

17.03.2022
KC(AD12)

F.M.A.T. 75 of 2022
Aditya Birla Finance Limited
-versus-
Aniruddha Guharoy
With
CAN 1 of 2022

Mr. Debnath Ghosh,
Mr. Amit Kumar Nag,
Ms. Ranjabati Ray,
Mr. Kush Agarwal.....For the appellant.

Mr. Tapan Coomaar Dey,
Mr. Subrata Bhattacharjee,
Ms. Shreya Chatterjee.....For the respondent.

On one ground alone the impugned judgment and order dated 22nd February, 2022 is required to be set aside. The order is ex-parte and without any reasons. The effect of this ex-parte order is restraint on the appellant/respondent from in any way dealing with the immovable property described in schedule 'A' of the application before the learned court below. Such an order apart from the reason aforesaid ought to have been passed upon notice to the respondent/appellant.

We set aside the order dated 22nd February, 2022 and direct the learned court below to consider the interim application afresh at the 'Motion' stage upon notice to the appellant/respondent and dispose of the

same by a reasoned order after considering the contentions of the parties.

We enumerate three of the contentions raised by Mr. Debnath Ghosh, learned advocate appearing for the appellant/petitioner.

The first is that the learned court below had no jurisdiction by virtue of the forum selection clause contained in the agreement between the parties.

Secondly, the subject matter of dispute was commercial in nature and that for this reason the learned court below had no jurisdiction.

Thirdly, the respondent had initiated steps under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in respect of the property which is the subject matter of the Section 9 application under the Arbitration and Conciliation Act, 1996; as a result of which the learned court below had inherent lack of jurisdiction to entertain and try the dispute.

We have heard out the appeal dispensing with all formalities.

Considering the urgency shown by learned counsel for the respondent/plaintiff, we direct that the learned court below will commence hearing of the application at the 'Motion' stage as directed earlier not later than one week from date.

The appeal (F.M.A.T. 75 of 2022) and the application (CAN 1 of 2022) are hereby disposed of.

(I.P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)