OCD-7

ORDER SHEET

**CS 139 of 2023**
IA No.GA 1 of 2023
IN THE HIGH COURT AT CALCUTTA
ORIDNARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

M/S. BAKYASHWRI SEA FOOD PVT. LIMITED
VS.
K. G. INVESTMENT & ORS.

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 12th July, 2023.

Mr. Ajay Krishna Chatterjee, Sr. Adv., Mr. Debdatta Sen, Mrs. Suchishmita Ghosh Chatterjee, Mr. Malay Seal, Advocates for plaintiff.

The Court : The plaintiff (hereinafter referred to as the proposed plaintiff) alleges that it had entered into an agreement with defendant (hereinafter referred to as the proposed defendant) no.1 by and under which the proposed defendant no.1 by a sanction letter dated 20th May, 2022 promised to provide loan to the proposed plaintiff to the tune of Rs. 50 crores on a condition that the proposed plaintiff would have to pay an advance interest of a sum of Rs.2.25 crores to the proposed defendant no.1 through RTGS and NEFT and further in addition thereto the proposed plaintiff would have to pay a sum of Rs.10 lakhs to the proposed defendant no.1 for other charges. The proposed defendant no.2 being a company through its directors being the proposed defendant nos.3 and 4 allegedly acted as a facilitator to arrange the loan from the proposed defendant no.1

to the plaintiff. The proposed plaintiff accepted the sanction letter and from time to time between 11th April, 2022 and 13th July, 2022 paid a sum of Rs.1,91,95,000/- to the defendant no.4 against bank account of the defendant no.2. The proposed plaintiff allegedly advanced Rs.2.25 crores as interest to the proposed defendant no.1 on 25th May, 2022 while a sum of Rs.8 lakhs through bank transfer and Rs.2 lakhs in cash to the proposed defendant no.1 for other charges. It is also the case of the proposed plaintiff that the proposed defendant no.1 issued seven post dated cheques in favour of the proposed plaintiff. Upon encashment of some of such cheques and/or payment made by the proposed defendant no.1, the proposed plaintiff has received an aggregate sum of Rs.1,76,25,000/-. The last of the payment, according to the proposed plaintiff, is dated 21st April, 2023.

Going by the averments, the right to sue, if any, in favour of the proposed plaintiff, therefore, arose for the first time immediately after 21st April, 2023 for non-receipt of the entire promised amount. The proposed plaintiff has approached this Court within a reasonable time therefrom but the averments as in paragraph 22 of the plaint in a case of recovery of money are insufficient, in my view, to support a contemplation to the proposed plaintiff for urgent interim relief. In paragraph 22 of the plaint it is alleged that the proposed defendant nos.3 and 4 have already taken steps to sell their properties. The proposed defendant nos.3 and 4 are directors of the proposed defendant no.2 and not partners of proposed defendant no.1. The loan has been allegedly sanctioned by the proposed defendant no.1. Part payments have been allegedly received by the proposed plaintiff from the proposed defendant no.1. The proposed plaintiff has also alleged that the proposed defendant no.4 has received cheque payments from the proposed plaintiff for the account of proposed defendant no.2. There is no allegation as against proposed defendant nos.1 and 2 about selling their properties. The allegation is that the proposed defendant nos.3 and 4 are selling their property. Proposed defendant nos.3 and 4 are individuals. They may be directors of proposed defendant no.2 but are free to deal with their individual properties. The allegations are also vague and devoid of specific particulars. On the basis of such allegation any litigant can approach the Court for leave under Section 12A of the Commercial Courts Act, 2015 to render the legislative intent which has been held to be mandatory in the judgment of the Hon'ble Supreme Court reported in (2022) 10 SCC 1 (Patil Automation Private Limited And Others Vs. Rakheja Engineers Private Limited) otiose.

In the aforesaid facts and circumstances, the leave sought for to dispense with the formalities of Section 12A of the Commercial Courts Act, 2015 is refused. The proposed plaintiff will be entitled to file a suit as against the same set of defendants after complying with the pre-institution mediation procedure as enumerated under Section 12A of the Commercial Courts Act, 2015.

The plaint has appeared in the list for presentation. Unless the plaint is admitted on being presented, the plaint does not enter the records of the Court although it has been filed in the computer department of this Court and has been allotted a number. The department is, therefore, directed to return the plaint along with the court fees to the proposed plaintiff after completion of necessary formalities. The department shall also de-register the suit number from the records of the Court. The proposed plaintiff shall be entitled to use the court fees in a suit that may be filed against the same set of defendants on the self-same cause after complying with the formalities of Section 12A of the Commercial Courts Act, 2015, if otherwise permissible in law.

(ARINDAM MUKHERJEE, J.)

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