

OCD-1

ORDER SHEET
APOT/83/2022
WITH
CS/249/2019
IA NO: GA/1/2022

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

PIYUSH BAID
VS
KAMALESH AGARWAL

Before:

The Hon'ble Justice I. P. MUKERJI

And

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 25th July, 2023

Appearance:

Ms. Manju Agarwal, Adv.

Ms. Anju Manot, Adv.

Mr. Varun Kothari, Adv.

Mr. Nikunj Berlia, Adv.

Ms. Sawlini Bose, Adv.

The Court: Sufficient cause is shown. The delay in filing the application is condoned.

Section 12A was inserted into the Commercial Courts Act, 2015 by the legislature with a purpose. The parties were given a chance to resolve their dispute by mediation within three months. If that failed the suit would be instituted by filing a plaint, the intent and purpose of such legislation obviously being to reduce the accumulation of cases in courts all over the country and also to utilise the machinery of mediation as an alternative dispute resolution mechanism.

However, it is being noticed that this provision in the statute is being used by some litigants as an engine of oppression against the adversary.

Take the example of this case. According to learned advocate for the plaintiff, the disputes are non-commercial. The cause of action in the suit is for recovery of money lent and advanced between friends and not out of a professional business of money lending. The suit was

instituted in the ordinary original civil jurisdiction of this court without pre litigation mediation.

However, it is submitted by Ms. Agarwal, learned advocate for the appellant plaintiff, that out of mistake, a court clerk in the office of the advocate-on-record inscribed commercial in the cause title of the plaint while filing it in the department. That is how it got registered as a suit in the commercial division.

Apparently, the plaint came up for admission before the learned commercial judge on 16th December, 2020. Learned trial judge recorded that the disputes involved in the suit are 'commercial in nature' and pre-litigation mediation had not been undertaken under Section 12A of the said Act. He dismissed the suit. Liberty was given to the plaintiff to approach the "appropriate forum".

First of all, when this kind of a serious order was being passed against the appellant plaintiff, a further opportunity should have been given to learned advocate to establish before the court that it was not a commercial cause and secondly that it was registered as a commercial cause by mistake.

Learned advocate for the respondent submits that the learned judge rightly dismissed the suit and that the appellant plaintiff should now file a suit in the commercial division after undergoing mediation under Section 12A of the said Act.

Acceptance of this submission will, in our opinion, cause great prejudice to the appellant plaintiff. In terms of the impugned judgment and order dated 16th December, 2020 he would have to file a fresh suit and prior to that give three months time to the defendant to participate in the Section 12A mediation.

First of all, the stand taken by the respondent in court amply suggests that mediation between the parties would be an idle formality because this Court does not notice any intention on the part of the respondent to resolve the dispute by mediation. On the contrary, there

is every attempt to nip the suit in the bud on the above technical ground. We do not think that pre litigation mediation would serve any purpose in this case, even if the order dated 16th December, 2020 is upheld. The cause of action as pleaded in the plaint does not suggest that the suit is commercial in nature.

The plaint should be transferred to the ordinary original civil jurisdiction of this court and marked as an ordinary original civil cause.

The suit will be treated as an ordinary suit. The advocate on record for the respondent defendant will accept service of summons along with a copy of the plaint to be served on him by 1st August, 2023. Written Statement to be filed by 19th October, 2023. Cross-discovery of documents by 24th November, 2023; inspection forthwith.

List the suit for trial before the learned judge subject to his lordship's convenience on 4th December, 2023.

The appeal (APOT No. 83 of 2022) and the application (IA No. GA 1 of 2022) are disposed of accordingly .

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)