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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 11309/2024 & CM APPL. 46861/2024**
NEW KRISHNA EDUCATION SOCIETY (REGD.) THROUGH
ITS PRESIDENT SH SANCHIT ARORAPetitioner
Through: Mr.Namit Suri, Ms.Purnima Singh
and Mr.Arjun Kaushal, Adv.

versus

THE COMMISSIONER OF POLICE & ORS.Respondents
Through: Ms. Nasreen and Mr. Kunal Raj
Advs for R-1 & 2.
Ms.Shilpa Ohri, ASC for R-3.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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14.08.2024

1. The petitioner admittedly has a decree in his favour in terms of judgment and decree dated 03.09.2019.
2. Learned counsel appearing on behalf of the petitioner further submits that in an execution proceeding, *vide* order dated 28.10.2022, the Court recorded its satisfaction with respect to the execution of the judgment and decree and accordingly, the proceedings were closed with the trial Court observing that the execution is satisfied.
3. If the petitioner feels that the aforesaid judgment and decree is not being implemented and there is violation of the injunction, the petitioner can very well approach the concerned Court in terms of provisions under Order XXXIX Rule 2A of the CPC.
4. In any case, once the decree exists in favour of the petitioner, the High Court under Article 226 of the Constitution of India cannot be expected to implement the judgment and decree passed by the trial court.



5. The High Court cannot assume the jurisdiction of a executing Court. On this aspect, it is pertinent to refer to the decision rendered by the Supreme Court in the case of *Ghan Shyam Das Gupta v. Anant Kumar Sinha*¹, wherein, it has been held that a public law remedy under Article 226 of the Constitution of India cannot be invoked for execution of a decree passed by a competent Civil Court when an alternate effective mechanism is provided under the Code of Civil Procedure, 1908. The relevant extract from the said decision has been culled out below for reference:

*“8. The principle as to when the High Court should exercise its special jurisdiction under Article 226 and when to refuse to do so on the ground of availability of an alternative remedy has been settled by a long line of cases. **The remedy provided under Article 226 is not intended to supersede the modes of obtaining relief before a civil court or to deny defences legitimately open in such actions.** As was observed in *State of A.P. v. Chitra Venkata Rao* [(1975) 2 SCC 557 : 1975 SCC (L&S) 349 : (1976) 1 SCR 521] the jurisdiction to issue a writ of certiorari is supervisory in nature and is not meant for correcting errors like an appellate court. In *Thansingh Nathmal v. A. Mazid, Supdt. of Taxes* [(1964) 6 SCR 654 : AIR 1964 SC 1419] a case dealing with liability to pay sales tax, the appellants without following the statutory remedy under the Sales Tax Act, moved the High Court under Article 226 on the ground that the Act was ultra vires. The challenge was rejected. Another contention, namely, that the finding of the Commissioner that the goods were actually within the State at the time of the contract was based on no evidence and was purely speculative, was also raised. This ground also failed before the High Court and the writ petition was dismissed. Approving the decision, this Court observed that if the appellants had pursued the statutory remedy under the Act and the question had been referred to the High Court, the Court could have appropriately advised the Commissioner, but not having done so, the High Court could not be asked to assume the role of an appellate court over the decision of the Commissioner either on a question of fact or even of law. Again when a learned Single Judge of the High Court and on appeal a Division Bench proceeded to examine the correctness of an order in relation to grant of a permit to ply a vehicle under the Motor Vehicles Act, it was observed by this Court in *M. Naina Mohammed v. K.A. Natarajan* [(1975) 2 SCC 352 : (1976)*

¹ (1991) 4 SCC 379



1 SCR 102] , that the power under Article 226 is supervisory in nature and the Judges at both the tiers had unwittingly slipped into the subtle but, fatal, error of exercising a kind of appellate review. So far the question of executability of a decree is concerned, the Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all its aspects. The numerous rules of Order XXI of the Code take care of different situations, providing effective remedies not only to judgment-debtors and decree-holders but also to claimant objectors as the case may be. In an exceptional case, where provisions are rendered incapable of giving relief to an aggrieved party in adequate measure and appropriate time, the answer is a regular suit in the civil court. The remedy under the Civil Procedure Code is of superior judicial quality than what is generally available under other statutes, and the Judge being entrusted exclusively with administration of justice, is expected to do better. It will be, therefore, difficult to find a case where interference in writ jurisdiction for granting to a judgment-debtor or a claimant objector can be justified. The Rules 97 to 106 of Order XXI envisage questions as in the present appeal to be determined on the basis of evidence to be led by the parties and after the 1976 Amendment, the decision has been made appealable like a decree. The High Court, in the present case, therefore, ought not to have embarked upon a decision of the writ petition on merits, and should have refused to exercise its special jurisdiction on the ground of alternative remedy before the civil court.”

6. Learned counsel appearing on behalf of the petitioner also places reliance on Annexure P/9 which is an order passed by this Court in the case of *Rosary Sr. Secondary School v. Commissioner of Police and Ors*². However, the facts and situation of the instant case varies from that of the order passed in the aforesaid case and the same would not be applicable in the instant case.

7. Accordingly, the instant writ petition along with pending application stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 14, 2024/MJ

² W.P (C) 16296/2022