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versus

CORAM: JUSTICE S. MURALIDHAR

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2. In response to the notice issued to him, the Respondent denies having received any notice of invocation of an arbitration clause purportedly sent by the Petitioner on 21st October 2010 and 11th January 2011. Additionally it is pointed out that the Petitioner filed Suit No. 154 of 2010 in the Court of the Senior Civil Judge, Delhi for a perpetual injunction and specific performance of the agreement dated 9th October 2009. The said suit came to be dismissed for default on 16th December 2010. It appears that thereafter the Petitioner on 27th December 2010 filed an application

Digitally Signed By: A.MUSE seeking restoration
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

seeking restoration of the suit. Additionally, the Petitioner filed an

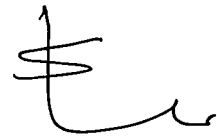
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application 22nd February 2011 seeking to amend the plaint even without the suit being restored. However on 22nd February 2011 when the restoration application was listed, the learned Senior Civil Judge noticed that the Petitioner had not taken steps pursuant to the notice issued in the restoration application. Consequently, the restoration application has itself been dismissed on 2nd February 2011.

3. This Court finds that all the above averments concerning the Petitioner's suit for injunction and specific performance being already dismissed in default, and the application for restoration of the said suit also being dismissed for non-prosecution are borne out by the documents placed on record in these proceedings. The Petitioner has only vaguely mentioned in para 7(ix) of the present petition that "the applicant was compel (sic '*compelled*') to filed (sic '*file*') a criminal complaint under Section 138 of NI Act and a civil suit for perpetual injunction to restrain the respondent from selling the property to the third party and both the matters are pending in the Saket Court, New Delhi". The Petitioner has suppressed the fact that the suit was dismissed for default on 16th December 2010 after which the Petitioner sought its restoration the application for which was, in the presence of the counsel for the Petitioner, dismissed by the learned Civil Judge for non-prosecution on 2nd February 2011. This was prior to the filing of the present application on 14th February 2011.

4. Apart from there being suppression of material facts in the present petition, it also appears that the Petitioner is precluded from raising a fresh claim by invoking the arbitration clause after having unsuccessfully pursued such remedy by way of a civil suit.

5. Consequently, there is no merit in this arbitration petition, and it is dismissed as such.



S. MURALIDHAR, J.

NOVEMBER 17, 2011

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