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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1089/2014
M/S CARZONRENT (INDIA) PVT LTD

..... Petitioner

Through Mr. Vijay Nair, Adv.
versus

JAGESHWAR

..... Respondent

Through None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **06.04.2016**

The petitioner is aggrieved by the order dated 12.08.2014 vide which his application seeking a review of the earlier order dated 17.01.2013 had been dismissed. Vide order dated 17.01.2013, the application filed by the defendant under Section 8 of the Arbitration and Conciliation Act had been dismissed. The Court had noted that neither the original arbitration agreement and nor the attested copy of the same had been filed along with the said application. On the same date, the Court had noted that the defendant had undertaken to file his written statement; in fact the defendant was served on 23.11.2012 and he had given an undertaking to file his written statement on one day prior to the order dated 17.01.2013 i.e. on 16.01.2013. This has been noted in the said order-sheet. On that date, the defence of the defendant had also been struck off. A review petition was filed seeking review of the order dated 17.01.2013. The prayer made in the review petition has been perused. The prayer is twofold. It had sought a recall of the order dated 17.01.2013 with a further prayer to be

granted an opportunity to contest the suit on merits. The impugned had noted this prayer; it was noted that the prayer made in the review application had sought a review of the order dated 17.01.2013 vide which the defence of the defendant had been struck off; the second prayer was to contest the suit on merits. He had been granted permission to contest the suit on merits and file his written statement.

Today before this Court, it has been urged that the original arbitration agreement had been placed on record along with these review application and in view of the mandate of Section 8 of the Arbitration and Conciliation Act, the matter should have been referred for arbitration. Reliance has been placed upon by the learned counsel for the petitioner to a judgment reported as 2012 (1) ARBLR 279 Comed Pharmaceuticals Ltd. Vs. Blue Star Limited to support a submission that in such an eventuality, the matter should have been referred to arbitration.

This Court is not in agreement with this submission of the learned counsel for the petitioner. Each case depends upon its own factual matrix. The defendant as way back as on 17.01.2013 had given an undertaking to file his written statement. Thereafter, he had sought review of the order dated 17.01.2013 as besides the fact on that date, his application under Section 8 of the Arbitration and Conciliation Act was dismissed; the next corollary was that the defence of the defendant had been struck off. In the review petition, the prayer made by the defendant was to contest the suit on merits. There was no prayer that the matter be referred to arbitration. That apart the defendant already having undertaken to file the written

statement, he had taken his steps to lead his defence. At the cost of repetition, this Court notes that the impugned order has already granted permission to the defendant to file his written statement and that part of the order where his defence has been struck off has been set aside.

The impugned order in this background suffers from no infirmity. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

APRIL 06, 2016

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