

MS (Com) – 9/2024

**Present: Rupanjana Chakrabarti
Judge, Commercial Court at Rajarhat,
North 24 Parganas**

**CNR: WBNP19-000011-2024
J.O Code.WB00612**

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15.01.2025**

The learned Advocate for the plaintiff appears and files hazira along with an extension petition praying for extension of ad-interim order which was in force till today.

Today is fixed for passing order in respect of the application under Order VII Rule 11 of the CPC.

The plaintiff has filed the instant suit for recovery of money.

The defendant has averred in the instant petition under Order VII Rule 11 of the CPC that a meaningful reading of the plaint reveals that the suit is vexatious and meritless and that it has been drafted with the intent of creating an illusion of a cause of action. All statements made in the plaint are false, baseless, and untrue. There is no urgency in the matter, as the alleged cause of action first arose on May 19, 2023, when the defendant/petitioner allegedly failed to clear the outstanding dues. But the suit was filed only on February 01, 2024 after a long delay from the alleged accrual of the first cause of action. The plaintiff/respondent ought to have exhausted the mandatory pre-institution mediation remedy as per section 12 A of the Commercial Courts Act 2015 before filing the suit. As such, the plaint should not only be rejected but also the suit should be dismissed.

The learned Advocate for the defendant further submitted that:

1. The suit is barred by law, specifically under the provisions of the Commercial Courts Act, 2015.
2. This Court lacks the jurisdiction to try, entertain, and/or decide the instant suit against the defendant/petitioner, and accordingly, the suit is liable to be rejected and/or dismissed.

The learned Advocate for the defendant further contended that the plaintiff further claims that the cause of action continued on October 7, 2023, when the cheques were dishonoured, and on December 13, 2023, when the plaintiff issued

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a legal notice demanding Rs. 92,94,952/- along with interest at the rate of 18% per annum, and also on December 22, 2023, when the defendant allegedly failed to clear the outstanding dues despite receiving the legal notice. However, the plaint was filed on February 01, 2024. No explanation is provided for the delay between December 22, 2023, and February 1, 2024 (approximately 41 days).

It is evident from the pleadings that the plaintiff/respondent has not sought any urgent interim relief by filing any separate application along with the plaint. There is only an averment in the plaint that the defendant is allegedly selling, alienating, encumbering, or creating third-party interests in movables and immovables, or withdrawing money from the bank account. Moreover, the plaintiff/respondent has not provided any documentary evidence to support such claims or averments in the plaint. The said averment appears to have been made deliberately to circumvent Section 12A of the Commercial Courts Act, 2015, which mandates pre-institution mediation. The intention behind this averment is only to mask the failure to comply with the statutory mandate of pre-litigation mediation.

Additionally, the plaint is silent regarding the period between May 19, 2023, and October 7, 2023 (a gap of 141 days), and from October 7, 2023, to December 22, 2023 (a gap of 76 days), during which the defendant allegedly failed to clear the outstanding dues. No explanation is provided for the delay between December 22, 2023, and February 1, 2024 (approximately 41 days). The plaintiff has filed the plaint after a delay of 256 days from the date of the alleged cause of action. In the light of this, it cannot be claimed that the plaintiff is entitled to urgent interim relief.

Furthermore, it is submitted that the plaintiff/respondent has failed to comply with the requirements of the Code of Civil Procedure, particularly with respect to the forms prescribed in Appendix-I of the First Schedule, as well as Order VI Rule 15A and Order XI Rule 3 of the Code, as amended. According to Order IV Rule (1)(3), a plaint shall not be instituted unless it complies with the requirements of Order VI and Order VII of the Code of Civil Procedure, and therefore, compliance with Order VI Rule 15A is mandatory.

In view of the above, the defendant/ petitioner has claimed that the plaint

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should be rejected under Order VII Rule 11 and hence this petition.

The plaintiff has filed written objection challenging the maintainability of the instant petition contending that this petition is false, frivolous, vexatious, harassing and is liable to be dismissed with exemplary costs.

The plaintiff contends that defendant has filed the instant application with ulterior motives, intending to evade the legitimate payments owed to the plaintiff.

The application fails to substantiate the grounds for rejection of the plaint as provided under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908. It is well-settled that, at the stage of disposal of an application for rejection of plaint under Order VII Rule 11, the contents of the plaint are to be assumed as true and correct. The defendant has not demonstrated that the suit is wholly barred under any law. In the plaint, the plaintiff has specifically pleaded the need for urgent interim relief. Moreover, the plaintiff filed a separate application under Section 12A of the Commercial Courts Act, 2015, seeking dispensation of the requirement for pre-institution mediation. This Court, after considering the urgency of the matter had allowed the application under Section 12A of the Commercial Courts Act, 2015. Furthermore, by order dated 3rd February, 2024, this Court granted an injunction restraining the defendant from selling, encumbering, or creating any third-party interest in the immovable property mentioned in the Schedule of the injunction application.

The present suit is a commercial suit seeking recovery of money for goods sold and delivered, with a specified value. The defendant is carrying on business within the jurisdiction of this Court, and therefore, this Court has both pecuniary and territorial jurisdiction to entertain, try, and determine the present suit.

The plaintiff has obtained leave under Section 12A of the Commercial Courts Act, 2015, and this Court, after considering the urgency, granted such leave by allowing the application under Section 12A and also issued an ex-parte ad-interim injunction order. The defendant has not challenged the ex-parte ad interim injunction order before the Hon'ble Appellate Court or by filing an application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908.

