OCD-5

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

APD/13/2023
WITH
CS/48/2023

INDIAN EXPLOSIVES PVT LTD
VS
IDEAL DETONATORS PVT LTD AND ORS

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant	:	Mr. Ranjan Bachawat, Sr. Adv. Mr. Rudraman Bhattacharyya, Sr. Adv. Mr. Sourajit Dasgupta, Adv. Mr. Bhavesh Garodia, Adv. Mr. Subhankar Chakraborty, Adv. Ms. Sayani Gupta, Adv.
For Respondent No. 1	:	Mr. Surajit Nath Mitra, Sr. Adv. Mr. Chittapriya Ghosh, Adv. Ms. Aiswariya Gupta, Adv. Mr. Somesh Ghosh, Adv. Mr. Soham Sanyal, Adv.
For Respondent Nos. 2, 6 & 7	:	Mr. Utpal Bose, Sr. Adv. Mr. Saptarshi Banerjee, Adv. Mrs. Anisha Kochar, Adv.
HEARD ON	:	05.05.2026
DELIVERED ON	:	05.05.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against the judgment and order dated July 11, 2023 passed in GA/2/2023 in CS/48/2023.

2. By the impugned judgment and order, learned Single Judge allowed the application of the defendant no. 1 in the suit, seeking revocation of the dispensation granted under Section 12A of the Commercial Courts Act, 2015. Learned Single Judge held that there was no ground seeking dispensation with the requirement of Section 12A of the Act of 2015. The averments made in the plaint did not warrant dispensation under Section 12A of the Act of 2015. The provisions of the pre-institution mediation must be complied with. Consequently, learned Single Judge, rejected the plaint.

3. Learned Senior Advocate appearing for the appellant submits that, leave under Section 12A of the Act of 2015 was granted to the appellant on March 23, 2023. Interim order was granted in favour of the appellant on March 27, 2023.

4. Referring the merits of the case, learned Senior Advocate appearing for the appellant submits that, the defendant no. 2 was an employee of the appellant. Defendant no. 2 was obliged not to part with any confidential information during his employment with the appellant to any third party. In breach of such confidentiality agreement, the defendant no. 2 parted with confidential informations to the defendant no. 1. Consequently, the defendant no. 2, infringed the copyrights existing in favour of the appellant.

5. Learned Senior Advocate appearing for the appellant refers to the various averments made in the plaint and in particular to paragraph 21 thereof. He submits that, the defendant no. 2 indulged in such activities since 2016. Such activities were not known to the appellant, till its discovery in 2022. Immediately on discovery of such illegal activities, a criminal complaint was filed. Thereafter, the present suit was instituted in the month of March, 2023 when, leave under Section 12A of the Act of 2015 was obtained and as also an interim order.

6. Learned Senior Advocate appearing for the appellant relies upon **2023 SCC Online Cal 2443 (Gavrill Metal Pvt. Ltd. Vs. Maira Fabricators Pvt. Ltd.)**, **2023 SCC Online SC 1382 (Yamini Manohar Vs. T.K.D Keerthi)** and **2025 SCC Online SC 2278 (Novenco Building and Industry A/S Vs. Xero Energy Engineering Solutions Private Ltd and Another)** to contend that, leave under Section 12A of the Act of 2015 ought not to be recalled, at least, in the facts and circumstances of the present case. According to him, learned Single Judge erred in doing so.

7. Learned Senior Advocate appearing for the defendant no. 1 submits that, the provisions of Section 12A of the Act of 2015 are mandatory. In the facts and circumstances of the present case, he submits that, the appellant tried to overcome such mandatory provisions. The appellant should not be permitted to do so.

8. Learned Senior Advocate appearing for the defendant no. 1 draws the attention of the Court to the pleadings of the plaint and in particular to paragraph 21 thereof. He submits that, in the earlier

portions of the pleadings of the plaint, the appellant did not aver that, the appellant was not aware of the incidents happening since 2016. He submits that, the incidents occurring were from 2016.

9. Relying upon **2026: CHC-OS-117-DB (Unique Enterprenuers and Finance Limited and Anr. Vs. Really Agritech Private Limited and Anr.)**, he submits that, the authorities cited by the appellant were noted therein. He submits that, the leave under Section 12A of the Act of 2015 was obtained through deception and falsity and therefore, the same was correctly withdrawn by the learned Single Judge, by the impugned judgment and order.

