

Present: Sri Srikumar Goswami (JO Code- WB00714)

Judge, Commercial Court at Alipore.

Money Suit 21/2022

CNR no. WBSP18-000068-2022

Order no. 02

21.05.2022

In the matter of :

Suit for recovery of money
and declaration valued at
Rs. 2,53,46,146/-.

And

In the matter of :

Ultimate Digital Solutions
Pvt. Ltd.

Vs.

In the matter of :

Indian Oil Corporation Ltd.

Appearance for the Plaintiff:

Mr. Shib Shankar Banerjee ... Ld. Counsel (virtually).

Ms. Arijita Ghosh ... Ld. Counsel.

Mr. Abdus Salam Kayal ... Ld. Counsel.

ORDERED

(Through Hybrid Mode)

- 1. The record is put-up today by a petition on behalf of the Plaintiff.*
- 2. In compliance to order dated 20.05.2022, Plaintiff files requisites.*
- 3. Issue summons accordingly within 24 hours positively by any accepted mode.*
- 4. The Plaintiff is also directed to issue notice relating to the instant suit alongwith the plaint, all annexures and all relevant documents at once preferably through Email or Whatsapp or*

any other mode as prescribed by the Hon'ble Supreme Court of India and is further directed to file affidavit of service on 30.05.2022, considering the ensuing Summer Vacation.

5. *Postal receipts at once.*

I.A. no. 01/2022

1. *The Ld. Counsel appearing on behalf of the Plaintiff/Petitioner, moves the present application for granting of leave under Section 12A of the Commercial Courts Act, as amended from time to time on the ground that some urgent relief is sought for in order to protect the interest of the Plaintiff/Petitioner.*
2. *Heard.*
3. *It appears that the suit contemplates an urgent relief by filing necessary application for attachment under Order XXXIX Rule 1 & 2 read with Section 151 CPC and therefore, the leave as sought for is granted.*
4. *Accordingly, the instant I.A. is disposed of.*

I.A. No. 02/2022

1. *At this stage, the Ld. Counsel of the Plaintiff/Petitioner, moves the application under Order XXXIX Rules 1 & 2 read with Section 151 CPC in terms of prayers of the said application.*
2. *The Ld. Counsel of the Plaintiff/Petitioner at this stage, moves the instant application praying for ad-interim order in terms of the prayers of the instant application.*

3. *Office noted that there is no caveat against any party in the instant case.*
4. *Considering the ensuing Summer Vacation, issue notice returnable by 07.06.2022.*
5. *Affidavit of service to be filed on 30.05.2022, considering the ensuing Summer Vacation.*
6. *The Petitioner is also directed to issue notice relating to the instant application alongwith all annexures and all relevant documents at once through Email or Whatsapp.*
7. *I have heard the Ld. Counsel as well as perused all relevant documents as annexed with the plaint as well as with the instant application.*
8. *Perused and considered the present application.*
9. *From the submission of the Ld. Counsel for the Petitioner, it appears that:*
 - i. *On or about 2016, a Notice Inviting Tender being no. HMLAA16938 was issued by the Respondent in respect of which the Petitioner had placed its bid and emerged as the successful bidder and accordingly, a letter of acceptance dated 28.07.2016 was issued by the Respondent to the Petitioner for carrying out miscellaneous and periodic maintenance jobs through unskilled and semi-skilled manpower for a term starting from August, 2016 till July, 2017 at the Respondent's Refinery at Haldia having a total contract value of Rs.4,81,01,268.86p inclusive of all relevant taxes.*

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ii. Being alarmed that the workmen would go on strike and that the works at the said Refinery would be brought to a standstill, the Respondent issued a letter dated 15.12.2016 directing the Petitioner to accept the demands made by the said workmen and accordingly, the Petitioner was constrained to succumb to the excessive payments of wages to be made to the said workers.

iii. Upon satisfactory completion of the above works, a Completion Certificate dated 06.11.2017 was issued by the Respondent to the Petitioner.

iv. However, the Respondent has proceeded to wrongfully and unlawfully withhold the payment of the bills raised by the Petitioner and an amount of Rs.2,53,46,146/- including interest is due and payable by the Respondent to the Petitioner.

v. Accordingly, the Petitioner has filed the instant application praying for an ad-interim order upon the Respondent to furnish cash security equivalent to the above claim amount before this Court and the Petitioner be granted liberty to withdraw the same as may be required by furnishing a bank guarantee of equivalent amount before this Court.

10. However, this is purely a suit for recovery of money and till judicial determination of such amount, there is very limited scope for this Court to pass any ad-interim order of injunction at this stage without giving any opportunity to the other side.

11. Also, the Respondent/Defendant is a statutory organization and in case decree is passed in favour of the

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Petitioner/Plaintiff, there is no chance of evading the same by the Respondent. Further, the present dispute arose during the year 2018 and the present suit has been filed after expiry of nearly 3½ years. Also, on perusal of the instant injunction application, I do not find any extreme urgency to issue direction upon the Respondent, which is a statutory organization, to furnish any cash security without giving any opportunity of hearing to the Respondent.

12. Accordingly, at this stage, the ad-interim prayer for injunction is hereby considered and refused.

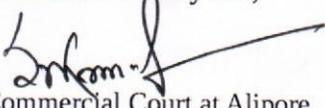
13. Both sides have the liberty to make necessary application for modification of this order in case of emergency after service of notice upon the other side.

14. Issue notice accordingly to show cause as to why the instant application shall not be allowed alongwith plaint, instant application and all annexures within 24 hours and the Plaintiff/Petitioner is also directed to file the affidavit of service within 30.05.2022, considering the ensuing Summer Vacation.

*15. In view of the above order, the date fixed vide order dated 20.05.2022 is hereby modified to **07.06.2022 at 1 p.m.** for S/R, appearance, filing affidavit-in-opposition, if any, and also for hearing.*

16. Both sides shall act on the basis of downloaded copy of this order from the website / Ecourts App.

Dictated and corrected by me,


Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

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Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
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