

05 16.12.2022

Ct-08

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FMA 1177 of 2022

with

I.A No. CAN 1 of 2022

Phoenix ARC Private Limited

Vs.

Rajib Mishra & Anr.

Mr. Sounak Bhattacharya
Mr. Shibnath Bhattacharya
... For the Appellant

Mr. Debjit Mukherjee
Mr. Shubham Gutpa
Mr. Rajiv Kumar
... For the Respondent no. 1

Learned counsel appearing on behalf of the respondent no. 1 submits that they would liquidate the dues of the secured creditors on or before 15th January, 2023.

Mr. Sounak Bhattacharya, learned counsel appearing on behalf of the appellant submits that in view of amended provision of Rule 9(4) of the Security Interest Enforcement Rules 2002, the time cannot be extended beyond the period of 90 days.

It is submitted that auction purchaser has not deposited 75% of the consideration money that became payable by March 2022.

It appears from the impugned order that the trial court has overlooked the aforesaid provision in granting the order of injunction. However, at the same time it cannot be ignored that COVID Pandemic continued for some time and the plaintiff has offered some explanations for not being able to pay the balance consideration money within the aforesaid period. The extension of time is a discretionary relief depending upon the nature and circumstances

that may have prevented the plaintiff from depositing the balance consideration money. However, since the reasons for which the amount could not have been paid by March 2022 is acceptable and having regard to the fact that there was an order of injunction for which the money was not paid we dispose of the appeal and connected application by directing the plaintiff to deposit the balance consideration money on or before 5th January, 2023. The said direction is peremptory.

We make it clear that if the said amount is not deposited within the aforesaid time, the secured creditor would be entitled to resale the property upon forfeiting the earnest money.

The appeal being FMA 1177 of 2022 is thus disposed of along with CAN 1 of 2022.

(Uday Kumar,J.)

(Soumen Sen, J.)

