03.09.2020
S/L No.26
(Through Video Conference)
(NB/SK)
Ct. No. 8

FMAT 363 of 2020
With
CAN 1 of 2020(Old No:CAN 5597 of 2020)
CAN 2 of 2020(Old No:CAN 5599 of 2020)

Srikanta Dey
Vs.
Amtek Dealer Private Limited

Mr. Saptansu Basu, Sr. Adv.,
Mr. Sukanta Chakraborty,
Mr. Aninda Halder
…for the Appellant.

The petitioner undertakes to affirm and stamp the petition as per the Rules within one month of resumption of normal functioning of the court. The petition is taken up through video conference on the basis of such undertaking.

Affidavit of service filed on behalf of the appellant/petitioner shows that the notice has been duly sent to the registered office of the opposite party on 24th August 2020. Copy of the same be kept with the record.

This appeal is arising out of an order passed by the learned District Judge in connection with the application under Section 9 of the Arbitration and Conciliation Act, 1996.

The petitioner relied upon a memorandum of understanding between Amtek Dealer Private Limited (hereinafter referred to as the ‘owner’) and the appellant/petitioner by which the appellant was required to pay a sum of Rs.6 crores 50 lakhs (Rupees Six Crores Fifty Lakhs) at the time of signing of the MoU and the balance of

Rs.30 crores when the Amtek Dealer Private Limited shall furnish acceptance letters from Banks Loan Settlement from the concerned bank to the appellant in respect of the property that the respondent had purchased in a court's sale. The appellant appears to have been appointed as a director of the respondent company. The appellant was to perform certain works and functions as director which inter alia include the appellant to take various measures as mentioned in Clause 8 and various sub-clauses thereunder. The appellant has claimed that in terms of the MoU, he had paid a sum of Rs.6 crores 50 lakhs and the property in question has been physically handed over to the appellant. The appellant complained that although the appellant had arranged a developer and applied for electric connection in the name of the developer as well as the draft agreement prepared and forwarded to the respondent for consideration the appellant could not get the financial assistance from the banks for want of the agreement being confirmed by the respondent.

The petitioner has stated that the respondent has informed the petitioner that there is a bank loan to the tune of Rs.36 crores 50 lakhs in respect of the property in question and unless such payments are being made, this will be well neigh impossible for the respondent to make the land free from all encumbrances. The petitioner alleged that it is the obligation of the first party to make such payment and to ensure issuance of a No Due Certificate to the appellant so as to enable the appellant to take appropriate steps in the matter.

However, what is revealing is that the respondent has informed the appellant about an existing loan with its bank in excess of Rs.36 crores and without payment of such amount the bank would not issue any non-encumbrance certificate. The appellant claims himself to be a director of the respondent. It is unbelievable that the appellant would not be in the know of the existing liability to be discharged by the respondent and with his eyes wide open entered into the MOU. This litigation cannot defeat the right of the bank to realise its dues through the enforcement of its securities which, inter alia, include the land mentioned in the schedule of the loan agreement.

Mr. Saptansu Basu the learned Senior Counsel appearing on behalf of the appellant has submitted that an order of injunction may be passed in favour of the appellant after protecting the right of the bank. This litigation cannot defeat the right of a bank and it has to be seen that this litigation is not engineered to defeat the legitimate due of the bank. However, at the same time it appears that the appellant has paid a sum of Rs.6.5 crores at the time of execution of the MOU and in view of failure of the respondent to make the said property free from encumbrance the appellant could not give effect to development agreement. In fact, the respondent did not finalise the draft development agreement.

Considering the aforesaid facts and circumstances we dispose of the appeal by restraining the respondent from creating any third party interest, however, this order shall not defeat the right of the bank under the security agreement executed by the respondent in favour of the bank.

This order shall also not prevent the appellant to deal with the properties in discharge of its statutory obligation arising out of any proceeding initiated by the bank in relation to the properties in question. To clarify we say that this order cannot defeat the right of the bank to realize its dues through the enforcement of securities, which includes the properties in question.

The learned District Judge in deciding the matter may issue notice to the bank for ascertaining if these properties are the securities created by the respondent and if any action is initiated by the bank for enforcement of such securities.

We make it clear the right of the bank should not in any way be prejudiced by the order passed by us and the bank shall be free to initiate appropriate proceeding in accordance with law in relation to the properties if occasion arises.

This order shall be in operation for a period of six weeks. It would be open to the learned District Judge to decide this injunction application on 30th September 2020 without being influenced by the observations made by us in the order after giving an opportunity of hearing to the respondent. Any further extension of the interim order passed by us would be at the discretion of the learned District Judge in the event the matter is not disposed of or decided on 30th September 2020 or on the expiry of six weeks from date.

The appellant shall communicate this order to the learned District Judge as well as to the Amtek Dealer Private Limited.

FMAT 363 of 2020, CAN 1 of 2020(Old No:CAN 5597 of 2020) CAN 2 of 2020(Old No:CAN 5599 of 2020) are disposed of.

(Soumen Sen, J.)

(Saugata Bhattacharyya, J.)