

Sayali Upasani

SANTOSH
SUBHASH
KULKARNI

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SANTOSH SUBHASH
KULKARNI
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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

IN ITS COMMERCIAL DIVISION

**INTERIM APPLICATION (L) NO. 1275 OF 2021
IN
COMMERCIAL SUMMARY SUIT NO. 19 OF 2021**

Deelight Fortune Private Limited & Anr.

...Applicants/
Orig. Defendants

In the matter between

M/s. Housing Development Finance
Corporation Limited

... Plaintiff

Vs.

Deelight Fortune Private Limited & Anr

...Defendants

Ms. Mithila Damle a/w Ms. Sharanya Shivaraman, for the Plaintiff.

Mr. Umang Mehta i/b Taurus Legal, for Applicants/Ori. Defendants.

CORAM : N. J. JAMADAR, J

DATE : JULY 25, 2022

P.C.:

1. Heard.
2. This is an application taken out by the defendants to dismiss the suit for non-compliance with mandatory pre-institution mediation envisaged under Section 12A of the Commercial Courts Act, 2015.

3. This suit is instituted for recovery of a sum of Rs.18,62,65,529/- along with future interest being the amount advanced by the plaintiff to the defendant No. 1.
4. This application is taken out by the defendant with the assertion that the suit being a commercial suit under the provisions of the Commercial Courts Act, 2015, it could not have been instituted without resorting to pre-institution mediation mandated by Section 12 -A of the Commercial Courts Act, 2015.
5. An affidavit-in-reply is filed on behalf of the plaintiff. It is, *inter alia*, asserted that in accordance with the order dated 1st October, 2021, passed by the Division Bench in the case of ***Deepak Raheja Vs. Ganga Taro Vazirani (Commercial Appeal (L) No.11950 of 2021) (Coram: Nitin Jamdar and C. V. Bhadang, JJ.)***, the suit be kept pending till the completion of the mediation process already initiated by the plaintiff before the main Mediation Center, Bombay High Court, on 23rd February, 2022.
6. The learned Counsel for the plaintiff invites the attention of the Court to an order passed by this Court on 8th April, 2022 in ***Executive Trading Company Pvt Ltd Vs. Grow Well Mercantile Private Limited, (Interim Application (L) No.7771 of 2022 in Commercial Summary Suit No.19 of 2020)***.

7. The learned Counsel for the defendants submits that the defendants are not averse to the said course being adopted. However, the defendants should not suffer prejudice in the event the suit is required to be heard on merits upon failure of mediation, in the sense that, the time for filing an affidavit-in-reply to seek leave to defend should not run against the defendants. The aforesaid submission seems reasonable.
8. In the case of ***Executive Trading Company Pvt Ltd.*** (supra) this Court has, *inter alia*, observed as under:

The course adopted by the Division Bench appears to be more pragmatic de hors the objection thereto on behalf of one of the contesting parties. What is of substance is exploring the possibility of mediated settlement in accordance with the mandate contained in section 12A of the Commercial Courts Act, before the parties approach the Court. In the case at hand, suit has been instituted without pre-institution mediation. At the stage of hearing of Summons for Judgment, the question of tenability of suit cropped up for consideration. Thus, at this length of time, it may not be appropriate to relegate the plaintiff to the lodging stage. The suit can remain in the state of suspended animation. In the event, the mediation is successful, there would be no cause to revive the suit. If the mediation does not succeed, the Summons for Judgment can be again taken up for consideration on merits. There is no element of prejudice to the defendant in the event the parties are referred to mediation in the manner devised by the Division Bench, while keeping the suit in abeyance

9. Hence, the following order.

:ORDER:

- (i) The Plaintiff and Defendants shall attend the office of the Member Secretary, Maharashtra State Legal Services Authority, on 4th August, 2022, for initiating the mediation process.
- (ii) No separate notice to the parties shall be required of the said mediation.
- (iii) The suit shall remain in abeyance for a period of three months from 4th August, 2022.
- (iii) If the learned Mediator is of the opinion that an extension is required and grants extension, the direction to keep the suit in abeyance shall stand suitably extended for the period of such extension granted by the mediator.
- (iv) Upon completion of the mediation, the Member Secretary shall forward the report of the same to the Prothonotary and Senior Master of this Court with copies to the parties.
- (v) On the submission of the report of the Mediator as per Clause (5), the direction for keeping the Suit in abeyance shall stand lifted.

- (vi) If the outcome of the mediation is positive, then no further orders from the Court would be required as the scheme of Section 12A of the Commercial Courts Act, 2015 will become operational.
- (vii) In the event of the mediation being unsuccessful, the parties are at liberty to make a motion for hearing the Summons for Judgment.
- (viii) By way of abundant caution, it is clarified that the time to file an affidavit seeking leave to defend the summary suit, shall commence after the motion for hearing of the summons for judgment is made by plaintiff in the event of unsuccessful mediation, of which advance notice should be given to the defendants.
- (ix) Interim Application stands disposed.

(N. J. JAMADAR, J.)