

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 20 of 2020

M/s Shiva Industries Through Its Proprietor S.R. Agrawal, Having Its Registered Office At Plot No. 72 And 79, Industrial Area, Rajgamar Road, Korba, District Korba Chhattisgarh. (Defendant).

---- Petitioner

Versus

Star Alloys And Chemicals Private Limited Plot No. 68, 69 And 70, Industrial Area, Rajgamar Road, Korba, District Korba, 495, 677, Chhattisgarh, through Director Vimal Kohli, S/o Late GD Kohli, Aged About 54 Years, R/o House No. A21, SS Green Colony, DDM School Road, Korba Chhattisgarh.

---- Respondent

For Petitioner : Shri Adil Minhaj, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

20-01-2020

1. Heard on admission as well as on I.A. No.1 of 2020, an application for grant of interim relief.
2. This petition has been brought being aggrieved by the order dated 17.9.2019 passed by the Learned Judge of Commercial Court (District Level), Raipur dismissing the application filed by the petitioner under Order VII Rule 11 of the Civil Procedure Code, 1908 (for short 'CPC').
3. It is submitted by counsel for the petitioner that Civil Suit No. 01B of 2019 was filed by the respondent against the petitioner on 27.3.2019 with an application under Section 149 read with Section 151 of the CPC praying for exemption from undergoing pre-institution mediation and settlement which was allowed by the Learned Judge of Commercial Court without assigning any specific reason. The respondent had though filed an application under Section XXXIX Rule 1 and 2 of the CPC praying for temporary injunction but the same was heard and

decided by the Learned Judge of Commercial Court and that was dismissed by order dated 22.6.2019. It was prayed in the application filed by the petitioner on the same date i.e. 22.6.2019 that the civil suit was barred under Order VII Rule 11(d) of the CPC as the filing of suit by the respondent was barred by law for noncompliance of Section 12A of the Commercial Courts Act, 2015, in which it is specifically mentioned that no suit shall be entertained without undergoing the stage of pre-institution mediation settlement. Although there is an exception that in case any prayer is made for grant of any interim relief, a suit can be filed without undergoing this stage, but the interim relief prayed by the respondent has been considered and decided in negative which implicates that it was not a case for grant of interim relief. Therefore, entertaining of the suit by the learned Court below was improper which should have been cured by allowing application under Order VII Rule 11 of the CPC. Hence, it is prayed that this petition be admitted and an interim order be passed in favour of the petitioner.

4. Considered the submissions made by counsel for the petitioner and also perused the impugned order. Learned Court below in the order dated 27.3.2019 held that looking to the urgency of the case, application for exemption from undergoing pre-institution mediation and settlement was allowed.
5. Section 12(A) of the Commercial Courts Act, 2015 is reproduced as under:

“12A. 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, for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987, the Authority authorised 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.

(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.”.

6. The exemption given under Sub-section 1 of Section 12(A) of the Commercial Courts Act, 2015 is very clear when if a suit contemplates any urgent interim relief and 'the dictionary meaning of the word contemplate is serious thought or consideration on any subject. Therefore, according to this meaning of the word contemplate used in the provision means that the urgent relief is pending for consideration which does not includes any grant of interim relief, other than that there is no law referred to by the petitioner's side that the suit filed by the petitioner was specifically barred by any other law in force'. The only

ground taken in the application is regarding the mandatory requirement under Section 12(A) of the Commercial Courts Act, 2015, in which the exemption is given to file a suit in case the concerned party feels necessary to make a prayer for urgent relief and the prayer was accordingly made by the respondent's side. Therefore, I am of this view that the learned Court below has not committed any error in passing the impugned order. Hence, for these reasons, I do not find any substance in this petition and it is dismissed at motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi