

15.05.2023
SL No.9 wt 10
Court No.8
(gc)

**FMAT (ARBAWARD) 15 of 2023
CAN 1 of 2023**

**Yashwant Associates & Anr.
Vs.
HDB Financial Service Ltd.**

With

**FMAT (ARBAWARD) 16 of 2023
CAN 1 of 2023
CAN 2 of 2023**

**Yashwant Associates & Anr.
Vs.
HDB Financial Service Ltd.**

Mr. Saptarshi Kumar Mal,
Mr. Rishabh Ahmad Khan,
...for the Appellants.
Ms. Tutul Das Singh,
Mr. Ranjit Singh,
Mr. Prosun Banerjee,
Ms. Moumita Chandra
...for the Respondent.

Both the appeals and the connected applications
are taken up together and disposed of by this common
order.

**Re: CAN 1 of 2023
In
FMAT (ARBAWARD) 15 of 2023**

This is an application for condonation of delay.
There is a delay of 151 days in presenting the
memorandum of appeal. Sufficient cause being shown for
not being able to present the appeal within the period of
limitation. The delay of 151 days is condoned.

Accordingly, the application being CAN 1 of 2023 is allowed and disposed of.

Re: CAN 1 of 2023
In
FMAT (ARBAWARD) 16 of 2023

This is an application for condonation of delay. There is a delay of 151 days in presenting the memorandum of appeal. Sufficient cause being shown for not being able to present the appeal within the period of limitation. The delay of 151 days is condoned.

Accordingly, the application being CAN 1 of 2023 is allowed and disposed of.

Re: FMAT (ARBAWARD) 15 of 2023
With
FMAT (ARBAWARD) 16 of 2023
CAN 2 of 2023

The appellants are the borrowers under a hire purchase agreement. The vehicle was seized on 26th December, 2022. The reference was initiated a little after expiry of 90 days' period and no further extension was granted by the Trial Court. Taking advantage of the failure on the part of the respondent, an application was filed for release of the vehicle. The learned Trial Judge although noted that the reference did not commence within the period of 90 days, however, declined to release the vehicle and directed the parties to maintain status quo.

The learned Counsel for the appellants submits that by reason of seizure of the vehicle, the business has

suffered immensely. However, it has been fairly submitted that as on date, there would be a due of roughly Rs.14 lakhs on account of principal. It is an admitted fact that there was a delay of almost one month in making the reference.

Considering the aforesaid fact and balance in the equities, we direct the appellants to pay a sum of Rs.14 lakhs on or before 31st May, 2023.

The respondent shall not be entitled to any interest for the period from February till 31st May, 2023 for their failure to initiate the proceeding in time and at the same time denying the right of the appellants to use the vehicle upon willingness to pay the defaulted amount in the proceeding. The amount of Rs.14 lakhs shall be adjusted against the principal. Upon payment of the said amount, it would be the responsibility of the respondent to release the vehicle within 48 hours in the same condition when the vehicle was seized in presence of the Receiver. The vehicle shall be handed over to the appellants in presence of the Receiver upon making an inventory.

The Receiver shall be entitled to a remuneration of Rs.10,000/- to be paid by the appellants. The Receiver, however, shall remain in symbolic possession till the matter is taken up for consideration afresh by the learned Arbitrator before whom the proceeding is pending. This order shall be coterminous with any order that may be

passed by the learned Arbitral Tribunal in the pending proceeding upon compliance of this order.

It is needless to mention that in the event the said sum of Rs.14 lakhs is not paid, the question of returning the vehicle would not arise and the respondent in that case shall be entitled to all charges payable by the appellants in case of default.

Having regard to the nature of the dispute, the learned Arbitrator shall make an attempt to bring about a settlement between the parties.

The objection raised before the Trial Court with regard to the jurisdiction would not be conclusive and left open to be decided at an appropriate stage.

Accordingly, the appeals and the connected application stand disposed of.

However, there shall be no order as to costs.

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

(Uday Kumar, J.)

(Soumen Sen, J.)