

A.No.1235 of 2021
in C.S.No.302 of 2020

Dr.G.JAYACHANDRAN, J.

The suit is filed for recovery of money due payable by the defendant pursuant to the business transaction regarding supply of EDM Make Meters followed by memorandum of understanding dated 20.03.2019.

2.After receipt of the suit summon, the defendant has entered appearance and has filed witness statement also. There is an application filed by the plaintiff under Order XXXVIII Rule 5, seeking attachment before judgment apprehending that the defendant may remove the properties beyond the jurisdiction of this Court.

3.At this juncture, this application is filed by the first defendant to reject the plaint. Though the merits of the case been canvassed in the said application, the sum and substance of the application is that the plaintiff, before filing the suit ought to have resorted to Mediation, which is mandatory requirement under Section 12A of the Commercial Courts Act and the ABJ Application is filed by the plaintiff is only to fake urgency and avoid the mediation process.

4.Learned counsel for the applicant/first defendant referring to Section 12A of the Commercial Courts Act, submitted that exercise of

pre institution mediation and settlement is mandatory requirement for any plaintiff who approach the Court under the Commercial Courts Act. Non compliance of the provision will render rejection of the plaint.

5. Per contra, the learned counsel for the respondent/plaintiff submitted that the instant suit requires urgent interim relief and hence, the plaintiff has already resorted to Order XXXVIII Rule 5 of C.P.C. for A.B.J., nonetheless the serious attempt on the part of the plaintiff was made even before filing the suit to settle the dispute amicably but however, the defendant refused and declined the proposals offered by the plaintiff. Hence, there is no purpose in resorting to pre institution mediation under Section 12A of the Act, when the defendant is not inclined to settle the dispute amicably. Learned counsel also submitted that the defendant had already filed his written statement, when the matter was ripe for trial the factual aspects which are disputed has to be tried. At this juncture, the plaintiff cannot be non-suited for non compliance of Section 12A of the Commercial Courts Act.

6. It is brought to the notice of this Court certain judgments of other High Courts wherein conflicting opinion regarding Section 12A of the Commercial Courts Act has been expressed regarding whether it is mandatory or obligatory on the part of the litigants Referring to Rules

framed under the Commercial Courts Act where the expression 'may' is used to make mediation as an obligatory clause. The Act in contra makes it a mandatory provision. By golden interpretation of statute, Act should prevail over the Rules. However, if strict interpretation of a clause leads to grave injustice or contra to public policy, we have to resort to a harmonious construction of the statute. If a plaintiff approach the Court under the Commercial Courts Act without resorting to pre-institution mediation, pre suit rejecting his plaint for his failure to explore mediation will amount to refusing the doors of justice. In alternate, it should be harmoniously read and construed. If the parties are willing for mediation even after institution of suit, Court should make them to explore the possibility of settling the dispute through alternate dispute redressal mechanism.

7. In this case, prima facie the plaintiff has proved that there is a need for urgent interim relief and also had placed before the Court that the parties attempted for mediation and amicable settlement of their accounts but it did not fructify. The substantial spirit of Section 12A of the Commercial Courts Act is satisfied. It is to be noted that unlike arbitration mediation is a different forum of Alternate Dispute Resolution Mechanism. Unless both the parties agree for mediation, neither the courts nor the

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legislation can compel them to undergo the process of mediation. This will tantamount to shirking the responsibility of judiciary and forcing the litigants to take a alternate dispute redressal mechanism which they are not inclined. Hence, the application filed belatedly without merit is dismissed with nominal cost of Rs.1000/- (**Rupees One Thousand only**) payable by the applicant to the Tamilnadu Legal Services Authority.

13.08.2021

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