

Present: Sri Utpal Misra (JO Code:WB00659)
Judge, Commercial Court at Alipore
Money Suit 20 of 2022
Renumbered as MS (Com) 60 of 2022
CNR No. WBSP18-000064-2022

Order No. 18

Date: 08.04.2024

In the matter of:

Suit for recovery of money valued at
Rs. 13,82,04,932/-.

AND

In the matter of:

Grandeur Infratech Pvt. Ltd.

Vs.

LTB Infra Consultants Pvt. Ltd. & 04
Ors.

Order

Today is fixed for passing order in respect of the application being I.A. No. 05 of 2022 and also for appearance of the defendant no. 2.

Haziras have been filed by the plaintiff and the defendant no. 3.

Now, the instant record is taken up for passing the order in respect of the application being I.A. No. 05 of 2022.

I.A. No. 05/2022

The Court: Sri Ganesh Singhania being the defendant no. 3 herein filed the captioned application under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (henceforth it is to be averred as CPC) for strike off the plaint corresponded with the instant money suit filed by the plaintiff for recovery of money from the defendants as arrayed herein.

1. The assertion as modulated by the defendant no. 3/petitioner in the instant application is ramified into two cleavages; first is that the defendant no. 3 has no involvement in any manner with the other defendants and/or the subject matter of the instant suit and, secondly, the plaintiff has skipped the essential pre-institution mediation and settlement under Section 12A of the Commercial Courts Act, 2015, therefore, the instant suit is not maintainable in law. However, during the course of hearing Ld. Counsel for the defendant no. 3/petitioner also asserted that the instant suit lacks to be a suit of commercial in nature.

2. According to the petitioner that the present petitioner being defendant no. 3 was neither a signatory to the aforesaid alleged MoU n was he ever an office bearer of defendant no. 1 company as it revealed from public documents available in the official website of the Registrar of Companies, Ministry of Corporate Affairs. The aforesaid fact of the defendant no. 3 having no nexus with the defendant no. 1 company has been evasively denied in paragraph no. 5 of the affidavit in opposition filed the plaintiff. No challenge has been even attempted to demolish the public documents downloaded from ROC forming a part of the present application. A letter purported to be reply of defendant no. 4 company represented by the defendant no. 5 to the letter of plaintiff has been so to say manufactured to somehow entangle the petitioner, that too as a director of defendant no. 1 company which he never was as records in public domain reveal. Through crafty pleadings the present petitioner has been entangled in the alleged suit for land in which he has or had no nexus whatsoever.

3. Ld. Counsel for the defendant no.3/petitioner submitted before this Court that defendant no. 3/petitioner stated that the plaint case categorically reveals that neither the plaintiff nor the defendant companies deal with land as a commodity of trade or commerce in the usual course of business. The subject matter of the present suit as it divulged from the meaningful reading of the plaint, pertains to a disputed transaction regarding purchase of a land parcel in and around city of Durgapur in the state of West Bengal. More so, from the averments as contained in paragraph no. 6 of the plaint, it is crystal clear that the subject MoU was an agreement for execution of a deed of conveyance in respect of a land parcel which definitely would be a onetime purchase and may or may not be exploited commercially. As such on the face of it, this is a suit for land and the competent civil court's jurisdiction cannot be ousted by crafty pleadings. He also contended that the plaint case further narrates that there was allegedly an unstamped, unregistered MoU apropos the aforesaid transaction with some of the defendants being only parties to such MoU.

4. Ld. Counsel for the defendant no.3/petitioner further submitted that the order no. 9 dated 04.03.2023 pointed out by the plaintiff does not grant specific leave under Section 12A of CCA which is mandatory as has been laid down by the Hon'ble supreme Court of India. Moreover, the present application for demur had already been registered before such date and since it raised the question of maintainability, it had to be dealt first before any other interlocutory application.

5. *Per contra*, the contention of the plaintiff/respondent is thatthe defendant no. 3 being a close associate and part of the dealings in respect of the subject matter of

suit, therefore, cannot claim having no involvement at this stage without proper trial and the same has been categorically stated by the plaintiff in the plaint. Plaintiff/respondent further stated that in its plaint that the defendant no. 3 has been introduced to the plaintiff as one of the directors of the defendant no. 1, so also was instrumental in the entire dealings, as such the defendant no. 3 is clearly a close associate and part of the dealings in respect of the said MoU. Moreover, by the letter dated 10.07.2019, the defendant no. 5 has clearly stated the involvement of the defendant no. 3 in the matter.

6. Ld. Counsel for the plaintiff/respondent submitted before this Court that the urgency as stated by the plaintiff, the procedure laid down in Section 12A of the CCA, was dispensed with vide order no. 9 dated 04.03.2023 of this Court, as such the instant plaint cannot be rejected on that ground. Sub-clause (i) of Section 12A of the CCA clearly stipulates that a, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation. It can clearly be concluded that in case of a suit contemplating urgent interim relief, such as the present lis, pre-litigation mediation is not mandatory/necessary.

7. In support of above contention, Ld. Counsel for the plaintiff/respondent referred to the decision of the Hon'ble Supreme Court of India arising out of a SLP (Civil) Diary No. 32275 of 2024 (*Yamini Manohar vs. TKD Keerthi*) wherein the Hon'ble Apex Court held as "*In the present case, it is an accepted fact that an urgent interim relief has been prayed for and the condition that the plaint "contemplates" an urgent interim relief is satisfied. Therefore, the impugned judgment/order of the Delhi High Court dated 08.05.2023, which upholds the order of the District Judge (Commercial Court) -01, South District at Saket, New Delhi dated 06.02.2023, rejecting the application under Order VII Rule 11 of the Code, is correct and in accordance with law*".

8. It appears from the case record that by an order no. 09 dated 04.03.2023 this Court disposed of I.A. No. 01 of 2022 which has been filed by the plaintiff under Section 12A of CCA. So, the procedure laid down in Section 12A of the CCA, was dispensed with vide order no. 9 dated 04.03.2023 of this Court, as such the instant plaint cannot be rejected on that ground.

9. The plaintiff has categorically stated in its plaint that the defendant No. 3 has been introduced to the plaintiff is one of the directors of the defendant no.1, so also was instrumental in the entire dealings, if that be so then, the defendant No. 3 is well

associated with defendant no. 1. Moreover, the defendant No. 3 is at all involved in the entire dealings or not, is the subject matter of the trial.

10. So, from the discussions made in the foregoing paragraphs, this Court is of the view that the manner in which the case has been made out and upon meaningful reading of the pleadings made in the plaint, I have no other option but to reject the application under Order VII Rule 11 read with Section 151 of the CPC filed by the defendant no.3 being I.A. No. 05 of 2023 on contest without any order as to cost.

11. The I.A. No. 05 of 2023 is thus, accordingly disposed of on contest without any order as to costs.

Fix the matter on 16.05.2024 at 11:00 a.m. for further order.

Parties to act on the basis of the downloaded copy of the order sheet from the website/E-court App.

Dictated and corrected by me,

Sd/-

Judge, Commercial Court at Alipore,
for South 24 Parganas, Purba Medinipur,
Paschim Medinipur&Jhargram

Sd/-

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for South 24 Parganas, Purba Medinipur,
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