

04 09.01.2025

Ct-37

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FMAT 1174 of 2019
with
IA No. CAN 1 of 2020(Old CAN No. 1071 of 2020)

M/s Annapurna Developer
Vs.
Sudhir Kumar Barman

Mr. Ajoy Debnath
Mr. Upamanyu Mukherjee
... For the Appellant

1. The appeal was filed on 18th November, 2019.
The appeal was defective.

2. The matter was listed on 21st January, 2021 when Mr. Deb Ranjan Das, learned advocate appeared on behalf of the appellant and prayed for adjournment and the matter was directed to appear on 28th January, 2021 by extending the time to put in the deficit court fees by 27th January, 2021. On 28th January, 2021 Mr. Debranjana Das, learned advocate, appeared, however, the matter was released as the Court did not have the determination. Thereafter, on 19th November, 2024 the matter was listed, however, the appellant was not represented. Till such time the deficit court fee was not deposited. As a reason whereof, we directed service of administrative notice upon the appellant. Thereafter, on 3rd December, 2024 an adjournment was prayed for on behalf of Mr. Ajoy Debnath, learned advocate for the appellant. The

matter was again listed on 10th December, 2024 when Mr. Debnath appeared and submitted that the matter may be adjourned in order to enable him to remove the defects.

3. The office has filed a report wherefrom it appears that the deficit court fee was deposited on 18th December, 2024.

4. We ask the specific question to Mr. Debnath as to whether any arbitration proceeding is initiated in the mean time. The application under Section 9 was filed in 2017 and was dismissed on 17th September, 2019. One would expect that the appellant to initiate the arbitration proceeding by serving notice under Section 21 of the Arbitration and Conciliation Act. The appellant seems to have not initiated any proceeding. Mr. Debnath submits that third party interest may have accrued in the mean time. Mr. Debnath has referred to the stay petition where it is stated that in the event the interim relief is not passed third party interest may accrue. After six years we do not find any reason to decide the said issue which is for the arbitrator to decide. There is no step taken for initiation of the arbitration proceeding. There was also no attempt made to make the appeal ready for hearing.

5. Under such circumstances, we are not inclined to grant any relief to the appellant at this stage. However, in the event any arbitration proceeding is initiated in accordance with law, it would be open for the appellant to pray for interim measure in the arbitration proceeding and in the event such prayer is made, the Arbitration Tribunal shall decide the matter in accordance with law without being influenced by any observation made in this order rejecting the prayer for interim relief.

6. With the above observation, the appeal being FMAT 1174 of 202019 stands disposed of along with CAN 1071 of 2020.

7. Urgent Photostat copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)

