ORDER SHEET

OCD-2

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
[COMMERCIAL DIVISION]

CS-COM/2/2023
CS No. 237 of 2023
INDIAN OIL CORPORATION LIMITED
VERSUS
KEJRIWAL MIINIING PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 4th December, 2023.

Appearance:
Mr. Amit Kumar Nag, Adv.
Mr. P. Banerjee, Adv.
For the plaintiff.

The Court:- The plaint has come up for presentation and admission on being filed in the computer department against which a suit number has been allotted. The plaintiff alleges that under the contract with the plaintiff, the defendant was liable to make over 'C' Form for the sales tax applicable in respect of the goods sold and delivered by the plaintiff to the defendant. The defendant did not hand over "C" Form. As a consequence thereof, the plaintiff as the seller had to pay the entire component of sales tax which it was not liable to do that the defendant made over the "C"-Form. The plaintiff is seeking to realize the amount of sales tax, which the plaintiff was not liable to pay, but had to pay for the default committed by the defendant.

Dispensation of the formalities of Section 12A of the Commercial Courts Act, 2015 has been sought for to institute the suit.

It is now well settled that the provisions of Section 12A of the Commercial Courts Act, 2015 is mandatory, reference in this context can be made to a judgment reported in ***(2022) 10 SCC (Patil Automation Private Limited & Others-Versus-Rakheja Engineers Private Limited)***. It is also now settled provision of law that the Court at the time of admitting the plaint has a scope of limited enquiry to look into the pleadings to ascertain whether urgent interim relief is contemplated by the plaintiff for which formalities under Section 12A of the said Act can be dispensed with. In this context one can refer to the judgment of the Hon'ble Supreme Court reported in ***2023 SCC OnLine SC 1382 (Yamini Manohar-Versus-TKD Keerthi)***.

On a reading of the plaint no urgent interim relief is contemplated and as such the prayer for dispensation of the formalities of Section 12A is refused.

The plaint has only been filed in the computer department initially with deficit court fees. The plaintiff says that subsequent to filing of the plaint, the plaintiff has paid the entire court fees.

The plaint does not enter the records of the court unless the same is admitted on being presented. No suit is instituted unless the plaint is admitted subject to scrutiny by the department.

In the aforesaid facts and circumstances, the plaint is directed to be returned to the plaintiff along with the court fees, if any, already paid. The plaintiff shall be entitled to use the court fees, if any, paid on being returned in a suit between the same parties after complying with the requirement of pre-institution mediation, if otherwise not barred in law.

The department is directed to de-register the suit number.

(ARINDAM MUKHERJEE, J.)

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