

Items
1&2. 12-11-2024

sg Ct. 37

**In The High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side
Commercial Division**

**FMAT 371 of 2024
CAN 1 of 2024**

Rakesh Sk
Versus
Micky Metals Limited & Ors.

With

**FMAT 383 of 2024
CAN 1 of 2024**

M/s. Sanyal Hardware of Jalangi Road & Ors.
Versus
Micky Metals Limited & Anr.

Mr. Shuvasish Sengupta
Mr. Debdut Mukherjee
Mr. Madan Mohan Roy
Mr. Haripada Nayak

...for the appellant in FMAT/371/2024

Mr. Siddhartha Banerjee
Mr. Bratin Kumar Dey
Ms. Anjana Banerjee

...for the appellant in FMAT/383/2024

Mr. Aniruddha Mitra
Mr. Deepnath Roy Chowdhury
Mr. Bhaskar Dwivedi
Mr. Souvik Kundu

...for the respondents

1. Rakesh Sk. claims to be a bona fide purchaser for value without notice and, admittedly, has paid a sum of Rs.1.30 crore to the judgment-debtor. It is contended that the petitioner was not aware of the terms of settlement entered into between the owners of the property and the award-holders.

2. The award was put into execution and during the pendency of the execution proceeding, a settlement was arrived at between the award-holder and the owner of the property. The

owners of the property namely, the judgment-debtors are the appellants in FMAT 383 of 2024. Under the terms and settlement, the judgment-debtors were required to pay a sum of Rs.95 lakhs in a particular manner and upon payment of such amount, the award-debtors shall be relieved of all the liabilities. However, it is alleged that that during the pendency of the execution proceeding and without complying the conditions of the terms of settlement, the property has been sold in favour of Rakesh Sk. in violation of the order of injunction. Rakesh Sk. alleged that he was not aware of the award or such proceeding or any order passed in the execution proceeding restraining the owner of the property to sell the property in favour of any third party.

3. On the last occasion, we heard the learned Counsel for the parties and adjourned this matter to this date in order to ascertain whether the third party is willing to discharge the remaining liability under the terms of settlement to the award-holders.

4. The learned Counsel for the award-holders submits that the award-holders will be entitled to interest on the sum of Rs.1.10 crore, provided Rs.95 lakhs was not paid in terms of the terms of settlement.

5. The terms of settlement does not specify any date for payment of Rs.95 lakhs. It contemplates certain reciprocal obligation. However, absence of any time specified in the terms of settlement does not mean that it would be open-ended and payable at the sweet will of the judgment-debtor. We would have excepted the judgment-debtors to pay the said amount at

least by 31st December, 2022 in absence of any period specified in the terms of settlement. Even if we accept the submission of Mr. Aniruddha Mitra, learned Counsel appearing on behalf of the award-holders, that the said amount was immediately payable or latest by end of August, 2022 then the award-holders will be entitled to interest for a period of little over two years.

6. Taking into consideration the conduct of the parties and the commercial rate of interest charged and the rate of interest to which the award-holders would have been entitled under Section 31(7)(b) of the Arbitration and Conciliation Act, 1996, we direct Rakesh Sk. to pay a consolidated sum of Rs.40 lakhs on or before 31st January, 2025 in full and final settlement. The award holder has agreed to accept the said amount in satisfaction of the award in full.

7. The aforesaid direction is peremptory, in default, the Executing Court shall proceed with the execution proceeding in terms of the award.

8. The right to realize the amount to be paid by Rakesh Sk. to the award-holder against the judgment-debtors may be decided in an appropriate proceeding in the event the said amount is paid. The right of Rakesh Sk to recover the said amount upon payment is reserved. On payment of the aforesaid sum, the Executing Court shall record satisfaction of the award.

9. The matter may be listed before the Executing Court after 31st January, 2025.

10. There shall be an order of injunction restraining Rakesh Sk to deal with and/or encumber the said property in any manner whatsoever until the balance awarded amount is

paid and on payment of such sum, the order of injunction on the property and against Rakesh Sk shall stand set aside. The order of cancellation shall, however, remain stayed till 31st January, 2025 or the payment of the balance consideration amount whichever is earlier. Upon payment of Rs.40 lakhs the order of the Executing Court dated 12th September, 2024 shall become inoperative. The order directing costs is set aside.

11. The appeals and the connected applications are, accordingly, disposed of with the aforesaid directions.

12. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Ajay Kumar Gupta, J.)