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

+ **CONT.CAS(C) 475/2017 & C.M. 38324/2018**

S K BAHL

..... Petitioner

Through: Mr. R.M.Sinha & Mr. P.M.Sinha,
Advocates

Versus

UDAY PRATAP SINGH & ANR.

..... Respondents

Through: Mr. Rajiv Bansal, Senior Advocate
with Mr.Arun Birbal & Ms. Kamna Singh,
Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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30.10.2018

The order of which contempt is alleged is of 3rd September, 2013 (*Annexure P-3*), vide which Division Bench of this Court on the basis of consent of the parties, had directed that the Conveyance Deed be executed in favour of petitioner in respect of subject premises upon payment of misuse charges etc.

Learned counsel for petitioner submits that all the requisite charges have been paid, but still Conveyance Deed has not been executed in favour of petitioner and so, respondents are in contempt.

Learned senior counsel for respondent-DDA has drawn attention of this Court to paragraph No.11 of the reply affidavit filed to the contempt petition, which reads as under:-

“11. That, in the meantime, on receipt of another complaint from one Shri P.K.Banerjee, the site was again got inspected and it was revealed that the building in issue was still under misuse and the commercial activities continue. At this stage, the respondent filed the present contempt petition, to which a status report in the nature of reply has been filed by DDA”

In response to affidavit of respondent, petitioner has filed a reply, which reads as under:-

“The contents of para 11 are absolutely wrong and vehemently denied. It is categorically denied that the property in question is still under the misuse. It is further submitted that the Hon’ble Division Bench passed the order on 03.09.2013 and since then the respondent DDA never raised the question of misuse by now i.e. prior to filing of the affidavit.”

Learned senior counsel for respondent-DDA submits that since misuse of the subject premises is being disputed by petitioner, therefore, the Court Commissioner, be appointed to find out as to whether there is misuse of the subject plot or not. It is pointed out that the subject property is purely residential one but shops are being run in it. It is maintained that unless misuse of subject property is stopped, conveyance deed cannot be executed in favour of petitioner.

On the contrary, learned counsel for petitioner submits that the subject property has been declared to be *mixed land use* property and the

question whether there is any misuse or not, is not the subject matter of this contempt petition. It is vehemently submitted by counsel for petitioner that respondents are bound by the order passed by the Division Bench, as it was a consent order.

Upon hearing and on perusal of material on record, I find that if there is misuse of the subject property, then direction to respondent to executed Conveyance Deed cannot be issued. Since the question of misuse is subject matter of dispute, therefore, it is deemed appropriate to dispose of this petition and application with liberty to parties to agitate the question of misuse of subject premises before the appropriate Forum.

With aforesaid directions, this petition and applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 30, 2018

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