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

+ **CONT.CAS(C) 959/2018**

SNEHA RAJPAL

..... Petitioner

Through: Ms.Ambika Vohra, Advocate with
Mr.Arjun Singh Bawa, Advocate.

versus

MADHAVI GUPTA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

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19.12.2018

CM No.53644/2018 (for exemption)

1. Allowed, subject to all just exceptions.

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2. The petitioner has filed this petition under Section 11 and 12 of the Contempt of Courts Act, 1971 for initiating contempt proceedings against the alleged contemnor (respondent) for non-compliance of the settlement agreement dated 19.09.2016 and the consequent decree dated 09.11.2016.

3. A civil suit bearing No. 3296/2011 titled as '*Madhvi Gupta v. Sneha Rajpal*' was pending between the parties, which was settled by way of the Settlement Agreement dated 19.09.2016 through mediation

before the Delhi High Court Mediation & Conciliation Centre ('DHCMCC'). A report to this effect was received from DHCMCC by the Court. The parties prayed that the suit may be decreed in terms of the said settlement. Accordingly, the suit was decreed in terms of the settlement. This court vide order dated 09.11.2016 directed that the decree sheet be drawn up and the settlement agreement dated 19.09.2016 shall form part of the decree.

4. Learned counsel for the petitioner contends that the petitioner has fulfilled her obligation in terms of the settlement agreement dated 19.09.2016 and executed a Sale Deed dated 04.10.2016 pertaining to the suit property i.e. B-89A/2, Kalkaji, New Delhi – 110019 in favour of the respondent and handed over the physical possession thereof to the respondent on 24.10.2016. He contends that the respondent has not been fulfilling her obligation to execute the requisite applications/petitions to be filed before this court for quashing of the FIR No. 435/2011 under Section 406/420/467/468/471/120B of the Indian Penal Code, 1860 ('IPC') registered against him on the complaint of the respondent. He submits that the CrI.M.C. No. 3216/2015 filed by the petitioner for quashing of the charge-sheet dated 18.02.2015 and the said FIR was dismissed as withdrawn. He submits that on 17.10.2018, the petitioner filed an application under Section 239 of the Code of Criminal Procedure, 1973 ('Cr.PC') before the concerned court seeking discharge from the criminal proceedings in view of the settlement.

5. He contends that by not signing the joint application for quashing of the said FIR and charge sheet, the respondent has willfully disobeyed the undertaking given by her to the court and action should be initiated under the provisions of the Contempt of Courts Act, 1971. In support of his contention, he relied upon a judgment of Hon'ble Supreme Court in **Rama Narang Vs. Ramesh Narang and Ors., (2009) 16 SCC 126**, wherein the Apex Court has referred to its earlier decision in **Rama Narang v. Ramesh Narang and Anr., (2006) 11 SCC 114**, holding that *'In the present case, the consent terms arrived at between the parties was incorporated in the orders passed by the Court on 12th December 2001 and 8th January, 2002. The decree as drawn up shows that order dated 8th January, 2002 was to be "punctually observed and carried into execution by all concerned". A violation of the terms of the consent order would amount to a violation of the Court's orders dated 12th December 2001 and 8th January 2002 and, therefore be punishable under the first limb of Section 2(b) of the Contempt of Courts Act, 1971.'* He also refers to para 30 of the judgment whereby the Apex Court has reiterated its view taken in **Noorali Babul Thanewala v. K.M.M. Shetty and Ors., (1990) 1 SCC 259**, holding that *'When a court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in substance to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the court by or on behalf of a party to a civil proceedings is, therefore, regarded as tantamount to a breach of injunction although the*

remedies were not always identical. For the purpose of enforcing an undertaking that undertaking is treated as an order so that an undertaking, if broken, would involve the same consequences on the persons breaking that undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an injunction or breach of an undertaking given to a court by a person in a civil proceeding on the faith of which the court sanctions a particular course of action is misconduct amounting to contempt.'

6. Learned counsel further relies on another judgment of the Hon'ble Supreme Court in **Bank of Baroda V. Sadruddin Hasan Daya and Ors., (2004) 1 SCC 360**, wherein the Apex Court has upheld the judgment of the Bombay High Court in **Bajranglal Khemka v. Kapurchand Ltd., AIR 1950 Bom 336**, holding that *'There is no reason why even in a consent decree a party may not give an undertaking to the Court. Although the Court may be bound to record a compromise still, when the Court passes a decree, it puts its imprimatur upon those terms and makes the terms a rule of the Court; and it would be open to the Court, before it did so, to accept an undertaking given by a party to the Court. Therefore, there is nothing contrary to any provision of the law whereby an undertaking cannot be given by a party to the Court in the consent decree, which undertaking can be enforced by proper committal proceedings.'*

7. The judgments relied upon by the learned counsel for the petitioner are distinguishable. In the present case, no undertaking was

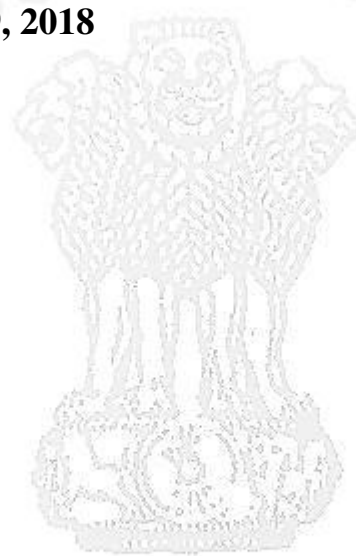
furnished by either of the parties to this court far from acceptance of any undertaking by the court. Therefore, I do not find any merit in the petition. The petitioner may pursue his remedies as available to him in accordance with law.

8. The petition is accordingly dismissed with no order as to costs.

DECEMBER 19, 2018

“shailendra”

VINOD GOEL, J.



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