

Money Suit (Commercial) 15 of 2024

Order No.15

Date:29-08-2025

Today is fixed for filing of show cause reply by the defendant-insurance company. Both parties take steps and are further duly represented by their respective Ld. Counsels.

Ld. Counsel for the defendant-insurance company files show cause reply. It is brought to the notice of the other side. No objection is raised.

Show cause reply is accepted for the ends of justice.

Record is next taken up for hearing of petition filed by the defendant-insurance company under O7 R11 CPC praying for rejection of plaint for non-compliance of PIMS under section 12A of the CCA, 2015 by the plaintiff.

Heard both sides.

Perused the p**Money Suit (Commercial) 15 of 2024**etition & the case record.

Perused the referral application filed by the plaintiff and the accompanying order of the Ld. Chairman SDLSC, Siliguri.

It is the contention of the defendant/petitioner that it cannot be said that the plaintiff in this case had properly or duly complied with the requirement of section 12A of the CCA, 2015 as no notice of PIMS was served on the defendant. Hence, plaint in the instant suit was liable to be rejected under O7 R11 CPC in light of the observations returned by the Hon'ble Apex Court in the Dhanbad Fuels Case.

On the contrary, it is the contention of the plaintiff/O.P. that having referred the matter to PIMS with the proper authority the plaintiff had duly complied with the requirement of section 12A CCA, 2015. Fact that no notice of PIMS was served on the defendant was not a fault on the part of the plaintiff and hence it cannot be said that the plaintiff herein was guilty of non-compliance of section 12A CCA. Accordingly, the petition under O7 R11 CPC should be dismissed.

Perusal of the case record clearly reveals that the plaintiff/O.P. referred the dispute to PIMS under section 12A of the CPC following the precise procedure laid down in R.3(1) of the Commercial Courts (Pre-Institution Mediation Settlement) Rules, 2018. Hence, it cannot be said that the plaintiff herein was guilty of non-compliance with the requirement of section 12A of CCA, 2015. Fact that no notice was duly served on the defendant-petitioner was certainly not attributable to the plaintiff and was also not a requirement of section 12A CCA. There was no logic behind penalizing the plaintiff for non-service of notice on the defendant.

In light thereof, this court is of the clear view that there is no merit in the submission of defendant-petitioner that the plaintiff-O.P. is guilty of intentional circumvention of the provision of section 12A of the CCA, 2015. Accordingly, there is no merit in the petition under O7 R11 CPC as well.

Hence, it is

ORDERED

that instant petition under O7 R11 CPC filed and/or preferred by the defendant-insurance company praying for rejection of plaint on the ground of intentional circumvention of the provision enshrined in section 12A of the Commercial Courts Act, 2015 is dismissed on contest but without any order as to costs.

Now, having due regard to the clear intent of the parties to the suit to mutually settle the dispute this court is of the opinion that the dispute should be referred to mediation for settlement.

Accordingly, the suit is referred for mediation.

Ld. Advocate of Siliguri Bar Association Smt. Sushmita Bose is hereby appointed as the Ld. Sole Mediator in this matter. Fees of the Ld. Mediator is hereby fixed at Rs.3000/-.

Parties to the suit are hereby directed to appear before the Ld. Mediator on **06.09.2025** for fixing up of date for mediation.

Fix **29.10.2025** for report for Ld. Mediator.

Let a copy of this order be sent to Ld. Mediator both at her E-mail address and at the E-mail address of SDLSC, Siliguri for information. Ld. Mediator be also informed over phone.

Sd/-

(Subhadeep Ray)

Judge, Commercial Court, Siliguri

J.O. Code WB00949