



C.R.P(MD)No.2255 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 18.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.2255 of 2024
and
C.M.P(MD)No.12771 of 2024

C.Chinnaraja

... Petitioner /
Petitioner /
Plaintiff

Vs.

1.Mubashar Ahmed Akthar Shaikh,

2.KEC-VNC Consortium,
Having Office at RPG House,
No.463, Dr.Annie Besant Road,
Worli, Mumbai – 400 030.

... Respondents /
Respondents /
Defendants

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the petition and order dated 09.08.2024 in I.A.No. 2 of 2024 in Unnumbered C.O.S.No. -- of 2024 on the file of Sub Court, Tirunelveli and allow this civil revision with costs throughout.



C.R.P(MD)No.2255 of 2024

For Petitioner : Ms.K.Shwathini
for Mr.G.Prabhu Rajadurai

ORDER

Heard the learned counsel for the revision petitioner.

2.The plaintiff filed a money suit before the Sub Court, Tirunelveli raising a commercial dispute. He filed I.A.No.2 of 2024 for dispensing with the requirement of pre-institution mediation and settlement under Section 12-A of the Commercial Courts Act, 2015. The Interlocutory Application was dismissed vide order dated 09.08.2024. Questioning the same, this Civil Revision Petition came to be filed.

3.The learned counsel for the revision petitioner reiterated the contentions set out in the memorandum of grounds of revision and called upon this Court to set aside the impugned order and grant relief as prayed for.

4.A doubt arose if notice has to be issued to the contesting defendant / first respondent herein. It is obvious that a petition filed



C.R.P(MD)No.2255 of 2024

under Section 12-A of the Commercial Courts Act, 2015 for dispensing with the statutory requirement can be allowed without notice to the defendant. If that be so, as rightly pointed out by the learned counsel for the revision petitioner, it is an issue between the Court and the plaintiff. An order dismissing a petition under Section 12-A is amenable to the revisional jurisdiction of this Court under Article 227 of the Constitution of India. While exercising the said jurisdiction, the character of the proceeding will not undergo any change. It continues to be a matter between the Court and the plaintiff. I am of the view that this Civil Revision Petition can be disposed of without issuing notice to the first respondent herein.

5. Section 12-A(1) of the Commercial Courts Act, 2015 is as follows:

“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.”



C.R.P(MD)No.2255 of 2024

The learned counsel for the revision petitioner draws my attention to the decision reported in **(2024) 5 SCC 815 (Yamini Manohar Vs T.K.D.Keerthi)**. The Hon'ble Supreme Court in the said decision had interpreted the aforesaid provision in the following terms:

“10. 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 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



WEB COPY



C.R.P(MD)No.2255 of 2024

court is inclined to entertain the plaint.

11. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and 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 12A of the CC Act is mandatory, as held by this Court in Patil Automation.

12. 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



WEB COPY

legislative object/intent behind the enactment of section 12-A of the CC Act is not defeated.”

The Madras High Court in the decision reported in **(2024) 5 MLJ 91**

(N.Mohan Vs G.Balamurugan) held as follows:

“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;

(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 exparte interim relief or ultimate rejection of the interim prayer on



C.R.P(MD)No.2255 of 2024

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.”

In the case on hand, the plaintiff had issued pre-suit notice to the contesting defendant on 04.06.2024. Even though the first defendant had received the same, he did not choose to give any reply. The cheque issued by the defendant was dishonored on presentation by the plaintiff. The plaintiff has averred in the plaint that the second defendant is about to make some payments to the first defendant and that is why urgent interim relief is required. The plaintiff wants to restrain the second defendant from parting with any amount to the first defendant.

5.Upon a careful and holistic reading and consideration of the plaint averments and the affidavit averments filed in support of the interim application, I am satisfied that the plaintiff truly seeks an urgent



C.R.P(MD)No.2255 of 2024

interim relief and that there is no attempt to bypass the mandatory pre-litigation mediation and circumvent the statutory requirements.

6.In this view of the matter, the impugned order is set aside. The plaintiff is permitted to re-present the plaint, the requirements under Section 12-A of the Commercial Courts Act, 2015 is dispensed with. The Court below shall number the suit.

7.This Civil Revision Petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.09.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

Note: Issue order copy on 23.10.2024.

To

The Sub Court,
Tirunelveli.



WEB COPY



C.R.P(MD)No.2255 of 2024

G.R.SWAMINATHAN, J.

MGA

C.R.P(MD)No.2255 of 2024

18.09.2024