

Items- 20-12-2023
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sg Ct. 8

FMAT 576 of 2023
CAN 1 of 2023

Eden Reality Ventures Pvt. Ltd.
Versus
Bhoomidata Promoters Pvt. Ltd.

With

FMAT 577 of 2023
CAN 1 of 2023

Eden Reality Ventures Pvt. Ltd.
Versus
Bhoomidata Promoters Pvt. Ltd

Mr. Surajit Nath Mitra, Sr. Adv.

Mr. Rajarshi Dutta, Adv.

Mr. Deepak Jain, Adv.

...for the appellant

Mr. Abhrajit Mitra, Sr. Adv.

Mr. Jishnu Chowdhury, Adv.

Mr. Dhiraj Sethia, Adv.

Mr. Soumyadeb Sinha, Adv.

Mr. Abhidipto Tarafder, Adv.

Mr. Abhishek Roy, Adv.

...for the respondent

1. Affidavit of service filed in Court is taken on record.
2. By consent of the parties, both the appeals are taken up together disposed of by this common order.
3. The dispute relates to the development of a huge land situated in Mouza Bon Hooghly. The parties have claimed to have entered into a Joint Venture Agreement for development of the said property. The agreement is claimed to have been entered into in the year 2017 with an initial period of 18 months to get possession by evicting the occupants and 60 months after sanctioning of the plan on the allegation that the appellant has not performed their obligation till 31st July, 2023. There has been no significant progress with regard to implementation of the

Joint Venture Agreement. The respondent claimed to have terminated the agreement and filed an application under Section 9 of the Arbitration and Conciliation Act praying, inter alia, for an order of injunction restraining the appellant to interfere with their possession.

4. Mr. Surajit Nath Mitra, learned Senior Counsel appearing on behalf of the respondent has submitted that the first impugned order was obtained by considering the material facts. It has not been disclosed that the appellant has entered into a settlement and/or arrangement with the occupiers and for reasons only beyond the control of the appellant and to the knowledge of the respondent the construction work could not be commenced. In this regard, Mr. Mitra has relied upon an order passed by the Block Land & Land Reforms Officer on 7th December, 2018 with regard to mutation and also referred to the averments mentioned in the appeal against the said order to demonstrate that there is no culpable negligence on the part of the appellant in performing their duties. The appeal was ultimately allowed by the District Land & Land Reforms Officer on 11th March, 2022 and by reason thereof, the mutation was delayed.
5. Mr. S.N. Mitra, learned senior advocate has further submitted that the respondent knowing the reason for the delay had extended from time to time the performance of the obligation and the duties to be discharged by the appellant in terms of the agreement which has now been arbitrarily extended without any prior notch to the

appellant. Mr. Mitra has further submitted that the application for recalling of the order was not considered on the returnable date on the ground that the P.O. was not available and it was mechanically extended till 25th January, 2024.

6. Mr. Abhrajit Mitra, learned Senior Counsel appearing on behalf of the respondent has submitted that the outer limit for the performance of the contract was till 31st July 2023. The mutation was allowed on 11th March, 2022 and on 23rd June, 2022, the parties have mutually agreed for extension till 31st July, 2023. Mr. Mitra has submitted that there is no significant progress of the work after the mutation was allowed and it clearly evinced an intention on the part of the appellant in not performing their duties and only to delay the project causing huge loss and inconvenience to the petitioner.
7. We have read the first impugned order carefully. The order was passed ex parte. The learned Single Judge has, in our view, considered the relevant facts and apprised the law correctly as required to be done at this stage in assessing the merits of the petition and has granted a limited interim order.
8. Mr. Abhrajit Mitra, learned Senior Counsel has drawn our attention to an order dated 5th December, 2023 passed in FMAT 541 of 2023 in which it has been specifically submitted on behalf of the respondent, appellant in the said appeal, that on termination of the development agreement between the parties, the respondent was

obliged to return Rs.5 crores to the present appellant. However, the present appellant had refused to accept the same and the respondent herein had deposited the said sum in the account of the Advocate-on-Record of the appellant. The said appellant appeared before the learned Regular Bench on 7th December, 2023 and the same was adjourned till 14th December, 2023.

9. Mr. Abhrajit Mitra, learned Senior Counsel has further submitted, on instruction, that the agreement was terminated on 30th November, 2023 and thereafter on 1st December, 2023, third party interest has been created.
10. Admittedly, the learned Single Judge may not have been fully aware of the fact that the appellant could not have proceeded with the project in which mutation has been granted in their favour and it was only decided in favour of the appellant on 11th March, 2022. It needs to be seen to the steps to be taken by the present appellant thereafter till it was terminated on 30th November, 2023. This aspect of the matter has not been considered by the learned Commercial Court in deciding the matter. The learned Single Judge also may not consider the arrangements that the appellant has entered into with the occupiers in the meantime in pursuance of the agreement between the parties.
11. The learned Commercial Court would be required to take a prima facie view at the interlocutory stage to decide whether the termination was proper in the factual background to be disclosed and argued by the parties on

the returnable date. The extension of the interim order appears to be mechanical. The learned Court extending the order ought to have heard the present appellant.

12. It appears from the impugned order that the interim order was extended although an application was filed by the present appellant opposing the prayer for extension. However, as fairly submitted by Mr. S.N. Mitra that no application stating the ground for vacating has been filed before the Bench and it was merely a one page application opposing the prayer with a request not to extend the interim order without giving any opportunity of hearing to the present appellant.
13. In the event of any third party interest is created by the respondent in the meantime, that shall abide by the result of the decision in the Section 9 application and cannot create any equity in favour of the person with whom an agreement alleged to have been entered into after the agreement with the present appellant is terminated.
14. We request the learned Single Judge to dispose of the matter preferably by 31st January, 2024. In the event the learned Single Judge decide to extend the interim order pending disposal of the main application beyond 31st January, 2024, the learned Single Judge is requested to give reason for extending such interim order in writing. However, all endeavour should be made to dispose of the same within the aforesaid period.
15. Affidavit-in-opposition in the pending application shall be filed by 12th January, 2024. Reply thereto, if any, shall be

filed by 20th January, 2024.

16. None of the parties should be allowed to pray for adjournment on the date fixed.
17. The learned Single Judge shall decide the matter uninfluenced by any observation made in this order or in the first impugned order in finally deciding the said application.
18. The appeals and the connected applications are accordingly, disposed of. However, there shall be no order as to costs.
19. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)