The plaint clearly discloses a cause of action, and the defendant has failed

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to establish that the suit is wholly barred by law in any manner. As such, the present application is devoid of merit and is liable to be dismissed with exemplary costs.

The plaintiff denies that the suit is barred by law or under the provisions of the Commercial Courts Act, 2015, or that this Court lacks jurisdiction to try, entertain, or decide the suit. The plaintiff has demonstrated the urgency required for the relief sought. Therefore, invoking Section 12A of the Commercial Courts Act, 2015, does not in any way affect the filing of the suit.

The plaintiff has a bona fide claim that has not been disputed by the defendant, entitling the plaintiff to an injunction and attachment in respect of both movable and immovable properties. It is incorrect to assert that the averments in the plaint were made with the intention to disguise or circumvent the statutory mandate of pre-litigation mediation under Section 12A of the Commercial Courts Act, 2015. The plaintiff has complied with the statutory requirements, and the suit has been filed within the prescribed period of limitation. The period between the alleged causes of action is irrelevant to the present application or to the determination of urgency by this Court.

The plaintiff has adhered to the formalities in filing the pleadings and submitting the relevant documents along with the plaint, and as such, the suit has been numbered without defect by the concerned department of this Court. The plaintiff denies that the suit is barred by law, liable to be dismissed, or should be summarily rejected. Furthermore, the plaintiff denies that the instant application was made at the earliest opportunity or without delay, as alleged.

For the reasons stated above, the defendant's application under Order VII Rule 11 of the CPC should be dismissed with exemplary costs.

Considering the facts and circumstances and the rival contentions of the two contesting sides upon hearing both sides, the contents of the instant application under order VII Rule 11 of the CPC and the written objection against the same, the plaint and the materials on record, it appears that, the scope of rejection of plaint under Order VII Rule 11 of the CPC is very limited as the Section runs thus :-

Rejection of plaint. – The plaint shall be rejected in the following cases:-

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(a) where it does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9.

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

The primary objection raised in the instant application by the defendant is that there is no explanation of delay of 256 days from the alleged first accrual of cause of action and not exhausting the remedy of pre-institution mediation as per Section 12A of the Commercial Courts Act, 2015. In this context, it appears that the ground of delay involves a mixed question of law and facts and it does not fall within the limited scope of rejection of plaint as provided under Order VII Rule 11 of the CPC.

The suit has been filed with the monetary claim of a substantial amount of more than one crore rupees and the compliance of pre-institution mediation and settlement was dispensed with by the leave granted by this Court vide Order No.2 dated 03.02.2024. On the same date, this Court had considered and allowed the prayer for ex-parte ad-interim injunction order under Order 39 Rule 1 & 2 read with Order 38 Rule 5 of the CPC filed by the plaintiff on the ground of urgency.

Section 12A of the Commercial Courts Act, 2015 runs thus :-

“A suit, which does not contemplate any urgent interim relief under this

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Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.....”

It follows that a suit which contemplates any urgent interim relief does not require any pre-institution mediation. As the leave under Section 12A of the said Act was granted by this Court and the urgency contemplated by the plaintiff was also appreciated by my learned Predecessor of this Court while granting the ex-parte ad-interim injunction order in favour of the plaintiff, there is not reason to assume that there is no urgency in filing the suit or that the suit does not contemplate any urgent interim relief.

Additionally, in view of the observations of the jurisdictional High Court in **FMAT 222 of 2024 with CAN No.1 of 2024, Shristi Infrastructure Development Corporation Limited – vs – Sarga Hotel Private Limited & Anr.** of the Hon’ble Calcutta High Court passed by the Hon’ble Justice I. P. Mukerji and the Hon’ble Justice Biswaroop Chowdhury, it appears that the plaintiff has filed the instant suit in contemplation of urgent interim relief and he has perceived an urgency. There is no reason to assume that the urgency perceived by the plaintiff is fanciful. The plaintiff has also prayed for ex-parte ad-interim injunction order as an urgent interim relief. Apprehending the urgency urged by the plaintiff in the plaint, the requirement of complying of Section 12A is dispensed with and the leave was **granted**.

After considering all aspects it appears that there is no ground of summary rejection of the plaint. The defendant has also urged that there has been non-compliance of the mandatory provisions of the prescribed forms in Appendix-I of the First Schedule, as well as Order VI Rule 15A and Order XI Rule 3 of the Code, as amended. It appears that though the said requirements are mandatory, such defects are not incurable in nature and there is no ground for outright rejection of plaint under Order VII Rule 11 of the CPC for the said defects, if any.

It appears that the instant application has not been made at the first instance. The defendant, after entering appearance in this suit has sought for several adjournments praying for time to file written objection against the application under Order 39 Rule 1 & 2 read with Order 38 Rule 5 of the CPC and written

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statement. To sum up, it appears that the factual score does not justify rejection of the plaint as sought for in the instant application and rather, the instant application deserves to be rejected on contest.

Thus, the application under Order VII Rule 11 of the CPC dated 22.04.2024 filed by the defendant is rejected on contest and the same is disposed of.

Fix **09.04.2025** for contested hearing of temporary injunction petition under Order 39 Rule 1 & 2 read with Order 38 Rule 5 of the CPC.

Let the ad-interim order be extended till the next date.

Sd/- Rupanjana Chakrabarti
Judge
Commercial Court,
Rajarhat, North 24 Parganas