

ODC-1

ORDER SHEET

IA No.GA 3 of 2022
IN
CS 5 of 2022
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

SOMANY CERAMICS LIMITED
VS.
RIVERBANK DEVELOPERS PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 13th December, 2022.

Mr. Rajarshi Dutta, Mr. Piyush Agarwal, Ms. Utsha Dasgupta,
Advocates for the plaintiff.

Ms. Radhika Misra, Mr. Aritra Deb, Advocates for defendant.

The Court : The defendant has taken out an application for rejection of the plaint on the ground that there is no contemplated urgency in the matter and as such dispensation of the formalities under Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as the said Act) at the instance of the plaintiff was not called for. The defendant says that the suit was instituted on 17th January, 2022 upon having the formalities of Section 12A of the said Act and thereafter no application till date has been made for any urgent relief. In fact no application has been filed by the plaintiff in the suit. This itself goes on to show that there was no urgency in the matter for which the suit could have been instituted by

seeking dispensation of all the formalities under Section 12A of the said Act. The defendant relies upon a judgment and order delivered by a Division Bench of this Court on 9th December, 2022 in F.M.A.T 360 of 2022 (M/s. Odisha Slurry Pipeline Infrastructure Ltd. & Anr. Vs. IDBI Bank Ltd. & Ors.) along with several other appeals on the same issue. By relying upon the said judgment the defendant says that since the provision of Section 12A has been held to be mandatory and in the facts of this case no urgency has been demonstrated, the plaint should be rejected and the suit should stand dismissed.

On behalf of the plaintiff it is submitted that after the judgment of the Hon'ble Supreme Court in the case of Patil Automation Private Ltd. Vs. Rakheja Engineers Private Ltd. reported in (2022) 10 SCC 1 and the judgment in M/s. Odisha Slurry (supra) there is no scope to contend that the plaint cannot be rejected if the plaintiff is unable to show urgency in the matter when the suit has been instituted upon dispensation of the provisions of Section 12A of the said Act.

The plaintiff, therefore, prays to withdraw the suit instead of the same being dismissed with liberty to file a fresh on the self-same ground.

Considering the facts of the case and that the pre-institution mediation is the only issue on which the plaint is sought to be rejected, I accede to the prayer made by the plaintiff by permitting the plaintiff to withdraw the suit as dismissed and grant leave to file a fresh suit on the self-same cause after completing the formalities under Section 12A(1) of the Commercial Courts Act, 2015, if the claim of the plaintiff is otherwise sustainable in law.

Since the suit is dismissed as withdrawn without the same proceeding to any extent apart from being filed to enable the plaintiff to go for a pre-institution mediation in compliance of the provisions of Section 12A(1) of the Commercial Courts Act and keeping in mind that the suit was instituted prior to Patil Automation (supra) being pronounced as a special case without creating any precedence, I am inclined to extend the benefit of the refund of the court fees to the plaintiff in view of the observations made by the Hon'ble Supreme Court in (2021) 5 SCC 1 (Manish Kumar Vs. Union of India & Anr.) and (2021) 3 SCC 560 (The High Court of Judicature at Madras Vs. M. C. Subramaniam & Ors.) and 1994 (2) CHN 472 (paragraph 51) so that the same can be used if the suit is required to be filed after pre-institution mediation. The department shall refund the court fees to the plaintiff upon complying with the necessary formalities.

Since the suit is dismissed as withdrawn, all connected applications also stand disposed of.

Interim order, if any, stands vacated.

(ARINDAM MUKHERJEE, J.)