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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CONT.CAS(C) 316/2017 & CM APPL. 15477/2017

BHARAT BUILDTECH PVT LTD Petitioner

Through Ms. Vibha Mahajan Seth with
Ms. Niharika Beri, Advocates

versus

RAAJ HIREMATH

..... Respondent

Through None

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

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25.04.2017

Present contempt petition has been filed alleging wilful disobedience of order dated 2nd September, 2016 passed in CS(OS) No. 2461/2007 whereby the respondent undertook to pay to the petitioner-company a sum of Rs. 10 lacs along with interest @ 9% per annum with effect from 26th August, 2007 till the date of payment on or before 2nd November, 2016.

Learned counsel for the petitioner-company states that despite the aforesaid order, the respondent has only paid an amount of Rs. 50,000 to the petitioner till date.

In the opinion of this Court, the petitioner has 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 and application are disposed of with liberty to the petitioner to file execution proceedings in accordance with law.

MANMOHAN, J

APRIL 25, 2017

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