

AD-15
Ct No.16
25.02.2025
TN

FMAT 8 of 2025
IA No: CAN 1 of 2025
CAN 2 of 2025

Lalit Narayan Pandey
Vs.
HDB Financial Services Limited

Mr. Satrajeet Sen,
Mr. Lalratan Mandal

....for the appellant

Mr. Sayak Ranjan Ganguly,
Ms. Srijani Ghosh,
Ms. Indrani Majumdar

....for the respondent

In re: IA No: CAN 1 of 2025

1. Mr. Sen, learned counsel for the appellant, contends that the appeal could not be filed in time in view of the reasons as explained in the application for condonation of delay. Initially the file was misplaced in the office of the learned advocate and subsequently the petitioner had fallen ill.
2. Having heard learned counsel for the parties, we are convinced that the cause shown in the application for the delay is sufficient.
3. Accordingly, IA No: CAN 1 of 2025 is allowed on contest, thereby condoning the delay in filing FMAT 8 of 2025. There will be no order as to costs.

In re: FMAT 8 of 2025
CAN 2 of 2025

4. The appeal is taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure on consent of parties, although the same is appearing under the heading “Application”.
5. Upon hearing learned counsel for the parties, we are convinced that the appeal, in which questions both of fact and law are involved, is required to be heard on the grounds taken in the memorandum and is accordingly admitted.
6. The court proposes to the parties that in view of the short conspectus of the appeal, the same be taken up along with the hearing of the application without filing of formal paper books or calling for the records.
7. Learned counsel for the parties, in their usual fairness, agree to the appeal being taken up here and now along with the application.
8. Heard learned counsel for the parties.
9. By the impugned order, an application filed by the plaintiff/appellant under Order IX Rule 9 of the Code of Civil Procedure, for restoration of his suit, was dismissed. Such dismissal, as we find from the impugned order, was on the technical ground that the relief sought by the plaintiff under Order IX Rule 9 of the Code of Civil Procedure does not tally with the order passed by the court while it dismissed the suit for default.

10. Apart from the trial court adopting a hyper-technical approach, we also find that the suit, in the first place, could not have been fixed for hearing and dismissed for default without disposing of the pending application of the defendant/respondent under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”). As such, the provisions of Order IX of the Code of Civil Procedure were not duly adhered to by the learned Trial Judge while dismissing the suit for default. Thus, the learned Trial Judge erred in law in dismissing the application of the plaintiff/appellant under Order IX Rule 9 of the Code of Civil Procedure and refusing to restore the suit.
11. Accordingly, FMAT 8 of 2025 is allowed on contest, thereby setting aside the impugned order and restoring Title Suit No. 996 of 2022, pending before the learned Judge, Twelfth Bench, City Civil Court at Calcutta, to its original file and number by recalling the order dismissing the same for default.
12. The learned Trial Judge shall now take up the suit from the stage of hearing of the pending application of the defendant/respondent under Section 8 of the 1996 Act. Upon adjudication of the said application and subject to the outcome of the same, the trial court shall either pass appropriate orders sending the

matter to arbitration or take up the suit for hearing and expedite the hearing of the same.

13. It is made clear that this court does not express any view on the merits, either in respect of the suit or in respect of the pending application under Section 8 of the 1996 Act, and the learned Trial Judge shall be at liberty to dispose of the said application and thereafter the suit, if necessary, in accordance with law independently and without being influenced by any of the observations made above.
14. CAN 2 of 2025 is also disposed of accordingly.
15. It is expected that the learned Trial Judge shall dispose of the pending application under Section 8 of the 1996 Act within one month from the date of communication of this order to the said court.
16. There will be no order as to costs.
17. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)