

04,DL,Ct.18.
16.03.2021
AJ.

C.O. 148 of 2021

M/s. Dbar Code Restro Bar & Club LLP
-Vs-
Siddhant Commotrade Pvt. Ltd. & Anr.

Mr. Partha Chakraborty,
Mr. S.C. Shrivastava,
Mr. Pradip Kumar,
Ms. Jayanti Ghoshal.
....for the petitioner.

Mr. Sabyasachi Chowdhury,
Mr. Satadeep Bhattacharyya,
Mr. Rajesh Upadhyay,
Ms. Surabita Biswas.
...for the opposite parties.

The present application under Article 227 of the Constitution of India is at the instance of a defendant in a suit for eviction and is directed against Order No.16 dated January 13, 2021 passed by the learned Judge, Commercial Court at Alipore in Title Suit No. 3 of 2020, whereby the learned Trial Judge has dismissed an application filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint of the said suit.

The petitioner is seeking rejection of the plaint of the said suit on two fold grounds, firstly that the suit has been filed without exhausting the remedy of pre-institution, mediation as contemplated under Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as the said Act in short), secondly the dispute raised in the suit does not come within the purview of the definition of 'Commercial dispute'.

The learned Trial Judge in the order impugned adverting to the first ground of the said

application under Order VII Rule 11 of the Code held that the plaintiffs/opposite parties in the suit filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure thereby prayed for ad-interim and interim order of injunction and when the Court finally entertained the said application, it would be deemed that the Court has acted upon on the contemplation of grant of the petitioners for urgent relief which takes the suit out of the purview of Section 12A of the said Act.

Mr. Chakraborty, learned advocate appearing on behalf of the petitioner submits that mere filing of the application for injunction does not ipso facto indicate that in the suit an urgent relief has been contemplated dispensing with the compliance of the requirement of Section 12A of the said Act, moreover refusal of the prayer for an ad-interim order of injunction on the said application proves beyond doubt that no urgent relief is contemplated in the suit.

Seeking an order of injunction in aid of the main relief of the suit whether granted or refused signifies that an urgent relief in the suit is necessary which dilutes the requirement of compliance of the pre-institution, mediation and settlement procedure in terms of Section 12A of the said Act.

The urgency for lack of which the prayer of the plaintiffs for an ad-interim order of injunction on the said application was refused cannot be equated with the urgency for an interim relief contemplated under Section 12A of the said Act.

That apart, the present suit was filed sometime in January 2020 but the standard operating procedure for the pre-institution, mediation and settlement in terms of Section 12A of the said Act came into operation on and from December, 2020, therefore, it is preposterous to suggest that the maintainability of the suit gets affected for not exhausting the procedure prescribed under the aforementioned provision of the said Act.

The petitioner questioned the jurisdiction of the learned Trial Judge on the ground that the dispute raised in the suit is not a commercial dispute. The learned Trial Judge overruled the said objection holding that the defendant is running a business of club, restaurant and bar from the suit property and such an activity being completely commercial in nature certainly comes within the purview of commercial disputes, there is no illegality in such finding of the learned Trial Judge.

Mr. Chakroborty submits that the main relief which the plaintiffs are seeking in the suit is for a decree of money and recovery of possession of the suit property, being ancillary to the said main relief does not come within the purview of explanation appended to the definition of 'commercial dispute' under Section 2(c) of the said Act.

I am not at all impressed by the said argument of Mr. Chakroborty inasmuch as the explanation appended to Section 2(c) of the said Act is an inclusive definition of 'commercial dispute' by virtue of which an action for recovery of immovable

property has been included in the definition of 'commercial dispute' and such definition stands independently.

The rejection of the application under Order VII Rule 11 filed by the petitioner for the aforesaid reason is absolutely justified.

The order impugned does not call for any interference.

C.O. 148 of 2021 is dismissed. No order for costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)