

11.02.2021
KC(2&3)

F.M.A.T. 361 of 2020
Kazi Zainal Absar and Anr.
-versus-
HDB Financial Services Limited
With
CAN 1 of 2020 (Old CAN No. 5457 of 2020)
With
CAN 2 of 2020 (Old CAN No. 5458 of 2020)
With
CAN 3 of 2020 (Old CAN No. 5459 of 2020)
With
F.M.A.T. 362 of 2020
Kazi Zainal Absar and Anr.
-versus-
HDB Financial Services Limited
With
CAN 1 of 2020 (Old CAN No. 5461 of 2020)
With
CAN 2 of 2020 (Old CAN No. 5462 of 2020)
With
CAN 3 of 2020 (Old CAN No. 5463 of 2020)

(Via Video Conference)

Mr. Debajyoti Basu,
Mr. Shamba Chakraborty,
Mr. Abhiraj Tarafdar.....For the appellants.

Mr. Pradip Mukherjee,
Ms. Barnana Sen.....For the respondent.

The contention of Mr. Basu, learned advocate for the appellant is that on 24th November, 2017 in an application under Section 9 of the Arbitration and Conciliation Act, 1996 an order was obtained by the respondent from the learned City Civil Court for appointment of a receiver to take possession of two tippers. The case arose out of a hire purchase agreement. He says that for long thereafter the

respondent took no steps to serve the petition on his clients and on 20th March, 2018, 26th June, 2018, 12th November, 2018, 19th March, 2019 and 2nd August, 2019 took extension of time from the court to file a service return. On 10th January, 2020 the application was adjourned till 26th May, 2020.

Thereafter during the lockdown due to outbreak of Covid-19 pandemic the respondent has taken possession of the vehicles.

Learned advocate for the respondent submits that an award has already been made and published and by virtue of the amended section 9 of the Arbitration and Conciliation Act, 1996, the section 9 application has become redundant.

Mr. Basu replies that in that case the vehicles should be released and returned to his clients. He submits that his clients did not receive any notice of commencement of the arbitration proceedings before the learned arbitrator.

Considering the submissions, dispensing with all formalities we dispose of this appeal (F.M.A.T. 361 of 2020) by directing that on the basis of this order, the learned court below will immediately fix a date for consideration of the section 9 application, when all points, including the point raised by the learned counsel for the respondent that the section 9 application has become infructuous, shall be

considered by the court. The said application shall be disposed of by a reasoned order upon hearing both sides as early as possible, preferably within two months from date.

All connected applications are disposed of.

F.M.A.T. 362 of 2020
With
CAN 1 of 2020 (Old CAN No. 5461 of 2020)
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CAN 2 of 2020 (Old CAN No. 5462 of 2020)
With
CAN 3 of 2020 (Old CAN No. 5463 of 2020)

The above order will govern this appeal and the connected applications, which are also disposed of.

(I.P. MUKERJI, J.)

(SUBHASIS DASGUPTA, J.)

