



C.R.P.No.4244 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.02.2024

PRONOUNCED ON: 15.03.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.R.P.No.4244 of 2023

and

C.M.P.No.25820 of 2023

1. T.V. Krishna Moorthy

2. T. K. Venkatesh

3. Latha Venkatesh

4. Srinivaasa Farms and Feeds,
rep. By its Managing Partner,
T.K.Venkatesh,
Old No.38, New No.1,
PVR Street, Gandhi Nagar,
Mohanur Road,
Namakkal- 637 011

...

Petitioners

/vs/

1. Kanakadhara Finance,
rep. By its Joint Managing Partner,
N. Prabakaran,
No.6/156, Trichy Road,
Namakkal – 637 001.



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2. E.Ramesh Kumar,

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3. The Karnataka Bank,
rep. By its Branch Manager,
No.2, Oasis Square,
Mohanur Road,
Namakkal – 637 001

...

Respondents

Prayer : Civil Revision Petition has been filed under Article 227 of the Constitution of India to allow the Civil Revision Petition, by setting aside, the fair and decretal order dated 30.08.2023, passed in I.A.No.14 of 2023 in C.O.S. No.21 of 2022, on the file of the Commercial Court, Namakkal/Principal District Court, Namakkal.

For Petitioners ... Mr. S.Senthil

For Respondent ... Mr. R.Vigneshwaran,
for Arun Karthik Mohan,
for R1

... Mr.Hari Shankar,
for R2

ORDER

Challenging the order of dismissal passed by the learned Principal District Judge, Commercial Court, Namakkal/Principal District Court, Namakkal in I.A.No.14 of 2023 in C.O.S.No.21 of 2022 dated 30.08.2023, the present Civil Revision has been filed.



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2. The fact of the case is that the first respondent/plaintiff had filed the suit in C.O.S.No.21 of 2022 before the Commercial Court/Principal District Court, Namakkal against the revision petitioners/defendants 1 to 4 and the respondents 2 and 3/defendants 5 & 6 for a direction to the defendants 1 to 4 to pay the suit claim of Rs.1,65,90,669/- along with subsequent interest at the rate of 18% per annum till the date of realization and to create a charge on the suit B, C and D schedule properties till the suit claim is settled by the defendants 1 to 4 and to declare that the sale deed dated 24.03.2021 registered as Doc. No.1255/2021 executed by the 2nd defendant in favour of the 5th defendant is ab-initio void and illegal, and consequential permanent prohibitory injunction restraining the 5th defendant and his men from further alienating A schedule property till the realisation of the decree amount. In the said suit, the revision petitioners/defendants 1 to 4 had filed a petition to reject the plaint in I.A.No.14 of 2022 under Order VII Rule 11(d) of Civil Procedure Code, which was dismissed by the Trial Court on 30.08.2023. Aggrieved over the same, the present revision has been filed.



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3. The learned counsel for the petitioners submitted that the suit was filed by the first respondent/plaintiff alleging that the first petitioner/1st defendant herein had approached the first respondent/plaintiff and sought for financial help for the business floated by the second and third petitioners in the name of the fourth petitioner, hence, the first respondent transferred the financial assistance directly in the second and fourth petitioner's bank account, for which, the petitioners 1 and 2/defendants 1 & 2 jointly executed promissory notes in favour of the first respondent/plaintiff. The plaintiff in the plaint stated that the 2nd respondent/5th defendant is one of the creditors of the revision petitioners and the property mentioned as suit schedule 'A' was transferred to the 5th defendant in March 2021 and hence, the plaintiff has filed the suit in C.O.S.No.21 of 2022, under Commercial Courts Act 2015, before the Commercial/Principal District Court, Namakkal. The Commercial Courts Act mandates for pre-litigation mediation and settlement under Section 12-A of the Act, but no such procedure was adopted by the first respondent/plaintiff before initiation of the suit. However the first



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respondent/plaintiff has failed to plea specifically in the plaint averments regarding urgent interim relief sought for in I.A.Nos.1 to 4 of 2022 and as to why the procedure contemplated under Section 12-A of the Act has to be waived. It is a statutory mandate cast upon the 1st respondent/plaintiff to have specifically pleaded in his plaint as to why he had directly approached the Court without approaching and exhausting the pre-litigation mediation and settlement. So, the plaint filed by the plaintiff without complying Section 12A of the Act, is liable to be rejected and hence, the petitioners herein have filed the petition under Order VII Rule 11(d) of CPC to reject the plaint as the plaint is barred by law. The Trial Court without considering the legal preposition, dismissed the rejection of plaint petition filed by the petitioners.

