(2025) 05 CAL CK 0818

In the Calcutta High Court, Original Side

Case No : IA. No. G.A. 2 Of 2023 In C.S. (Com) No. 389 Of 2024 (Old No. C.S. 137 Of 2022)

Perfecto Electricals and Ors — APPELLANT

Vs

Rail Vikas Nigam Limited (RVNL) and Ors — RESPONDENT

Date of Decision : 02-05-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 7 Rule 11
Arbitration and Conciliation Act, 1996 — Section 9
Commercial Courts Act, 2015 — Section 12A, 12A(1), 12A(2)

Citation : (2025) 05 CAL CK 0818

Hon'ble Judges : Krishna Rao, J

Bench : Single Bench

Advocate : Joy Saha, Avishek Guha, Ishaan Saha, Ankush Majumder, Debraj Sahu, R. Sengupta, Abhishek Banerjee

Final Decision : Dismissed

Judgement

Krishna Rao, J

1. The defendant no. 2 has filed the present application being G.A. No. 2 of 2023 praying for revocation of leave granted for dispensation of requirement of Section 12A of the Commercial Courts Act, 2015 and for rejection of plaint.

2. Mr. Debraj Sahu, Learned Advocate representing the defendant no.2 submits that solely on the basis of the averments made in paragraph 78 of the plaint, the plaintiffs have obtained leave for dispensation of the provisions of Section 12A of the Commercial Courts Act, 2015. He submits that the plaintiffs have prayed for dispensation on the ground that mediation or settlement in the matter had failed and there was no further scope for mediation and that the defendant no.1 had already terminated the agreement and invoked the bank guarantee and received payment of the same and there is no scope for mediation/ settlement. He further submits that the plaintiffs also alleged that there are several insolvency cases and proceedings have been filed by various parties against the defendant no.2.

3. Mr. Sahu submits that the defendant no. 2 only after filing of the application for rejection of plaint and revocation of leave, the plaintiffs have filed an application for grant of interim relief. He submits that the plaintiffs have obtained leave for dispensation for compliance of requirements of Section 12A of the Commercial Courts Act, 2015 upon misrepresentation.

4. Mr. Sahu submits that the conduct of the plaintiffs clearly establishes that the plaintiffs never had any urgency in filing the suit without having exhausted pre-institution mediation. He submits that in the plaint also there is no prayer for any perpetual injunction or mandatory injunction or any urgent interim relief. In support of his submissions, he has relied upon an unreported judgment in the case of Mazhar Hussain Vs. M/s India Construction Company and others dated 13th April, 2023 in APOT No. 90 of 2023. In the said case, the Hon'ble Division bench of this Court held that "there is no prayer either for perpetual or mandatory injunction in the plaint though an omnibus way of incorporating the word "injunction" in the plaint is adopted which, in our opinion, does not satisfy the basic ingredients required to be pleaded for the purpose of dispensation of the provisions contained in Section 12A of the Act".

5. Mr. Sahu relied upon the judgment in the case of Yamini Manohar Vs. T.K.D. Keerthi reported in (2024) 5 SCC 815 and submitted that the plaintiff does not have the absolute right to paralyze Section 12A of the Commercial Courts Act, 2015.

6. Mr. Sahu relied upon the judgement in the case of Patil Automation Private Ltd. and Others Vs. Rakheja Engineers Private Limited reported in (2022) 10 SCC 1 and submitted that in a clear case, where on allegations in the suit, it is found that the suit is barred by any law, as would be the case, where the plaintiff in a suit under the Commercial Courts Act, 2015, does not plead circumstances to take his case out of the requirement of Section 12A of the said Act, the plaint should be rejected without issuance of summons. He further submits that even on issuance of summons, it will be always open to the defendant to make an application as well under Order 7 Rule 11 of the CPC.

7. Per Contra, Mr. Joy Saha, Learned Senior Advocate representing the plaintiffs submits that the plaintiffs have sought for leave for dispensation of the provisions of Section 12A of the Commercial Courts Act, 2015, on the grounds that several attempts were made to resolve the disputes amicably and through mediation but had failed. The contracts in respect of both packages II and III had already been terminated by the defendant no.1 and the work had already been awarded to third (3rd) parties. The defendant nos. 1 and 2 having terminated the contract of the plaintiffs and illegally and wrongfully invoked the bank guarantee and received payments. He submits that three insolvency proceedings were pending against the defendant no.2 before the NCLT at the time of filing of the suit.

