

12.07.2023.
Item No. 6.
Court No. 13
ap

F.M.A.T. No. 472 of 2022
With
I.A. No. CAN 1 of 2023
And
I.A. No. CAN 2 of 2023

Ratanlal Agarwal @ Shah
Versus
Babulal Agarwal & Anr.

Mr. Souradipta Banerjee,
Ms. Fatima Hassan,
Mr. Sumit Mishra.

...For the Appellant.

Mr. Ankit Agarwal,
Mr. Abhishek Dutt,
Ms. Rupa Singh.

...For the Respondents.

Re: CAN 1 of 2023 (Sec.5)

1. This is an application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of about 36 days in filing the instant appeal.
2. Having heard the learned Advocates appearing on behalf of the respective parties, as also considering the statements made in the said application, this Court is satisfied with the grounds indicated therein, as sufficiently explaining delay of 36 days in preferring the instant appeal.
3. The application for condonation of delay being CAN 1 of 2023 is, thus, allowed and disposed of.
4. There will, however, be no order as to costs.

Re: F.M.A.T. No. 472 of 2022

1. The instant appeal is directed against Order No.28 dated 22nd September, 2022 passed by the learned Judge-in-charge, XIIIth Bench, City Civil Court at Calcutta in Title Suit No. 767 of 2021.

2. By the impugned order, continuation of an ex-parte ad interim order of injunction originally granted on 28th July, 2021 was declined on contest.

3. The brief facts relevant for the case are that the appellant herein had originally filed T.S. No. 101 of 2017 before the City Civil Court of Calcutta seeking declaration and injunction and Receiver in respect of a property against the respondents on 17th January, 2017. Interim orders applied for in the suit were declined by the court below in order dated 19th January 2017.

4. The appellant filed F.M.A. No. 709 of 2017 was filed before this Court against the order dated 19th January, 2017 passed in Title Suit No. 101 of 2017.

5. A Division Bench of this Court while disposing of the said F.M.A. No. 709 of 2017 had found as follows:

(a)The appellant and the respondents are the blood brothers and sons of one late Ishwar Prasad Agarwal @ Ishwar Prasad Marwari;

(b)There was an Arbitral Award dated 19th June 2003 between the parties under the provisions of the Arbitration and Conciliation Act, 1996;

(c) The refusal of injunction by the XIIIth Bench, City Civil Court at Calcutta in its order dated 19th January, 2017 was justified since the appellant herein had effective alternative remedy under the Arbitration and Conciliation Act, 1996, inter alia, to seek enforcement of the Award dated 19th June, 2003.

(d) The Title Suit being T.S. No. 101 of 2017 was not maintainable;

6. Based on the aforesaid order of the Division Bench, the aforesaid above mentioned application under Order XXIII, Rules 1 and 2 of the Code of Civil Procedure, 1908 was filed and the said suit being Title Suit No. 101 of 2017 was withdrawn.

7. Notwithstanding the above observation of the Division Bench, the appellant once again filed a Title Suit No. 767 of 2021, inter alia, seeking a declaration and permanent injunction, as regards the possession of the suit property that was the subject matter of the Award in question.

8. Initially an ad interim injunction was granted by the City Civil Court in the said Title Suit No. 767 of 2021 on 28th July, 2021.

9. Not to be outdone by the appellant, the respondents also filed a suit against the appellant claiming possession of the same property, which was

the subject matter of the Award dated 19th June, 2003 being Title Suit No. 864 of 2021 on 18th August, 2021.

10. On an application for interim relief in Title Suit No. 864 of 2021 filed by the respondents in the Court below directed the two suits being Title Suit No. 767 of 2021 and Title Suit No. 864 of 2021 to be heard analogously and injunction was refused.

11. This Court is of the view that the appellant as well as the respondents have acted in gross abuse of process of law by suppression of material facts and/or misstatement thereof in filing of the two suits being T.S. no. 767 and 864 of 2021.

12. Clearly the Coordinate Bench in F.M.A. No. 709 of 2017 in its order dated 13th February, 2020 (supra) had held that the Award dated 19th June, 2003 was required to be executed as the rights of the two brothers under the Award is the essence and subject matter of Title Suit No. 101 of 2017.

13. The Court below was most likely not informed of the scope and purport of the order of the Division Bench of this Court dated 13th February, 2020 (supra).

14. The order dated 13th February 2020 passed by a Co-ordinate Division Bench of this Court that the Award in question was not enforceable, is subsisting and has not been challenged or reviewed.

15. In view of the aforesaid, the two suits being Title Suit No. 767 of 2021 and Title Suit No. 864 of 2021

are not maintainable in view of the order dated 13th February, 2020 passed by a Division Bench of this Court (supra). The suits could not and should not have been filed. The question of passing any interim orders therein does not and cannot arise.

16. Hence, T.S. No. 767 of 2021 and T.S. No. 864 of 2021 now pending before the XIIIth Bench of the City Civil Court at Calcutta shall stand dismissed.

17. The Registry shall communicate this order to the Registrar of the City Civil Court at Calcutta.

18. Since the appellant has not approached this Court with clean hands and has engaged nearly one and half hours of this Court's time, in a frivolous, abusive and illegal proceeding, the appellant is liable to pay costs assessed at Rs.51,000/- (Rupees fifty one thousand only) made payable to the High Court Legal Services Authority.

19. A photostat copy of the Award dated 19th June, 2003 passed by the learned Arbitrator be kept with the record.

20. With the aforesaid observations and discussions, the instant appeal shall stand dismissed.

21. In view of the disposal of the appeal itself, the connected application being CAN 2 of 2023 shall also stand disposed of.

22. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)