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Ct. 18
03.03.2022

**C.O. No. 270 of 2021
(Via Video Conference)**

**Swift Freight (India) Private Limited
Vs.
M/s. Jindal International (India) & Anr.**

Mr. Surojit Nath Mitra, Sr. Adv.,
Mr. P. K. Dutt,
Mr. S. K. Dutt,
Mr. Syamantak Banerjee ... For the petitioner.
Ms. Micky Chowdhury,
Mr. Sanjay Baid ... For the opposite parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendant in a money suit and is directed against Order No. 10 dated January 22, 2021 passed by the learned Judge, Commercial Court at Alipore in the said suit being Money Suit No. 02 of 2020.

The petitioner in the said suit filed an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint of the said suit on the ground that it has been filed without exhausting the remedy of pre-institution mediation as contemplated under Section 12A of the Commercial Courts Act, 2015.

The learned Trial Judge by the order impugned has dismissed the said application holding, *inter alia*, that the suit was filed on March 12, 2020 long before the standard operating procedure for exhausting the remedy of pre-institution mediation came into operation, as such, it would not be proper to hold that for not exhausting the said remedy, the plaint of the suit is liable to be rejected.

The learned Trial Judge by the order impugned has appointed a mediator from the panel of mediators of D.L.S.A to mediate the dispute between the parties.

Mr. Surojit Nath Mitra, learned senior counsel appearing on behalf of the petitioner submits that the Commercial Court cannot entertain a suit where remedy of Section 12A of the said Act has not been exhausted before its filing and the said bar being mandatory, the plaint of the connected suit is liable to be rejected. To fortify his said argument, he places reliance on an unreported decision of the learned Single Judge of this Court in the case of ***M/s. Amit Motorcycles Pvt. Ltd. Vs. M/s. Axis Bank Ltd.***

Heard Mr. Mitra, perused the materials on record.

Section 12A of the said Act provides that a suit which does not contemplate any urgent interim relief under the said 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 the rules.

The plaint of the connected suit was presented on March 12, 2020, the standard operating procedure to avail the remedy envisaged under Section 12A of the said Act came into force thereafter.

The plaintiff for non-availability of the standard operating procedure to exhaust the said remedy at paragraph 51 of the plaint has stated that “*in view of the fact that there is no mechanism for pre suit mediation set up till date, the plaintiffs pray for dispensation of the provisions of Section 12A of the Commercial Courts Act, 2015*”, therefore, in the facts and circumstances of the

present case, it is preposterous to suggest that for not availing the said remedy the plaint of the said suit is liable to be rejected.

The Learned Single Judge of this Court in the decision relied on by Mr. Mitra has explained the mandatory nature of Section 12A of the said Act, there is no dispute with regard to the said proposition but the issue under consideration in this revisional application is otherwise, as such, the decision is of no help for the petitioner.

The order impugned, for the aforesaid reasons does not call for any interference, the revisional application fails.

C.O. 270 of 2021 is dismissed without any order as to 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.)