8. Mr. Saha submits that immediately after termination of contract and invocation

of bank guarantee, the plaintiffs has initiated proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 on 7th December, 2017 but the same was dismissed on 8th December, 2017. He submits that after dismissal of the application under Section 9 of the Arbitration and Conciliation Act, 1996, the plaintiffs have filed a suit before the Alipore Court on 20th September, 2018 with respect to Package II and Package III for recovery of money. The suit filed by the plaintiffs was withdrawn on 10th October, 2018.

9. Mr. Saha submits that after withdrawal of the suit from the Alipore Court, the plaintiffs have filed the present suit. He submits that the instant suit filed by the plaintiffs is continuous to the proceeding initiated by the plaintiffs under Section 9 of the Arbitration and Conciliation Act, 1996 as the plaintiffs have filed Section 9 application for urgent relief which justifying the grant of leave for dispensation of provisions of Section 12A of the Commercial Courts Act, 2015 on 6th July, 2022.

10. Mr. Saha submits that the law requires that the plaint must only contemplate or indicate the need for urgent reliefs. He submits that there is no requirement of law that the interim reliefs prayed for are likely to succeed, interim orders prayed for, if not granted, will justify any order of dismissal of the suit or the suit can be dismissed under Order VII Rule 11 merely because interim reliefs, post argument is denied on merit. In support of his submissions, Mr. Saha relied upon the following judgements:

i. Yamini Manohar Vs. T.K.D. Keerthi reported in (2024) 5 SCC 815.

ii. Gavrill Metal Pvt. Ltd. Vs. Maria Fabricators Pvt. Ltd. reported in MANU/ WB/1793/2023.

iii. Shristi Infrastructure Development Corporation Ltd. Vs. Sarga Hotel Private Ltd. reported in MANU/WB/1688/2024

iv. Kohinoor Seed Fields India Pvt. Ltd. Vs. Veda Seed Sciences Pvt. Ltd. & Anr. reported in MANU/ TL/1081/2024.

11. Mr. Saha submits that in the Commercial Courts Practice Direction, 2021, there is no provisions for revocation of leave already granted under Section 12A of the Commercial Courts Act, 2015. He submits that in the absence of any provisions in the Practice Direction for revocation of the leave granted under Section 12A of the Commercial Courts Act, 2015, is not maintainable.

12. Heard the Learned Counsel for the respective parties, perused the materials on record and the judgements relied by the parties. In paragraph 78 of the plaint, the plaintiffs have pleaded leave for dispensation of the provisions of Section 12A of the Commercial Courts Act, 2015 which are as follows:

i. The plaintiffs have made several attempts to resolve the disputes by and between the parties amicably and through mediation but the defendants ignored the same. As regard to the package 3, has already been reallotted to third party thus, there is no possibility of any further mediation and settlement.

ii. The defendant no.1 already terminated the agreement and illegally and fraudulently invoked and received payment of the Bank Guarantee, thus there is no chance of settlement.

iii. Numerous insolvency proceedings have been filed by various parties against the defendant no.2 and as such urgent reliefs are required against the defendants to preserve and protect the rights and claim of the plaintiffs.

13. Apprehending that the defendant no. 2 is in collusion with the defendant no.1 would invoke the Bank Guarantee furnished through the State Bank of India on behalf of the plaintiff no.1 with respect to Package -3, the plaintiffs have filed an application before this Court under Section 9 of the Arbitration and Conciliation Act, 1996 being A.P. No. 1050 of 2017, praying for an order of injunction restraining the defendant no.2 from invoking the Bank Guarantee but the plaintiffs could not succeed to get any order in the said proceeding and on 8th December, 2017, the application filed by the plaintiffs was dismissed.

14. After dismissal of the application filed by the plaintiffs under Section 9 of the Arbitration and Conciliation Act, 1996, the plaintiffs have filed a suit being Title Suit No. 320 of 2018 before the Learned Civil Judge, Senior Division, Alipore, South 24 Parganas on 20th September, 2018 but on 10th October, 2018, the plaintiffs have withdrawn the suit with the liberty to file afresh.

