

OCD-2

ORDER SHEET

**CS 57 of 2023**

IA No.GA 1 of 2023

IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ORIGINAL SIDE  
(COMMERCIAL DIVISION)

ABDUL RASHID

VS

BIDHAN DE SARKAR & ANR.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 31<sup>st</sup> March, 2023.

Mr. Ishaan Saha, Mr. Nilay Sengupta, Mr. Sujit Banerjee,  
Advocates for plaintiff.

The Court : The plaintiff (hereinafter referred to as the proposed plaintiff) intends to present the plaint for instituting a suit against two defendants (hereinafter referred to as the proposed defendants) inter alia for declaration and specific performance of two registered development agreements dated 25<sup>th</sup> October, 2017 (hereinafter referred to as the said agreements). The premises which is required to be developed under the said agreements are situate at 42C and 42D, Serpentine Lane, Kolkata-700014 within the Ordinary Original Civil Jurisdiction of this Court. The proposed defendants are described as the owners in the said agreements. It is the case of the proposed plaintiff that by a notice dated 1<sup>st</sup> September, 2020 the two development agreements, the specific performance whereof is sought for in the suit were cancelled and the Power of Attorney given in consequence thereof were also revoked. Admittedly the proposed plaintiff did not take any

step immediately after 1<sup>st</sup> September, 2020 except replying to the said notices. The tenure of the development agreements were 24 months from the date of handing over of vacant possession. Although, the proposed plaintiff says that vacant possession of the two premises were not handed over to the proposed plaintiff but the fact remains that the termination of the agreements and the cancellation took place in September 2020. The proposed plaintiff's cause of action as per the pleading arose immediately upon receipt of the termination notice dated 1<sup>st</sup> September, 2020. The proposed plaintiff had waited for about two and half years to approach the Court. The proposed plaintiff says that the plaintiff has been served with a caveat on 9<sup>th</sup> March, 2023 for which the proposed plaintiff apprehends a legal action from the proposed defendants which is the basis of the plaintiff's contemplation for urgent interim relief in favour of the plaintiff which accrues with the service of the termination notice and revocation of the power of attorney as alleged by the proposed plaintiff. This ground for dispensation of the formalities under Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as the said Act) does not appeal to the Court for exercising a discretion available to Court.

It is well settled that the right to sue does not get deferred till the service of the caveat on 9<sup>th</sup> March, 2023 in view of the ratio laid down in the judgment reported in (2016) 13 SCC 1 (Sundaram Finance Ltd.-versus-Noorjahan Beevi & Anr.). Even if in the instant case the benefit of the orders passed by the Hon'ble Supreme Court during the covid period is given to the proposed plaintiff, then also the proposed plaintiff had enough time from 1<sup>st</sup> March, 2022 to approach the Court. The proposed plaintiff is free to wait till

the last day of limitation to approach the Court and institute a suit but in such a case the proposed plaintiff has to show imminent urgency which requires urgent relief even considering that the right to sue had accrued quite some time back. In the instant case, I do not find any such situation which warrants leave under Section 12A of the said Act to be granted to the proposed plaintiff for instituting the suit. Leave under Section 12A of the said Act is refused. That apart and in any event, service of caveat by the proposed defendants in respect of a litigation in the City Civil Court at Calcutta clearly demonstrates that the proposed defendants were contemplating a legal action from the side of the proposed plaintiff and not the other way round as alleged by the plaintiff.

The proposed plaintiff has also sought for leave under Clause 12 of the Letters Patent, 1865 but since the immovable property in respect of which development agreements were executed and the proposed defendants are within the Ordinary Original Civil Jurisdiction of this Court, there is no necessity to pray for such leave.

The presentation of the plaint, therefore, fails as the same is not admitted by granting dispensation of formalities under Section 12A of the said Act. The plaint, therefore, has not entered the records of the Court on being admitted and has only been filed in the computer department of this court to which a number has been allotted. The plaint, therefore, is directed to be returned back to the proposed plaintiff along with the court fees after completing the requisite formalities for the same. The proposed plaintiff will be entitled to present the plaint for institution of a suit against the proposed defendants on the self-same ground after complying with the provisions of

pre-institution mediation as laid down under Section 12A of the said Act, if otherwise permissible in law. The plaintiff will be also entitled to use the court fees to be returned in respect of a suit on the self-same cause of action as against the same defendants unless there is any statutory embargo to the same.

(ARINDAM MUKHERJEE, J.)

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