

Present: Sri Utpal Misra (JO Code:WB00659)
Judge, Commercial Court at Alipore
Title Suit 30/2023
CNR No. WBSP18-000146-2023

Order No. 02

Date: 05.10.2023

In the matter of:

Suit for declaration, perpetual
and mandatory injunction and
other appropriate reliefs
valued at Rs. 1,20,00,000/-.

AND

In the matter of:

Prakash Bhutoria.

Vs.

Tirupati Carrier Limited and
02 Ors.

Appearance for the Petitioner/Plaintiff:

Mr. Abhrajit Mitra, Ld. Sr. Advocate.

Mr. Satadeep Bhattacharyya.

Mr. Antarup Banerjee.

...Ld. Advocates

Order

The instant record is put up today on the prayer of the Plaintiff intending to move the applications being I.A. No. 01 of 2023 and I.A. No. 02 of 2023.

Plaintiff files hazira.

I.A. No. 01 of 2023

Mr. Mitra, Ld. Sr. Counsel appearing for the Petitioner moves the present application seeking for exemption from pre-institution mediation and settlement by grating of leave under Section 12A of the Commercial Court 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 Petitioner.

I have heard the submission as made by the Ld. Sr. Counsel in respect of the present application being no. I.A. No. 01 of 2023 at great length and perused and considered.

On *prima facie* contemplation, it appears that the suit contemplates an urgent relief by filing necessary application under Order XXXIX Rule 1 and 2 read with Section 151 of CPC. Therefore, the leave as sought for by the Plaintiff in this instant interlocutory application is granted.

Accordingly, the instant interlocutory application being no. 01 of 2023 is hereby **disposed of**.

I.A. No. 02 of 2023

The instant application is filed by the Petitioner/Plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908.

On conjoint reading of the instant application as well as the plaint it is found that the Plaintiff/Petitioner had filed the instant suit for declaration, perpetual and mandatory injunction, *inter alia*, claiming for the reliefs as prayed for therein.

So, it is to be, *ex facie*, said that the prayers as prayed for in the injunction application as well as the plaint are in the nature of permanent reliefs not in the temporary and/or *ad interim* form.

On the course of hearing, Mr. Mitra, Ld. Sr. Counsel appearing for the Petitioner/Plaintiff also submits before this Court that as the reliefs as sought for in the instant application as well as the plaint are in the nature of permanent form so, presence of the Respondents/Defendants is necessary before granting such reliefs. However, he prays for a short returnable date instead of the date as fixed on 29.11.2023, as per the convenience of this Court.

Heard.

Therefore, this Court is of the view that before giving any *ad interim* relief, Defendants/Respondents should be given a liberty to produce their case before this Court.

As such, Plaintiff/Petitioner is directed to serve the copy of the instant application as well as plaint upon the Defendants/Respondents and also to file the affidavit of compliance to such effect within 24 hours.

Considering the instant case, the date fixed on 29.11.2023 is hereby preponed.

Post the matter on 12.10.2023 at 1:00 P.M. for S/R, A/D appearance of the Defendants/Respondents and also for hearing. Defendants/Respondents shall have liberty to file affidavit-in-opposition in respect of injunction application being I.A. No. 02 of 2023 on that date.

Both the parties are to act forthwith on the basis of the downloaded copy of this Order.

Dictated and corrected by me

Sd/-

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

Sd/-

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