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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 10th July, 2024*

+ CM(M) 2883/2024

MR. GHANSHYAM KARSHANBHAI PAGHDALPetitioner

Through: Mr Gaurav Kumar with Mr. Mithilesh
Kumar Mishra and Mr. Anish
Chandra Mishra, Advocates.

versus

M/S RADHA PALLAVI EXPORTSRespondent

Through: Mr. Deepak Singh Thakur,
Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 38062/2024 (exemption)

Exemption allowed subject to all just exceptions.

CM(M) 2883/2024 & CM APPL. 38061/2024 (stay)

1. Petitioner herein is defending a commercial suit before the learned Trial Court.
2. Present petition has been filed under Article 227 of the Constitution of India praying herein that order dated 03.06.2024 be set aside.
3. Learned counsel for the respondent appears on advance notice and accepts notice on behalf of respondent.
4. I have heard both the sides.



5. The controversy, raised herein, is very limited.
6. When the suit was initially filed before the learned Trial Court and was taken up by the learned Court concerned on 16.10.2023, learned counsel for the plaintiff (respondent herein) relying on *Chandra Kishore Chaurasia vs. R.A Perfumery Works P. Ltd.:* (2022) 295 DLT 276 submitted that he was not obligated to resort to Section 12A of the Commercial Court Act, 2015 as urgent interim relief had been contemplated in the suit in question.
7. Resultantly, the Court had issued summons.
8. According to learned counsel for the defendant (petitioner herein), it was merely a recovery suit and no urgency of any kind had either been expressed or contemplated in any of the averments made in the suit. He also states that when the suit was filed and was taken up by the learned Trial Court on 16.10.2023, there was no application filed along with the suit suggesting that the plaintiff was seeking any urgent relief from the Court.
9. Accordingly, the defendant moved an application seeking recall of order dated 16.10.2023 and also sought rejection of the suit for non-compliance of the mandatory provision of Section 12A of the Commercial Courts Act, 2015.
10. The grievance of the petitioner is very specific.
11. According to him, instead of deciding the aforesaid application, the learned Trial Court has rather also directed that both the parties should appear before it for the purposes of examination under Order X of CPC. It is apprehended that the Court, instead of deciding the aforesaid application moved under Section 151 CPC which virtually



goes to the root of the matter, is proceeding further with the entire suit as such.

12. During course of the arguments, learned counsel for the respondent has stated that he would have no objection if the Court is requested to first take up the application moved under Section 151 CPC and then to deal with the suit in accordance with law. He, however, states that the suit, actually, contemplated urgent relief.

13. Suffice it to say, this Court would not make any observation in context of the aforesaid fact pertaining to Section 12A of Commercial Court Act, 2015.

14. The present petition is thus disposed of with a direction that the learned Trial Court would first take up the application moved under Section 151 CPC by the petitioner herein and then proceed further with the matter in accordance with law as per the outcome thereof.

(MANOJ JAIN)
JUDGE

JULY 10, 2024
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