

I 20.06.2024

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)**

**F.M.A.T 193 of 2024
With
CAN 1 of 2024**

**Tuhin Kanti Choudhury
Vs.
State of West Bengal & Ors.**

**Mr. Priyankar Saha
Mr. Hemant Tiwari**

... For the Appellant/Petitioner.

Re: CAN 1 of 2024

An affidavit of service is on record.

None appears for the respondents.

By the impugned judgement and order of the learned judge commercial court at Rajarhat, North 24 Parganas dated 16th May, 2024 the suit has been dismissed by rejection of the plaint under Order VII, Rule 11 of the Code of Civil Procedure, on the ground that there was requirement for the parties to undergo pre-litigation mediation and that the suit having been instituted without obtaining such leave was liable to be dismissed.

s.D. In fact the appellant/plaintiff following the usual procedure had filed an application under Section 12A of the Commercial Courts Act, 2015 praying for dispensation of mediation. By the impugned order that application was dismissed.

While admitting the appeal we made some observations prima facie with regard to the interpretation of Section 12A of the said Act which are as follows:-

“The legislature has very consciously and carefully used the word “contemplate”. It does not use the words “statement”, “argument”, “pleading” or “claim” in the plaint concerning any urgent relief. The plaintiff may state that a certain sum is due and payable by the defendant to the plaintiff. But it may well be within the contemplation of the plaintiff that the defendant is likely to dispose of his assets to defeat the claim of the plaintiff and on such circumstances occurring be directed to secure the claim of the plaintiff. Since at the time of filing of the plaint the situation may not have occurred, the pleading may not have been necessary.

It is enough that the plaintiff contemplates that such a situation may likely to occur within the time spent in mediation. In that event, contemplation of the plaintiff has to be clearly expressed and understood by the court from the plaint or from the statements in an application seeking dispensation of pre-institution mediation.

Here, in paragraph 38 of the plaint, there is clear averment of the plaintiff asking the defendant in the near future to secure the claimed amount of Rs.15,14,08,881/- and for an order restraining them from creating any lien on the security. The plaintiff has categorically stated that it was proposing to file an application for “urgent interim relief”.

Prima facie, in the circumstances, we fail to understand why dispensation under section 12A of the 2015 Act was not made by the learned court below. However, we are inclined to hear the respondent-defendant in the matter.

We give a chance to the respondents to make submissions in relation to the above observations.”

There is always great necessity for disposing of the issue whether pre-litigation leave is required or not as expeditiously as possible. Otherwise the fate of the suit will remain uncertain and its disposal would be delayed which is contrary to the intention of the legislature.

We have heard Mr. Priyankar Saha, learned advocate for the appellant.

We affirm our observations made above.

We set aside the impugned judgement and order dated 16th May, 2024. Post-facto leave is granted to the appellant to institute the suit without leave under Section 12A of the said Act.

The appeal (FMAT 193 of 2024) is accordingly allowed.

The application (CAN 1 of 2024) is also disposed of.

(I.P. Mukerji, J.)

(Biswaroop Chowdhury, J.)