4. The learned counsel for the petitioner further submitted that the plaintiff had also failed to plead specifically in the plaint regarding the urgent interim relief sought for, which is against the principle stated by the Hon'ble Supreme Court in M/s. Patil Automation Private Limited and other /vs/ Rakheja Engineers Private Limited reported in 2022 SCC Online SC



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1028, where it is categorically held as follows :

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“ having regard to all these circumstances, we would dispose of the matters in the following manner. We declare that Section 12A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order VII Rule 11. This power can be exercised even suo-moto by the court as explained earlier in the judgment. We, however make this declaration effective from 20.08.2022 so that concerned stakeholders become sufficiently informed. Still further, we however direct that in case plaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff. Finally, if the plaint is filed violating section 12A after the jurisdictional High Court has declared Section 12A mandatory also, the plaintiff will not be entitled to the relief.”

5. The learned counsel appearing for the 2nd respondent/5th defendant supported the argument of the counsel for the revision petitioners and further contended that the Trial Court erred in entertaining the plaint with



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respect to Prayer B. to declare that the sale deed dated 24.03.2021 registered as Doc.No.1255/2021 executed by the 2nd defendant in favour of the 5th defendant is ab-initio void, illegal, does not reflect the real consideration of the schedule 'A' property received by the 2nd defendant as it is fraudulent transfer made with a view to defeat and delay the lawful liability of creditor/plaintiff; consequential permanent prohibitory injunction restraining the 5th defendant, and his men from alienating or encumbering the suit A property till the realisation of the decree amount due to the plaintiff. As it does not fall within the scope of the Commercial Dispute as defined under Section 2 (c) of the Commercial Courts Act, 2015. Thus, pleaded to set aside the impugned order and to allow the civil revision.

6. The learned counsel for the first respondent/plaintiff supported the impugned order and further contended that the present Civil Revision is not maintainable in view of the bar contained in Section 8 of the Commercial Court Act. Further contended that the supervisory jurisdiction under Article 227 can be exercised by the High Court in respect of the challenge made against the order passed a trial court only if the “ error is manifest and



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apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and grave injustice or gross failure of justice has occasioned thereby” and not in cases where there are “ mere errors of fact or law”. Article 227 of the Constitution has to be used sparingly in such suits which under CPC are revisable and which remedy has been taken away by the Commercial Courts Act, 2015 in order to preserve the legislative intent and give effect to the purpose behind commercial Courts Act, of expeditious disposal of commercial suits”. The subject suit is evidently of a commercial nature as it falls within the definition of “ commercial dispute”, more specifically Section 2(1)(c)(i) of the Commercial Courts Act, 2015 described that ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such document. The 2nd respondent has sought to raise this issue for the very first time before this Court, without filing a counter affidavit in I.A.No.14 of 2022 or placing arguments in the interlocutory application before the Trial Court. On the other hand, the 2nd respondent was set exparte for non filing of counter and hence, all the submissions made by the 2nd respondent



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are novel and made only at this stage.

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7. The learned counsel further submitted that the commercial suit viz., O.S.No.21 of 2022 was presented on 26.08.2022 under Section 6 of the Commercial Courts Act. The suit was returned to comply with the affidavit of verification of pleading. On 07.09.2022 the suit was re-presented emergently. However, the Trial Court raised the issue with respect to the maintainability of the suit and detailed submissions were made in respect of Section 12A of the Act. The Trial Court, being convinced of the emergency nature of reliefs sought for in the suit and interim application for advancing the case was allowed the petition to take up the suit emergently and passed necessary orders. Hence, it is clear that the Trial Court was , atleast prima facie, satisfied of the fact that urgent reliefs were required in the suit. The Trial Court took cognizance of the suit and it was numbered, summons were issued to the defendants and the case was adjourned to 12.10.2022. On 12.10.2022, the defendants filed their vakalath and the matter was adjourned to 10.01.2023, since the petitioners herein were taking efforts to dispose of the properties that were



