

07-12-2023
Item no.10 CD
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Commercial Division)

FAT No.390 of 2023
Messers. Navayuga Engineering Company Limited
-vs-
Messers. National Trailer Transport Company
with
CAN No.1 of 2023

Mr. Chayan Gupta
Mr. Saptarshi Mal
Mr. Kaushik De
Ms. Mohini Majumdar ...for the appellant

Mr. Upendra Roy
Mr. Rishabh Ahmed Khan
Mr. Kanchan Roy
Mr. Atulya Sinha ...for the respondent

Since a short point is involved in this appeal, we propose to hear it out dispensing with all formalities.

This is an appeal from a judgement and decree dated 30th August 2023 passed by the learned Judge, Commercial Court, Alipore in the Money Suit No.22 of 2022 between the parties.

By the said order, the plaint was rejected tantamounting to dismissal of the suit. The reason for such dismissal was that the appellant-plaintiff did not undergo pre-litigation mediation under section 12A of the Commercial Courts Act, 2015. Leave was not taken by them dispensing with such procedure.

Mr Gupta, learned counsel appearing for the appellant-plaintiff, has drawn our attention to paragraph 54 of the plaint, which is as follows:—

“As a matter of fact, the plaintiff has received information that the defendant upon receipt of the said notice from the plaintiff is attempting to siphon away the said monies as claimed in the instant suit to render any reliefs that may be passed in the present suit infructuous. In fact, the plaintiff has learnt that the defendant has similarly caused inconveniences to other companies and there are legitimate claims against the defendant. In the premises as aforesaid and in view of the stand of the defendant, not only would an attempt at mediating the differences be futile, but also the said period of time would be utilised to siphon away the monies due and payable to the plaintiff. Accordingly, the plaintiff is in need of urgent interim reliefs in support of its case and craves for leave and dispensation of the mandate of Section 12A of the Commercial Courts Act, 2015.”

He submits that this very averment suggests that immediately after filing the suit, the appellant-plaintiff would take steps to prevent the respondent-defendant from disposing of their assets.

In our view, this very paragraph in the plaint suggests that the requirement of undergoing pre-litigation mediation ought to have been waived by the learned judge, because pendency of the mediation might have given the respondent-defendant enough latitude to dispose of their assets, assuming the appellant-plaintiff's allegation to be true. Therefore, learned judge ought not to have dismissed the suit, instead ought to have held that the plaint had been rightly filed without taking such leave.

Hence the said impugned order dated 30th August 2023 is set aside. The suit is restored to the file of the said learned court below.

Learned counsel for the respondent-defendant submits that his client is agreeable to mediation post-institution of the suit under section 89 of the Code of Civil Procedure, 1908.

On hearing learned counsel for both the parties, we feel that some element is present which may result in the settlement of the disputes between the parties.

In that view of the matter, we appoint Mr Udayan Mukherjee, retired learned Judge from the West Bengal Higher Judicial Service (mob: 9433158010), to be the mediator. He shall determine his own fees which shall be borne equally by the parties. He shall file a report by 31st January 2024 before the learned court below.

Till such time the respondent shall not deal with its assets share in the usual course of business.

Subject to the result of mediation, the learned court below is free to proceed with the suit.

The appeal and the connected application are, thus, disposed of.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]

