

01-08-2024
Item no.8 & 9
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Commercial Division)

FMAT No.283 of 2024
Magpet Polymers Private Limited
-vs-
Arpita Agro Products (P) Limited
with
CAN No.1 of 2024
with
FMAT No.284 of 2024

Mr. Abhrajit Mitra, sr. adv.
Mr. Satadeep Bhattacharyya, adv.
Mr. Biswajit Kumar, adv.
Ms. Shruti Swaika, adv.
Mr. R. Ganguly, adv.
Ms. Yukti Agarwal, adv. ...for the appellant

Mr. Pratik Garai, adv.
Mr. Kaushik Das, adv.
Ms. Antara Biswas, adv.
Mr. Abhisekh Sikdar, adv. ...for the respondent

Mr Mitra, learned senior advocate appearing for the appellant, has rightly described the impugned order as a “Section 12A menace”.

We are also of the view that section 12A is not being applied and interpreted in its proper perspective. The intention of the respondent-defendant is apparently clear. They resist filing of the suit without mediation, and simultaneously also resist any interim order to be passed restraining them from disposing of their immovable property.

This simply means that the plaintiff is compelled to mediation before institution of the suit running the risk of the defendant disposing of the immovable property that might have been utilized to satisfy the decree.

We accept the submission of Mr Garai, learned

advocate for the respondent, that the suit involves a money claim simpliciter and as such does not contemplate any urgent relief. But that does not deter the defendant from disposing of the property at any point of time after institution of the suit.

Since the plaint has been registered, the plaintiff will not take any steps in the suit till mediation is not concluded. Let the appellant-plaintiff undertake the exercise of mediation as provided in section 12A.

On the other hand, the respondent-defendant which includes its directors, undertakes to this court through their counsel that during the period the suit is suspended and mediation continues and for a fortnight thereafter, status quo regarding the respondent's immovable properties or any part of those properties described in paragraph 23 of the stay/injunction application sufficient to satisfy the appellant-plaintiff's claim for Rs.45,00,000/- shall not be dealt with by the respondent-defendant. The respondent-defendant shall make the necessary declaration to the appellant regarding the property which is of the value of Rs.45,00,000/- and upwards.

The appeals and the connected application are thus disposed of by modifying the impugned order only to the extent of directing that the suit shall continue to be registered in the learned court below and proceeded with after the mediation exercise is completed.

As affidavits are not invited, the allegations contained in the application are deemed not to have been admitted.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]

