

24.03.2023

Court : 04
Item : 6 & 7
Matter : FMAT
Status : DO
Bench ID : 266048
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FMAT 119 of 2023

(Cosmic MAPL JV Vs. Al-Amin Garments Haat Private Limited.)

with

CAN 1 of 2023

&

FMAT 120 of 2023

(Cosmic MAPL JV Vs. Al-Amin Garments Haat Private Limited.)

Mr. Abjrajit Mitra, Senior Advocate

Mr. Debnath Ghosh, Advocate

Mr. Rajarshi Dutta, Advocate

Mr. Deepak Jain, Advocate

.....for the Appellant

Mr. Rajeev Kumar Jain, Advocate

Mr. Shamok Sengupta, Advocate

Mr. Abhirup Chakraborty, Advocate

.....for the Respondent

Though a preliminary objection is raised in the instant appeals as to the maintainability of the same having not come within the strict peripheral of Section 9 of the Arbitration and Conciliation Act, 1996 but we do not intend to go into the same as we find that the hearing of the aforesaid application has been completed and the matter is fixed for pronouncement of judgment on 06.04.2023. The date is in close proximity of this day and the moment the matter is fixed for delivery of judgment, it is expected that the judgment would be pronounced on the said date.

However, it is contended by the appellant that because of the fixing of a date for delivery of judgment at a distant time, there is possibility of dissipation of the property in the event, no protection is provided. Serious allegation as to the construction beyond the four corners of the sanctioned building plan as well as creation of third party interest in respect of the portion of the newly constructed building has been raised.

We are not unaware of the proposition that the refusal or granting an ad interim order of injunction is an order under Section 9 of the said Act and, therefore, there is no hesitation in our mind that the same is capable of being

assailed by approaching the appellate forum under Section 37 of the said Act.

However, the learned Advocate for the respondent is very critical on the same as according to him the step taken in furtherance of considering the prayer for passing an ad interim order, cannot be construed as granting or refusing to grant the ad interim order and, therefore, does not come within the ambit of Section 9 of the said Act. It is no longer *res integra* that the principle for granting an ad interim relief under Section 9 of the Act is somewhat akin to the principle of granting injunction.

The moment the Court has decided to conclude the hearing upon exchange of affidavits and posted the matter for delivery of judgment, it is not proper on the part of the appellate Court to interfere with the said order and pass an interim order to that effect. Furthermore, any third party interest, if allegedly created or to be created, shall always be subject to the result of the proceeding and, therefore, the apprehension that the same would be done taking advantage of the time gap between the date of the conclusion of the hearing and the pronouncement of the judgment, does not appear to be so.

We expect that the judgment would be pronounced on the said date and, therefore, we decline to interfere with the impugned order.

The appeals being **FMAT 119 of 2023 and FMAT 120 of 2023** and the connected application being **CAN 1 of 2023** are accordingly **disposed of**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

