



C.R.P.(MD)No.1274 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 01.03.2024

Delivered on : 06.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1274 of 2023

and

C.M.P.(MD)No.6246 of 2023

M/s.Arjun Pulp & Papers (I) Private Limited,
Velchamypuram, Tirunelveli,
Rep.by its Director,
P.Chandrasekhar,
having corporate office at
RVI Towers, 2nd Floor,
149, velachery Tambaram High Road,
Pallikarani, Chennai – 600 100.

: Petitioner/Defendant

Vs.

Visakan Impex,
Rep.by Proprietor Nagarajan,
No.7-B Elayarasanandal Road,
Kovilpatti,
Thoothukudi – 628 502.

: Respondent/Plaintiff

Prayer : The Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.42 of 2022 on the file of the Commercial Dispute Court/Principal District Court, Thoothukudi.



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For Petitioner : Mr.Raja Karthikeyan

For Respondent : Mr.Aayiram K.Selvakumar

ORDER

The Civil Revision Petition has been filed, invoking Article 227 of the Constitution of India, to strike off the plaint in O.S.No.42 of 2022 on the file of the Commercial Dispute Court/Principal District Court, Thoothukudi.

2. The respondent as plaintiff has filed the suit in O.S.No.42 of 2022 against the revision petitioner/defendant for recovery of Rs.30,38,574.16/- with interest and cost.

3. The case of the plaintiff is that as per the oral contract between the parties, he had been supplying the coal to the defendant for the period from 01.04.2019 to 03.06.2020; that the defendant admitting the balance amount has given a transaction list on 09.06.2020; that since the amount due was not paid, the plaintiff was constrained to send a legal notice dated 20.11.2020 to the Company at Tirunelveli and to the Head Office at Chennai; that the defendant having received the notice, has neither sent any reply nor made



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any payment and that therefore, the plaintiff was forced to file the above suit.

Since it is a commercial dispute, the suit was taken on file by the Commercial Court/Principal District Court, Thoothukudi.

4. It is evident from the records that since the defendant has failed to appear for the hearing on 21.06.2022, the defendant's company was called absent and set ex-parte. Thereafter, the defendant has filed an application under Order IX Rule 7 of C.P.C., for setting aside the ex-parte order, dated 21.06.2022. The trial Court, invoking the provision of Commercial Courts Act that since the defendant has not filed the written statement within the time stipulated of 120 days from the date of service of summons, the defendant has forfeited the right to file the written statement and the Court shall not allow the written statement to be taken on record, returned the petition.

5. In view of the specific return made by the trial Court in tune with the provisions of the Commercial Courts Act, the defendant finding no other way to enter into the suit proceedings, has invoked the jurisdiction of this Court directly under Article 227 of the Constitution of India to strike of the plaint itself.



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6. The only ground canvassed by the defendant for striking of the plaint is that the plaintiff before filing the suit has not complied with the mandatory requirement contemplated under Section 12 A of the Commercial Courts Act. At this juncture, it is necessary to refer Sub Section 1 of 12 A of the said Act.

“12A. 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 preinstitution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.”

7. As rightly contended by the learned counsel for the revision petitioner, the Hon'ble Supreme Court in ***M/s.Patil Automation Private Limited and Others Vs. Rakheja Engineers Private Limited*** reported in ***2022 Live Law (SCC) 678***, has specifically declared that Section 12A of the Commercial Courts Act, 2015 is mandatory and held that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11 of C.P.C.



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WEB COPY 8. No doubt, in the case on hand, the plaintiff without complying with the requirement contemplated under Section 12 A of the Act has filed the suit. But the learned counsel for the respondent/plaintiff would submit that since the plaintiff has claimed urgent relief, pre-institution mediation under Section 12 A of the said Act is not at all necessary. It is necessary to refer the following passage in *M/s.Patil Automation Private Limited* 's above referred.

“100. In the cases before us, the suits do not contemplate urgent interim relief. As to what should happen in suits which do contemplate urgent interim relief or rather the meaning of the word ‘contemplate’ or urgent interim relief, we need not dwell upon it. The other aspect raised about the word ‘contemplate’ is that there can be attempts to bypass the statutory mediation under Section 12-A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis. Section 80(2)CPC permits the suit to be filed where urgent interim relief is sought by seeking the leave of the court. The proviso to Section 80(2) contemplates that the court shall, if, after hearing the parties, is satisfied that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to the court after compliance. Our attention is drawn to the fact that Section 12-A does not contemplate such a procedure. This is a matter which may engage attention of the



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lawmaker. Again, we reiterate that these are not issues which arise for our consideration. In the fact of the cases admittedly there is no urgent interim relief contemplated in the complaints in question.”

