

Item- 12-12-2024
5.

sg Ct. 37

**FMAT 434 of 2024
CAN 1 of 2024
CAN 2 of 2024**

M/s. Swastik & Anr.
Versus
Anil Agarwal

Mr. Soujanya Bandyopadhyay
...for the appellants
Ms. Shrayashee Dutta
Ms. Debjani Sen Gupta
Ms. Poulami Das
...for the respondent

1. The defects as pointed out by the learned Registrar Administration (L&OM) have cured. Deficit court fees have been deposited and an application for condonation of delay has been filed.

In Re: CAN 1 of 2024

2. The delay being sufficiently explained, we condone the delay of 29 days in filing the memorandum of appeal.
3. CAN 1 of 2024 is thus disposed of.

In Re: FMAT 434 of 2024 and CAN 2 of 2024

4. In view of the fact that Misc. Appeal No. 31 of 2024 has been filed before the learned City Civil Court, Kolkata challenging the order passed under Section 17 of the Arbitration and Conciliation Act, we modify the impugned order to the extent that the Receiver shall remain in symbolic possession of the flats in question as the nature of the impugned order would, in fact, result in execution of the

arbitral award, which is yet to be passed in the said proceeding. Moreover, the learned Counsel for the appellants has submitted that the learned Arbitrator has decided the application for interim measure without giving an opportunity of hearing to the appellant. At this stage, it has been suggested that if the application for interim measure can be heard afresh.

5. We feel that it would be better if the learned Arbitrator hears the application for interim measure afresh and decide the said application in presence of the appellants after giving an opportunity to the appellants to file objection to the application for interim measure.
6. Accordingly, we set aside the order passed by the learned Arbitrator. However, the Receiver already appointed, shall remain in symbolic possession of the flats till the application for interim measure is finally decided by the learned Arbitrator.
7. The Receiver shall hand over peaceful possession of the flats in question to the appellants. The appellants shall not alienate and/or encumber the property in any manner whatsoever till the application for interim measure is decided by the learned Arbitrator.
8. All notices and communications in relation to the arbitration proceeding shall be served upon the advocate-on-record of the appellant namely, Soujanya Bandyopadhyay, Bar Association Room No. 15, High Court, Calcutta, Mobile 9051940531, email: soujanya.banerjee18@gmail.com. The service can also be effected by email. Service upon the Mr. Soujanya Bandyopadhyay, Advocate shall be deemed to be a

service upon the appellants including the service of any interim or final award as the case may be to avoid all future controversies.

9. The appeal and the application are accordingly disposed of.
10. In view of the aforesaid order, nothing remains to be decided in Misc. Appeal No. 31 of 2024 and the appellants shall withdraw the said appeal in terms of this order.
11. Since no affidavit-in-opposition is called for, all allegations are deemed to have been denied.
12. The Receiver shall remove the padlock and hand over the possession of the flats in question to the appellants within 48 hours from the date of this order.
13. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)