

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

Present:-

The Hon'ble Justice Subhasis Dasgupta.

C.O. 3326 of 2022

**M/s Arcelormittal Nippon Steel India Limited
Vs
M/s. Odisha Slurry Pipeline Infrastructure Ltd. & Ors.**

With

C.O. 3334 of 2022

**M/s. Arcelor Mittal India Private Limited
Vs
Odisha Slurry Pipeline Infrastructure Ltd. & Ors**

For the Petitioner
in C.O. 3326 of 2022

: Mr.. Mr. Joydip Kar, Sr. Adv.
Mr. Avishek Swaroop, Adv.
Mr. Arkaprava Sen, Adv.

For the petitioners
in C.O. 3334 of 2022.

: Mr. Mukul Rohatgi, Sr. Adv.
Mr. Joydip Kar, Sr. Adv.
Mr. Jishnu Saha, Sr. Adv.
Mr. A. Sukla, Adv.
Mr. Asutosh P. Sukla, Adv.
Ms. Ruby Singh Ahuja, Adv.

For the Opposite parties.

: Mr. Deepak Khosla, Adv
Mr. Moinak Bose, Adv.
Ms. Anjan Banerjee, Adv.
Mr. Rohan Nandy, Adv.

For the Opposite Party
Nos. 3,18,20,21

: Mr. Joy Saha, Sr. Adv.
Mr. Sakabda Roy, Adv.
Mr. Depanjan Dutta Roy, Adv.

For the Opposite Party.
No. 119

: Mr. Surojit Dasgupta, Adv.
Mr. Souvik Majumdar, Adv.

Heard On : 10.11.2022, 14.11.2022

Judgment : 17.11.2022

Subhasis Dasgupta, J:-

On the prayer of the both the parties, both the matters referred hereinabove are taken up together for a common law point being involved.

Petitioners being defendant nos. 39 and 50, upon assailing two orders dated 31st October, 2022, and 1st November, 2022, passed by Learned Judge, Commercial Court at Alipore, in Money Suit No. 27 of 2022, has approached the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, alleging that the Commercial Court, referred above, has improperly exercised its authority upon declining to hear out first two petitions, filed by petitioner/defendant no. 50 praying pre-ponment of date of an application under Section 151 of Code of Civil Procedure, being IA 34 of 2022, and another application, filed by defendant no. 39 under Section 151 C.P.C., praying for dismissal of suit, on account of failure of plaintiffs to comply with certain provisions of law, thereby giving precedence to the hearing of an application under Section 12A of the Commercial Courts Act, 2015.

Mr. Mukul Rohatgi, learned senior advocate, appearing in virtual mode, while assailing the two orders, mentioned hereinabove, submitted

that the instant litigation had not been a properly constituted suit, under Order 4 Rule 3 C.P.C., for the documents, relied upon by the plaintiffs, not being supplied entirely to defendants/petitioners, enabling them to furnish their respective written statement to controvert the claims, raised in the commercial suit.

Mr. Rohatgi drawing attention of the Court to the list of documents, relied upon by the plaintiffs, submitted that there had been 125 documents disclosed, being relied upon, out of which 98 documents only could be supplied to defendants, and the rest of the documents remained un-supplied, resulting in improper constitution of suit upon making infraction of provisions incorporated in Order 11 of the Commercial Courts Act, 2015.

According to Mr. Rohatgi, as per provisions of Commercial Courts Act, engrafted in Order 11, filing of all documents, being relied upon, is compulsory requirement of law, failing which there may be improper constitution of the suit, and suit being itself not properly constituted upon due adherence to the provisions of Order 11 of the Commercial Courts Act, 2015, the summons, if any issued, should be recalled, upon dismissing the suit.

It was emphasized by Mr. Rohatgi that as many as 27 documents mentioned in list of documents were left blank, which if not disclosed at the very threshold of case, as per requirement of Order 11 of the Commercial Courts Act, there would be greater injustice caused to defendants to put up their respective defence in the written statement.

