

OCD-3

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

CS-COM/441/2024
[Old No. CS/275/2022]
IA No. GA/1/2022

BALURGHAT TECHNOLOGIES LIMITED
-VS-
USHA MARTIN LIMITED

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : December 23, 2024.

Appearance:

Mr. Arindam Kundu, Adv.
...for the plaintiff

The Court: Mr. Arindam Kundu, learned counsel, is appearing for the plaintiff.

The plaintiff has filed the present suit praying for a decree for a sum of Rs.1,41,23,864/- along with interest. The plaintiff has also prayed for leave under Section 12A of the Commercial Courts Act, 2015, as well as leave under Order I Rule 1 of the Code of Civil Procedure and Order II Rule 2 of the Code of Civil Procedure.

Counsel for the plaintiff submits that in paragraph 20 of the plaint, the plaintiff has narrated the facts as to why the plaintiff requires leave under Section 12A of the Commercial Courts Act, 2015, and why the plaintiff could not initiate the pre-mediation process.

Counsel for the plaintiff prays for leave under Section 12A of the Commercial Court Act, 2015, and in support of his submission the Counsel for the plaintiff relied upon the judgment in the case of **YAMINI MANOHAR Vs. T.K.D. Keerthi** reported in **(2024) 5 SCC 815** and

submitted that the Hon'ble Supreme Court has categorised the word "contemplate any urgent interim relief" in Section 12A(1) of the Commercial Court Act, 2015, with reference to the suit. He submits that in the present suit also the plaintiff has contemplated the urgent leave for dispensing with Section 12A of the Commercial Courts Act, 2015. Counsel for the plaintiff submits that the plaintiff has also filed supplementary affidavit by disclosing the non-starter report issued by the Mediation Centre, High Court at Calcutta, dated 20/12/2022.

Counsel for the plaintiff submits that the said mediation process was initiated by the defendant before the mediation centre but the defendant has not appeared in the said mediation process, accordingly, non-starter report has been filed.

Heard the learned Counsel for the plaintiff.

This court finds that the plaintiff has affirmed the present suit on 10th November, 2022. Thereafter, the matter listed before this court on 23/11/2022, 30/11/2022, 7/12/2022, 14/12/2022, 21/12/2022 and thereafter, as per the order passed by this Court the matter has gone out of the list.

Subsequently, again the matter had appeared on 10th May, 2024, but none appeared and this Court directed to place the matter in the warning list.

On 25/11/2024 the matter was listed in the warning list. After the warning list, the matter was placed before this Court on 6th December, 2024. On the said date, again the matter was adjourned and fixed on 9th December, 2024. As per the prayer of the plaintiff again the case was

adjourned till 17th of December, 2024. Now, the plaintiff is praying for leave for dispensation of Section 12A of the Commercial Court Act, 2015.

Section 12A of the Commercial Court Act, 2015, reads as follows:-

12-A. Pre-Institution Mediation and Settlement. (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.

In the plaint, in paragraph 20, the plaintiff has made the following averments for dispensation of leave under Section 12A of the Commercial Court Act, 2015, which reads as under :

20. The plaintiff has tried to resolve the dispute by mediation, but all its efforts went in vain and now there is extreme urgency that the claims of the plaintiff are properly adjudicated and reliefs as prayed for by the plaintiff is granted at the earliest and as such there is no necessity to refer the instant dispute to mediation any further. Therefore, the plaintiff craves leave to dispense with the formalities as enshrined under Section 12A of the Commercial Courts Act, 2015.

Now, the counsel for the plaintiff further submits that the plaintiff has also filed an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure for grant of ad interim injunction.

Considering the above, this court finds that though the averments have been made in paragraph 20 for dispensation of leave under Section 12A of the Commercial Court Act, 2015, in the month of November, 2022, subsequent to filing of the plaint the matter was listed on several dates, but the plaintiff has chosen not to appear before this Court for praying leave under Section 12A of the Commercial Court Act, 2015. Now, after the period of two years, when the matter was placed in

the warning list, the plaintiff has appeared and prayed for leave under Section 12A of the Commercial Court Act, 2015, relying upon the mediation report initiated by the defendant.

Considering the above, this court finds that this is not a fit case where leave under Section 12A of the Commercial Court Act, 2015 is to be granted. The plaintiff relied upon the mediation report initiated by the defendant, which ultimately failed and on the said non-starter report, the plaintiff cannot take the benefit.

Thus, the plaint is returned to the plaintiff for initiation of the pre-mediation process, if advised so, and after the initiation of the process the plaintiff is at liberty to file the suit.

CS-COM/441/2024 (Old No.CS/275/2022) is disposed of.

(KRISHNA RAO, J.)

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