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

% **Date of Decision: 24th March, 2025**

+ **CM(M) 537/2025 & CM APPL. 16916-16917/2025**

RAM PRABHAKAR

.....Petitioner

Through: Petitioner-in-person

versus

PHILIPS PAINTS PVT LTD & ORS.

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 16917/2025 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 537/2025 & CM APPL. 16916/2025

1. The point raised in the present petition is very short.
2. Petitioner had filed a suit for specific performance, declaration and injunction. Such suit was registered as Suit No. 81/10 and during the course of the pendency of the aforesaid suit, matter was amicably settled between the parties and one application under Order XXIII Rule 3 r/w Section 151 CPC was filed jointly by the plaintiff and defendant nos. 2 & 3. Along with the application, they also placed on record *Memorandum of Settlement* (MoS) and prayed the Court that the matter may accordingly be disposed of, on the basis of such settlement terms and a decree be also passed.
3. Based on the aforesaid development and the terms reflected in the MoS, learned Civil Judge passed a decree on 01.12.2011. Copy of decree-sheet has also been annexed with the present petition.
4. Plaintiff (petitioner herein) filed execution petition, which was registered as Execution No. 169/2022. It seems that on the basis of some



objection taken by the judgment debtor, who contended that as per the terms of aforesaid MoS, parties were rather required to go for appointment of Arbitrator, the decree holder/plaintiff/petitioner herein, under some legal advice, moved an application seeking stay of the execution petition. Petitioner accordingly apprised the Executing Court that he had filed an application under Section 11 of Arbitration & Conciliation Act, 1996 before this Court for appointment of Arbitrator. He, therefore, prayed that the execution petition may be stayed till the adjudication of his such application moved under Section 11 of Arbitration & Conciliation Act, 1996. Judgment debtors opposed the aforesaid application and contended that decree holder could not have been permitted to pursue two equally efficacious remedies at the same time.

5. Learned Civil Judge, while observing that decree holder was not diligently pursuing the execution petition and had rather opted to resolve the disputes by seeking appointment of an Arbitrator, came to conclusion that decree holder was delaying the proceedings and, accordingly, execution petition was *dismissed for non-prosecution*.

6. Such order is under challenge.

7. Apparently, learned Civil Judge has not appreciated the averments made by the decree holder in the right perspective.

8. There was, actually speaking, nothing to suggest that the decree holder was pursuing two legal remedies by making any kind of concealment. On the contrary, according to decree holder, the aforesaid application under Section 11 of Arbitration and Conciliation Act, 1996 had been filed by him in order to deal with the objections taken by the judgment debtors. Faced with the aforesaid objections, decree holder not only filed an application before



this Court seeking appointment of Arbitrator, but also prayed for stay of the proceedings till the execution of the aforesaid appointment of Arbitrator and in such a situation, learned Civil Judge should not have dismissed the execution petition, that too, for want of prosecution.

9. It is not difficult to imagine a situation whereby this Court, if dismisses the application seeking appointment for an Arbitrator, the decree holder, despite there being a decree in his favour, would become totally remediless.

10. Nobody appears on advance notice.

11. However, keeping in mind the overall facts and circumstances of the case, this Court does not find any reason to keep this case pending anymore and dispose of the present petition with direction that the abovesaid execution petition would rather be deemed as adjourned *sine die*. It would be for the concerned party to seek its revival as per the outcome of the abovesaid application moved under Section 11 of Arbitration & Conciliation Act, 1996.

12. The petition stands disposed of.

13. Resultantly, the direction of the learned Trial Court whereby the execution petition was disposed of as dismissed for non-prosecution stands set aside.

14. A copy of this order be given *dasti* to the petitioner under the signatures of the Court Master and be also sent to the learned Trial Court for information.

(MANOJ JAIN)
JUDGE

MARCH 24, 2025/dr/js