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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 31st May, 2023*

+ C.R.P. 150/2023

SATISH MISHRA

..... Petitioner

Through: Mr. Sanyam Khetarpal and
Ms. Prakriti Anand, Advocates

versus

DEEPAK

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.M. No. 30455/2023 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

C.R.P. 150/2023 & C.M. No. 30454/2023 (stay)

3. By this revision petition, the Petitioner assails an order dated 02.03.2023 passed by the Trial Court dismissing the application filed by the Petitioner under Order VII Rule 11 CPC. Petitioner herein is the Defendant before the Trial Court while the Respondent is the Plaintiff and parties hereinafter are referred to by their litigating status before the Trial Court.

4. Narrative of facts as captured in the revision petition is that Defendant is a Proprietorship concern carrying on the activity of interior designing and renovation work of constructed properties. In June, 2021 Defendant approached the Plaintiff for interiors and

Signature Not Verified renovation work of his property and after initial negotiations and
Signed By: KAMAL KUMAR C.R.P. 150/2023

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discussions, an estimated price was worked out between the parties for the entire project. However, after some work was carried out the parties fell apart and Plaintiff sent a legal notice dated 23.11.2021 to the Defendant demanding the alleged outstanding amounts due to the Plaintiff. Failing to receive the said amounts, Plaintiff filed a suit for recovery of Rs.29,36,498/- being CS (COMM) No. 418/2021.

5. It is averred in the petition that with the intervention of acquaintances and friends, settlement was arrived at between the parties on 04.03.2022 and Plaintiff carried out further work in the concerned property. An invoice for the balance amount was raised by the Plaintiff on the Defendant, which was not paid. On account of the settlement agreement, the earlier suit was withdrawn by the Plaintiff and the present suit was filed subsequently for recovery of Rs.8,85,460/- along with applicable GST and pendente lite and future interest @ 18% p.a.

6. Upon service of summons, Defendant filed his written statement and an application under Order VII Rule 11 CPC for rejection of plaint on account of failure on the part of the Plaintiff to exhaust the remedy of pre-institution mediation as mandatorily required under Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as the 'Act 2015'). It was urged in the application that Plaintiff had neither filed an application seeking exemption or leave from resorting to pre-institution mediation and relied on the judgment of the Supreme Court in *Patil Automation Private Limited and Others v. Rakheja Engineers Private Limited, (2022) 10 SCC 1*, in this regard.



7. Plaintiff, on the other hand, opposed the application on the ground that along with the plaint an application had been filed for urgent interim relief under Order XXXIX Rules 1 and 2 CPC read with Order XXXVIII Rule 5 CPC and therefore the Plaintiff was not required to take recourse to the remedy of pre-institution mediation under Section 12A of Act 2015.

8. The Trial Court was of the view that since an urgent interim relief was contemplated, Plaintiff was not bound to take recourse to the remedy of pre-institution mediation and whether or not the Court would grant the relief sought was irrelevant for deciding whether the plaint ought to be rejected on the ground of the failure of the Plaintiff to take recourse to the remedy and thus the Trial Court dismissed the application.

9. Challenging the impugned order, learned counsel for the Defendant contends that the Trial Court has failed to consider the settled position of law that if by means of clever drafting, a camouflage or illusionary urgent relief is created, such cases should be nipped in the bud. Plaintiff had initially filed the plaint with an application under Order XXXIX Rules 1 and 2 CPC read with Order XXXVIII Rule 5 CPC seeking attachment before judgment by way of freezing the bank account of the Defendant, although the suit is a simplicitor suit for recovery. Defendant is the owner of the property in question, which carries a valuation far in excess of the amounts allegedly due to the Plaintiff and therefore there was no question of seeking a relief of freezing the bank accounts of the Defendant or a direction to the Defendant to furnish security. There was thus no urgency in the matter and the Trial Court ought to have rejected the



plaint for failure of the Plaintiff to take recourse to the mandatory procedure under Section 12A of Act 2015.

10. I have heard the learned counsel for the Defendant and examined the contentions as well as the impugned order passed by the Trial Court.

11. The issue whether provisions of Section 12A of Act 2015 are mandatory is no longer *res integra*. The Supreme Court has in ***Patil Automation Private Limited and Others (supra)***, clearly propounded that provisions of Section 12A are mandatory and failure to comply would entail rejection of the plaint. Relevant paras of the judgment are as follows:-

“100. In the cases before us, the suits do not contemplate urgent interim relief. As to what should happen in suits which do contemplate urgent interim relief or rather the meaning of the word “contemplate” or urgent interim relief, we need not dwell upon it. The other aspect raised about the word “contemplate” is that there can be attempts to bypass the statutory mediation under Section 12-A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis. Section 80(2)CPC permits the suit to be filed where urgent interim relief is sought by seeking the leave of the court. The proviso to Section 80(2) contemplates that the court shall, if, after hearing the parties, is satisfied that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to the court after compliance. Our attention is drawn to the fact that Section 12-A does not contemplate such a procedure. This is a matter which may engage attention of the lawmaker. Again, we reiterate that these are not issues which arise for our consideration. In the fact of the cases admittedly there is no urgent interim relief contemplated in the plaints in question.

