

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
[COMMERCIAL DIVISION]
ORIGINAL SIDE

Present :
THE HON'BLE JUSTICE ARINDAM MUKHERJEE

IA GA NO.2 of 2022
In
CS 195 of 2022

SKIPPER LIMITED

VERSUS

PRABHA INFRASTRUCTURE PRIVATE LIMITED

For Plaintiff : Mr. Shounak Mukhopadhyay,
Ms. Madhurima Das,
Ms. Ankita Choudhury,
Mr. Shreyan Bhattacharya
.....Advocates

For the Defendant : Mr. Mr. Sankarsan Sarkar ,
Mr. Rites Goel,
Mr. Ritoban Sarkar,
Mr. Tanvi Luhariwala
..... Advocates

Last Heard on : 18.01.2023.

Judgment on : 20th December, 2023

Arindam Mukherjee, J:

1. This is an application inter alia for rejection of the plaint and dismissal of the suit filed by the sole defendant on the ground that the plaint does not disclose any statement wherefrom the plaintiff's contemplation of urgent interim relief is borne out which entitled the plaintiff to seek dispensation of the provisions and the formalities of Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as the 2015 Act).

The plaintiff has opposed the said application by contending that on a meaningful reading of the plaint, the necessity of urgent interim order is explicit.

Law so far as the applicability of provisions of Section 12A of 2015 Act and its dispensation has been more or less settled by the Hon'ble Supreme Court through the ratio laid down in the judgment reported in **2022 (10) SCC 1 (Patil Automation Pvt. Ltd & Ors. vs. Rakheja Engineers Pvt. Ltd) and Yamini Manohar vs. T.K.D Keerthi reported in 2023 SCC OnLine SC 1382**. On a conjoint reading of the two judgments aforesaid the following principles can be culled out to be are the admitted position of law at the present:-

- i) The provisions of Section 12A of 2015 Act are mandatory.
- ii) The plaintiff's contemplation as to urgent interim relief shall be borne out from the averments in the plaint.
- iii) The plaintiff does not have the absolute choice and right to paralyse Section 12A of 2015 Act by making a prayer for urgent interim relief to camouflage and disguise and bypass statutory mandate of pre-litigation mediation.

iv) The contemplation of urgent interim relief as pleaded by the plaintiff for dispensing the pre-institution mediation is subject to the satisfaction of the Court.

v) The Commercial Court should examine the nature and the subject matter of the suit, the cause of action and prayer for interim relief so that such prayer is not a mask or disguise to wriggle out or get-over Section 12A of 2015 Act before allowing dispensation.

vi) On finding that the plaint does not disclose any material to dispense with the formalities of pre-institution mediation or that the falsity as to such claim is apparent or established at the time of admission then the Commercial Court can refuse admission but the same will not be under the provisions of Order 7 Rule 11 of the Code of Civil Procedure, 1908 (In short CPC).

vii) Mere refusal of interim order in an application for interim relief will not be a ground to reject the plaint automatically.

viii) There is no mechanism as in Section 80 of CPC for return of the plaint after institution of the suit, if the contemplation of urgent interim relief as pleaded by the plaintiff is held to be unfounded.

ix) A suit can also be dismissed under the provisions of Order 7 Rule 11 of CPC if it is found subsequent to the filing on the prayer of the defendant that there was no contemplation of urgent interim relief.

In the light of the principles as aforesaid an application for rejection of plaint as the instant one is required to be decided.

In the instant case, the suit is for recovery of unpaid price of goods sold and delivered by the plaintiff to the defendant. It is, therefore, a suit for money claim. It is the case of the plaintiff that as per the purchase orders the plaintiff sold and delivered diverse goods to the defendant. The defendant accepted the goods and made intermittent payment but ultimately failed and neglected to pay the entire dues on account of price of goods sold and delivered. The plaintiff in support of its contemplation of urgent interim relief to dispense with the mandatory requirement under Section 12A of 2015 Act has pleaded the following in paragraph 61 of the plaint:-

“61. In as much as the plaintiff intends to pray for urgent interim relief in aid of the relief claimed in the suit, the plaintiff seeks leave of this Hon’ble Court under Section 12A of the Commercial Courts Act, 2015 and for dispensing with the requirement of compliance of pre-institution mediation and settlement as contemplated in terms of Section 12A of the Commercial Courts Act, 2015”.

The plaintiff in the plaint apart from money decree has claimed the relief of “injunction” and “attachment before judgment” on the basis whereof the plaintiff can ask for interim relief as to injunction and attachment before judgment.

On a holistic reading of the plaint in the instant case, including paragraph 61 thereof, neither any statement appears to have been made to satisfy the contemplation of urgent interim relief nor does any act of the defendant allege therein, shows even any prima facie case to allow the plaintiff to institute the suit without dispensing with the mandatory requirements of Section 12A of 2015 Act. The averments in support of contemplation of urgent interim relief in the plaint are not only bold but devoid of bare minimum particulars. If

these pleadings are accepted for dispensing with the formalities under Section 12A of 2015 Act then any plaintiff by making such averment will sail through to render the legislative mandate otiose. It should also be borne in mind that the plaint does not call for evidence to be pleaded but the particulars are to be provided on to lay the foundation for evidence.

The contemplation of urgent interim relief has to be at the time of admission of the plaint with the prayer for dispensation of pre-institution mediation and not at a subsequent stage. This is more so as far as an urgent interim relief subsequent to institution of the suit, the plaintiff is entitled to ask for the same under provisions of Order 38, Order 39 Rules 1 and 2 or even under Section 151 of CPC. That is why the Hon'ble Supreme Court has conferred the Commercial Court with a limited jurisdiction to scrutinize the averments in the plaint at the time of admission as the power of enquiry is already provided under Order 38, Order 39 Rules 1 and 2 and Section 151 of CPC while hearing an application for urgent interim relief. This is further evident when the Hon'ble Supreme Court clarifies in *Yamini Manohar* (supra) that an application for urgent interim relief has nothing to do with dispensation of the formalities under Section 12A of the Commercial Courts Act, 2015.

On a meaningful reading of the plaint and examining nature and subject matter of the suit, the case of action and the prayer for interim relief, it is apparent that the statements made in the plaint are to wriggle out or get-over the provision of Section 12A of 2015 Act. The plaintiff in this manner by way of clever drafting has attempted to bypass statutory mandate of pre-litigation mediation. This Court, therefore, is not satisfied with the statements made in support of the contemplation of any of the urgent interim relief.

The leave to dispense with the provisions of Section 12A of 2015 is, therefore, recalled and the plaint is rejected. Consequent upon such rejection, the suit instituted as CS No.195 of 2022 by filing the plaint also stands dismissed.

GA No.2 of 2022 is accordingly allowed.

The department is directed to de-register the plaint from the records.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)