

OCD-1

ORDER SHEET

RVWO/12/2023
[CS/72/2022]
IA No.GA/1/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
[COMMERCIAL DIVISION]

STATE OF WEST BENGAL

-VS-

SAMAR AND SAMAR INFRASTRUCTURE DEVELOPMENT PRIVATE LIMITED
AND ORS

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : May 4, 2023.

Appearance:

Mr. Domingo Gomes, Adv.

Mr. Paritosh Sinha, Adv.

Mr. Joydeep Roy, Adv.

Mr. Arindam Mondal, Adv.

... for the petitioner/defendant no.2.

Mr. Abhrajit Mitra, Sr. Adv.

Mr. Chayan Gupta, Adv.

Mr. Kausik De, Adv.

Mr. Pourush Bandyopadhyay, Adv.

Mr. Roshan Pathak, Adv.

... for the plaintiff

Mr. Arnab Chakraborty, Adv.

Mr. Pragya Bhowmick, Adv.

... for the defendant no.1

The Court: The defendant no.2 has preferred the instant application for review of the judgment passed by this court dated 27th February, 2023 on the ground that this Court has dismissed the application filed by the defendant no.2 under Order VII Rule 11 of the Code of Civil Procedure as per the order passed by the Hon'ble Supreme Court in the case of **Patil Automation Private Limited** reported in **(2022) 10 SCC 1**.

Learned counsel for the petitioner submits that this Court while passing the judgment has considered paragraph 113.1 of the ***Patil Automation Private Limited (supra)*** but this Court has not considered the paragraphs 113.2 and 113.3 of the said judgment. Learned counsel for the petitioner submits that in paragraph 113.3 the Hon'ble Supreme Court has categorically held that finally, if the plaint is filed violating Section 12A after the jurisdictional High Court had declared Section 12A mandatory also, the plaintiff will not be entitled to the relief.

The counsel for the petitioner also relied upon the judgment passed by the Co-ordinate Bench of this Court in the case of ***Laxmi Polyfab Private Limited*** wherein the Co-ordinate Bench of this Court held that, "in view of the discussion above, the first issue is answered by holding that Section 12A of the Act of 2015 is mandatory. In respect of suits filed up to December 11, 2020 the plaintiff cannot be non-suited for non-compliance as the requisite infrastructure under Section 12A was notified." Counsel for the petitioner submits that admittedly the suit was filed on 30th March, 2022 and by that time already the infrastructure under Section 12A was notified and the suit was filed after notification but this Court while passing the judgment has not considered the said aspect.

Mr. Mitra, learned senior counsel appearing for the plaintiff/respondent submits that there is no error apparent on the face of the record and the submission made by the counsel for the petitioner is on merit and the same cannot be considered in this review application

Learned counsel for the plaintiff/respondent submits that this Court has not only considered the judgment passed in **Patil Automation Private Limited (supra)** but also considered the judgment passed by the Co-ordinate Bench of this Court in **Laxmi Polyfab Private Limited** as well as the pleadings of the plaint. Mr. Mitra submits that this Court categorically finds that the plaintiff has filed the suit on 30th March, 2022 and the same was presented on the same day for grant of leave under Section 12A of Commercial Courts Act, 2015. The defendant no.2 had also given notice for settlement but settlement could not arrive between the parties and the plaintiff has filed the suit.

In view of the submission made by the counsel for the respective parties and after perusing the grounds as mentioned in the review application, this Court finds that none of the grounds taken by the petitioner is satisfied to review the judgment passed by this Court on 27th February, 2023.

Accordingly, the review application being RVWO/12/2023 is dismissed.

As the review application is dismissed, the application being GA/1/2023 is also dismissed.

(KRISHNA RAO, J.)