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covered in the two interim applications for attachment before judgment and another application for temporary injunction, there was a need for urgent interim reliefs to secure the rights of the first respondent. Therefore, the first respondent herein was constrained to move an interim application to advance the hearing for the case in I.A.No.11 of 2022 and the case was advanced to 06.12.2022 from 10.01.2023 for filing counter and written statement. At this juncture, the petitioners herein filed the application for rejection of plaint. When a suit is emergently presented, the plaint is accompanied by interlocutory applications for urgent relief and therefore, the pleadings in the plaint as well as pleadings in the interlocutory application has to be read conjointly to ascertain the urgency that was sought. It is not necessary to make specific pleadings in the plaint with regard to waiving of the mandatory procedure contemplated under Section 12A of the Act as alleged by the petitioners. The interpretation given by the petitioners herein by relying upon a few paras of the judgment of the Supreme Court in M/s.Patil Automation Private Limited /vs/ Rakheje Engineers Pvt. Ltd. 2022 SCC Online SC 1028 is totally mischievous as neither the said judgment nor section 12A nor any of the provisions of the



Act contemplate expressly or impliedly the existence of such a pleading in the plaint. The Hon'ble Supreme Court in Patil Automation mandates that the sine-qua non is just “urgent interim relief” in a suit for commercial nature. It is clearly clarified in the judgment of the ***Hon'ble Supreme Court in Yamini Manohar /vs/ TKD.Keerthi cited in 2023 (6) CTC 302*** as to what the term “contemplate urgent interim relief” used in the Section 12 A of the Act means. The relevant portion is as follows:

“ 7. We are of the opinion that when a plaint is filed under CC Act, with a prayer for urgent interim relief, the Commercial Court should examine the nature and the subject matter of the suit, the cause of action and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad-interim stage, when the plaint is taken up for admission and examination will not justify dismissal of the commercial suit under Order VII Rule 11 CPC.....

8. An absolute and unfettered right approach is not



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justified if the pre-institution mediation under Section 12 A of the Act is mandatory , as held by this Court in Patil Automation Pvt. Ltd., The words' contemplate any urgent interim relief in Section 12A(1) of the Act with reference to the suit should be read as conferring power on the Court to be satisfied. They suggest that the suit must 'contemplate', which means the plaint,documents and facts should show and indicates need for an urgent interim relief....'

8. When the suit contemplates urgent interim relief, then the rigours of Section 12 A of the Act will not apply. It is submitted that the petitioners herein have at no point argued that urgent interim relief were not required in the suit. Their only argument has been that the plaint does not disclose the urgency. Therefore, it is very clear that the petitioners are only attempting to frustrate and defeat the rightful claim of the first respondent. Further, the submission of the petitioners is frivolous, which is clear from the fact that despite admitting the liability, they have till date, not made any efforts to discharge such liability and hence, there is no merit in the revision and thus pleaded to dismiss the revision.

9. I have considered the matter in the light of the submissions made



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by the learned counsel for the parties and perused the materials available on records carefully.

10. On perusal of records it is seen that admittedly there is no dispute between the parties with regard to the fact that the commercial suit in O.S.No.21 of 2022 was presented before the Court on 25.08.2022, the suit was returned to comply with the affidavit of verification of the pleadings. And the same was represented emergently on 07.09.2022. Therefore, the suit was pre-ordered summoned to the defendant and posted to 12.10.2022. On 12.10.2022, the defendants filed their vakalath and the matter was listed to 10.01.2023. In the meantime, On 06.12.2022, the revision petitioners herein had filed a petition to reject the plaint in I.A.No.14 of 2022.

11. Admittedly, when this plaint is filed under CC Act , requirement of pre-litigation mediation and settlement has not been complied with as per Section 12-A of the 2015, Act, which is held as mandatory declared by the Hon'ble Supreme Court of India in “ ***Patil Automation Private Limited***



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and others /vs/ Rakheja Engineers Private Limited reported in **2022 SCC**

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12. According to the first respondent/plaintiff, since urgent relief of attachment before judgement petition filed in IA.No.1 of 2022 and I.A.Nos.3 of 2022 in respect of two suit properties of the petitioners herein, defendants 1 to 4 in the suit and also filed I.A.No.2 of 2022 and I.A.No.4 of 2022 for the relief of temporary and ex parte ad interim injunction for not violating mandates of Section 12-A of the Act and therefore, not attracted for rejection of plaint under Order VII Rule 11 CPC.

13. According to the revision petitioners/defendants 1 to 4, filing of attachment before judgments and ad interim injunction petition are not enough in the absence of specific pleading in the plaint regarding the urgent interim relief sought for.

