

RVWO/29/2023

WITH

APOT/90/2023

CS/26/2023

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

(COMMERCIAL DIVISION)

MAZHAR HUSSAIN

VERSUS

M/S. INDIA CONSTRUCTION COMPANY AND ORS.

BEFORE:

THE HON'BLE JUSTICE HARISH TANDON

THE HON'BLE JUSTICE PRASENJIT BISWAS

Date : 11th July, 2024

APPEARANCE:

Mr. Dhiraj Trivedi, Adv.

Mr. Anindhya Dutta, Adv.

Mr. Bikash Kumar Singh, Adv.

Mr. Bankim Pal, Adv.

...for the petitioner

The Court:- The order dated April 13, 2023 passed by this Bench is sought to be reviewed at the behest of the review petitioner solely on the ground that the Court ought not to have rejected the plaint simplicitor on the ground that there is no prayer for mandatory or permanent injunction in the plaint.

Indubitably, the plaint was filed relating to a commercial dispute without exhausting the procedure provided under Section 12A of the Commercial

Courts Act, 2015. By virtue of the said provision, it is obligatory on the part of the plaintiff to exhaust the pre-litigation mediation and only after the failure, approach can be made to the Court for adjudication of the disputes in pursuit of granting reliefs as claimed therein. However, an exception was carved out in the said provision in relation to an urgent and interim relief necessitated for immediate and an interim protection which appears to have not been availed by the review petitioner in filing the said suit in the Commercial Division. After noticing the averments made in the plaint as well as the reliefs claimed therein, this Court does not find any reflection as to the incorporation of reliefs of permanent and/or mandatory nature. We are conscious that the injunction is passed in order to protect the interest of the parties pending final adjudication and for such reason, it is termed as an order in aid of the final reliefs. The pleadings were silent on an urgent or interim relief which invited the Court to reject the plaint in view of the law laid down by the Apex Court in *Patil Automation Private Limited & others v. Rakheja Engineers Private Limited* reported in (2022) 10 SCC 1. The Apex Court had an occasion to consider two situations prevalent in the litigation in the commercial division. Firstly, the plaintiff was directed to exhaust the remedy provided under Section 12A of the said Act keeping the suit pending; secondly, the plaint was returned to the plaintiff to be presented afresh after exhausting the pre-litigation mediation contemplated under Section 12A of the said Act. The Apex Court unequivocally held that both procedures adopted by different courts would frustrate the very purpose of incorporating the pre-litigation mediation under Section 12A of the

said Act and, therefore, it would not be advisable and/or desirable either to keep the suit in suspended animation until 12A is exhausted or to return the plaint to be presented after exhausting the procedures relating to mediation under Section 12A of the Act. The Apex Court held that the proper course is to reject the plaint which, in fact, has been held in the order under review.

The scope of review is limited and should pass the muster of the incidents provided under Order XLVII Rule 1 of the Code of Civil Procedure. The review jurisdiction should be exercised if the order passed by the Court contained an error apparent on the face of the record. It can further be exercised on discovery of new and important documents which despite due diligence was not within the knowledge of the party to the proceedings and subsequently discovered or for any other reasons. There is no case made out of the aforesaid instances and, therefore, we do not find that it is a fit case where the order dated April 13, 2023 warrants interference or in other words to be reviewed.

The application is, thus, dismissed.

There will be no order as to costs.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J.)