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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CONT.CAS(C) 357/2017 & CM APPL. 17637/2017

RIMPLE WADHERA

Through

..... Petitioner

Ms. Ankita Gupta, Proxy Counsel for
Mr. Prabhjit Jauhar, Advocate

versus

GAURAV WADHERA

Through

..... Respondent

None

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

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09.05.2017

At the pass over stage, matter is taken up for hearing.

Present contempt petition has been filed alleging wilful disobedience of the order dated 21st August, 2014, passed in Case No. 37/1/2014, whereby the respondent-husband was directed to pay an amount of Rs. 50,000/- towards the maintenance of the petitioner-wife and an amount of Rs.40,000/- towards the maintenance of the child on or before 10th day of each English Calendar month. The respondent was also directed to clear the arrears of maintenance within five months.

It has been averred in the petitioner that an earlier CONT.CAS(C) 172/2016 preferred by the petitioner was disposed of vide order dated 27th October, 2016 wherein the respondent had given undertaking that the aforesaid order shall be complied with.

Learned counsel for the petitioner states that the respondent is not complying with the aforesaid orders and arrears of maintenance amounting to Rs. 2,90,000 are still outstanding.

She submits that the present contempt petition is maintainable in view of the judgment of the Supreme Court in ***Rama Narang (5) Vs. Ramesh Narang and Another, (2009) 16 SCC 126.***

Having heard learned counsel for the petitioner, this Court is of the view that petitioner has an alternative effective remedy under Section 20(6) of Protection of Women from Domestic Violation Act, 2005 (for short ‘DV Act’) and/or Section 125(3) of Code of Criminal Procedure, 1973 (for short ‘Cr. P.C.’) read with Section 28 of DV Act.

The Supreme Court in ***Kanwar Singh Saini Vs. High Court of Delhi, 2012 (4) SCC 307*** after considering ***Rama Narang (5) (Supra)*** 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.”

(emphasis supplied)

This Court is also of the view that it is only in exceptional circumstances and that too when a case of wilful disobedience is made out on the face of it, that a contempt petition on account of non-payment of maintenance is to be directly entertained by this Court. After all a contempt petition is not a substitute for enforcement/execution proceedings

Consequently, present contempt petition and application are disposed of with liberty to the petition to file appropriate proceedings either under the DV Act and/or Cr.P.C.

MANMOHAN, J

MAY 09, 2017

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