15. After withdrawal of the suit from the Learned Court, the plaintiffs have filed the present suit before this Court on 21st May, 2022 but the same was presented on 6th July, 2022 and leave for dispensation of the requirement under Section 12A of the Commercial Courts Act, 2015 was also granted on the same day.

16. The plaintiffs have made out a case that the plaintiffs have made numerus attempts to resolve the disputes by and between the parties amicably and through mediation but the defendants have ignored/ disregarded the same.

Section 12A of the Act of 2015 has been introduced to the Act of 2015 by an amendment. It has been introduced to the Act of 2015 with retrospective effect from May 3, 2018. Sub-Section (1) of Section 12A of the Act of 2015 has required the plaintiffs to exhaust the remedy of pre-institution mediation to institute a suit which may fall within the purview of the Act of 2015. Sub-Section (2) of Section 12A has required the Central Government to authorize the Authorities constituted under the Legal Services Authority Act, 1987 for the purposes of pre-institution mediation. In exercise of powers conferred under Sub-Section (2) of Section 12A of the Act of 2015, the Central Government has by a notification dated July 3, 2018, published in the Gazette of India on July 3, 2018, authorised the State of Authority and the District Authority constituted under the Legal Services Authorities Act, 1987 for the purposes of pre-institution mediation and settlement under Chapter IIIA of the Act of 2015, i.e., Section 12A of the Act of 2015.

The plaintiffs have not disclosed that the plaintiffs have approached for mediation and notices were served to the defendants and the defendants inspite of receipt of notice, failed to come forward for settlement through mediation. Thus, the contentions raised by the plaintiffs cannot be said to be true.

17. At first on 7th December, 2017, the plaintiffs have filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 but on the very second day, the said application was dismissed. After dismissal of the said application, the plaintiffs have not taken any steps till 19th September, 2018 i.e. about nine months, on 20th September, 2018, the plaintiffs have filed a suit before the Learned Court of Civil Judge, Senior Division, Alipore but on 10th October, 2018, the said suit was dismissed as withdrawn with the liberty to file afresh. The plaintiffs have filed the present suit on 21st May, 2022 and was presented for admission on 6th July, 2022. The plaintiffs have withdrawn the earlier suit from the Learned Court of Civil Judge, Senior Division, Alipore on 10th October, 2018 but has filed the present suit after the period of more than three and half years.

18. The suit which was filed before the Learned Court of Alipore and before this Court, the prayers are mostly similar. All the claims of the plaintiffs in the present case is of 2017 to 2019 as appearing in paragraphs 52, 53, 54, 56, 58, 59 and 60 of the plaint. In the present suit, the plaintiffs have not prayed for any urgent interim relief. The plaintiffs at the time of hearing of the present application have handed over the order passed by the Learned National Company Law Tribunal to establish that against the defendant no. 2, the operational creditor has initiated proceeding under the Insolvency and Bankruptcy Code, 2016 but from the said order, it reveals that the same was filed in the year 2018.

19. In the case of Shristi Infrastructure Development Corporation Limited reported in MANU/WB/1688/2024, the Hon'ble Division Bench of this Court held that:

"33. Please note the wording of12A(1). The legislature does not mention "plaint". It uses the word "suit". It employs the word "contemplation". Hence it avoids such words as "averments or statements in the plaint". In other words, the legislature does not say that from the statements or averments in the plaint urgent reliefs obtainable by the plaintiff should be apparent. I would interpret the Section as suggesting that if at the time of presentation of the plaint before the judge from the averment in the plaint and an affidavit to be filed by the plaintiff it would appear that in the contemplation of the plaintiff a situation for urgent relief might arise in the period when mediation has to be undergone, the court may allow the plaintiff to institute the suit without mediation.

34. On the basis of the declaration that urgent relief is contemplated, the plaintiff should be allowed to present the plaint. The court should not ordinarily interfere with such assertion unless it is shown to be palpably erroneous or mala fide. Once, the plaintiff is allowed to file a suit without pre-litigation mediation the discretion of the court should not be allowed to be interfered with at a later

stage. Otherwise the proceedings are likely to become very dilatory. Even after filing of the suit the parties can be referred to mediation, if the facts so warrant.”

20. In the case of Garvill Metal Pvt. Ltd. vs. Maira Fabricators Pvt. Ltd. reported in MANU/WB/1793/2023, the Hon’ble Division Bench of this Court held that :

“14. The section stipulates three months' time from the date of the application of the plaintiff which can be further increased by two months with the consent of parties for completion of the mediation process. Take the example of a suit for recovery of money lent and advanced. The defendant debtor has huge debts in the market. Several claims of creditors against him are pending. When the plaintiff is contemplating filing of the suit against him, he is in the process of transferring his immovable property so as to defeat the claim of the defendant as well as other creditors. Immediately with the filing of the suit, the plaintiff needs to move an interim application and obtain an order restraining the defendant from transferring the property and for the property to be taken possession of by a receiver to be appointed by the court.

15. Now, if the plaintiff is to undergo mediation compulsorily, the defendant might keep it pending for three months. For three months the plaintiff would be unable to institute the suit and hence, unable to obtain any relief. In the meantime, the defendant could be successful in transferring the property, thus defeating the claim of the plaintiff. Hence, the justification for the exception in Section 12A that in suits contemplating urgent reliefs pre-litigation mediation could not be required.

16. The legislature, in my opinion, has used the expression "contemplated" to express the intention that an interim relief may be required at the time of filing of the suit or may be required any time the defendant expresses an intention to do some act to defeat the decree to be passed.”

21. Recently another Division Bench of this Court in the case of Asa International India Microfinance Ltd. Vs. Northern ARC Capital Ltd. & Anr. passed in FMAT No. 3 of 2025 dated 17th January, 2025 taking into consideration of the judgments in the case of Gavrill Metal Pvt. Ltd. (supra) and Shristi Infrastructure Development Corporation Limited (supra) and held that:

“10. In this context, the legislative intent of the phrase “an urgent relief” and the expression “contemplate” are to be understood and applied.

11. Contemplation thus would not mean an instant immediacy but the prejudice and the irreparable loss and injury that the plaintiff is likely to suffer if the plaintiff is made to wait for pre-litigation mediation. The Court has to examine whether the facts and circumstances justify a genuine apprehension as opposed to a camouflage of an irreparable injury the plaintiff is likely to suffer.

16. Pre suit correspondence and conduct between the parties can be indicative of existence of genuine apprehension in the mind of the plaintiff since any further delay might cause irreparable and irretrievable prejudice to the plaintiff as there

might be every likelihood of the assets and properties being dissipated or alienated”

22. In the case of Yamini Manohar (supra), the Hon’ble Supre Court held that:

“10. We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine the nature and the subject-matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12-A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order 7 Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order 7 Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely : (i) prima facie case, (ii) irreparable harm and injury, and (iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.

11. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyse Section 12-A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The proposition that the commercial courts do have a role, albeit a limited one, should be accepted, otherwise it would be up to the plaintiff alone to decide whether to resort to the procedure under Section 12-A of the CC Act. An “absolute and unfettered right” approach is not justified if the pre-institution mediation under Section 12-A of the CC Act is mandatory, as held by this Court in Patil Automation.

12. The words “contemplate any urgent interim relief” in Section 12-A(1) of the CC Act, with reference to the suit, should be read as conferring power on the court to be satisfied. They suggest that the suit must “contemplate”, which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and ensure that the legislative object/intent behind the enactment of Section 12-A of the CC Act is not defeated.”

23. In the present case though the plaintiffs have prayed for leave for dispensation of the provision of Section 12A of the Commercial Courts Act, 2015 but considering the plaint as a whole, the documents relied by the plaintiffs and the cause of action for filing of the suit, this Court finds that initially on the same cause of action, the plaintiff has filed an application under Section 9 of the

Arbitration and Conciliation Act, 1996 on 7th December, 2017 and on dismissal of the same, the plaintiff has filed a suit before the Alipore Court on 20th September, 2018 and after withdrawal of the suit on 10th October, 2018, the plaintiff has filed the present suit on 21st May, 2022. The plaintiff also not prayed for any interim urgent relief in the plaint. Thus, from the facts and circumstances of the present case, this Court finds that the judgments relied by the plaintiffs in the case of Shristi Infrastructure Development Corporation Limited (supra) and Gavrill Metal Pvt. Ltd. (supra) are distinguishable. The judgments relied by the defendants in the case of Mazhar Hussain (supra) and Asa International India Microfinance Ltd. (supra) are squarely applicable in the present case.

