

FMAT 73 of 2020
with
I.A No. CAN 2 of 2020 (Old No. CAN 836 of 2020)

Aditya Birla Finance Ltd.
Vs.
Luthfa Foundation & Ors.

Mr. Amit Kumar Nag
... For the Appellant

Mr. Sandip Ghose
... For the Respondents

Learned counsel for the parties are ad-idem that this matter involves similar question that has been decided by a coordinate bench of this Court in FMAT 74 of 2020 (Aditya Birla Finance Limited Vs. Pinnacle Educational Trust and Others) and invited this Court to dispose of the present appeal and the connected application in terms of the coordinate bench's decision in the aforesaid appeal dated 22nd November, 2021.

In view of the aforesaid submission and having regard to the amendment of Section 8 of the Arbitration and Conciliation Act, which came into effect on and from 23rd October, 2015 and also having regard to the submission made on behalf of the appellant that the appellant is in a position to produce the original agreement before the trial court, we dispose of the appeal and the connected application by directing the trial court to consider the matter in the light of the observations made by the coordinate bench in FMAT 74 of 2020. The relevant observations made in the said appeal are indicated below:-

“We have examined the impugned order in the light of the aforesaid submissions. We are of the opinion that the trial court ought to have examined the issue of maintainability of the

suit in the light of the arbitration agreement between the parties in view of the prayer made under Section 8 of the Arbitration and Conciliation Act. In doing so, the Court was required to examine the existence of an arbitration agreement vis-à-vis the cause of action pleaded in the plaint. The court below failed to do so and directed the appellant to file written statement. Thus, we are inclined to set aside the order impugned and remand the matter for fresh consideration by the court below.

Appellant shall file original agreement before the court below within seven days from date. Respondents may file additional objection, if so advised, within seven days from date.

Trial court, thereafter, dispose of the application in the light of the additional materials filed before it within three months from date without granting unnecessary adjournment to either of the parties.”

The period of three months for the purpose of disposal of the application should commence from tomorrow i.e. 4th January, 2022.

Thus, the order impugned is hereby set aside and we remand the matter for fresh consideration by the court below.

The appeal and the connected application are accordingly disposed of without any order as to costs.

(Ajoy Kumar Mukherjee,J.)

(Soumen Sen, J.)

