

12.12.2024
SI No.2
Court No.37
(gc)

**FMAT (ARBAWARD) 51 of 2023
CAN 1 of 2023**

**M/s. IndusInd Bank Limited
Vs.
Partha Sarathi Rakshit & Anr.**

Ms. Soni Ojha,
Ms. Sambrita B. Chatterjee
...for the Appellant.

Ms. Iti Dutta,
Ms. Priti Jain
....for the Respondents.

Re: CAN 1 of 2023

1. There is a delay of 95 days in preferring the appeal. In view of the explanation offered for not being able to prefer the appeal within the period of limitation, the delay of 95 days is hereby condoned.
2. Accordingly, the application for condonation of delay is allowed and disposed of.

Re: FMAT (ARBAWARD) 51 of 2023

3. The appeal is arising out of an order passed by the learned Chief Judge, City Civil Court at Calcutta where an application was filed by the judgment-debtor challenging the award on the ground that he has not received any notice from the arbitral tribunal and hence he could not participate in the arbitration proceeding.

The learned Chief Judge has referred to the observation of the learned Arbitrator in paragraph 3 of the award and has also perused the record of the arbitration proceeding and arrived at a conclusion that the said paragraph read with the record of the arbitral tribunal would show that notice was not served upon the respondent no.1. It is also noted by the learned Chief Judge that while sending the record of the proceedings, the Arbitrator held back and did not send the envelopes which allegedly have been returned to the Tribunal with the endorsement 'refused' as was submitted by the learned Counsel for the award-holder during the course of his argument before the learned Arbitrator.

4. Under such circumstances, we do not find any reason to interfere with the order passed by the learned Chief Judge, City Civil Court.
5. It would be open for the appellant to initiate fresh arbitration proceeding upon notice to the parties.
6. Affidavit-of-service filed in Court is taken on record.
7. We also record that the opposite party no.2 has refused to accept service of notice and it shall be presumed that the service has been effected upon the said respondent no.2.

8. Accordingly, the appeal and application stand disposed of.
9. However, there shall be no order as to costs.
10. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)