

OCD-7

ORDER SHEET

CS 146 of 2023
IA No.GA 1 of 2023
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

PRADIP KUMAR GANERIWALA
VS.
M/S. EXCHANGE & ORS.

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 19th July, 2023.

Mr. Rajeev Kumar Jain, Ms. Sreyasi Chatterjee, Advocates for plaintiff.

The Court : The proposed plaintiff claims to be a partner of a partnership firm under the name and style of M/s. Exchange, being the proposed defendant no.1. The proposed plaintiff also says that he had retired from the firm with effect from 1st April, 2022 and is as such seeking a declaration to that effect. The right to sue for this declaration for the first time arose on 1st April, 2022. The inter se dispute and settlement of the accounts is an internal mechanism under the deed of partnership dated 23rd August, 1994 following the provisions of Indian Partnership Act, 1932. The proposed plaintiff did not approach the Court immediately after 1st April, 2022 or within a reasonable period therefrom. The proposed plaintiff under the law is entitled to wait till the last date of limitation to institute a suit. The proposed plaintiff is also entitled in law to file a suit based on

successive cause of action even after the first right to sue accrues. However, in either of the case the first right to sue which accrued on 1st April, 2022 did not get deferred as held in 2011 (9) SCC 126 [Khatri Hotels Private Limited & Anr. Vs. Union of India & Anr] and 2016 (13) SCC 1 [Sundaram Finance Limited vs. Noorjahan Beevi].

The proposed plaintiff has filed this suit in the computer department of this Court on 18th July, 2023 and is seeking dispensation of formalities under Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as '2015 Act') after lapse of more than one year from the date when his right to sue had first accrued on 1st April, 2022. The averments made in the plaint in support of dispensation of formalities under Section 12A of the 2015 Act also does not demonstrate as to why the proposed plaintiff should not go for pre-institution mediation which has been held to be a mandatory requirement in view of the judgment reported in (2022) 10 SCC 1 (Patil Automation Private Limited And Others Vs. Rakheja Engineers Private Limited). That part and in any event, the proposed plaintiff having himself decided to refrain from invoking the jurisdiction of the Court upon accrual of his first right to sue cannot also be permitted to file the suit by dispensing with the mandatory provision of Section 12A of the 2015 Act. On the strength of the averments made in the plaint if the proposed plaintiff is given leave then that will frustrate the legislative intent. Any litigant with bare allegations then will have to be permitted to institute the suit dispensing with the mandatory requirement under Section 12A of the 2015 Act and the whole purpose of Section 12A contained in the said Act will become otiose.

In the facts and circumstances as aforesaid, the leave sought for to dispense with the formalities of Section 12A of the Commercial Courts Act, 2015 is refused.

The plaint has appeared in the list for presentation and admission. 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.)