



C.R.P(MD)No.1668 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)No.1668 of 2024

and

CMP(MD)No.9773 of 2024

N.Mohan

... Revision Petitioner/Petitioner/Defendant

vs.

G.Balamurugan

... Respondent/Respondent/Plaintiff

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records and pleaded to set aside the fair and decretal order in I.A.No.03 of 2023 in C.O.S.No.01 of 2022 dated 15.06.2024 on the file of the learned Sub Court, Kovilpatti.

For Petitioner : Mr.S.Saravanan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 15.06.2024 made in I.A.No.03 of 2023 in C.O.S.No.01 of 2022 on the file of the learned Sub Court, Kovilpatti.



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2.By the said order, the interlocutory application filed by the petitioner was dismissed. By the said interlocutory application, the petitioner has prayed for rejection of plaint under Order VII, Rule 11 of CPC. The contention of the petitioner was that when the suit is taken on file as a commercial suit, the petitioner had not resorted to the mandatory pre-litigation mediation under Section 12-A of the Commercial Courts Act, 2015 and as such, the trial Court has no other go than to reject the plaint for not resorting to pre-litigation mediation.

3.The trial Court considered the case of the parties and considered the fact that firstly, the suit was initially filed as a normal suit and thereafter, transferred to the file of the Commercial Court and the Commercial Court proceeded with the trial and the entire trial itself is now complete and further, considered that the suit was also filed along with an urgent relief of attachment before judgment and on those grounds rejected the application filed by the petitioner.

4.The learned counsel appearing on behalf of the petitioner would submit that when the suit is ultimately taken on file as the commercial suit, pre-litigation mediation is held to be mandatory and the



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suit is filed without resorting to the pre-litigation mediation, the trial Court ought to have rejected the plaint.

5.I have considered the said submissions made by the learned counsel for the petitioner and perused the material records of the case.

6.The matter is no longer *res integra*. The question relating to pre-litigation mediation has since been considered by the Hon'ble Supreme Court of India in ***Patil Automation Private Limited and Ors. Vs. Rakheja Engineers Private Limited***¹. The Hon'ble Supreme Court of India summarized the arguments against the mandatory mediation in paragraph No.9 and in paragraph No.48 held that Section 12-A of the Commercial Courts Act, 2015 is not a mere procedural law, but a substantive provision. In paragraph No.49, it is held that the very object will be defeated by non-compliance of the mandatory mediation. It has further held that the right to sue itself will accrue and fructify only on compliance of Section 12-A of the Commercial Courts Act, 2015. In paragraph Nos.70 and 71 of the said Judgment, the Hon'ble Supreme Court also dealt with the purpose of pre-litigation mediation being the matter of public policy that commercial

¹ 2022 SCC Online SC 1028



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litigations should be resolved at the earliest and in paragraph No.77, the Hon'ble Supreme Court of India held that the decision to mediate does not block access to justice. The Court held that unless a party resorts to pre-litigation mediation, the plaint has to be rejected. The plaint has to be rejected even if the parties have not filed an application to that effect. The Hon'ble Supreme Court of India held that pre-litigation mediation by itself is access to justice and based on public policy that commercial litigations shall be resolved in quick time thus furthering the cause of the ease of doing business.

7.Thus, as per *Patil Automation*¹, the requirement to attempt pre-litigation mediation Section 12-A of the Commercial Courts Act, 2015 is mandatory. If the parties filed the suit without any application for urgent relief and without resorting to the pre-litigation mediation, then the Court has no other option than to reject the plaint.

8.With reference to cases where the commercial suit is filed with an application for interim relief and without resorting to pre-litigation mediation, the Hon'ble Supreme Court of India had considered the same in



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the case of ***Yamini Manohar Vs. TKD Keerthi***². When contradictory views arose with reference to whether or not the Court can decide whether urgent interim relief is needed in a particular suit or whether it should be left to the discretion of the plaintiff, the Hon'ble Supreme Court answered the same in the following terms and it is necessary to quote paragraph Nos.7 and 8:-

".....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 paralyze Section

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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. "

9. Therefore, now the matter is been settled wherever the parties had filed an application for urgent interim relief and without resorting to pre-litigation mediation, the commercial court will consider whether the application is only a camouflage/disguise to by-pass or wriggle out of the mandate of Section 12-A of the CC Act. In essence, the plaint will not be rejected merely because ex-parte interim relief was not granted or



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ultimately the application for interim relief was dismissed by considering the merits of the prayer. It is the attempt of the plaintiff which has to be looked into. If in the nature of the case, the prayer for interim relief is genuinely made irrespective of the fact whether the interim relief is granted or not, then the Courts shall not enforce the mandate of pre-litigation mediation by rejecting the plaint. The Courts shall holistically consider the entire facts and circumstances of the case to decide whether the attempt is to camouflage/bypass or whether an interim relief was genuinely contemplated.

10. Therefore, the legal position with reference to the matter is made clear and it can be summarized as follows:-

(i) In matters of commercial suit, the parties have to resort to mandatory pre-litigation mediation before filing the suit as per the rules before approaching the Court;

(ii) If the commercial suit is filed without any urgent relief and the parties have not resorted to pre-litigation mediation, then the Commercial Courts shall reject the plaint even in the absence of any application on behalf of the defendant;



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(iii) Where the parties have not resorted to pre-litigation mediation, but have filed a suit with prayers of urgent relief, then the Commercial Courts have to decide whether the urgent interim relief was genuinely contemplated or it was a disguise/camouflage to bypass the mandatory pre-litigation mediation;

(iv) In deciding so, mere non grant of ex parte interim relief or ultimate rejection of the interim prayer on merits by itself shall not be considered as a case of bypassing the mandatory pre-litigation mediation but it shall be decided by holistically considering the facts and circumstances of the case;

(v) If upon considering the overall facts and circumstances of the case, the Commercial Court is of the opinion that the suit ought not to have been filed without resorting to pre-litigation mediation then only it has to reject the plaint and in other cases the suit will continue.



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11. Before, advertng to the present case on the above principles settled by the Hon'ble Supreme Court of India, it should be noted that there is yet another *raison d'etre* for pre-litigation mediation. Conflict arises between the parties in the course of the transactions and still is fluid. When a party prepares the plaint, an important exercise of taking a position and disclosing a cause of action and requesting a particular prayer is undertaken. That is akin to 'crystallization' of the conflict, hitherto in a fluid form. When things are fluid and an attempt is made to resolve, it is altogether a different exercise. Though the the parties can be referred to mediation even pending the suit, the above factor has to be borne in mind. The stakeholders must understand the concept that when your conflict is escalating and you are in the cusp of approaching the court and filing the litigation, 12-A requires you (i) to take a pause, do not immediately rush to write the plaint and put your pen aside; (ii) connect to the other side and attempt to resolve in an informal and relaxed atmosphere with the help of a third party neutral - mediator; (iii) and if the attempt fails, write your plaint and proceed.

12.Having these principles in mind, in the instant case, the trial Court has taken into consideration that the suit itself was filed with an



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application praying for urgent relief of attachment before judgment.

Secondly, the trial itself is now over and the matter is posted for arguments and at this stage, the defendant has come up with present application. Therefore, the Trial Court has holistically considered the facts and circumstances of the case and decided not reject the plaint and to proceed further with the case and as such no exception whatsoever can be made to the decision of the Trial Court.

13.In view of the civil revision petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

26.07.2024

NCC : Yes / No
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To

The Sub Court, Kovilpatti.



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D.BHARATHA CHAKRAVARTHY, J.

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