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

+ RFA 361/2016

HEMANT JAIN

..... Appellant

Through: Mr. Rakesh C. Agrawal, Adv.

Versus

SIDHARTH JAJU & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **24.05.2016**

CM No.20071/2016 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

RFA 361/2016, CMs No.20070/2016 (for stay) & 20072/2016 (for condonation of delay in filing the appeal)

3. The appeal impugns the order dated 14th October, 2014 of the Court of Additional District Judge (ADJ)-1, North East District, Karkardooma Courts, Delhi disposing of the Civil Suit No.323/2012 filed by the appellants for declaration and permanent injunction on an application of the respondent / defendant under Sections 8 and 5 of the Arbitration and Conciliation Act, 1996 by referring the parties to arbitration.
4. The appellant earlier preferred RFA No.531/2014 against the said order and which was withdrawn on 25th February, 2015 with liberty to apply to the ADJ for review.

5. The appellant thereafter applied for review and which review application has been dismissed by the learned ADJ vide order dated 18th February, 2016.

6. In this appeal, besides the order dated 14th October, 2014, challenge is made to the order dated 18th February, 2016 also.

7. I have enquired from the counsel for the appellant as to how this appeal under Section 96 of the Code of Civil Procedure, 1908 which is maintainable only against a decree or against orders deemed to be decreed lies. The disposal of suit on an application under Section 8 of the Arbitration Act, does not constitute a decree.

8. The counsel for the appellant has no answer though states that he had advised the filing of a CM(M) petition under Article 227 of Constitution of India.

9. The question, in my opinion, is no longer res integra. The Division Bench of this Court in ***Canbank Financial Services Ltd. Vs. Haryana Petrochemicals Ltd.*** MANU/DE/0794/2008 (whereagainst SLP(C) No.27734/2008 was dismissed as withdrawn on 18th February, 2013) has held that no appeal under Section 96 of the CPC lies against such an order and in fact even an LPA against such an order is barred by Section 37 of the Arbitration Act. The said judgment was subsequently followed by me in ***Shri Rohan Lal Gupta Vs. Shri Parasram Holdings Pvt. Ltd.*** (2009) 157 DLT 712.

10. The counsel for the appellant then seeks to withdraw this appeal with liberty to take appropriate remedies.

11. In this view of the matter, need to go into the aspect of substantial delay in filing the appeal insofar as against the order dated 14th October, 2014 does not arise.

12. The appeal is dismissed as withdrawn with liberty aforesaid.

RAJIV SAHAI ENDLAW, J.

MAY 24, 2016

‘gsr’