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

+ **CONT.CAS(C) 1011/2016**

KRITIKA SURI & ANR Petitioners

Through Mr.Rajeev Kumar, Advocate.

versus

RAJESH RAJPAL & ORS Respondents

Through Mr.Harsh Jaidka, Advocate for R-1.
Mr.Harpreet Singh with Mr.Rajesh
Gupta Advocates for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

% **21.04.2017**

Learned counsel for the petitioners states that contrary to the Court's order and undertaking, the respondent-tenant has neither vacated the property in question nor paid rent for the same. He also states that the respondent has parted with possession contrary to the order passed by the Trial Court.

A perusal of the paper book reveals that the property in question had been purchased by the petitioner from the respondents itself and thereafter the same was leased back to respondent no.1. The suit for possession as well as arrears of rent and mesne profit had been filed only against respondent no.1 and the settlement had taken place between the petitioner and respondent no.1.

A perusal of the paper book also reveals that the petitioner has already filed execution proceedings with regard to the judgment and

order in question. Consequently, as the petitioner has already filed an alternative effective proceeding, this Court is of the opinion that the present contempt petition should not be entertained.

The Supreme Court in ***Kanwar Singh Saini Vs. High Court of Delhi, 2012 (4) SCC 307*** has held as under:-

“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.

Accordingly, the present contempt petition is closed. 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. The Executing Court is directed to decide the matter as expeditiously as possible preferably within a period of six months.

MANMOHAN, J

APRIL 21, 2017
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