

09.01.2024
S/L. No. 12
Court No. 3
Suvayan/
Sourav

FMA 1175 of 2022
With
CAN 1 of 2022

Tata Motors Finance Limited
Vs.
Hamida Bibi

Mr. Snehashis Sen

...for the appellant.

Mr. Sanjib Kr. Mal
Ms. Gitashree Mistry

...for the respondent.

1. Both the parties are represented by their respective learned Advocates.
2. In this appeal the Order No. 2 dated 01.08.2022 as passed in Title Suit No. 1630 of 2022 by learned Judge, Bench XII, City Civil Court at Calcutta has been impugned.
3. By the impugned order learned Trial Court while entertaining an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure passed an *ad interim* order of injunction restraining the defendant from disturbing the peaceful possession, right, title, interest and enjoyment in respect of vehicle No. WB45-5503 save and except by due process of law.
4. The defendant felt aggrieved and, thus, preferred the instant appeal.

5. At the time of hearing of the instant appeal learned Advocate for the appellant strongly contended that learned Trial Court while passing the said *ad interim* order of injunction ought to have considered that Title Suit No. 1630 of 2022 which is pending before him is a suit of commercial nature where there is a clause of arbitration. It is further argued that in a purely commercial contract between the parties the learned Trial Court ought to have been very slow in passing an *ad interim* order of injunction following the principle of law as discussed in the order dated 18.07.2023 passed in FMAT 444 of 2022 (*Sanowar Hossain Mondal vs. Tata Motors Finance Limited*) as passed by a co-ordinate Bench of this Court.
6. While opposing such prayer learned Advocate for the plaintiff/respondent strongly contended that such point as raised by learned Advocate for the appellant can very well be agitated before the learned Trial Court at the time of hearing of the injunction application on contest. It is further contended on behalf of the plaintiff/respondent that in terms of the impugned order his client is regularly paying the installments.

7. On perusal of the entire material as placed before us, we find that while passing the impugned order of *ad interim* injunction learned Trial Court has duly considered the three basic criteria of granting injunctions. It appears to us that the present appellant being the defendant in Title Suit No. 1630 of 2022 still has sufficient opportunity to ventilate his grievance with regard to the maintainability of the said order of *ad interim* injunction as well as with regard to the maintainability of the said suit in view of the submission of the learned Advocate for the appellant that in between the parties there exists an arbitration agreement in a commercial contract between the parties though the same has been disputed by the learned Advocate for the plaintiff/respondent.
8. We are apprised of the situation that scope of appeal against an order of *ad interim* injunction is very limited and we are not supposed to make any further comment which may affect the finding of the learned Trial Court while disposing the injunction application on contest as well as the suit.
9. In view of the discussion supra, we find no merit in the instant appeal and accordingly the instant

appeal is disposed of with an observation that injunction application shall be disposed of finally within a period of three months from the date of receipt of a copy of this order and while disposing the said application, learned Court below may take into consideration the question of equity in as much as repayment by the plaintiff/respondent is a bounden duty on his part as per the solemn terms of the contract between the parties. If the plaintiff has failed in making repayment though he is in possession of the vehicle in question, equity may not favour.

10. Accordingly, the appeal being FMA 1175 of 2022 along with interim application being CAN 1 of 2022 is disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)