

21-03-2024
Item no.3 CD
Subrata
Bhattacharyya
AR(C)

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

FMAT No.503 of 2023
Monojit Guha Roy
-vs-
Subrata Indu & Ors.
with
CAN No.1 of 2024

Mr. Debdatta Sen
Ms. Suchismita Ghosh Chatterjee
Ms. Ledia Dasgupta
Mr. Malay Kumar Seal ...for the appellant

An affidavit of service is on record. It says that the cause papers could not be served on the respondents by the postal authorities, as they could not be found. None appears for the respondents.

This kind of an appeal should not be kept pending. All procedures should be suitably relaxed so as to dispose of the appeal as expeditiously as possible. Otherwise, the cause of justice would suffer. We hereby dispose of the appeal, dispensing with all formalities.

Here, we are concerned with an order of the learned court below passed under section 12A of the Commercial Courts Act, 2015.

Mr Sen, learned advocate appearing for the appellant, submits that all along the suit was entertained by successive judges taking it up, on the footing that urgent reliefs were contemplated. Direction for filing of written statement was made. Written statement has been filed by the respondents-defendants. Written objection to the injunction application was also directed to be filed and duly filed. Photocopies of the relevant orders and

records of the learned court below have been annexed to the connected application.

Whilst these directions were made by the court, an application under section 12A of the said Act was made by the appellant and was pending. By the impugned judgement and order the learned court below dismissed that application. This has the effect of return of the plaint.

This kind of a practice is deprecated and should not be repeated. Once expressly or impliedly a discretion has been exercised by the court to entertain the suit on the ground that it contemplated urgent reliefs, it should not thereafter revoke that decision and reject or return the plaint. Instead of promoting and expediting justice which is the aim and objective of section 12A of the said Act, this kind of a direction passed by the court has altogether a negative effect of delaying justice, if not defeating it.

For all those reasons, the impugned judgement and order dated 23rd August 2023 passed by the learned court below is set aside.

The application under section 12A of the said Act before the learned court below is formally allowed by us.

The appeal and the connected application – FMAT No.503 of 2023 with CAN No.1 of 2024 – are thus disposed of.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]