In view of the above, this Court did not find any contemplation of urgent relief.

24. Another contention raised by the plaintiffs is that there is no provisions for revocation of leave already granted under Section 12A of the Commercial Courts Act, 2015. It is true that in the Calcutta High Court Commercial Courts Practice Direction, 2021, there is no provisions for revocation of leave granted for dispensation of provisions of Section 12A of the Commercial Courts Act, 2015. Order VII, Rule 11 of the Code of Civil Procedure, 1908, has not amended. The Commercial suits also governed under the Code of Civil Procedure, 1908. Order VII, Rule 11 of the Code of Civil Procedure, 1908 reads as follows:

"O. VII. R. 11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

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

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to 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 returned 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-paper 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 for correcting the valuation or supplying the requisite stamp-paper, 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.]"

In the case of Madiraju Venkata Ramana Raju Vs. Peddireddigari Ramachandra Reddy reported in (2018) 14 SCC 1, the Hon'ble Supreme Court held that :

"24. Ordinarily, an application for rejection of election petition in limine, purportedly under Order 7 Rule 11 for non-disclosure of cause of action, ought to proceed at the threshold. For, it has to be considered only on the basis of institutional defects in the election petition in reference to the grounds specified in clauses (a) to (f) of Rule 11. Indeed, non-disclosure of cause of action is covered by clause (a) therein. Concededly, Order 7 CPC generally deals with the institution of a plaint. It delineates the requirements regarding the particulars to be contained in the plaint, relief to be specifically stated, for relief to be founded on separate grounds, procedure on admitting plaint, and includes return of plaint. The rejection of plaint follows the procedure on admitting plaint or even before admitting the same, if the court on presentation of the plaint is of the view that the same does not fulfil the statutory and institutional requirements referred to in clauses (a) to (f) of Rule 11. The power bestowed in the court in terms of Rule 11 may also be exercised by the court on a formal application moved by the defendant after being served with the summons to appear before the Court. Be that as it may, the application under Order 7 Rule 11 deserves consideration at the threshold."

25. In the case of Patil Automation Private Limited (supra), the Hon'ble Supreme Court held that:

"94.3. Order 7 Rule 11 does not provide that the court is to discharge its duty of rejecting the plaint only on an application. Order 7 Rule 11 is, in fact, silent about any such requirement. Since summon is to be issued in a duly instituted suit, in a case where the plaint is barred under Order 7 Rule 11(d), the stage begins at that time when the court can reject the plaint under Order 7 Rule 11. No doubt it would take a clear case where the court is satisfied. The Court has to hear the plaintiff before it invokes its power besides giving reasons under Order 7 Rule 12. In a clear case, where on allegations in the suit, it is found that the suit is barred by any law, as would be the case, where the plaintiff in a suit under the Act does not plead circumstances to take his case out of the requirement of Section 12-A, the plaint should be rejected without issuing summons. Undoubtedly, on issuing summons it will be always open to the defendant to make an application as well under Order 7 Rule 11. In other words, the power under Order 7 Rule 11 is available to the court to be exercised suo motu."

26. In the present case, though at the time of presentation of plaint, this Court granted leave for dispensation of requirement of Section 12A of the Commercial Courts Act, 2015 but on receipt of writ of summons, the defendant no. 2 filed the present application for revocation of leave and for rejection of plaint. The plaintiffs have given an opportunity of hearing of the present application and the plaintiffs have also filed affidavit-in-opposition to the present application. Considering the above, this Court finds that the issue raised by the plaintiffs that there is no provisions for revocation of leave is not sustainable in view of the

provisions of Order VII, Rule 11 of the CPC.

27. In view of the above, leave granted for dispensation of requirement of Section 12A of the Commercial Courts Act, 2015 dated 6th July, 2022, is hereby revoked. G.A. No. 2 of 2023 is allowed. C.S. (Com) No. 389 of 2024 (Old No. C.S. 137 of 2022) is dismissed.

