IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE COMMERCIAL JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

AO-COM 57 of 2025
with
IA No.: CAN 1 of 2025
with
IA No.: CAN 2 of 2025
with
IA No.: CAN 3 of 2026

JM Financial Asset Reconstruction Company Limited
Vs.
Abhinandan Holdings Private Limited & Anr.

For the Appellant : Mr. Mainak Bose, Ld. Sr. Advocate
Mr. Y. Bhattacharyya, Advocate
Ms. Akansha Yadav, Advocate

For the Respondent No.1 : Mr. Saptangsu Basu, Ld. Sr. Advocate
Mr. Abhrajit Mitra, Ld Sr. Advocate
Mr. Sushovit Dutt Majumder, Advocate
Mr. Sarosij Dasgupta, Advocate
Mr. Sagnik Shaw, Advocate

Hearing & Judgment on : **May 7, 2026**

DEBANGSU BASAK, J.:-

1. IA No.: CAN 1 of 2025 is an application for condonation of delay.
2. Affidavits filed in Court be taken on record.
3. Appellant explains the delay on the ground of the learned Advocate as also the learned Senior Advocate took time to prepare the appeal and file the same. Acting on the principle that a litigant should not suffer the

consequences of the faults, if any, of the learned Advocate and for the ends of justice, we accept the causes shown in the application for condonation of delay as sufficient.

4. The delay in making and filing the appeal is condoned.
5. IA No.: CAN 1 of 2025 is allowed.
6. The appeal is taken up for final hearing by consent of the parties.
7. Appeal is directed against the Order No.45 dated July 30, 2025 passed in TS (Com)-39/2024 by the learned Judge, Commercial Court at Rajarhat, North 24-Parganas.
8. By the impugned order, learned Judge after noticing that there were two ad interim orders of injunction subsisting since September 29, 2021 and August 2, 2023 was pleased to make them absolute till the disposal of the suit.
9. Learned Senior Advocate appearing for the appellant submits that, the respondent no.1 filed a suit for specific performance of an agreement dated January 15, 2020 entered into between the appellant and the respondent no.1. He submits that, admittedly the respondent no.1 acted in breach of the terms and conditions of the agreement dated January 15, 2020. The appellant on the occurrence of such breach of the terms and conditions of the agreement, terminated the same by a writing dated March 2, 2020. He submits that, the initial ad interim order dated September 29, 2021 restrained the appellant from giving effect to the letter of termination dated March 2, 2020. Thereafter, on a petition

under Section 151 of the Code of Civil Procedure, 1908, another ad-interim order was passed on August 2, 2023 which restrained the appellant from transferring the loan account.

10. Learned Senior Advocate appearing for the appellant submits that, the respondent no.2 obtained loan from Federal Bank. Such loan account was classified as a "Non-performing Assets (NPA)" on December 31, 2015. Appellant being a securitization company within the meaning of SARFAESI Act obtained assignment of the NPA of Federal Bank by virtue of a registered deed of assignment dated March 30, 2016.

11. Learned Senior Advocate appearing for the appellant submits that, the appellant filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 as against the respondent no.2. He submits that, at present, hearing of the company petition under Section 7 of the Code of 2016 was concluded and that the decision on such company petition is reserved by the National Company Law Tribunal, Kolkata.

12. Learned Senior Advocate appearing for the appellant submits that, during the pendency of the company petition, appellant entered into an agreement to assign the debt along with underlying securities of the respondent no.2 to the respondent no.1 for a consideration of Rs.26.01 crores. He draws the attention to the terms and conditions of agreement. He submits that, time is the essence of the contract. He points out that, the respondent no.1 was obliged under the agreement dated January 15,

2020 to pay the sum of Rs.26.01 crores in the manner as stipulated therein.

13. Learned Senior Advocate appearing for the appellant submits that, save and except the payment of a sum of Rs.6.5 crores, the respondent no.1 failed and neglected to pay the balance sum to the appellant. Defaults occurring, the appellant validly terminated the agreement dated January 15, 2020 by the letter dated March 2, 2020.

14. Learned Senior Advocate appearing for the appellant submits that, in the suit for specific performance of the agreement dated January 15, 2020 when the ad interim order of injunction was passed on September 29, 2021, the learned Judge noted that, there was default in payment of the agreed consideration under the agreement dated January 15, 2020. He submits that, since the order dated September 29, 2021, no further payment was made by the respondent no.1.

15. Learned Senior Advocate appearing for the appellant submits that, the order dated August 2, 2023 passed subsequently by the learned Trial Judge extended the scope of the ad interim order dated September 29, 2021 and restrained the appellant from transferring the loan account. He submits that, neither the order dated September 29, 2021 nor August 2, 2023 could be passed by the learned Trial Judge in absence of the respondent no.1 as the plaintiff establishing its readiness and willingness to perform the terms and conditions of the assignment agreement dated January 15, 2020.

16. Learned Senior Advocate appearing for the respondent no.1 submits that, the two interim orders spoken of, by the impugned order, were subsisting for substantial period of time. He contends that, the initial ad interim order passed on September 29, 2021 contains elaborate reasons.

