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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA(COMM) 17/2021

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Date of decision:12.04.2022**M/S PSA POLYMERS PRIVATE LIMITED Appellant****Through: Mr Akhil Suri and Mr Ritik Malik,
Advs.****versus****MR. RAJENDER MALHOTRA, PROPRIETOR OF M/S SHAKTI
PLAS INDUSTRIES Respondent****Through: None****CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MS. JUSTICE POONAM A. BAMBA****[Physical court hearing/ hybrid hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):-**

1. Notice was issued in the present appeal, *via* order dated 06.10.2021. In the meantime, we had asked for a report from the Registry, as to whether or not the pre-litigation mediation regime had kicked in at the various District Courts in Delhi, at the relevant point in time i.e., 15.11.2018, having regard to the provisions of Section 12A of the Commercial Courts Act, 2015 [in short, 'the Act'].
2. The report placed before us, pursuant to the aforesaid order, reveals that the Standard Operating procedure [in short, 'SOP'] to facilitate pre-institution mediation settlement was prepared on 03.10.2018, which was superseded by an amended SOP on 27.11.2018.
3. A perusal of the impugned order dated 23.02.2021 shows that the appellant had filed the suit on 15.11.2018 and that the plaint was returned by on the ground that the appellant had not taken recourse to pre-litigation mediation.



3.1. The appellant, being aggrieved, approached this court for redressal of its grievance.

4. The record shows that the respondent had not been served, when the matter was taken up by the Learned District Judge (Commercial Court), North (Rohini), Delhi, on 23.02.2021.

4.1. However, since the court came to the conclusion that the suit was not maintainable in view of the mandatory provisions, contained in Section 12A of the 2015 Act, the Learned District Judge did not deem it necessary to effect service on the respondent i.e., the original defendant.

5. Insofar as this court is concerned, an attempt was made to serve the respondent.

5.1. The office report placed before us by the Registry is suggestive of the fact that the proprietor of the respondent i.e., Mr Rajendra Malhotra, was contacted by the process server, who, in the first instance, identified himself and when he was informed about the pendency of the case, denied that he was the person, who he had said he was, in the first instance i.e., Mr Rajendra Malhotra.

5.2. It appears that there is an attempt by the respondent to avoid service.

6. In any event, since this is a case where, *via* the impugned order, the plaint had been returned, and we have found that at the relevant point in time, the pre-litigation mediation regime had not kicked in, in the District Court, North (Rohini), Delhi, we are inclined to set aside the order dated 23.02.2021 and remit the matter to the concerned court.

6.1. It is ordered accordingly.



7. The concerned court will take up the suit, and, thereafter, initiate the next steps in the matter, including having the respondent i.e., the original defendant, served in the suit action.
8. The appeal is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

POONAM A. BAMBA, J

APRIL 12, 2022/p

Click here to check corrigendum, if any