9. The learned counsel for the petitioner has relied on the decision of this Court in the case of ***K.Varathan Proprietor, M/s.Chinetekk, Egmore, Chennai Vs. Prakash Babu Nakundhi Reddy, Proprietor, M/s.Shankarnag Theatre, N.Bengaluru*** reported in ***2023 CTC 201***. A learned Judge of this Court by referring to the judgment of the Hon'ble Supreme Court in ***M/s.Patil Automation Private Limited*** 's above referred, has observed as follows :

“ 19. The above only means that there are only two classes of suits, one class of suits where no 'urgent interim relief' is contemplated and another where 'urgent interim relief' is contemplated. If a suit falls under the former class, it will be hit by Section 12A of CCA if a plaintiff comes to this Commercial Division without exhausting pre-institution mediation process under Section 12A of CCA and if it falls under the latter class, the position is different. As regards the case on hand, this Commercial Division is of the view that it falls under the former class. As alluded and delineated supra, it is not necessary to discuss this aspect of the matter any further.



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20. Before concluding, it is also necessary to make it clear that a notification required under sub-section (2) of Section 12A of CCA and Rules (subordinate legislation), which need to be made under sub-section (1) of Section 12A of CCA, both by the Central Government, have since been done i.e, on 03.07.2018.”

10. As already pointed out, the plaintiff has filed a petition under Order 38 Rule 5 of C.P.C., claiming attachment before judgment and the same was taken on file in I.A.No.1 of 2022 in O.S.No.42 of 2022 on the file of the Commercial Dispute Court/Principal District Court, Thoothukudi. It is pertinent to note that the above petition for interim relief has been filed along with the plaint. The learned trial Judge, after taking the petition on file, has ordered notice to the defendant.

11. It is evident from the records that since the defendant, after the receipt of notice, has not turned up and hence, he was called absent and set ex-parte; that thereafter, notice was ordered to be issued for production of security; that since the notice was served and the defendant has failed to furnish the security, attachment was ordered and that since the properties were attached and copy was also served to the Sub Registrar Office,



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attachment was made absolute and the petition in I.A.No.1 of 2022 was ordered to be closed.

12. The learned counsel for the revision petitioner would contend that the properties sought to be attached are belonging to another private company M/s.Arjun Technologies India Limited; that the plaintiff cannot claim attachment of the properties not belonging to the defendant's company and that therefore, it has to be taken that the plaintiff has not claimed any urgent relief.

13. As already pointed out, even after the receipt of initial notice and subsequent notice, the defendant has not appeared before the concerned Court and the trial Court, after setting him ex-parte, has proceeded to attach the property before judgment. It is not the case of the revision petitioner that he has challenged the said order in the manner known to law. Even assuming for argument sake that the properties sought to be attached and subsequently attached by the concerned Court are not belonging to the defendant and are belonging to some other concern, it is for some other concern to raise their objections and to file claim petition. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in the case of *Yamini Manohar*



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Vs. TKD Keethi Special Leave Petition (CIVIL) Diary No(s). 32275/2023,

dated 13.10.2023, wherein, the Hon'ble Apex Court, after referring to its earlier decisions has observed as follows :

“7. 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 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 CC Act. The facts and circumstances of the case have to be considered holistically 7 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 right to



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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 12A 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."

By holding so, the Hon'ble Supreme Court dismissed the application confirming the order dismissing the petition filed under Order 7 Rule 11 of C.P.C. The above decision is squarely applicable to the case on hand.



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14. It is not the case of the defendant that the plaintiff has not at all claimed any urgent relief in the suit. As already pointed out, the plaintiff, by alleging that the defendant has been attempting to alienate their properties and that if they are allowed to alienate the properties, the plaintiff will not be in a position to realize the decretal amount, in case, if the suit is decreed, has filed the petition for attachment before judgment.

15. The learned counsel for the respondent has also produced the copies of encumbrance certificate to show that M/s.Arjun Technologies India Limited, has executed power of attorney deed in favour of G Square Realtors Private Limited on 15.10.2022; that subsequently, they have cancelled the said power of attorney deed on 29.11.2022 and on the date itself, they have executed another power of attorney deed in favour of the same ' G Square Realtors Private Limited' in respect of the lands which includes the petition mentioned property. Since the plaintiff has claimed urgent relief, the question of complying the requirement under Section 12 A of the said Court does not arise at all.

16. Except the above, the defendant has not canvassed any other reason or ground to impugn the plaint filed in O.S.No.42 of 2022.



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Consequently, this Court concludes that the Civil Revision is devoid of merits and the same is liable to be dismissed.

17. In the result, the Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed. No costs.

06.03.2024

NCC : yes/No
Index : yes/No
Internet : yes/No
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To

- 1.The Commercial Dispute Court/Principal District Judge,
Thoothukudi.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

DAS

Pre-delivery order made in
C.R.P.(MD)No.1274 of 2023
and
C.M.P.(MD)No.6246 of 2023

Dated : 06.03.2024