

24.02.2023
SL No.2
Court No.8
(gc)

**FMAT (ARBAWARD) 8 of 2023
CAN 1 of 2023
CAN 2 of 2023**

**Singh Transport Agency & Anr.
Vs.
Tata Capital Financial Services Ltd.**

Mr. Shubham Gupta,
Mr. Rajiv Kumar,
Mr. Raunak Shaw,
...for the Appellants.
Ms. Soni Ojha,
....for the Respondent.

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

Re: CAN 1 of 2023

This is an application for condonation of delay in preferring the appeal by 74 days.

The learned Counsel appearing on behalf of the appellants has produced before us a transaction slip showing that the deficit court-fees of Rs.400/- was deposited on 22nd February, 2022. In view thereof, the report filed by the department is erroneous.

The department is directed to rectify the defects. The appeal is now in time. Sufficient cause being shown for not being able to prefer the appeal within the period of limitation.

Accordingly, the application being CAN 1 of 2023 stands disposed of.

Re: FMAT (ARBAWARD) 8 of 2023
With
CAN 2 of 2023

The procedure adopted by the respondent in withdrawing the application filed under Section 9 of the Arbitration and Conciliation Act, 1996 is questionable and it seems that without giving any notice to the respondents/appellants who have suffered an ex parte order of injunction, the said application was withdrawn. This sharp practice adopted by the Finance Company is not at all appreciated. The appellants did not get an opportunity to contest the said proceeding. Before the said matter was made returnable, an application was filed to withdraw the Section 9 application.

The learned Counsel appearing on behalf of the respondent submits that as reference before the learned Arbitrator has already commenced by virtue of Section 9(3) of the Arbitration and Conciliation Act, 1996, this appeal may not be entertained.

We are unable to accept the said submission. The Court cannot be a lame duck where the arbitrary conduct of the respondent is manifest. In fact, it had snatched the order and before giving an opportunity to the appellants, the matter was surreptitiously withdrawn.

In view thereof, the interim order stands vacated. The Receiver shall immediately stand discharged.

This will, however, not prevent the hirer to make an application under Section 17 of the Arbitration and Conciliation Act, 1996. The vehicle shall be immediately returned to the appellant. It is an admitted position that as on the date of seizer by the Receiver, a sum of Rs.1.96 lakhs was due and payable to the respondent hirer. The appellants shall without prejudice to their rights and contentions in the pending reference deposit the said amount with the respondent by Tuesday, i.e. 28th February, 2023.

Undisputedly, the appellant has paid a sum of Rs.20 lakhs approximately before the vehicle was seized.

The learned Counsel for the respondent submits that some time may be given to the respondent to make over the vehicle to the appellants. On the prayer of the learned Counsel, the respondent is directed to make over the vehicle to the appellants within 72 hours from the date of this order in the same condition as it was existing at the time of seizer.

The respondent for its conduct shall pay costs of Rs.20,000/- to the State Legal Services Authority. The said amount shall be utilized for payment of remuneration of the learned Arbitrator and other incidental expenses of arbitration proceedings.

The learned Counsel for the respondent was unable to produce service of the application under Section 9 of the Arbitration and Conciliation Act, 1996 and it appears that without informing the Court that the said order passed by the learned Arbitrator was communicated to the appellants, the vehicle was seized and the respondent filed an application apparently with an innocuous prayer of withdrawal. This practice is deprecated.

The parties shall be at liberty to approach the learned Mediator for an amicable settlement in the facts and circumstances of this case appears to be possible.

Since no affidavit-in-opposition is filed, all allegations are deemed to have been denied.

The appeal succeeds.

Accordingly, the appeal and the application are allowed with the aforesaid direction.

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

(Uday Kumar, J.)

(Soumen Sen, J.)