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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CONT.CAS(C) 207/2014 & C.M.Nos.2246/2015, 12942/2015,
34237/2016

SH VIJAY KUMAR OHRI

..... Petitioner

Through Mr.D.K.Mehta, Advocate.

versus

SH NARESH KUMAR OHRI & ORS

..... Respondents

Through Mr.Arun Vohra with Ms.Aakriti
Vohra, Advocates for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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26.04.2017

Present contempt petition has been filed alleging wilful disobedience of the order dated 10th December, 2009 passed in CS(OS) No.490/2009, vide which the suit was disposed of in terms of the settlement agreement dated 02nd December, 2009 arrived at before the Mediation Centre.

Learned counsel for the petitioner states that the respondents are not cooperating in conversion of the property inasmuch as they are not removing the unauthorised construction in the premises occupied by the respondents.

This Court is of the view that the petitioner has an alternative effective remedy by way of execution proceedings. The Supreme Court in *Kanwar Singh Saini Vs. High Court of Delhi, 2012 (4) SCC*

307 has in similar facts held that execution proceedings should be resorted to. The relevant portion of the Supreme Court judgment in **Kanwar Singh Saini** (supra) is reproduced hereinbelow:-

“15. xxxx xxxx xxxx

Thereafter the learned Judge passed the following order:-

“12-5-2003

Present : The plaintiff in person.

The learned counsel for the defendant.

The statement of the plaintiff is recorded on a separate sheet. Statement of the defendant is already recorded. Keeping in view the statements of parties, the suit of the plaintiff is disposed of. Parties are bound by their statements as given in the court. No orders as to costs. File be consigned to record room.

*sd/-
CJ/Delhi
12-5-2003”*

16. Be that as it may, the so-called statement/undertaking given by the appellant-defendant culminated into the decree of the civil court dated 12-5-2003. Thus, the question does arise as to whether the application under Order 39 Rule 2-A CPC or under the 1971 Act could be entertained by the civil court and whether the matter could be referred to the High Court at all.

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18. In case there is a grievance of non-compliance with the terms of the decree passed in the civil suit, the remedy available to the aggrieved person is to approach the execution court under Order 21 Rule 32 CPC which provides

for elaborate proceedings in which the parties can adduce their evidence and can examine and cross-examine the witnesses as opposed to the proceedings in contempt which are summary in nature. Application under Order 39 Rule 2-A CPC is not maintainable once the suit stood decreed. Law does not permit to skip the remedies available under Order 21 Rule 32 CPC and resort to the contempt proceedings for the reason that the court has to exercise its discretion under the 1971 Act when an effective and alternative remedy is not available to the person concerned. Thus, when the matter relates to the infringement of a decree or decretal order embodies rights, as between the parties, it is not expedient to invoke and exercise contempt jurisdiction, in essence, as a mode of executing the decree or merely because other remedies may take time or are more circumlocutory in character. Thus, the violation of permanent injunction can be set right in executing the proceedings and not the contempt proceedings. There is a complete fallacy in the argument that the provisions of Order 39 Rule 2-A CPC would also include the case of violation or breach of permanent injunction granted at the time of passing of the decree.

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26. The case requires to be considered in the light of the aforesaid settled legal proposition. Whatever may be the circumstances, the court decreed the suit vide the judgment and decree dated 12-5-2003. The said decree was passed on the basis of admission/undertaking made by the appellant on 29-4-2003 and the pleadings taken by him in his written statement. Therefore, in a case where there was any disobedience of the said judgment and decree, the application under Order 39 Rule 2-A CPC should not have been entertained. Such an application is maintainable in a case where there is violation of interim injunction passed during the pendency of the suit. In the instant case, no interim order had ever been passed. Thus, the appropriate remedy available to the decree-holder Mohd. Yusuf had been to file application for execution under Order 21 Rule 32 CPC. The procedure in execution of an injunction decree is same as

prescribed under Order 39 Rule 2-A i.e. attachment of property and detention of the disobedient to get the execution of the order. In view thereof, all subsequent proceedings were unwarranted.”

In view thereof, present contempt petition is disposed of with liberty to the petitioner to file execution proceedings. However, this Court clarifies that it has not expressed any opinion on the merits of the controversy. The rights and contentions of all the parties are left open.

MANMOHAN, J

APRIL 26, 2017

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