

16.10.2023
Court No. 13
Item No. 53
pk

**FMAT 459 of 2023
With
CAN 1 of 2023
CAN 2 of 2023**

**Tata Motors Finance Limited, presently known as
Tata Motors Finance Solution Limited
Versus
Anup Dolai**

Mr. Pratip Mukherjee,
Mr. Sayak Ranjan Ganguly,
Ms. Srijani Ghosh

..for the appellant.

Mr. Sanjib Kumar Mal,
Mrs. Gitashree Mistry

... for the respondent.

Re: CAN 1 of 2023

1. Affidavit of service filed in Court is taken on record.
2. Sufficient grounds have been made out in the instant application explaining such delay in filing the appeal. Hence, the delay is condoned.
3. Accordingly, CAN 1 of 2023 is allowed and disposed of.
4. The appeal is taken up for hearing.

Re: CAN 2 of 2023

1. CAN 2 of 2023 is filed for stay of the impugned judgement and order dated 25.07.2023. It is submitted that the respondent has obtained the

- vehicle-in-question under a hire purchase agreement which has an arbitration clause.
2. Counsel for the appellant submits that the award has already been passed in the matter.
 3. The appellant/defendant has filed an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint. Counsel for the respondent has relied upon a decision of a Coordinate Bench dated 3rd July, 2023 in FMAT 202 of 2023 whereby it was directed that the Court below should dispose of the application under Order 7 Rule 11 as expeditiously as possible.
 4. Counsel for the appellant relies upon a decision of this Bench dated 18th July, 2023 passed in FMAT 444 of 2022 whereby this Court has made observations deprecating the practice of passing ex parte interim orders in hire purchase matters.
 5. In view of the above, this Court directs that the interim order shall subsist only until 15th December, 2023. The Court below shall fix the application under order 7 Rule 11 of the CPC filed by the appellant at the earliest and dispose of the same in accordance with law preferably by 7th December, 2023.
 6. Let objection to the application under Order 7 Rule 11 be filed within ten days from date positively and a copy of the same be served on the learned advocate for the appellant.

7. The Court below at the time of disposal of the application under Order 7 Rule 11 shall have the liberty to consider the extension of interim order, if necessary.
8. Since no affidavit has been called for by the respondent, the allegations made in the CAN application shall not be deemed to have been admitted by the respondent.
9. The parties shall communicate this order to the Court below.
10. With the aforesaid observations, the instant appeal and the application being CAN 2 of 2023 are disposed of.
11. There will be no order as to costs.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)