

03.07.2023
Item No.37
Court No.32
Avijit Mitra

FMAT 203 of 2023
with
IA No. CAN 1 of 2023
with
IA No. CAN 2 of 2023

Tata Motors Finance Limited
Versus
Abhijit Mahato

Mr. Pratip Mukherjee,
Mr. Sayak Ranjan Ganguly,
Ms. Srijani Ghosh
....for the appellant

Mr. Prinkwar Saha,
Mr. Lalmohan Mondal
....for the respondent

Affidavit of service filed by the appellant be kept on record.

This application has been taken out praying for condonation of delay in preferring the appeal.

Upon hearing the learned advocates appearing for the respective parties and upon considering the materials on record placed before us, we are satisfied with the explanation given towards the delay in preferring the appeal. Accordingly, such delay is condoned and the application being IA No. CAN 1 of 2023 is disposed of.

The appellant has assailed the order no.2 dated 31st January, 2023 passed by the learned Judge, City Civil Court, Calcutta in Title Suit No.220 of 2023 whereby the learned Court below by passing an *ad interim* order of injunction restrained the appellant and its men, agents

and associates from seizing and/or taking over possession of the vehicle bearing registration no. WB-93-0026 save and except due process of law, till the next date, subject to the condition that the respondent would go on depositing an amount of Rs.5,000/- till the liquidation of the loan.

Mr. Mukherjee, learned advocate appearing for the appellant submits that the respondent availed of one financial assistance extended to him on the basis of a hire-purchase agreement entered into by and between the parties hereto. He submits that the respondent is a habitual defaulter and has not paid the instalments as agreed upon.

He contends that the hire-purchase agreement contains one arbitration clause and the appellant has taken steps to invoke the said arbitration clause but suppressing all these facts and claiming that the appellant has practised fraud upon the respondent, the instant suit has been instituted by the respondent.

Mr. Mukherjee further contends that along with plaint, one application under Or. 39 Rule 1 & 2 of the Code has also been filed and in that application, *ad-interim* order of injunction has been passed restraining the appellant from taking possession of the vehicle, however, subject to payment of Rs.5,000/- p.m. He argues that when there is an agreement having stipulation of payment of a certain amount of monthly

instalment by the respondent, learned court below should not have deviated the terms of that bi-partite agreement. He alleges that even the respondent has failed to comply with the condition incorporated in the order impugned.

Mr. Mukherjee informs us that the appellant has filed an application under Section 5 read with Section 8 of the Arbitration Act to relegate the disputes to arbitration. He submits that this Court can direct the learned Court below to dispose of that application as early as possible.

Mr. Saha, learned advocate appearing for the respondent denies and disputes such contention. He submits that no copy of the agreement has ever been supplied to the respondent and he submits that the agreement does not contain the signature of the respondent and consequently, the terms and conditions of the agreement are not binding on the respondent. However, he accepts the proposal given by Mr. Mukherjee and submits that if the learned Court below is directed to dispose of the application taken out by the appellant under Sections 5 & 8 of the Arbitration Act expeditiously he shall have no objection.

Having considered such submissions of the parties and taking note of the subsequent event, we direct the learned court below to dispose of the application taken out by the appellant under Sections 5 & 8 of the Arbitration Act as expeditiously as possible without

granting unnecessary adjournments to either of the parties thereto.

The *ad-interim* order impugned in the present appeal is not interfered with by this Court.

Accordingly, the appeal and the application being IA No. CAN 2 of 2023 are disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)