

Misc. Appeal No 2/2005

Order No 81 dated 23.08.16.

Appellant files an application praying for adjournment on this day fixed for hearing of the Appeal on the ground that he should be given an opportunity to bring order from the Hon'ble Court.

Heard ld advocate for the appellant.

From the submission of ld advocate for the appellant and the materials on the case records it appears that appellant preferred an appeal being aggrieved by the order dated 04.08.2001 passed by the ld Civil Judge (Sr. Divn.) Tamluk in the Misc case 4 of 1998 u/s 30 and 33 of Arbitration and Conciliation Act, 1940 by which the award dated 03.02.1998 passed under the Arbitration and Conciliation Act has been modified by the judgment/order dated 30.01.2006. The order dated 04.08.2001 passed by the ld. Civil Judge (Sr. Divn.), Tamluk has been set aside by this court by judgment dated 30.01.2006 on the ground that the Court of ld. Civil Judge (Sr. Divn.) has no jurisdiction under the Arbitration and Conciliation Act, 1996 to entertain the objection against the award passed on 03.02.1998.

In the proceeding CO No. 1613/2007 the Hon'ble court by order dated 08.07.2008 has been pleased to reverse the judgment dated 30.01.2006 passed by this Court and directed this court to dispose of the Appeal on merit. Since after passing of the judgment by Hon'ble Court in CO No. 1613/2007 on 08.07.08, appellant has been insisting that one Review Application vide Review Application No 165/2008 for reviewing the order passed in CO No. 1613/2007 is pending before the Hon'ble court. Since filing of the Review Application more than 8 years have elapsed and no order of stay of the proceeding has been received from the Hon'ble Court. Merely on the ground of pendency of the Review Application preferred by Appellant for reviewing the order of Hon'ble High Court passed in CO No. 1613/2007, the hearing of the Appeal has been

adjourned for long eight years.

At this stage on being called by the Court as to why the Appeal shall not be dismissed for non-prosecution, ld. advocate for the appellant asked for a time of two months for bringing order from the Hon'ble Court in the proceeding Review Application No. 165/2008.

Considering the legal proposition involved in the case involving the factual matrix of the case and the submission of ld. advocate for the Appellant that a last opportunity should be given to the appellant for bringing stay order from the Hon'ble court, I tilt in favour of the adjournment of the hearing of the appeal for the day.

The case is thus adjourned for the day.

To 17.11.2016 for hearing of the Appeal.

Dictated and corrected by me

Additional District Judge,
FTC-I, Tamluk

Additional District Judge
FTC-I, Tamluk