

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
[COMMERCIAL DIVISION]

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

GA 2 of 2022
In
CS No. 130 of 2020

Gavrill Metal Pvt. Ltd.
Vs
Maira Fabricators Pvt. Ltd.

For the Plaintiff : Mr. Debmalya Ghosal, Advocate
Mr. Jit Ray, Advocate
Mr. Niladri Khanra, Advocate

For the Defendant : Mr. Rupak Ghosh, Advocate
Mr. Debraj Saha, Advocate
Mr. Indranil Karfa, Advocate

Heard : 09.06.2022, 14.06.2022

Judgment : 04.07.2022

Ravi Krishan Kapur, J.:

1. This is an application for revocation of the dispensation granted to the plaintiff for Pre-Institution Mediation and Settlement under Section 12A of the Commercial Courts Act, 2015 (the Act) and for dismissal of the suit.
2. The application has been filed by the defendant on the grounds that even though the plaint in this suit was presented as far back as 3 November, 2020, the plaintiff has not filed any application for any interlocutory relief far less any urgent reliefs. Hence, the dispensation

with compliance of Section 12 A of the Act had been wrongly granted and is liable to be revoked.

3. The suit was filed on 3 November, 2020. In this suit, the plaintiff has filed an application being GA No. 1 of 2020 sometime in March 2022, seeking amendments to the plaint. No other steps whatsoever have been taken by the plaintiff. It is alleged that the defendant has not even been served the Writ of Summons. It is also alleged that the plaint has also not been verified in terms Rule 15 A of Order 6 of the Code of Civil Procedure, 1908. In this background, the defendant seeks dismissal of the suit.
4. On behalf of the plaintiff, it is submitted that dispensation with the requirement of Pre-Institution Mediation and Settlement was sought for on the grounds that no prescribed procedure for conducting mediations was operational nor had any Rules for the same been framed. Thus, there was no question of the plaintiff taking any steps for mediation.
5. Section 12 A of the Act provides as follows:-

“12 A Pre-Institution Mediation and Settlement. – (1) A suit, which does not contemplate any urgent interim relief under this 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 rules made by the Central Government.

(2) The Central Government may, by notification, authorize the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services authorities Act, 1987 (39 of 1987), the authority authorised by Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:

Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of Section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996)."

6. In *Laxmi Polyfab Pvt. Ltd. and Others vs. Eden Realty Ventures Pvt. Ltd. and Others* (AIR 2021 Cal 190), a Single Judge of this Court has held the provisions of Section 12 A of the Act to be mandatory, subject to the exception as contemplated under the section in respect of suits where the plaintiff seeks urgent interim reliefs.
7. The scheme of Section 12 A is that a commercial dispute under the Act must receive Pre-Institution Mediation and Settlement. Such Pre-Institution Mediation and Settlement has to be completed within a stipulated time period. The provisions for Pre-Institution Mediation and Settlement are a mechanism for expeditious redressal of commercial disputes. In fact, Section 12A of the Act debars the plaintiff

from instituting a suit relating to a commercial dispute without exhausting the remedy of Pre-Institution Mediation and Settlement unless the plaintiff seeks urgent reliefs.

8. The plaint was presented and admitted on 3 November, 2020. The dispensation under Section 12 A of the Act was granted on that day. The only pleading in the plaint (at paragraph 23) is that in view of the urgent reliefs sought for by the plaintiff, the plaintiff had prayed for dispensation of compliance with Section 12 A of the Act. Admittedly, no interlocutory application for urgent reliefs has been filed till date. The only application filed by the plaintiff is an application for amendment of the plaint and that also in 2022.
9. The requirement for Pre-Institution Mediation and Settlement under Section 12 A of the Act is mandatory. It is true that the section permits dispensation of the requirement for Pre-Institution Mediation and Settlement under Section 12 A of the Act in cases where a plaintiff seeks urgent reliefs. However, this is certainly not the case in this suit. On the contrary, the plaintiff has for more than two years not even filed an application for interlocutory reliefs. The only pleading in the plaint is that dispensation under Section 12 A be granted on the ground of urgent reliefs. There is also no averment in the plaint that Mediation was not possible in terms of the section. In any event, there is no basis to such allegation. Accordingly, in my view, the entire basis for dispensation with the requirement of Section 12 A of the Act is found to be false.

10. In view of the aforesaid, the dispensation granted to the plaintiff under Section 12 A of the Act stands revoked.
11. C.S. 130 of 2020 stands dismissed. There shall be an order in terms of prayer (b) of the Master's Summons.
12. With the aforesaid directions, GA 2 of 2022 also stands allowed.

(Ravi Krishan Kapur)