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12.12.2024

Ct-37

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**In the High Court at Calcutta
Civil Appellate Jurisdiction
Commercial Division**

**FMAT 452 of 2024
with
IA No. CAN 1 of 2024**

**M/s. Sainath Autolinks Pvt. Ltd.
Vs.
Sri Enterprises & Ors.**

Mr. Jishnu Chowdhury
Mr. Ritoban Sarkar
Ms. Sucheta Mitra
Mr. Sourav Sharma
... For the Appellant

Mr. Debdatta Saha
Mr. Riddhiman Mukherjee
Mr. Subhamay Dewanji
Mr. Diprav Deb
... For the Respondents

1. By consent of the parties the appeal is taken up by treating the same as on day's list and taken up along with the application by disposing of the same by this common order.
2. Mr. Jishnu Chowdhury, learned counsel appearing for the appellant has fairly submitted that save and except the order directing furnishing of security by way of attachment of bank account the other issues although urged in the memorandum of appeal cannot be possibly gone into in this forum. However, in order to impress upon this Court that the said

order could not have been passed. Mr. Chowdhury submits that unless and until the Commercial Court arrives at a finding that the dispute is arising out of a commercial transaction, as defined and enumerated under Section 2(1)(c) of the Commercial Courts Act, 2015, the order of attachment, which is drastic in nature, could not have been passed as the Commercial Court shall not have the jurisdiction to decide every commercial dispute between the parties. It is submitted that the dispute between the parties are not commercial in nature and does not attract Section 2(1)(c) of the said Act.

3. Actually, the application for revocation under Section 12A of the Commercial Courts Act, 2015 read with Order 7 Rule 11 of the Code of Civil Procedure was although filed but not moved and as such the learned Judge, Commercial Court, had no other alternative but to ignore or reject the same for inability to me as is reflected from the impugned order. In so far as the furnishing of security is concerned, it was not an ex parte order as the learned Judge initially instead of directing furnishing of security by way of attachment of bank account had given an opportunity to the appellant to reply by issuing

show-cause and as such it cannot be said that learned Commercial Judge has exceeded its authority in passing such a drastic order. The appellant cannot complain of violation of natural justice or denial of a fair hearing. Now a prayer is made on behalf of the appellant that an opportunity be given to the appellant to move an application raising the jurisdictional issue.

4. We want to give an opportunity to the appellant to file an application for revocation of leave under Section 12A of the Commercial Courts Act, 2015 and an application for rejection and/or return of the plaint, as the case may be, only upon the appellant furnishing an affidavit of assets disclosing all the assets of the appellant in the pending proceeding. On such affidavit being filed the learned Commercial Court shall modify the impugned order to extent that the appellant shall be restrained from dealing or alienating or disposing of any immovable property mentioned in the said affidavit of asset till the disposal of the applications.

5. In the event, no such affidavit is filed, there would be no requirement for the learned Commercial Court to modify its earlier order. The appellant shall be given a further chance to

show cause as to why the prayer for attachment before judgment should not be allowed. However, the said application shall be taken up only after disposal of the applications intended to be filed for revocation and rejection/return of the plaint. In the event, the court holds it has jurisdiction the prayer for attachment for judgment shall be revisited upon consideration of the objection that may be filed by the appellant in the said proceeding.

6. On such consideration, the appeal being FMAT 452 of 2024 stands disposed of.
7. In view of disposal of the appeal, nothing remains to be decided in the application for stay being CAN 1 of 2024 and the same is accordingly disposed of.
8. Urgent Photostat copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)

