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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
COMMERCIAL FIRST APPEAL NO. 3 OF 2022

Hardasmal Hazarimal Tharwani & Ors ...Appellants
Versus
Sunil Hardasmal Tharwani & Ors ...Respondents

Mr Girish S Godbole, i/b Aditya P Shirke & Shivraj Patne, for the
Appellants.
Mr GR Agrawal, for Respondent No.1.

CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 5th July 2022

PC:-

1. The Appeal has to be allowed immediately. It is directed against an order dated 5th October 2021 made by the Special Judge-2, Panvel-Raigad on Exhibit 1. That was order under the Commercial Courts Act. The learned Special Judge took the view that the provisions of Section 12A, set out below, of the Commercial Courts Act are mandatory.

“12A. Pre-institution Mediation and Settlement—(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:

Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996)."

2. The impugned order is contrary to the decision of a Division Bench of this Court in *Deepak Raheja vs Ganga Taro Vazirani*.¹ In paragraph 37, the Division Bench held:

"37. Thus, we hold that section 12A of the Act of 2015 is mandatory, and a commercial suit of specified value *which does not contemplate any urgent interim relief* under

12021 SCC Online Bom 3124.

the Act of 2015, cannot not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government. Considering the object and purpose of Section 12A of being rooted in the public interest, there is no question of it being waived by a party. The findings in the impugned order to the contrary are set aside.”

(Emphasis added)

3. The Plaintiff had in fact filed an Interim Application for urgent interim relief in the Commercial Suit. If that be so, then there is no question of pre-institution mediation being mandatory.

4. The Appeal succeeds. The impugned order is quashed and set aside. The Interim Application is to be listed before the Trial Judge on 12th July 2022 for orders. On that date, the learned Judge will pass the necessary directions for filing a reply and rejoinder in the Interim Application and set an early date for its final disposal. The Trial Court will not once again consider the question of Section 12A.

5. The Appeal is disposed of in these terms with no order as to costs.

(Madhav J. Jamdar, J)

(G. S. Patel, J)