

31

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CONT.CAS(C) 330/2017 & CM APPL. 16358/2017

ORANGE MAHA WIND
ENERGY PRIVATE LIMITED

..... Petitioner

Through: Mr. Sudhir Nandrajog, Senior Advocate
with Mr. Sunil Satyarthi, Mr. Sanjay
Jain, Ms Surya Rajappan and Mr. Uday
Pratap Singh, Advocates.

versus

M/S SRI MARUTI WIND
PARK DEVELOPERS & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

%

01.05.2017

Present contempt petition has been filed alleging wilful disobedience of order dated 02nd August, 2016 passed in CS(Comm.) 18/2015 wherein the suit was decreed in terms of the Settlement Agreement dated 08th June, 2016.

By virtue of Settlement Agreement dated 08th June, 2016 the respondents undertook to pay Rs. 25.20 crores to petitioner towards full and final settlement in relation to the project contracts on or before 30th November, 2016 failing which respondents had to pay interest @15% per annum till date of payment.

Respondents further agreed to complete their obligation and scope of work with regard to development of wind power project at Tehsil Khanapur, District Sangli, Maharashtra on or before 15th August, 2016.

Learned senior counsel for petitioner states that respondents have neither paid the settlement amount nor have completed their scope of work under the project agreement till date. He also states that the cheques given under the Settlement Agreement have been dishonoured.

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 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.....

xxxx

xxxx

xxxx

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.

However, this Court clarifies that it has not expressed any opinion on the merits of the controversy. Rights and contentions of all parties are left open.

MANMOHAN, J

MAY 01, 2017

js