

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(Commercial Division)**

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

**GA/3/2022
CS/113/2022**

In the matter of:

Optimum Infratel Pvt. Ltd.

Vs.

Torus Buildcon Pvt. Ltd. & Ors.

For the plaintiff : Mr. Suman Dutta, Advocate
Mrs. Anjali Agarwal, Advocate
Mr. Ranjeet Prasad, Advocate

Reserved on : 28.11.2022

Judgment on : 20.03.2023

Ravi Krishan Kapur, J.

1. This is an application for recalling of an order dated 22nd August, 2022.
2. Briefly, the suit had been filed before the Commercial Division of this Court after obtaining dispensation under section 12A of the Commercial Courts Act, 2015 (the Act).
3. Upon filing of the suit, the plaintiff filed an application seeking interlocutory reliefs. Thereafter, the suit and the interlocutory application appeared on different occasions i.e. 18th July 2022, 25th

July 2022, 28th July 2022 and 29th July, 2022 when the plaintiff remained unrepresented. Ultimately, on 22nd August, 2022 this Court passed an order inter alia dismissing the suit and the interlocutory application on the ground that the plaintiff had not been diligent in proceeding with the suit or the interlocutory application. By the order, this Court also revoked the dispensation which had been granted under section 12A of the Act on the ground that there could have been no possible urgency in this matter in view of the repeated defaults in appearance of the plaintiff. Admittedly, the plaintiff had remained unrepresented on 18th July 2022, 25th July 2022, 28th July 2022, 29th July, 2022 and 22nd August, 2022. There was also no adjournment sought for on behalf of the plaintiff on any of the above dates.

4. The grounds for seeking recalling of the order dated 22nd August, 2022 are that the Advocate appearing for the plaintiff had left the country on 8th July, 2022 for more than a month. On 19th August, 2022, though the Advocate had returned to India she was unable to rejoin office till September 7, 2022. The delay in joining office was on the ground that the Advocate was ill and was undergoing treatment.
5. It is submitted on behalf of the plaintiff that there is no power provided under the Commercial Courts Act, 2015 whereby the Court can suo moto reject the plaint without giving the plaintiff an opportunity of being heard. It is also contended that the suit contemplates urgent reliefs and dispensation having once been granted, the Court cannot revisit the issue. It is further alleged that inaction or negligence of the Advocate in conducting the proceedings

cannot be a reason for the dismissal of the suit. Thus, it is submitted that the order dated 22nd August, 2022 be recalled and the application as well as the suit be restored.

6. The overriding objective of the Commercial Courts Act, 2015 is to meet the demand of speedy and quality resolution of commercial disputes. The Act also contemplates strict and mandatory timelines. Accordingly, if the provisions of the Act are interpreted liberally, the object of providing fast track and speedy resolution of commercial disputes would be defeated and the object of the Act would be frustrated. [*SCG Contracts India Pvt Ltd. vs K.S Chamankar Infrastructure Pvt Ltd & Ors.* reported in (2019) 12 SCC 210, *Desh Raj vs. Bal Kishan* (2020) 2 SCC 708, *Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP*, reported in (2010) 15 SCC 585].
7. The grounds alleged in the petition are that the Advocate appearing for the plaintiff had left the country for more than a month. Thereafter, upon her return, the Advocate was ill.
8. This suit was entertained after dispensing with the requirement of Pre-Institution Mediation under section 12A of the Commercial Courts Act, 2015 on the ground that urgent interim reliefs were necessary. It has been held that the requirement of Pre-Institution Mediation as contemplated under section 12A of the Act is mandatory and the power to reject the suit filed in violation of the mandate under section 12A can also be exercised *suo moto* by the Court. [*Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*, (2022) 10 SCC 1.

9. There is no absolute proposition that the fault of an Advocate should always be considered with latitude. The grievance of the plaintiff that the matter had been posted within a period of 4 days on 3 occasions is also unfathomable. The plaintiff simply disappeared for three months after filing of the suit. The medical certificate relied on by the Advocate is unconvincing and does not justify any reason for the repeated non-appearance of the plaintiff.
10. Ordinarily, an Advocate is duty bound to make some alternative arrangement in case of non appearance. In this case, no adjournment was also sought for on any of the dates when the matter had appeared.
11. No litigant is relieved of his or her duties and obligations on the ground that an Advocate had been engaged. A party to a suit is not at liberty to proceed with the suit or the interlocutory application at its pleasure. The repeated defaults of non appearance are unacceptable. I find no reason nor explanation which constitutes any cause far less sufficient cause to recall the order. In my view, the purpose and object of the Act cannot be thwarted by such indolent conduct on the part of any litigant or their Advocate.
12. The callous manner in which the suit and the interlocutory application have been proceeded with do not warrant any exercise of discretion in favour of the plaintiff. After having obtained dispensation under section 12A of the Act on the ground of the need for urgent interim reliefs, the plaintiff deserves no leniency even in the name of “interests of justice” or “justice oriented approach”.

13. In such circumstances, there are no grounds to recall the order dated 22 August, 2022.

14. Accordingly, GA 2 of 2022 stands dismissed. There shall be no order as to costs.

(Ravi Krishan Kapur, J.)