

18.07.2023
Court No.13
Item No.7
AP

**FMAT 444 of 2022
With
IA NO: CAN 1 of 2022**

**Sanowar Hossain Mondal
Vs.
Tata Motors Finance Limited**

Mr. Asit Kr. Bhattacharya
... for the Appellant.

Mr. Soumava Ghosh
Mr. Sayak Ranjan Ganguly
Ms. Srijani Ghosh
... for the Respondent.

1. The appeal is directed against an order dated 31st October, 2022 passed by the learned Judge, Bench- VI, City Civil Court at Calcutta in T.S. No.2262 of 2022.

2. By the impugned order passed under Order 39 Rule 1 and 2 of the C.P.C., the Court below has restrained the respondent from taking possession of the vehicle in question upon the plaintiff/appellant paying regular monthly installments.

3. The respondent is represented. Counsel for the respondent submits that the vehicle was purchased under a hire purchase agreement, which contained an arbitration clause. Such ADR mechanism has been invoked. The arbitrators enter upon reference and an award has been passed on 7th February, 2022.

4. This Court is of the unequivocal view that the suit itself being T.S. No.2262 of 2022 may not be maintainable.

5. The question of passing an interim order thereunder, therefore, does not and cannot arise. Even assuming for the sake of argument that there was no arbitration clause, in a purely commercial contract between the parties, interference by a Civil Court to permit any party to obtain any benefit contrary to the terms of the contract, as an ad interim measure in a suit, is not permissible.

6. Counsel for the respondent submits that an application under Order 7 Rule 11 of the C.P.C. has been filed in the pending suit.

7. In view of the above observations, FMAT 444 of 2022 shall stand dismissed.

8. In view of the dismissal of the FMAT 444 of 2022, connected applications, if any, shall also stand dismissed.

9. Interim orders, if any, shall stand vacated.

10. There shall be no order as to costs.

11. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)