17. Referring to the impugned order, learned Senior Advocate appearing for the respondent no.1 submits that, in the event, the Court is pleased to hold that such order does not contain adequate reasons, the matter may be remanded to the learned Trial Judge for reconsideration given the period of time that the interim order was subsisting.

18. Learned Senior Advocate appearing for the respondent no.1 submits that, a sum of Rs.1 crore was tendered to the appellant after the termination of the agreement dated January 15, 2020.

19. The appeal is pending for a considerable period of time. On the first date, when the appeal was taken up for consideration by this Bench, we expressed our view that the respondent no.1 should deposit the entire amount covered under the agreement dated January 15, 2020 along with interest with Registrar General of this Hon'ble Court. We made such observation in order to test the readiness and willingness of the respondent no.1 to perform the agreement dated January 15, 2020. The respondent no.1 is yet to deposit any sum with the Registrar General of this High Court.

20. The response to the query of the Court, as to whether, the respondent no.1 is still willing to do so today, is in the negative.

21. Suit is for specific performance of the agreement dated January 15, 2020. Such agreement requires the respondent no.1 to pay a sum of Rs.26.01 crores to the appellant for assignment of the loan to it. The respondent no.1 paid a sum of Rs.6.5 crores to the appellant. After adjusting the sum paid, a sum of Rs.19.50 crores remain due and payable by the respondent no.1 to the appellant on account of principal only. Such amount is yet to be paid by the respondent no.1.

22. Suit is for specific performance of the agreement dated January 15, 2020. Readiness and willingness to perform the subject agreement of specific performance which is sought for in the suit is a *sine quo non* for the plaintiff in such suit to obtain any relief in the suit, including interim relief.

23. In the facts and circumstances of the present case, the respondent no.1 is unable to demonstrate its readiness and willingness to perform the contract. It is not in a position to discharge its part of the obligations under the agreement dated January 15, 2020 specific performance of which, the respondent no.1 is seeking in the suit. Apart from paying a sum of Rs.6.5 crores prior to filing of the suit, the respondent no.1 is yet to pay the balance. The tender of Rs.1 crore made during the pendency of the suit was not accepted by the appellant. Today also the respondent no.1 is unwilling to deposit the balance.

24. Consequently, there is no material to arrive at a finding that the respondent no.1 as a plaintiff made out a *prima facie* case to go to trial or

that the balance of convenience or inconvenience lies in favour of the respondent no.1 in granting any relief to it in a suit for specific performance.

25. In such circumstances, the impugned order dated July 30, 2025 confirming the orders dated September 29, 2021 and August 2, 2023 are set aside.

26. It is clarified that, there does not subsist any order of injunction in the suit in favour of the respondent no.1.

27. IA No.:CAN 3 of 2026 is an application under order 41 Rule 27 of the Code of Civil Procedure filed by the respondent no.1.

28. It is contended in such application that the appellant does not possess a right of appeal.

29. The respondent no. 1 contends that, the appellant lost locus standi to represent the trust GMFRS-Federal Bank March 26-Trust through which the assignment agreement was entered into. According to the respondent no. 1, authority of the appellant flowing from the trust deed is no longer as the trust came to an end.

30. The respondent no. 1 sought specific performance of the agreement dated January 15, 2020 entered into between the appellant and the respondent no. 1. It is in this suit for specific performance that the impugned order was passed.

31. Federal Bank assigned the NPA to the appellant by a registered deed of assignment dated March 30, 2016. There is nothing on record to remotely suggest that the deed of assignment came to an end.

32. The Appellant before us is a party-defendant to the suit and is suffering an order of injunction. Right of the appellant stands prejudiced by the order impugned. The stand of the respondent no.1 in the application being IA No.: CAN 3 of 2026 is utterly dishonest.

33. There is substance in the contention of the appellant that, respondent no. 1 is the alter ego of the respondent no. 2 and setup by the respondent no. 2 to delay the recovery. It is the respondent no. 2 which is using the respondent no. 1 to stall the recovery proceedings as against the respondent no. 2.

34. The respondent no. 2 is finding various mechanisms to stall the recovery proceedings, if possible, and IA No. CAN 3 of 2026 is one of such dubious mechanism.

35. In order to ensure that such dishonest stand is not repeated, it would be appropriate to put the respondent no.1 on terms. Respondent no.1 will pay costs assessed at Rs.5 lakh (Rupees Five Lakh) to the West Bengal State Legal Services Authority, Kolkata within 7(seven) days from date. Documentary evidence of such payment of costs is to be made over by the Advocate-on-record of the respondent no.1 to the Advocate-on-record for the appellant. In the event of the Advocate-on-record for the appellant not receiving such document within the time stipulated,

appellant will recover it from the respondent no.1 and make it over to the West Bengal Legal Services Authority.

36. **AO-COM 57 of 2025** along with connected applications are **disposed of**.

(Debangsu Basak, J.)

37. I agree.

(AD) **(Md. Shabbar Rashidi, J.)**