

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

CS 94 OF 2023
IN THE MATTER OF:
ANJANA FEEDS LLP
VS
NEST FARM AND ANR.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date : 14th June, 2023.

Appearance:
Mr. Pratyush Patwari, Adv.
Ms. Laxmi Agarwal, Adv.
For plaintiff

The Court : The plaint has come up for presentation and admission for institution the suit. The plaintiff (hereinafter referred to and shall mean the proposed plaintiff) alleges to have sold and delivered diverse quantities of Soya DOC to the defendants (hereinafter referred to and shall mean the proposed defendants) between May 2018 and March 2020. The proposed plaintiff says that in respect of two invoices raised by the proposed plaintiff on 22nd January, 2020 and 7th March, 2020 the proposed defendants had wilfully and deliberately neglected to make payment. It is also the case of the proposed plaintiff in paragraph 10 of the plaint that as on 7th March, 2020 a principal sum of Rs. 25,69,769/- was due and payable by the proposed defendants to the proposed plaintiff although, the proposed plaintiff submits that there was a credit period of 30 days on the invoices.

In this aforesaid factual backdrop the right to sue according to the own pleading of the proposed plaintiff arose on 7th March, 2020 or immediately thereafter on the expiry of the credit period. Even if the benefit of the orders passed by the Hon'ble Supreme Court suspending the period of limitation between 15th March, 2020 and 28th February, 2022 is given to the proposed plaintiff by applying the same principles to right to sue then also the right to sue which does not get deferred in ordinary course, at the highest stood deferred up to 90 days from 1st March, 2022. The proposed plaintiff as per its pleading issued a notice only on 27th February, 2023. Even thereafter no steps were taken to file the suit within 90 days from 1st March, 2022. The plaint was filed in the computer department only on 19th May, 2023. The proposed plaintiff seeks dispensation of the formalities under Section 12A of the Commercial Courts Act, 2015 on the ground of alleged contemplation of urgent interim relief as pleaded in paragraphs 21 to 24 of the plaint. The sum and substance of this paragraphs are that the Goods and Services Tax Identification Number (GSTIN) of the proposed defendants has been cancelled without, however, specifying the date of cancellation. The proposed plaintiff has also alleged that the proposed defendants are not accepting the notices even at their Guwahati and Meghalaya offices.

The proposed plaintiff was free to wait till the last date of limitation for instituting a suit for recovery of unpaid price of goods sold and delivered but its right to sue does not get deferred. However, after waiting for more than three years, the proposed plaintiff now cannot turn around and seek dispensation of formalities under Section 12A of the Commercial Courts Act, 2015 by citing events which has taken place much subsequent to the accrual of right to sue, if any, in favour of the proposed plaintiff. The conduct of the proposed plaintiff to seek dispensation of the formalities of 12A of the Commercial Courts Act, 2015

could have been justified if the proposed plaintiff had approached this Court at least within 90 days from 1st March, 2022 by taking benefit of the orders of the Hon'ble Supreme Court. However, the proposed plaintiff has come as noted hereinabove only on 19th May, 2023. The reasons cited for dispensation of formalities under Section 12A of the Commercial Courts Act, 2015 does not also persuade this Court in the backdrop of events elucidated hereinabove to dispense with the formalities of Section 12A of the Commercial Courts Act, 2015 apart from the delay.

The leave prayed for under Section 12A of the Commercial Courts Act, 2015 to institute the suit is thus refused.

The plaint has only been filed in the computer section of this Court and has been allotted a number but without the same being presented and admitted does not enter the records of the Court for the purpose of institution of the suit. The plaint is, therefore, directed to be returned along with the court fees upon completion of necessary formalities. The suit number should be de-registered. The proposed plaintiff, however, will be entitled to use the returned court fees for institution of a suit against the same set of defendants for the self-same cause, if permissible in law.

(ARINDAM MUKHERJEE, J.)