14. I have considered the principle stated by the Hon'ble Supreme Court in this regard. The Hon'ble Supreme Court in “ *M/s. Patil*



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Automation Private Limited /v/ Rakheja Engineers Pvt. Ltd. 2022(10)

SCC 1,” held that (i) Section 12-A of the 2015 Act is declared mandatory and it is held that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order VII Rule 11 CPC. This power can be exercised even suo motu by the court as explained above. However, this declaration is made effective from 20.08.2022 so that stakeholders concerned become sufficiently informed, (ii) Still further, a direction is issued that in case plaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff, (iii) Finally, if the plaint is filed violating Section 12-A of the 2015 Act after the jurisdictional High Court has declared Section 12-A mandatory also, the plaintiff will not be entitled to the relief.

15. Further, the ***Hon'ble Supreme Court in Special Leave Petition(Civil) Diary No.32275/2023 (Yamini Manohar /vs/ TKD***



Keerthi) observed as follows :

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“ we are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the Commercial Court should examine the nature and subject matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over section 12A of the CC Act. The facts and circumstance of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad-interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under order VII, Rule 11 of the code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order VII, Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely, (i) prima facie case, (ii) irreparable harm and injury, and(iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.

8. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and



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right to paralyze Section 12A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The proposition that the commercial courts do have a role, albeit a limited one, should be accepted, otherwise it would be up to the plaintiff alone to decide whether to resort to the procedure under Section 12A of the CC Act. An 'absolute and unfettered right' approach is not justified if the pre-institution mediation under Section 12 A of the CC Act is mandatory, as held by this Court in Patil Automation Private Limited(supra). The words 'contemplate any urgent interim relief' in Section 12A(1) of the CC Act, with reference to the suit, should be read as conferring power on the court to be satisfied. They suggest that the suit must “contemplate”, which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and ensure that the legislative object/intent behind the enactment of Section 12A of the CC Act is not defeated. ”



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16. The plaint was presented on 25.08.2022 represented on 05.09.2022 and then returned and again represented on 10.09.2022.

Thereafter, taken on file in C.O.S.No.21 of 2022. Further on perusal of the plaint documents, it is noticed that on 15.05.2022 lawyer notice issued on behalf of the plaintiff to the defendant 1 to 5 and reply notice received by the plaintiff from the defendants 1 to 4 on 12.06.2022. Further, the plaintiff issued lawyer notice to 6th defendant on 12.08.2022. The above facts exposes that the suit do not contemplate urgent interim relief. Apart from this, there is no specific averment pleaded in the plaint regarding the circumstances to take his case out of requirement of Section 12-A of the CC Act and therefore, the plaint should be rejected without issuing summons. On issuing summons, it will be always open to the defendants to make an application under Order VII Rule 11. The Trial Court failed to consider those facts and dismissed the petition filed by the revision petitioners, which is unsustainable.

17. With regard to the bar contend in Section 8 of the Act, the Division Bench of this Court in CRP.(SR) No.92516 of 2021 (Ramanan



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Balagangatharan /vs/ M/s. Rise East Entertainment Private Limited), in which it has been held that the bar contained in Section 8 of the Commercial Court Act shall not affect the supervisory jurisdiction of the article under 227 of the Constitution of India in respect of orders including the interlocutory application order passed by the Commercial Court. Therefore, the argument placed by the learned counsel for the first respondent/plaintiff is not acceptable one.

18. The filing of I.A for injunction and attachment before judgment under Order 39 Rule 1 and Order 38 rule 50 are not enough to take his case out of the requirement of Section 12-A of the Act and therefore, the Trial Court is erred in dismissing the petition filed by the revision petitioners and the same is liable to be set aside.

19. Accordingly, this Civil Revision Petition is allowed and the impugned order passed by the learned Principal District Judge, Commercial/Principal District Court, Namakkal in I.A.No.14 of 2022 in Commercial Original Suit No.21 of 2022 dated 30.08.2023 is set aside and



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the plaint in C.O.S.No.21 of 2022 is rejected. Consequently, connected miscellaneous petition is closed. No costs.

15.03.2024

Index : Yes/No
Internet : Yes/No
mrp

To

The Commercial Court, Namakkal,
In the Court of the Principal District Court,
Namakkal



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V.SIVAGNANAM ,J.

mrp

Pre-delivery order made
in
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