

ORDER

OCD-1

APOT/90/2023
WITH
CS/26/2023
IA NO: GA/1/2023

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

MAZHAR HUSSAIN
VERSUS
M/S. INDIA CONSTRUCTION COMPANY AND ORS.

BEFORE:

THE HON'BLE JUSTICE HARISH TANDON
THE HON'BLE JUSTICE PRASENJIT BISWAS
[COMMERCIAL DIVISION]

Date : 13th April 2023.

APPEARANCE:

Mr. Anirudhya Dutta, Advocate
Mr. Rajdeep Mantha, Advocate
..... for Appellant.

The Court:- The appeal arises from a judgment and order dated 28th February 2023 passed by the Learned Single Judge in CS/26/2023 whereby and whereunder leave under the provisions of Section 12A of the Commercial Courts Act, 2015 has been refused. The Single Bench proceeded on the premise that there is no contemplation of an urgent interim relief found from the plaint and therefore dispensation of the provisions of Section 12A of the Act cannot be accepted. However, the Learned Single Bench has directed return of the plaint for being presented after compliance with the provisions of Section 12A(1) of the Act, provided

it is permissible in law. Although the Single Bench noticed the judgment of the Supreme Court rendered in the case of Patil Automation Private Limited & Others v. Rakheja Engineers Private Limited reported in (2022) 10 SCC 1, yet directed return of the plaint for being presented after compliance with the provisions contained in Section 12A of the said Act. The Apex Court in the case of Patil Automation Private Limited (supra) indicated that the moment the plaint does not contemplate urgent interim relief, there is no option left to the Court but to reject the plaint. There is no concept of return of the plaint to be presented subsequently after complying with the provisions of Section 12A of the Act and in such view of the matter, we do not find that the course which has been adopted by the Single Bench is in tune with the spirit of the judgment rendered by the Apex Court in the above-noted case.

We had the occasion to peruse the plaint annexed to the application and the reliefs claimed therein. Our endeavour has failed to find out any contemplation for urgent interim relief claimed therein. However, the learned advocate appearing for the appellant submits that the averments made in paragraph 35 of the plaint, if read meaningfully, would indicate that the plaintiff does contemplate for urgent interim relief which would further be evident from the fact that an application for injunction is taken out in the suit. The law as expounded by the Supreme Court in Patil Automation Private Limited (supra) does not indicate that in absence of any urgent interim relief claimed in the plaint, the rigour of the said provisions has to be construed in the perspective of an application being

taken out seeking interim relief. The aforesaid submission appears to us incongruous for the simple reason that even if urgent interim reliefs are prayed in the plaint, the plaint would invite rejection in the event an application for injunction is moved before the Court and the Court does not find any urgency to pass an interim order therein. The legislature never contemplated such recourse to be adopted. The language employed in Section 12A of the Act is explicit to the extent that dispensation of provisions contained in Section 12A of the Act can only be resorted to in the event it contemplates urgent interim relief which obviously would be seen from the reliefs claimed in the plaint and the averments made therein. There is no prayer either for perpetual or mandatory injunction in the plaint though an omnibus way of incorporating the word “injunction” in the plaint is adopted which, in our opinion, does not satisfy the basic ingredients required to be pleaded for the purpose of dispensation of the provisions contained in Section 12A of the Act. The provision of Section 12A of the Act is restricted to a case where urgent interim relief is contemplated and not dependent upon the subsequent action of the parties or seeking a relief by way of an interlocutory application.

We, thus, do not find any merit in the instant appeal. However, we make it clear that the course adopted by the Single Bench in returning the plaint is contrary to the ratio of the judgment rendered in Patil Automation Private Limited (supra) and therefore, the order is modified to

the extent that instead of returning the plaint, it should be deemed to have been rejected.

The appeal and the application are disposed of.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J.)

s.kumar