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IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 34 OF 2023

1. Saligao Ayurvedic Health Centre (SAL), having its registered address at 2/154/A, Pequeno Morod, Saligao, Bardez, Goa. Represented by Applicant Nos. 2 and 3 herein through its Directors.
2. Mr. Felix Agnelo Rodrigues, s/o late Nicolau Xavier Rodrigues, aged 78 years, married, Indian National.
3. Mr. Ivo Xavier Savio Rodrigues, s/o Mr. Felix Agnelo Rodrigues, aged 47 years, Indian National.

Both Resident of H. No. 2/154, Pequeno Morod, Saligao, Bardez, Goa – 403 511.

... APPLICANTS

Versus

1. Ayurvedic Natural Health Centre Pvt. Ltd., having its registered address at Chogm Road, Saligao, Bardez, Goa, through its Directors 2 and 3 herein below.
2. Mr. Bruno Fernandes, s/o Marcus A.P. Fernandes, aged 60 years, business, married, Indian National.
3. Mrs. Jennifer Fernandes, w/o Mr. Bruno Fernandes, married, aged 56 years, Indian National.

Both r/o H. No. 900, Naika vaddo, Aldona, Bardez, Goa.

... RESPONDENTS

Mr. John Abreu Lobo with Ms. Akshaya Nanodkar,
Advocates for the Applicants.

Mr. Nigel da Costa Frias with Mr. Shane Coutinho,
Advocates for the Respondents.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 1st FEBRUARY 2024

ORAL JUDGMENT:

1. Admit.
2. Heard finally at the stage of admission itself with the consent of parties.
3. The present Revision is filed challenging the order dated 03.02.2023 below Exhibit-39 passed by the Commercial Court at Mapusa. By this order, the Application filed by the Applicants/ Defendants under Order VII Rule 10 and 11 read with Section 9 of CPC for rejection of the plaint, was dismissed.
4. Mr. Lobo, appearing for the Applicants submits that initially, the Respondents/Plaintiffs filed a suit, which was registered as Regular Civil Suit No. 251/2016 before the Court of the Civil Judge Junior Division at Mapusa Goa. The Applicants/

Defendants filed an Application for rejection of the plaint on the ground that the suit has not been properly valued and that under the agreement, there is a clause of arbitration. The Respondents/ Plaintiffs then filed an Application for amendment, thereby, properly valuing the suit and paying the additional Court fees. After allowing such Application, Regular Civil Suit No. 251/2016 was converted into a Special Civil Suit and registered as Special Civil Suit No. 83/2017, on the basis of valuation shown in the amended plaint.

5. Mr. Lobo would submit that the learned Civil Judge Senior Division with whom the matter was pending being newly registered as Special Civil Suit, forwarded the file directly to the District Court with a request to register it as a Commercial Suit. The District Judge registered it as Special Civil Suit (Commercial) No. 4/2018 and issued notice to the Defendants. However, since there was no decision taken by the learned Civil Judge Senior Division as to whether the suit is actually a commercial dispute, the matter was sent back to the Civil Judge Senior Division by the District Court.

6. Mr. Lobo would submit that the learned Civil Judge Senior Division without considering the facts that it pertains to a commercial dispute, registered the suit as Commercial Suit No.

21/2022/A. Thereafter, the learned Court issued notices to the Advocate of the Defendants instead of issuing fresh summons. The Applicants/Defendants appeared and filed an Application for rejection of the plaint vide Exhibit-39 under Order 7 Rule 11 of CPC claiming that the procedure mandated under Section 12A of the Commercial Courts Act has not been followed.

7. After hearing the parties, the learned Commercial Court passed the impugned order, which is challenged in the present Revision.

8. Mr. Lobo while relying upon the case of **Patil Automation Pvt. Ltd. & Others Vs. Rakheja Engineers Private Limited, (2022) 10 SCC 1** and **Yamini Manohar Vs. T.K.D. Keerthi, 2023 SCC OnLine SC 1382** would submit that it is the duty of the Court to look into the plaint, the application and other documents so as to *prima facie* come to the conclusion as to whether there is any scope of interim relief or whether the Application is filed to avoid the mandated provisions of the Commercial Courts Act.

9. Mr. Lobo further submits that after the matter was transferred to the Commercial Court, fresh summons to the Defendants was mandatory and only notice to the Advocate was

not sufficient. In this respect, he relied on the decision in the case of **Metro Ortem Ltd. Vs. Maharashtra State Road Transport Corporation, 2022 SCC OnLine Bom 7238**. Mr. Lobo also placed reliance on the decision in the case of **Krishnaji Mahadeo Bapat Vs. Wamanrao Balwantrao Shinde & Another, AIR 1976 BOM 36**, wherein, the learned Single Judge of this Court has observed that once the matter is transferred, fresh summons to the parties is necessary.

10. Per contra Mr. Nigel Costa Frias appearing for the Respondents would submit that there is no error in the impugned order since the decision in the case of **Patil Automation Private Limited** (supra) has been relied upon as the Plaintiffs along with the plaint prayed for interim relief/injunction and the matter is pending for arguments on such Application. He submits that once the Court is seized with the matter in connection with the interim Application, the provisions of Section 12A of the Commercial Courts Act cannot be invoked.

11. Mr. Frias would then submit that the suit was not in fact transferred, but, it was re-registered as Commercial Suit and therefore, the earlier summons to the Defendants were in compliance with the provisions of CPC as well as the Commercial Courts Act. He submits that the Advocate appearing for the

Defendants accepted the notice only after the suit was re-registered as Commercial Suit.

