

OCD-79

ORDER SHEET

CS-COM/525/2024
[OLD NO. CS/142/2023]
IA NO: GA-COM/1/2024

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
[COMMERCIAL DIVISION]

MARUTI PACKAGES PVT LTD.
VS
JMV POLYMER LIMITED

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date : September 24, 2024.

Appearance :

Mr. Shiv Ratan Kakrania, Adv.
Mr. Ratul Das, Adv.
Mr. Karamjeet Sharma, Adv.
Ms. Shreya Goenka, Adv.
...for the plaintiff.

Mr. R.S. Tiwari, Adv.
Mr. Anubhav Sinha, Adv.
Ms. Sruti Shaw, Adv.
...for the defendant.

The Court: Mr. Shiv Ratan Kakrania, learned Counsel, is appearing for the plaintiff and Mr. R. S. Tiwari, learned Counsel, is appearing for the defendant.

The matter is fixed today for witness action.

Counsel for the defendant has filed an application being GA-COM/1/2024 praying for leave to participate in mediation process with respect of the claim raised by the plaintiff before the Mediation Centre, High Court at Calcutta.

Counsel for the defendant submits that the defendant has received the Non-Starter Report on 6th May, 2023 and immediately thereafter, the defendant had sent an e-mail to the Mediation Centre intimating that the defendant has not received any notice of mediation and without hearing the defendant, Non-Starter Report has been issued on 29th April, 2024 and requested to give an opportunity to the defendant to appear before the Mediation and Conciliation process initiated by the plaintiff.

Per contra, Counsel for the defendant has drawn the attention of this Court to the e-mail sent by the Members Secretary of Mediation Centre to the defendant at the e-mail address mlakhotia17@gmail.com on 5th April, 2023 with the notice intimating that the mediation process will be held on 12th April, 2023 at 12:30 pm at the Mediation Centre, High Court at Calcutta.

In the said notice, it is also mentioned that failure to appear before authority or not sending any e-mail in this record would be deemed as their refusal to participate in the mediation process initiated by the plaintiff.

The defendant has not appeared before the mediation on 12th April, 2023 in terms of the e-mail dated 5th April, 2023. Again on 17th April, 2023, Members Secretary has sent e-mail to the defendant in the same e-mail Id informing the date of hearing on 25th April, 2023 at 2:30 pm but in spite of receipts of second notice also, the defendant had not appeared before the mediation and on 29th April, 2023 Non-Starter Report has been submitted. Non-Starter Report was also communicated to the defendant as well as to the plaintiff.

On receipt of the Non-Starter Report, the plaintiff has filed the present suit. After filing of the suit, the plaintiff had lodged the writ of summons. The defendant has also received writ of summons but the defendant failed to appear in the suit and the suit is proceeding undefended.

Considering above, this Court finds that the averments made in the application being GA-COM/1/2024 are totally misleading contrary to record and had made facts statement as affidavit.

In view of the above, GA-COM/1/2024 is dismissed with the cost of Rs.25,000/-.

The defendant is directed to pay this cost to the State Legal Service Authority within a week from date.

The plaintiff's witness is present.

The plaintiff has filed examination in chief on affidavit as well as Judge's Brief of Documents after serving copy to the learned Counsel for the defendant. Let the same be kept with record.

Plaintiff's witness is examined in part.

As per prayer of the Counsel for the plaintiff, examination in chief of the plaintiff's witness is deferred.

List this matter on 2nd December, 2024 at 2:00 pm for further evidence.

(KRISHNA RAO, J.)