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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CONT.CAS(C) 240/2017 & CM APPL. 11508/2017

BISWADEEP GUHA & ANR Petitioners

Through

Ms. Prema Priyadarshini with

Mr. Abhishek Gusain, Advocates

versus

ANIL NARANG

..... Respondent

Through

None

CORAM:**HON'BLE MR. JUSTICE MANMOHAN****ORDER**

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23.03.2017

Present contempt petition has been filed alleging wilful disobedience of the order dated 22nd July, 2014 passed in RFA 309/2009 whereby the appeal was disposed of in view of the Settlement Agreement dated 18th January, 2014, which incorporated the Collaboration Agreement dated 18th January, 2014.

Learned counsel for the petitioners states that respondent has failed to comply with Clause 7 of Settlement Agreement wherein respondent undertook to return all the original documents of the petitioners on the sale of his portion of the property or within a maximum period of 24 months of receiving the same from the petitioners, whichever was earlier.

She further states that the respondent has failed to comply with Clauses 18, 22 and 23 of the Collaboration Agreement with regard to construction/development of the third floor of the property bearing No. H-

1520, Chitranjan Park, New Delhi.

The Supreme Court in *Kanwar Singh Saini Vs. High Court of Delhi*, (2012) 4 SCC 307 in similar facts held that when the matter relates to infringement of a decree or decretal order which embodies rights, as between the parties, it is not expedient to invoke and exercise contempt jurisdiction. It further held that the appropriate remedy available to such a decree-holder is to file an application for execution under Order 21 Rule 32 CPC. The relevant portion of the aforesaid judgment is reproduced hereinbelow:-

“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.

(emphasis supplied)

Consequently, the present contempt petition and application are disposed of with liberty to the petitioners to file execution proceedings in accordance with law. The rights and contentions of all the parties are left open.

MANMOHAN, J

MARCH 23, 2017

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