12. The rival contentions fall for determination.

13. Insofar as the first contention of Mr. Lobo that the suit/ complaint ought to have been rejected for non-compliance of Section 12A of the Commercial Courts Act is concerned, it is necessary to look into the Application filed at Exhibit-39. Such Application contains only three paragraphs. Paragraph no. 2 reads that “the procedure mandated under Section 12A of the Commercial Courts Act has not been followed”.

14. It has been canvassed now that in view of the observations in the case of **Yamini Manohar** (supra), it was the duty of the Commercial Court to look into the plaint, the application and the documents to come to the conclusion that whether an Application for temporary injunction or urgent relief is filed only to by-pass the provisions of Section 12A of the Commercial Courts Act.

15. In the case of **Yamini Manohar** (supra), the Apex Court discussed the decision in the case of **Patil Automation** (supra) in paragraph 4. In paragraph 6 in the case of **Yamini Manohar** (supra), it has been observed that an urgent interim relief was

prayed for and the condition that the plaint contemplates an urgent interim relief stands satisfied. However, in paragraphs 9 and 10, the Apex Court observed thus:

“9. 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 12A 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 VII, Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order VII, 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.

10. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyze Section 12A 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 12A of the CC Act. An ‘absolute and unfettered right’ approach is not justified if the pre-institution mediation under Section 12A of the CC Act is mandatory, as held by this Court in Patil Automation Private Limited (supra). The words ‘contemplate any urgent interim relief’ in Section 12A(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 12A of the CC Act is not defeated.”

16. A peculiar fact in the present matter needs to be appreciated. The suit was filed somewhere in September 2016, which was registered as Regular Civil Suit. The Defendants were summoned, who appeared and filed an Application for rejection of

the plaint on the ground of under valuation and existence of the clause of arbitration. The Plaintiffs immediately filed an Application for amendment of the plaint by showing proper valuation and paid the necessary Court fees. Such amendment was allowed and due to pecuniary jurisdiction, Regular Civil Suit was then registered as Special Civil Suit No. 83/2017 and was allotted to the Court of Civil Judge Senior Division at Mapusa itself.

17. Besides, the learned Civil Judge Senior Division on its own transferred the said proceedings to the District Court probably under the impression that the suit or the plaint needs to be registered as a Commercial Suit. The District Court, in fact, registered the said proceedings as Special Civil Suit (Commercial) No. 4/2018 by order dated 03.08.2020. The District Court also issued notice to the Defendants, who appeared and argued the matter on the ground that there is no specific order passed by the learned Civil Judge Senior Division holding that the dispute is a commercial dispute. Accordingly, the learned District Judge transferred the said matter back to the Mapusa Court, which was registered as Commercial Suit No. 21/2022/A. At this stage, the notice was issued to the Advocate appearing for the Defendants, which was accepted and an Application was filed for rejection of the plaint vide Exhibit-39.

18. In the context of the above specific fact, the first contention of Mr. Lobo that the plaint ought to have been rejected since the Court did not consider as to whether Application for interim relief is actually warranted or whether it was just filed to by-pass Section 12A of the Commercial Courts Act, need to be rejected as no such ground was raised before Trial Court.

19. The observations of the Apex Court in the case of **Yamini Manohar** (supra), no doubt, considered the duty of the Court to *prima facie* look into the plaint as well as the Application for urgent relief. However, in the same breathe, the Apex Court has also observed that once the Application is filed showing some cause for urgent relief and even if subsequently, such an Application is rejected, the plaint cannot be dismissed or rejected for non compliance of Section 12A of the Commercial Courts Act.

20. In paragraph 10 of **Yamini Manohar** (supra) as quoted earlier, the Apex Court has observed that the Commercial Courts do have a role, albeit a limited one, to decide whether to resort to the procedure of Section 12A of the Commercial Courts Act, even if the Plaintiff is trying to camouflage or by-pass the statutory mandate of pre-litigation mediation. Admittedly, such arguments were not advanced before the learned Court. There is absolutely no ground to suggest that Exhibit-39 along with the interim relief

Application filed by the Plaintiffs is only to by-pass Section 12A of the Commercial Courts Act.

21. Mr. Costa Frias would submit that along with the plaint, an Application for urgent relief and that too in the form of temporary, mandatory relief is sought for. The prayers in the Application for temporary injunction would go to show that the Plaintiffs sought multiple reliefs at that stage itself. Since such arguments were not advanced as tried to be projected before this Court, the Applicants cannot be permitted to raise such grounds for the first time in these proceedings.

22. The second contention of Mr. Lobo is that on transfer, fresh summons ought to have been issued to the Defendants. In the case of **Metro Ortem Ltd.** (supra), the issue was totally different, which could be ascertained from the facts found in the opening paragraphs. The Plaintiffs in that suit clearly admitted that no summons were served on the Defendants. However, private notice through the Advocate was served. Thus, the facts of the said decision will not be helpful to the Applicants as far as the present matter is concerned.

23. The decision in the case of **Krishnaji Mahadeo Bapat** (supra) turned on its own facts. No provision of CPC or under the

Advocates Act is considered before observing that Vakalatnama of an Advocate is only for a particular Court and not with regard to the matter transferred to the other city. With respect, such a decision will not help the Applicants in the present matter.

24. Mr. Lobo would submit that the right of the Applicants to file a written statement would be affected if no fresh summons is issued to them by the Commercial Court. However, it is clear that the peculiar facts of this matter, it needs to be considered that the Defendants were served in the year 2016 itself, who instead of filing a written statement, preferred Applications for rejection of the plaint. Be that as it may, the Commercial Court will be able to consider the facts of the present matter in case such an Application is filed for extension of time to file the written statement.

25. Having said so, the impugned order needs no interference. The Revision stands dismissed.

BHARAT P. DESHPANDE, J.

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