While making elaboration of the provisions mentioned in Order 11 of the Commercial Courts Act, Mr. Rohatgi stressed upon production of a list of all the documents together with their photocopies in power, possession, control or in custody of plaintiffs, followed by a declaration on oath by plaintiffs that there was no other document left to be produced in support of the stand of the plaintiffs.

It was a mandatory requirement of law, which could not be allowed to be diluted in any manner whatsoever by any other interpretation, Mr. Rohatgi argued.

Regarding non-submission of the written statement, Mr. Rohatgi submitted that in a defectively constituted suit, summons had been served upon defendants on 8th July, 2022. Since entire documents, relied upon by the plaintiffs, could not be disclosed doing adherence to the mandatory requirement of Order 11 of the Commercial Courts Act, the written statement could not be furnished as yet, as per provisions under the law operative under the Commercial Act.

Since it was a defectively and badly constituted suit making infraction of mandatory requirement of law, as mentioned hereinabove, Mr. Rohatgi submitted that there should have been some precedence given to the hearing of those two applications filed under Section 151 C.P.C. registered as IA No. 34 of 2022, filed by defendant no. 50, and IA No. 54 of 2022, filed by defendant no. 39, otherwise, the time period for submitting written statement could not be allowed to run, and same should be stopped running.

Adverting to the impugned orders, Mr. Rohatgi submitted that the court below, without adhering to true purport of petitions contained in averments of such petitions, had proceeded to decide the interlocutory application under Section 12A of the Commercial Courts Act first, preceding all other interlocutory applications being over enthusiastic.

In the context of such submission, Mr. Rohatgi proposed for interference of this Court in order to make the referred Commercial Court discharge its function within the bounds of its jurisdictional authority.

It is thus incidentally proposed by Mr. Rohatgi, that unless those applications are decided, preceding any other interlocutory applications, there might be serious prejudice caused to petitioners/defendants.

Mr. Deepak Khosla, learned advocate appearing for the opposite parties denied and refuted all the submissions, advanced by Mr. Rohatgi submitting that grievance raised in this case was nothing, but a cosmetic one. Mr. Khosla argued that there had been no mandatory infraction of the provisions, contained in Order 11 of the Commercial Courts Act. The submission advanced by Mr. Rohatgi was countered by Mr. Khosla alleging that the provisions of Order 11 of the Commercial Courts Act had been misappreciated.

According to Mr. Khosla filing of all the documents was not compulsory, as per provisions of law mentioned in Order 11 of the Commercial Courts Act. It was furnishing a list of all documents, relied upon in power, possession, control or custody of plaintiffs, was compulsory, as an absolute requirement of law under the Commercial

Courts Act. The documents available in the possession and custody of the plaintiffs had already been furnished, and the rest of the documents, being in the custody and possession of the other side, could not be furnished. The list of documents contained a full description of documents leaving no ambiguity therein, Mr. Khosla replied.

With regard to giving precedence to two those interlocutory applications, as emphasised by Mr. Rohatgi, it was disclosed by Mr. Khosla that the court below proceeded to take up hearing of interlocutory application under Section 12A, as to pre-institution and mediation and settlement, filed by the defendants themselves, for their insistence. According to Mr. Khosla there were many interlocutory applications, filed by the plaintiff remaining pending.

Mr. Khosla incidentally brought to the attention of the court regarding pendency of an appeal, preferred by the opposite parties/plaintiffs before this court, being FMAT No. 360 of 2020 with CAN 1 of 2022, which was preferred impugning an order dated 26th August, 2022 passed by Commercial Court, to decide the application under Section 12A of the Commercial Courts Act, being I.A No. 2 of 2022, first, than all other pending interlocutory applications, which would be decided later after the disposal of 12A application.

Disputing with the date of service of summons, as referred by Mr. Rohatgi, it was argued by Mr. Khosla that summons had been served upon the defendants on some earlier date than disclosed, and the written statement, that ought to have been filed within the statutory period, as

available under Order 8 Rule 1 C.P.C in the given circumstances of the case, could not be strictly adhered to.

