27-06-2024
Item no.3,4 &5 CD
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction
(Commercial Division)

FMAT No.160 of 2024
Pradeep Paul & Anr.
-vs-
Rithvik Bhattacharya & Ors.
with
CAN No.1 of 2024
with
FMAT No.161 of 2024
Aditya Kumar Ruhil
-vs-
Rithvik Bhattacharya & Ors.
with
CAN No.1 of 2024
and
CAN No.2 of 2024
with
FMAT No.162 of 2024
M/s. Sanjiban Diagnostics & Health Care Private Limited
-vs-
Rithvik Bhattacharya & Ors.
with
CAN No.1 of 2024
and
CAN No.2 of 2024

Mr. Krishnaraj Thaker
Ms. Sneha Singhania
Mr. S. Ghoshdastidar ...for the appellants

Mr. Amritam Mandal
Mr. Debasish Mukaherjee
Mr. Jeenia Rudra ...for respondents no.1 & 2

The application (**CAN No.1 of 2024**) connected with FMAT No.161 of 2024 is for condonation of delay in filing the appeal.

Sufficient cause is shown. We condone the delay in preferring the appeal. The section 5 Limitation Act application (**CAN No.1 of 2024**) is, thus, allowed.

The department is directed to register the appeal.

The application (**CAN No.1 of 2024**) connected with FMAT No.162 of 2024 is for condonation of delay in filing the appeal.

Sufficient cause is shown. We condone the delay in preferring the appeal. The section 5 Limitation Act application (**CAN No.1 of 2024**) is, thus, allowed.

The department is directed to register the appeal.

The company involved in this litigation is Sanjibon Diagnostics & Health Care Private Limited. The dispute arises out of a share purchase agreement between the other parties. The agreement contains an arbitration clause. There is no question that the company, Sanjibon, is not a party to the arbitration agreement. Its involvement would be limited to registration of share transfer in its records. The impugned judgement and order restrains the company from dealing with its two immovable properties.

Mr Thakar, learned advocate appearing for the company, contended that in the dispute between the parties arising out of the said share purchase agreement, the company's property could not be attached or any injunction passed restraining it from transferring its property. He also pointed out that there was a dispute regarding payment of consideration running into several crores.

On the other hand, Mr Mandal, learned advocate appearing for the first and second respondents – Rithvik Bhattacharya and Archisman Bhattacharya – argued that it was a very closely held company. The share purchase involved 100 per cent acquisition of the shares of the company. He further submitted that if pending resolution of the dispute the assets of the company were parted with, then the share transfer agreement would be worthless.

Having considered the above submissions made by learned advocates for the parties, we, by consent of the parties to the arbitration agreement, appoint the Hon'ble Mr Justice Ashok Das Adhikari, a retired judge of this court, as the arbitrator to adjudicate the disputes between the parties in accordance with the provisions of the Arbitration and Conciliation Act, 1996 including the schedules thereto. We clarify on the basis of our observations made above that the company is not a party to the arbitration agreement.

If the company proposes to sell, transfer, encumber, part with possession or otherwise deal with the said two or either of the immovable properties, it shall give two weeks' notice to the other parties specifying the nature of the transaction and the consideration involved to enable any aggrieved party to approach the arbitral tribunal under section 17 of the said Act or take any other step in accordance with law.

The impugned order and judgement is set aside. The appeals and the connected stay applications – FMAT No.160 of 2024 with CAN No.1 of 2024, FMAT No.161 of 2024 with CAN No.2 of 2024 and FMAT No.162 of 2024 with CAN No.2 of 2024 – are thus disposed of.

As affidavits were not invited, the allegations contained in the appeal are deemed not to have been admitted.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]