

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

APO/157/2023
WITH
CS/151/2022

SRMB SRIJAN PRIVATE LIMITED
VS
B. S. SPONGE PVT. LTD.

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN

AND

The Hon'ble JUSTICE BISWAROOP CHOWDHURY

Date : 2nd December, 2024.

Appearance:

Mr. Debnath Ghosh, Adv.

Mr. Saptarshi Datta, Adv.

Mr. Biswaroop Mukherjee, Adv.

Ms. Srinjita Ghosh, Adv.

Mr. Pourush Kanti Pal, Adv.

Mr. Dubdut Hore, Adv.

...for the appellant

Mr. Sayan Roychowdhury, Adv.

Mr. Paritosh Sinha, Adv.

Mr. K.K. Pandey, Adv.

Mr. Kironjit Majumder, Adv.

...for the respondent

The Court: This appeal is arising out of an order passed by the learned Single Judge on 2nd August, 2023 revoking the leave under Section 12A of the Commercial Courts Act, 2015. The reason for revoking the leave was that initially the plaintiff issued a cease-and-desist notice on 25th May, 2021 and did not pursue the said claim and, thereafter, in the plaint filed in the year

2023, the word 'recently' has been used in order to show that in the event any notice is served, the plaintiff will suffer irreparable loss.

In the first place, the plaintiff could have shown urgency in May 2021 and claim dispensation of Section 12A if it were a clear case of infringement and the plaintiff is the registered owner of the mark. Usually in a suit for infringement, ex parte order is passed on the principle that prejudice may be caused to the plaintiff in the event of any notice being served. However, having regard to the amendment in the Commercial Courts Act, it is the discretion of the Court as to whether a case has been made out for dispensing Section 12A which is held to be mandatory. In *Patil Automation 2022 (10) SCC 1*, it has been noticed that the tendency is to bypass the said Section and it should be stopped, otherwise the said Section may be rendered otiose.

The court is required to find out whether the averments in the plaint point to a situation where even before expiry of three months, the plaintiff may have the need to obtain interim relief.

In the facts of the case as it appears from the impugned order, the plaintiff did not proceed with the matter after the cease-and-desist notice was issued on 25th May, 2021 and only, thereafter, on 26th April, 2023 a further cease-and-desist notice was issued in order to create urgency in the matter. There is no pleading that after the earlier cease and desist notice the defendant has withdrawn the alleged infringed material. This fact the learned Single Judge has taken into consideration in directing the parties to file a fresh suit if

the pre-institution mediation fails. We are not inclined to interfere with the discretion exercised by the learned Single Judge in this regard.

The appeal is disposed of by confirming the order passed by the learned Single Judge.

In the event an application is made for pre-institution mediation in terms of Section 12A, the Member Secretary, Mediation Centre is directed to take immediate steps for commencement of the mediation.

The parties through their learned counsel have assured that they shall participate in the mediation and shall not pray for any adjournment in the mediation proceeding.

This order shall be immediately communicated to the Member Secretary, Mediation Centre.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)