Taking recourse to the High Court Amendments, Calcutta, Mr. Khosla with all his efforts submitted that filing of the documents could not be construed in any case to be mandatory requirement of law at the time of presenting the plaint before the court, particularly when there had been provisions contained in Order 11 Rule 4 of the Commercial Courts Act, permitting plaintiffs to file and rely on additional documents, upon taking leave of the court, in case of suit being filed with some urgency.

Objection was further raised by Mr. Khosla that in view of the provisions contained under Section 8 of the Commercial Courts Act putting a bar against preferring revisional application, the instant application under Article 227 of the Constitution of India would not be maintainable, for efficacious appellate remedy being available against interlocutory orders.

In context with the submission advanced by both the parties, this court is called upon to address an issue, whether there had been infraction of the provisions of law, as available under Order 11 of the Commercial Courts Act, for not filing of all the documents, together with their photocopies at the time of presentation of plaint, and for which the filing of suit could be deemed to be improperly constituted suit resulting in recalling of summons, even without undertaking a trial.

Upon perusal of the impugned orders, it appears that application under Section 12A of Commercial Courts Act being IA No. 2/2022 was heard on 7th September, 2022, in presence of plaintiffs and some of the defendants, and the matter was next posted on 22nd September, 2022, for giving reply by the plaintiffs

It may be mentioned over here that by order dated 26th August, 2022, the court below thought it prudent to decide the application under Section 12A of Commercial Courts Act first thereby giving precedence to it, presumably on the insistence of defendants.

It was at this juncture, defendants persuaded the court below to hear out two different interlocutory applications under Sections 151 C.P.C. registered as IA No. 34 of 2022 and IA No. 54 of 2022 first, than disposal of any other interlocutory applications.

There had been appeal preferred against the order dated 26th August, 2022 passed by the court below, directing IA No.2 of 2022 pertaining to application 12A of Commercial Courts Act be decided first. The appeal is still pending.

It is thus abundantly clear from the submission advanced by both the parties to this case that the court below has not yet addressed those two petitions, and returned any decision. When an appeal is pending, upon challenging a decision passed in connection with an interlocutory order, dated 26th August, 2022 setting the application under Section 12A of the Commercial Courts Act for hearing first, than any other interlocutory applications, there may be conflicting decision to come, by

returning any decision on the prayer of the petitioners, which have not yet been finally disposed of by the Commercial Court.

The instance revisional applications in the given circumstances of the case appear to be prematured one.

It would be not wise to return any decision on the points raised, which has not yet been finally decided by the court below. The decision, if any returned from this court, as asked for, may influence the court below to take independent decision, as per requirement of the law.

The supervisory jurisdiction of this court under Article 227 of the Constitution of India is exercised for keeping subordinate courts within the bounds of their jurisdiction. It is, however, not available for correcting mere errors of facts or law. It is only available when there is error manifest and the apparent on the face of record and grave injustice or gross failure of justice has been occasioned.

Unless there be a decision rendered by the court below pertaining to IA No. 34 of 2022 and IA No. 54 of 2022, there arises no occasion for the court to presume even that there has been grave injustice, or gross failure of justice occasioned, merely for giving precedence to hearing of an application under Section 12A of the Commercial Courts Act, what is basically for insistence of the defendants.

All such applications are accordingly left to be decided by the court below in accordance with law.

Written statement, if any, filed in the meantime, is also left to be decided in accordance with the law.

The impugned orders do not call for any interference, as such.

Nothing would, however, prevent the court below to hear out those two applications, referred hereinabove, as expeditiously as possible, bearing in mind the points disclosed in those two petitions, together with interlocutory petition under Section 12A of the Commercial Courts Act, subject to the decision of appeal being FMAT No. 360 of 2022 with CAN 1 of 2022.

Both the revisional applications are thus disposed of.

Parties are directed to make communication of this order to the learned court below.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Subhasis Dasgupta, J.)