10. Learned Senior Advocate appearing for the respondent nos. 2, 6 and 7 adopts the submissions made on behalf of the defendant no. 1.

11. Appellant filed a suit claiming reliefs with regard to alleged infringement of copyrights in the artistic drawings. In the plaint, the appellant averred that, the defendant no. 2 was an employee of the appellant since 2012. Defendant no. 2 was given access to the proprietary and confidential materials including drawings and trade secrets referred to paragraph 4 of the plaint on an explicit condition of confidentiality. Defendant no. 2 continued in his service, till his services were terminated due to moral turpitude in the year 2022.

12. Appellant as the plaintiff also averred in the plaint that, in or about 2016, the defendant no. 2 shared unauthorized copies of the drawings and other documents to the defendant no. 1 without the

consent from the appellant. The appellant continued to act in the breach of confidentiality during his employment till 2022.

13. It is also averred in the plaint by the appellant that, the appellant was in the dark about such activities of the defendants. Subsequently, on discovery of the same, in the year 2022, the appellant, approached the Courts of law.

14. In the plaint, the appellant as the plaintiff does not disclose the exact date of knowledge of the so called illegal activities of the defendant no. 2. It is stated in paragraph 21 that, the discovery was made in 2022. No specific date as noted above is provided as to such discovery. The discovery alleged, is of events occurring since 2016. Again, no specific date is provided by the appellant.

15. Suit filed by the appellant was verified and affirmed on March 17, 2023. Leave under Section 12A of the Act of 2015 was granted on March 23, 2023. Leave so granted was *ex parte*.

16. The appellant as the plaintiff applied for and obtained an interim order on March 27, 2023. The defendant no. 1 thereafter applied by way of GA/2/2023 resulting in the impugned judgment and order, for revocation of the dispensation granted under Section 12A of the Act of 2015.

17. Authorities cited by the appellant, namely, **Gavrill Metal Pvt. Ltd. (supra)**, **Yamini Manohar (supra)** and **Novenco Building and Industry (supra)** were considered by us, in **Unique Enterprenuers and Finance Limited and Another (supra)**. In paragraph 21 of **Unique Enterprenuers and Finance Limited and Another (supra)**, we are of the following view:-

> *"21. Therefore, when a Court is faced with an application for grant of leave under Section 12A of the Act of 2015, Court is required to consider the case made out in the plaint as also the documents attached to the plaint in order to arrive at a finding that there is a real need for urgent interim intervention by the Court for bypassing the mandatory provision of Section 12A of the Act of 2015. Once such leave is granted, the Court is not powerless so to re-visit such issue. In a given case, where, such leave was obtained by practising fraud, Court is not powerless in recalling the leave granted. In other cases, where the defendant made out a case that, leave was obtained through deception and falsity, then again, the Court granting leave under Section 12A of the Act of 2015 is not powerless."*

18. In the facts and circumstances of the present case, we find that, the defendant no. 2 allegedly indulged in illegal activities since 2016 without a specific date thereof being provided by the appellant. Appellant claims to discover such alleged illegal activities in 2022. Again, no specific date of such alleged discovery is provided. The plaint was affirmed and verified on March 17, 2023. Interim order was sought for and obtained as also dispensation under Section 12A of the Act of 2015.

19. Although the request of dispensation of mandatory pre-institution mediation as ordained by Section 12A of the Act of 2015 is to be considered on the anvil of the perception of the plaintiff of its requirement of an urgent interim relief, nonetheless, such anvil must not be hoisted to defeat the mandatory provisions on ruse. Need of dispensation is required to be assessed on the facts and circumstances of each case.

20. There was no requirement for urgent interim relief as on the date of presentation of the suit and seeking dispensation of compliance under Section 12A of the Act of 2015. Provisions of Section 12A of the Act of 2015 are mandatory in nature. Parties to the suit are obliged not to act in derogation of such mandatory provisions of the Act of 2015.

21. Learned Single Judge, was correct in holding that, the appellant as the plaintiff, waited for a period of more than 5 years since the alleged act of misappropriation of the infringing materials. We find no material irregularity in the findings returned by the learned Single Judge on such score warranting our interference.

22. In such circumstances, we find no merits in the present appeal.

23. APD/13/2023 is dismissed, without any order as to costs.

(DEBANGSU BASAK, J.)

24. I agree.

(MD. SHABBAR RASHIDI, J.)

KB
AR(CR)