

10.08.2023
SL No.3-4
Court No.8
(gc)

**FMAT 513 of 2022
CAN 1 of 2023
CAN 2 of 2023**

**Sri Goutam Chatterjee & Ors.
Vs.
M/s. Dharmik Construction Private Limited & Ors.**

With

**FMAT 516 of 2022
CAN 1 of 2023
CAN 2 of 2023**

**Sri Goutam Chatterjee & Ors.
Vs.
M/s. Dharmik Construction Private Limited & Ors.**

Mr. Supratim Dhar, Advocate,
Mr. Arif Ali,
Mr. Sarban Bhattacharjee,
...for the Appellants.
Mrs. Shohini Chakrabarty,
Ms. Prajaaini Das,
...for the Respondent No.1.

**Re: CAN 1 of 2023
In
FMAT 513 of 2022**

1. Sufficient cause being shown for not being able to file the memorandum of appeal within the period of limitation. The delay of 29 days in filing the memorandum of appeal is condoned.
2. Accordingly, the application for condonation of delay is disposed of.

**Re: CAN 1 of 2023
In
FMAT 516 of 2022**

3. Sufficient cause being shown for not being able to file the memorandum of appeal

within the period of limitation. The delay of 27 days in filing the memorandum of appeal is condoned.

4. Accordingly, the application for condonation of delay is disposed of.

**Re: FMAT 513 of 2022
CAN 2 of 2023**

**With
FMAT 516 of 2022
CAN 2 of 2023**

5. The plaintiff/respondent No.1 filed a suit for damages based on agreement which contains an arbitration clause. Prima facie, the requirement of Section 5 of the Arbitration and Conciliation Act, 1996 is satisfied. In view of the existence of the arbitration clause, the suit is not maintainable. Previously, the plaintiff had filed an application under Section 9 of the Arbitration and Conciliation Act. The plaintiff has accepted the agreement which alleged to have been cancelled subsequently. The Court has jurisdiction to convert the application filed for interim order as an application under Section 9 of the Arbitration and Conciliation Act.
6. Having regard to the fact that the plaintiff has been enjoying an interim order since 28th October, 2022, the interim order shall

continue for a period of five weeks from date or until an application for interim order is taken up for consideration by the learned Arbitrator, whichever is earlier. In the event no application under Section 17 of the Arbitration and Conciliation Act, 1996 is filed within the aforesaid period, this interim order shall stand automatically vacated.

7. The learned Counsel for the parties have submitted that the parties have no objection in the event the Arbitrator is appointed by this Court.
8. Accordingly, by consent of the parties, we appoint Justice Ranjit Kumar Bag (since retired) as an Arbitrator.
9. The learned Arbitrator is requested to fix the remuneration at the first sitting of the arbitration proceeding. Costs, charges and expenses of the arbitration shall be borne in equal measure by the respective parties.
10. In the event any application is filed for fresh interim order, we would request the learned Arbitrator to consider the same without being influenced by any observation made by this Court or by the learned Trial Judge in deciding the said application for injunction.

11. The learned Counsel for the appellants submits that two appeals have been filed with incorrect classification as FMAT (ARBAWARD) 37 of 2023 and FMAT (ARBAWARD) 38 of 2023. These appeals have been filed against the orders by which the interim orders were extended from time to time.
12. Leave is given to correct the classification in course of the day and the department shall publish the supplementary cause list with proper classification.
13. Leave is given to the Advocate-on-record for the respondent No.1 to file Vakalatnama in the correct first miscellaneous appeals by Monday, i.e. 14th August, 2023.
14. Accordingly, the appeals and the connected applications are disposed of.
15. This order also disposes of the suit and connected applications filed by the plaintiff before the learned 4th Civil Judge (Sr. Divn.), Alipore.
16. However, there shall be no order as to costs.

17. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)