

23.09.2022
SL No.1 wt 4
Court No.8
(gc)

**FMA 1170 of 2022
CAN 1 of 2022**

**Tata Motors Finance Ltd.
Vs.
Araman Shekh**

With

**FMA 1173 of 2022
CAN 1 of 2022
CAN 2 of 2022**

**Tata Motors Finance Ltd.
Vs.
Faijul Kabir**

Mr. Pratip Mukherjee,
Mr. Sayak Ranjan Ganguly,
Ms. Srijani Ghosh,
...for the Appellant/Petitioner.
Mr. Sanjib Mal,
Mrs. Gitashree Mistry,
...for the Opposite party/Plaintiff.

The appeals and the connected applications are assigned to this Bench by the administrative order of the Hon'ble the Chief Justice on 21st September, 2022. The matters are listed today.

By consent of the parties, the appeals and the connected applications are taken up together and disposed of by this common order.

**Re: CAN 1 of 2022
in
FMA 1173 of 2022**

This is an application for condonation of delay. We have perused the application for condonation of delay. There is a delay of 2 days in filing the appeal. We satisfied with the explanation offered for not being able to prefer the appeal within time.

Accordingly, the application for condonation of delay being CAN 1 of 2022 in FMA 1173 of 2022 stands disposed of.

Both the appeals are arising out of an ad-interim order of injunction. We have carefully perused the order under appeal. We have also heard the learned Counsel for the parties. The dispute appears to be reconciliation of accounts. The respondents/plaintiffs in both the appeals contended that on reconciliation of accounts, there is an excess payment to which the respondents/plaintiffs is entitled to receive suitable adjustment.

The learned Counsel for the appellant, however, submits that there has been default for which interest was levied and that was accepted by the respondents without murmur as on date is Rs.1,69,000/- in T.S.1641 of 2022 and Rs.1,75,430/- in T.S. 1598 of 2022. The learned Trial Judge did not have the opportunity to hear the respondents as on immediacy being shown that the appellant is about to seize the vehicle for default and an ad-interim order was passed. We have been informed that monthly EMI is for Rs.68,000/- and Rs.44,853/-. The respondents to show their bona fide shall deposit the said amount without prejudice to their rights and contentions in the pending proceedings on or before 26th September, 2022.

The appellant shall produce a reconciliation statement on the date fixed by the Trial Court upon prior service to the learned Advocate representing the plaintiffs in both the suits.

The ad-interim order is modified to the aforesaid extent.

In view of the submission made on behalf of the appellant that the appellant has no objection in the event the respondents/plaintiffs pay the EMI's in allowing the plaintiffs to ply the vehicle, the learned Trial Judge may consider the said submission and pass suitable order subject to the Court being satisfied with payment of all the past EMI's and if there is any outstanding amount, the plaintiffs should be directed to pay the said amount as a condition precedent for plying the vehicle.

This order is passed without prejudice to the application filed by the appellant purportedly under Section 8 of the Arbitration and Conciliation Act, 1996.

The learned Trial Judge shall decide the matter uninfluenced by the observations made by us.

Accordingly, the appeal being FMA 1170 of 2022 and the application being CAN 1 of 2022 and the appeal being FMA 1173 of 2022 and the application being CAN 2 of 2022 stand disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)