

23.03.2022
SL No.27
Court No.8
(gc)

FMAT 71 of 2022
With
CAN 1 of 2022
With
CAN 2 of 2022

HDB Financial Services Ltd.
Vs.
Md. Juber Alam

(Via Video Conference)

Mr. Pratip Mukherjee,
Mr. Omar Faruk Gazi,
Mr. Sayak Ranjan Ganguly,
....for the Appellant.
Mr. Abhijit Roy,
Mrs. Gitashree Mistry,
Mr. Subham Gupta,
...for the Respondent.

Re: CAN 1 of 2022

This is an application for condonation of delay.

There is a delay of 11 days in preferring the memorandum of appeal. We have perused the application for condonation and we feel that sufficient cause is being shown for not being able to prefer the appeal within the period of limitation.

On such consideration, the application for condonation of delay being CAN 1 of 2022 is allowed and disposed of.

Re: FMAT 71 of 2022
with
CAN 2 of 2022

The learned Counsel for the respondent admits that in terms of the statement dated 13th January, 2022, a

sum of Rs.1,17,720/- is due and payable by the respondent to the appellant. The learned Counsel for the appellant submits that there are other charges payable by the respondent to the appellant under the hire purchase agreement.

Be that as it may, it is an admitted fact that the respondent is a defaulter.

The learned Counsel for the respondent submits that the respondent is ready and willing to pay the aforesaid sum and shall continue to pay the future installments in time in order to prevent repossession of the asset in question.

In the event the respondent pays a sum of Rs.1,60,000/- within 10 days from date, the interim order granted by the Trial Court shall continue. In default, the impugned order shall stand vacated and the appellant shall be entitled to exercise all or any of his rights under the hire purchase agreement.

Upon receipt of such payment, the appellant shall regularize the account and furnish a statement showing the amount that may be due and payable till March, 2022. Any amount found payable over and above Rs.1,60,000/- towards arrears shall be paid by the respondent along with EMI for the month of April, 2022.

In the event the said sum of Rs.1,60,000/- is paid within the aforesaid stipulated time, the Receiver shall release the said vehicle in favour of the respondent and

shall stand discharged. The appellant shall not, for the time being, make any demand for payment of interest or any other penal charges that they are entitled to under the hire purchase agreement.

This order is without prejudice to the rights and contentions of the appellant that the suit is not maintainable in view of Sections 5 and 8 of the Arbitration and Conciliation Act.

Since no affidavit-in-opposition is filed, all allegations are deemed to have been denied.

The impugned order stands modified to the aforesaid extent.

With the aforesaid observation, the appeal being FMAT 71 of 2022 and the application being CAN 2 of 2022 stand disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)