

11.09.2025
Item No. 8.
Court No.37.
AB
(Bench ID 266311)

**FMAT 368 of 2025
With
CAN 1 of 2025
CAN 2 of 2025**

**Kakali Ghosh & Anr.
Vs
HDB Financial Services Ltd.**

Mr. Prantick Ghosh,
Ms. Sabana Hasinfor the Appellants.

Mr. S. R. Ganguly,
Ms. Srijani Ghosh,
Ms. Indrani Majumdarfor the Respondent.

Dictated by Arijit Banerjee, J.

In re : CAN 1 of 2025

1. This is an application for condonation of delay of 80 days in filing the appeal. Causes shown being sufficient, the delay is condoned.
2. CAN 1 of 2025 is, accordingly, disposed of.

In re : FMAT 368 of 2025, CAN 2 of 2025

3. This appeal is directed against an order dated May 7, 2025, passed by the learned Court, 2nd Bench, City Civil Court, Calcutta, in Misc. Case No.3687 of 2025, being an application under Section 9 of the Arbitration and Conciliation Act, 1996, filed by the respondent/bank.
4. It appears that the appellants availed of loan from the respondent/bank. They have

defaulted in paying agreed installments. Accordingly, the bank approached the learned Trial Court with an application under Section 9 of the 1996 Act for appointment of Receiver over the vehicle which was hypothecated in favour of the bank as security for the loan advanced by the bank to the appellants.

5. By the impugned order, which was passed ex parte, the learned Trial Court appointed a Receiver for taking actual physical possession of the vehicle in question. We also understand that the Receiver has already taken physical possession of the vehicle.
6. Learned Advocate for the appellants says that the appellants may be put on terms and the respondent may be directed to hand back physical possession of the vehicle to the appellants.
7. We are not inclined to entertain this appeal as the appellants should ideally approach the learned Trial Court with an application for vacating or modification of the ex parte order. Admittedly, the appellants are in default. If they wish to make up for such default and make payment to the respondent bank, they are at liberty to do so before the learned Trial Court or otherwise.

8. Learned Advocate for the appellants further says that the City Civil Court at Calcutta does not have territorial jurisdiction to entertain the Section 9 application. It will be open to the appellants to urge this point before the learned Trial Judge. If this issue is raised, the same should be decided as a preliminary issue by the learned Trial Court.
9. We have not gone into the merits of the disputes between the parties. It will be upto the learned Trial Court to decide the Section 9 application or any vacating or modification application that may be filed by the appellants herein, in accordance with law, without being influenced by any observation in this order.
10. We only put on record the submission made on behalf of the respondent/bank that arbitration proceedings have already been initiated. This is disputed by learned Advocate for the appellants, who says that the appellants do not have any notice of such proceedings.
11. To grant a breathing space to the appellants, we restrain the respondent/bank from dealing or disposing of the vehicle of which possession has been taken by the Receiver, for a period of six weeks from date.

In the meantime, the appellants will be at liberty to obtain appropriate orders from the learned Trial Court if they can do so.

12. In the event the appellants file an application for vacating or modification of the ex parte order appointing Receiver, the same shall be disposed of as expeditiously as possible, without granting unnecessary adjournment to either of the parties and by fixing short dates.

13. The appeal and the connected application are disposed of accordingly.

14. After this order is dictated, learned Advocates for the parties say that they are agreeable to try out mediation to resolve the disputes between the parties.

15. Accordingly, the Member Secretary of the High Court Mediation Committee is directed to appoint a trained Mediator to look into the matter.

16. Due and sufficient notice of the mediation proceedings will be issued to the parties and/or their learned advocates. The Mediator shall file his report before the learned Trial Court within 30 days from the date of initiation of mediation. In the event the mediation succeeds, naturally, the learned Trial Court shall record a final order in

accordance with the agreement arrived at between the parties. Otherwise, the learned Trial Court shall decide the Section 9 application in accordance with law observing the principles of natural justice.

17. In the event, the mediation does not conclude within the period indicated above, the parties would be at liberty to pray for appropriate order before the learned Trial Court.

18. It is desirable that the first mediation sitting is held within 7 days from receipt of a copy of this order by the Member Secretary of the High Court Mediation Committee.

19. Registry is directed to communicate this order to the Member Secretary, High Court Mediation Committee. Learned Advocates for the parties shall also be at liberty to communicate this order to the Member Secretary, High Court Mediation Committee.

20. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Om Narayan Rai , J.)

(Arijit Banerjee, J.)

