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Court : 04
Item : 01
Matter : FMAT
Status : DO
Bench id : 266048
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FMAT (ARBAWARD) 53 of 2022

with
CAN 1 of 2022

M/s. Signotron (India) Pvt. Ltd.
Vs.
M/s. Sunbird Realty Pvt. Ltd. & Anr.

Mr. Kishore Dutta, Senior Advocate
Ms. Sumita Shaw, Advocate
Mr. Soumen Chatterjee, Advocate

.....for the Appellant

Mr. Jishnu Chowdhury, Advocate
Mr. Rahul Das, Advocate
Ms. Tianna Bhattacharya, Advocate
Ms. Anshumala Bansal, Advocate
Ms. Prarthana Singha Roy, Advocate

.....for the Respondent No. 1

Mr. Soumabho Ghose, Advocate
Mr. Soumalya Ganguli, Advocate
Mr. Abhidipto Tarafdar, Advocate

.....for the Respondent No. 2

An application under Section 9 of the Arbitration and Conciliation Act was filed before the District Judge, North 24-Parganas at Barasat giving rise to registration of Miscellaneous (Arbitration) Case No. 21 of 2022 for interim protection against an eviction from the schedule premises on the basis of a decree passed in Title Suit No. 203 of 2019.

The aforesaid suit was filed by the appellant against the lessee for recovery of possession and an application under Order XII Rule 6 of the Code of Civil Procedure was taken out for passing a judgment on admission. Considering that there is an unequivocal and unconditional admission having been made, which does not justify any adjudication in the suit, the said application was allowed and, in fact, a judgment on admission was passed. Admittedly the respondent no. 1 herein being the sub-tenant, approached the District Judge under the provisions of Arbitration and Conciliation Act raising various grounds to thwart the said decree passed on admission. A preliminary objection was

taken as to the maintainability of the said proceeding in view of the fact that the decree has already been passed against the tenant to whom the appellant claims right in respect of the schedule promises.

The learned Advocate for the respondent no. 1, after going through the materials as well as the law in this regard fairly submitted that the approach under the aforesaid provision was unwarranted and his client does not intend to proceed with the said application and prays for withdrawal of the same. It is further submitted that such withdrawal shall not stand in the way of the respondent in pursuing his remedy available under the law before the appropriate forum.

We find that the aforesaid prayer made by a person who approached the Court being the beneficiary of the impugned order. Had it been a case that was adjudicated upon and held against the plaintiff, it would not be open for the plaintiff to seek for withdrawal of the suit at the appellate stage. Since the said respondent no. 1 is the beneficiary of the order and intends to withdraw the proceeding initiated by it, we do not find any fetter on the part of the appellate Court to permit the applicant in the trial Court to withdraw the proceeding.

Accordingly, the order impugned in the instant appeal set aside and/or vacated. The proceeding being Miscellaneous (Arbitration) Case No. 21 of 2022 is permitted to be withdrawn.

In view of the above, the said proceeding shall not be shown pending in the docket of the Court below and a formal order in this regard shall be passed by the concerned Judge on the basis of the order passed in the instant appeal.

However, the withdrawal of the proceeding shall not preclude the respondent no. 1 in pursue his remedy before the appropriate forum in accordance with law.

The appeal being **FMAT (ARBAWARD) 53 of 2022** and the connected application being **CAN 1 of 2022** are **disposed of** accordingly.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)