

Item-5 02-05-2022

FMAT 131 of 2022
CAN 1 of 2022

sg Ct. 8

Kotak Mahindra Bank Ltd.
Versus
Abani Kr. Ghosh

Mr. Shibnath Bhattacharya, Adv.
Mr. Abhishek Bhattacharjee, Adv.
...for the appellant

This appeal is arising out of an order dated 7th March, 2022 in connection with an application filed by the respondent praying, inter alia, for injunction restraining the appellant from taking possession of the vehicle.

The learned Trial Judge passed an ex-parte ad-interim order on 7th March, 2022. It is recorded in the said order that, although there was some default in making payment of the EMIs under the higher purchase agreement, the respondent has not agreed to pay the amounts that had fallen due during the lockdown period i.e. during 2020-21. The peaceful possession of the vehicle should not be disturbed and the possession may not be taken save and except by due process of law. The said injunction order was limited for a period of four weeks. The plaintiff was also directed to pay a sum of Rs.1 lakh every month without prejudice to his right until further orders. The said interim order has been extended till 7th June, 2022. The appeal is preferred on the ground that there has been a suppression of materials facts at the time when the injunction order was obtained or when it was extended.

The learned Counsel for the appellant has submitted that earlier a suit was filed by the appellant but the same was

withdrawn without any leave to file a fresh suit and without applying that the order passed in the aforesaid proceeding. Moreover, by reason of such default, on 13th February, 2019 the appellant has filed an application under Section 19 of the Recovery of Debts due to Bank and Financial Act, 1993 before the Debts Recovery Tribunal, which was registered and numbered as OA No. 112 of 2019. In the said proceeding an order was passed on 8th April, 2021 on contested hearing and a receiver has been appointed to take possession of the secured assets.

In the instant case, the impugned order was passed on 7th March, 2022 prior to the order passed by the DRT. At the relevant time, prima facie, the learned Civil Court had the jurisdiction to pass such protective orders. There cannot be any doubt that in matters fallen exclusively under the jurisdiction of the DRT, Civil Court may not have any jurisdiction and the order may be lawfully passed. When no proceeding is initiated before the DRT or it refused to entertain the proceeding, the Civil Court has the jurisdiction to grant relief and decide the dispute between the parties. However, having regard to the facts disclosed are subsequent to the order dated 7th March, 2022 and we have not shown any petition filed bringing on record such subsequent events, we do not wish to interfere with the interim order at this stage.

We have also taken note of the fact that the respondent has complied with the order dated 7th March, 2022 without having any subsequent fact. In the event an application is filed by the appellant for vacating or the interim order or for any other

reliefs including the continuation of the suit before the learned Civil Court, the learned 12th Bench, City Civil Court at Kolkata shall consider the said application in accordance with law without being influenced by any observations made by us in this order.

With the aforesaid direction, the appeal being FMAT 131 of 2022 and the application being CAN 1 of 2022 are accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Sugato Majumdar, J.)

(Soumen Sen, J.)