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IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

C.S. No. 78 of 2020

TERAI OVERSEAS PRIVATE LIMITED & ORS.
Versus
KEJRIWAL SUGAR AGENCIES PRIVATE LIMITED & ORS.

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

Date : 3rd September, 2020.

Appearance:
Mr. Ratul Das, Adv.
Mr. Soumyajyoti Nandy, Adv.
...for the plaintiff.

The Court: The plaintiff seeks leave under Section 12A of the Commercial Courts Act, 2015 as well as Clause 12 of the Letters Patent, 1865.

On a query from the Court as to whether there was any pleading in the plaint with regard to under Section 12A of the Commercial Courts Act, learned Advocate of the plaintiff draws attention of the Court to paragraph 23 of the plaint.

Section 12A of the Commercial Courts Act, 2015 is as follows:-

“12-A. Pre-Institution Mediation and Settlement.- (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority authorized by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:

Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996)."

Paragraph 23 of the plaint states that, the plaintiff apprehends that the defendants are acting in collusion and, therefore, there is no chance for any conciliation as mandated under the Commercial Courts Act, 2015. Section 12A of the Act of 2015 prohibits in situation of a suit without the mandated mediation, where urgent reliefs are not sought. In my view, the pleading at paragraph 23 of the plaint does not come within the scope of ambit of the Commercial Courts Act, 2015.

In such circumstances, leave as prayed for under Section 12A of the Commercial Courts Act, 2015 cannot be granted. Consequently, grant of leave under Clause 12 of the Letters Patent, 1865 is not required.

In such view, department will treat CS 78 of 2020 as dismissed. This order will however not prevent the plaintiff from filing a suit on the self same cause of action.

(DEBANGSU BASAK, J.)

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