

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE
(Commercial Division)

APD/15/2023
WITH
CS/197/2022

PRANOY KUMAR SAHA
VERSUS
RABINDRA NARAYAN DAS

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN

AND

The Hon'ble JUSTICE BISWAROOP CHOWDHURY

Date : 3rd March, 2025.

Appearance:

Mr. Krishna Raj Thaker, Sr. Adv.

Mr. Anupam Dasadhikari, Adv.

Mr. Suvam Sinha, Adv.

...for the appellant

Mr. Kumar Jyoti Tewari, Sr. Adv.

Mr. Niloy Sengupta, Adv.

Mr. Aniruddha Tewari, Adv.

Ms. Samriddhi Nayak, Adv.

Ms. Kausiki Bose, Adv.

...for the respondent

1. This appeal is arising out of an order dated 22nd June, 2023 passed by the learned Single in an application for revocation of plaint by revoking the leave granted under Section 12A of the Commercial Courts Act, 2015.
2. We have carefully read the plaint.
3. The claim is arising out of an agreement for sale. The plaintiff entered into a contract with the defendant on 11th April, 2019 in respect of supply of certain goods mentioned in the agreement. The plaintiff claims to have supplied materials, however, the defendant

without payment of price of goods supplied illegally terminated the contract on 9th September, 2019. The suit was filed in July, 2022.

4. In the plaint, it is alleged that the delay attributed to the plaintiff was factually incorrect and the plaintiff was not at all responsible for the said delay and by reason of such illegal termination, the plaintiff has suffered loss and damages. In the suit, under seven heads of claim, a sum of Rs.4.17 crores in aggregate have been claimed. Out of the aforesaid sum, a sum of Rs.49,31,326/- have been claimed on account of goods sold and delivered.
5. In the plaint, it is stated that despite all arrangements being made with regard to the performance of the contract, the defendant without any cogent reason withheld Rs.25 lakhs and GST thereon. The plaintiff in lieu of the works done by him continued to issue invoices to the defendant for the works that were executed. The invoices were issued between 2nd September, 2019 and 14th September, 2019.
6. The plaintiff claimed dispensation of Section 12A on the basis of the following averments:-

“43. On July 26, 2021, since the defendant has been constantly denying the rightful legitimate entitlements of the plaintiff, the plaintiff was constrained to address a complaint to the State Vigilance Commission, West Bengal inter-alia bringing to light several immoral trade practices being carried on by the defendant in collusion with the Kolkata Metropolitan Development Authority and has asked there be a proper probe in the matter. Only recently the plaintiff has been informed by one of the officers of the State Vigilance

Commission that steps in accordance with law are being taken in this matter. A copy of the letter dated July 26, 2021 is annexed hereto and marked "R".

44. Since it is likely that the plaintiff will have to appear before the State Vigilance Commission and penal action may be taken against the defendant, it is imperative that the plaintiff pursues his claims before this Hon'ble Court and secures protection of his claims forthwith since there is a sincere belief that the defendant in order to frustrate due process is making preparations to abscond.

48. In the circumstances there is grave urgency on the part of the plaintiff to seek interim reliefs in the matter and as such the plaintiff in view of the urgency as pleaded in paragraph 41 herein above seeks leave under Section 12A of the Commercial Courts Act, 2015 on account of having interim urgent interlocutory reliefs sought for."

7. Initially, leave was obtained under Section 12A of the Commercial Courts Act, 2015. Subsequently, on an application filed by the respondent for revocation of leave, the said application was allowed by the learned Single Judge. The plaint was rejected with an observation that the said rejection would not preclude the plaintiff in instituting a suit as against the defendant on the self-same cause after complying with the pre-institution mediation if otherwise permissible in law.

8. Mr. K.R. Thaker, learned senior counsel appearing on behalf of the plaintiff, submits that the learned Single Judge has failed to appreciate that the suit contemplates an urgent relief and on the basis of that leave was granted. The application for revocation was

filed on behalf of the defendant. It is submitted that even in the written statement the defendant has not evinced any intention to have the dispute resolved in mediation. Drawing attention to the averments mentioned above, it is submitted that the said averment is sufficient for a leave under Section 12A as it contemplates an urgent relief. Learned senior counsel, referring to *Yamini Manohar v. T.K.D. Keerthi* reported in (2024) 5 SCC 815, has submitted that it has been categorically held in the said decision that when a suit is filed with a prayer for urgent interim relief, it is the duty of the commercial court to find out whether the suit contemplates any urgent interim relief. It is immaterial whether any such relief would be granted ex parte or with notice or that the said application might ultimately fail, but the bona fide of the plaintiff in approaching the Court seeking leave under Section 12A would be the paramount consideration. It is further submitted that the learned Single Judge has proceeded on the basis that the suit was filed near to the period when the limitation would set in disregarding the right of the plaintiff to institute a suit within the period of limitation. The consideration for rejecting the plaint on the ground that the suit was filed close to limitation is not a ground on which the leave under Section 12A was revoked.

9. Learned counsel appearing on behalf of the respondent has submitted that by reason of the failure on the part of the plaintiff to perform the contract, the defendant has also suffered loss and damages, however, it has been submitted that in the written

statement no counter-claim has been made nor the respondent has referred the dispute to mediation.

10. At this stage, we are not concerned with the defence of the defendant. The Hon'ble Supreme Court in *Patil Automation Private Limited v. Rakheja Engineers* reported in (2022) 10 SCC 1 has conclusively held Section 12A is mandatory. However, in exceptional circumstances, the Court may dispense with such leave depending upon the frame of the suit and the relief sought.
11. In *Yamini Manohar* (Supra) while referring to the views of the Delhi High Court, it has been observed that 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 masked to wriggle out and get over Section 12A of the Commercial Courts Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff.
12. Applying the aforesaid principles and the tests, we are unable to accept the submission of Mr. Thaker that the frame of the suit contemplates any urgent relief. The contract was alleged to have been performed between 11th April, 2019 and 14th September, 2019. The contract was terminated on 9th September, 2019. There is no prayer in the suit for a declaration that the said termination is illegal. The urgency pleaded in paragraph 43 for dispensation is a veiled attempt to circumvent Section 12A. The explanation offered is unacceptable. The complaint to the State Vigilance

Commission, West Bengal with regard to alleged immoral trade practices being carried on by the defendant in collusion with the Kolkata Metropolitan Development Authority and a demand for a probe into the said activities have no relevance to the cause of action pleaded by the plaintiff for recovery of the price of goods sold and delivered and damages suffered due to alleged termination.

13. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge. However, it would be open for the plaintiff to refer the dispute to mediation and the time spent in this Court in the Commercial Division and in the Appellate Division shall stand excluded for the reasons stated above.
14. This order is subject to the appellant referring the dispute to mediation within two weeks from date. In default, the benefit under Section 14(2) of the Limitation Act shall stand recalled without any further reference to this Court.
15. We make it clear that our observations are limited to the issues involved, namely, whether the plaintiff was entitled to obtain leave under Section 12A of the Commercial Courts Act, 2015.
16. The appeal (APD/15/2023) stands disposed of.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)