

16 12.05.2022

Ct-08

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**FAT 90 of 2022**

**with**

**I.A No. CAN 1 of 2022**

**Kotak Mahindra Bank Limited**

**Vs.**

**Abani Kumar Ghosh**

Mr. Shounak Bhattacharya  
Mr. Abhishek Bhattacharjee  
... For the Appellant

The appeal is treated as on day's list and is taken up for hearing along with the application.

The appellant is the Finance Company.

Learned Counsel appearing for the appellant submits that the suit was filed by the plaintiff against the defendant/appellant for declaration and permanent injunction.

It appears that on 17<sup>th</sup> March, 2022 learned Counsel appearing for the plaintiffs submitted before the Trial Court that the matter had been settled out of the Court and he filed an application for dismissal of the suit for non-prosecution. The said prayer was allowed.

It appears from the impugned order that the Trial Court on perusal of the petition and deposition dismissed the suit for non-prosecution.

Learned Counsel appearing for the appellant submits that the copy of the application for withdrawal of the suit was never served upon the appellant.

The learned Trial Judge in disposing of the suit did not record that the parties have arrived at a settlement and the suit was decreed accordingly.

In view of the fact that the issues between the parties have not been decided by the Trial Court on merit. The suit was dismissed for non-prosecution on the basis of the submission of the plaintiff.

It is needless to mention that the order of dismissal of the suit for non-prosecution cannot prevent the appellant from taking appropriate step in accordance with law for recovery of dues, if any, as the merit of the suit was never decided by the Trial Court.

In view thereof, we do not find any reason to interfere with the order passed by the Trial Court.

The appellant, if so advised, to file an application before the Trial Court for any clarification of the order.

In view of the above, FAT 90 of 2022 is disposed of.

In view of disposal of the appeal, nothing remains to be decided in the application for stay being CAN 1 of 2022 and the same is accordingly disposed of.

**(Sugato Majumdar,J.)**

**(Soumen Sen, J.)**

