

Item- 22. 10-09-2025

sg Ct. 16

FMAT 253 of 2025
CAN 1 of 2025
CAN 2 of 2025

Biswadeep Chakraborty
Versus
Abhisek Guha & Ors.

Mr. Ishaan Saha
Ms. Tanuj Kakrania
Ms. Shreya Goenka
Ms. Shadna Manzua

...for the appellant

Mr. Mrinal Kanti Ghosh
Mr. Abhirup Halder
Mr. Sounak Mondal

...for the respondent no.1

1. On 20th August, 2025, the respondents have applied to the Land Manager, Bidhannagar, Urban Development and Municipal Affairs Department with a prayer to grant permission to transfer lease hold right in respect of the land and building forming the subject matter of the suit.
2. The appellant has filed an application preferring a special leave petition against the order dated 12th August, 2025. Simultaneously, the appellant has also filed an application for modification of the order dated 12th August, 2025.
3. In the modification application, it is stated that instead of 50%, the appellant may be permitted to deposit 20% of the agreed consideration amount with the learned Registrar General. It appears that the respondent no.1 has acted on the basis of the order dated 12th August, 2025 with a hope and expectation that the order dated 12th August, 2025 will be acted upon. In such facts and circumstances, it clearly shows that the appellant is not

ready and willing to perform the contract and the bona fide of the appellant is not established.

4. The consideration amount is over Rs.2.38 crores and if the appellant is unable to even deposit 50% of the agreed consideration amount, it clearly shows that he is not in a position to perform his obligation under the contract even if a decree is passed today. The respondent no.1 has clearly stated that upon receiving the entire consideration amount the respondent no.1 shall execute the conveyance in favour of the plaintiff. There could not be an impediment in a suit for specific performance to enter into an agreement which is contingent in nature. In this regard we may refer to **Mrs. Chandnee Widya Vati madden Vs. Dr. C. L. Katial & Ors** reported in **AIR 1964 SC 978** in which in paragraph 4 it has been clearly stated:

“4. The main ground of attack on this appeal is that the contract is not enforceable being of a contingent nature and the contingency not having been fulfilled. In our opinion, there is no substance in this contention. So far as the parties to the contract are concerned, they had agreed to bind themselves by the terms of the document executed between them. Under that document it was for the defendant-vendor to make the necessary application for the permission to the Chief Commissioner. She had as a matter of fact made such an application but for reasons of her own decided to withdraw the same. On the findings that the plaintiffs have always been ready and willing to

perform the part of the contract, and that it was the defendant who wilfully refused to perform her part of the contract, and that time was not of the essence of the contract, the court has got to enforce the terms of the contract and to enjoy upon the defendant-appellant to make the necessary application to the Chief Commissioner. It will be for the Chief Commissioner to decide whether or not to grant the necessary sanction.”

5. We have directed to deposit only 50% of the agreed consideration till we decide the appeal in order to find out the solvency and bona fide of the appellant till the respondent no.2 communicates its decision. We however, extend the time to deposit the amount by two weeks failing which the appeal and application may stand dismissed after a fortnight. The respondent No.2 is not represented. An appropriate notice be served upon the respondent No.2 on or before Monday, 15th September, 2025. The respondent No.2 must depute an authorized person conversant with the matter with the decision taken on the basis of the application filed by the respondent No.1 for permission.
6. Under such circumstances, we are not inclined to modify the order dated 12th August, 2025.
7. In such facts and circumstances of the case, the appeal and the connected applications are dismissed. However, there shall be no order as to costs.

(Soumen Sen, J.)

(Apurba Sinha Ray, J.)