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113. Having regard to all these circumstances, we would dispose of the matters in the following manner:

113.1. We declare that Section 12-A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order 7 Rule 11. This power can be exercised even suo motu by the court as explained earlier in the judgment. We, however, make this declaration effective



from 20-8-2022 so that stakeholders concerned become sufficiently informed.

113.2. Still further, we however direct that in case complaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the complaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff.

113.3. Finally, if the complaint is filed violating Section 12-A after the jurisdictional High Court has declared Section 12-A mandatory also, the plaintiff will not be entitled to the relief.”

12. A Division Bench of this Court in ***Chandra Kishore Chaurasia v. RA Perfumery Works Private Ltd., 2022 SCC OnLine Del 3529*** has elaborately dealt with various issues pertaining to Section 12A of Act 2015 and two of them squarely apply to the present case. The Division Bench has held that Section 12A indicates that institution of a suit, which does not contemplate any urgent interim relief, is proscribed unless the Plaintiff exhausts the remedy of pre-institution mediation and therefore there is no ambiguity that a suit which contemplates urgent interim relief is excluded from the rigor of Section 12A(1). The Court also held that the provision does not contemplate any application for exemption from the applicability of Section 12A(1) and no such discretion to grant exemption vests in the Court for the simple reason that the provision is mandatory and if there is no urgent relief claimed, the suit cannot be filed without taking recourse to pre-institution mediation. Significantly, the Division Bench has also held that whether a suit involves an urgent interim relief is to be determined solely on the basis of the pleadings and reliefs sought by the Plaintiff. If a Plaintiff seeks any urgent interim relief, the suit cannot be dismissed on the ground that Plaintiff has not exhausted the remedy of pre-institution mediation. The



important observation of the Division Bench that is particularly applicable to this case is that *'the Court may or may not accede to such a request for an urgent interim relief. But that is not relevant to determine whether the Plaintiff was required to exhaust the remedy of pre-institution mediation. The question whether a suit involves any urgent interim relief is not contingent on whether the Court accedes to the Plaintiff's request for interim relief.'* The Court also observed that compulsory mediation is foisted only on a Plaintiff who does not contemplate urgent interim relief and therefore it is implicit that it is only the Plaintiff that can contemplate the relief it seeks in a suit. Relevant passages from the judgment are as follows:-

"23. The respondent contends that the learned Commercial Court had erred in rejecting its application under Order VII Rule 11(d) of the CPC. According to the respondent, the plaint is liable to be rejected as being barred in terms of Section 12A of the Commercial Courts Act, 2015. The learned Commercial Court had rejected the said contention as it found that the provisions of Section 12A of the Commercial Courts Act, 2015 were not applicable because the appellant (plaintiff) had sought urgent interim reliefs.

24. Mr. Sengupta, learned counsel appearing for the respondent, did not dispute that the provisions of Section 12A of the Commercial Courts Act, 2015 are not applicable to suits involving urgent reliefs. He, however, submitted that the appellant (plaintiff) could not be the sole judge of determining whether the provisions of Section 12A of the Commercial Courts Act, 2015 are applicable. Therefore, it was necessary for the appellant (plaintiff) to file an application seeking exemption from the provision of pre-institution mediation. He contended that the suit could be entertained only once such an application was moved and allowed.

25. He referred to an order dated 30.09.2020, passed by the learned Single Judge of this Court in an application seeking amendment of the plaint filed by the plaintiff in CS(OS) 201/2020 captioned Anil Gupta v. Baburam Singla, Proprietor of Singla Sweets. He pointed out that in the said order, the Court had observed that the plaintiff had neither filed an application seeking exemption nor leave in the present suit for exempting the plaintiff from the process under Section 12A of the Commercial Courts Act, 2015. Further, the Court had issued summons subject to the plaintiff filing an application seeking exemption under Section 12A of the



Commercial Courts Act, 2015 to the defendants.

26. *He referred to the decision of the Supreme Court in Patil Automation Private Limited v. Rakheja Engineers Private Limited, 2022 SCC OnLine SC 1028 and contended that the provisions of Section 12A of the Commercial Courts Act, 2015 are mandatory and on an analogy of Section 80 of the CPC - which was also referred to by the Supreme Court in its decision - it was necessary for the plaintiff to make an application seeking exemption from the provisions of Section 12A of the Commercial Courts Act, 2015.*

27. *The question whether the provisions of Section 12A of the Commercial Courts Act, 2015 are mandatory, is no longer res integra. In Patil Automation Private Limited v. Rakheja Engineers Private Limited (supra), the Supreme Court has authoritatively held that the provisions of Section 12A of the Commercial Courts Act, 2015 are mandatory and failure to comply with the same would entail rejection of the plaint. However, in the present case, the question whether the provisions under Section 12A of the Commercial Courts Act, 2015 are mandatory or not is not in issue; the point for consideration is whether the provisions of Section 12A of the Commercial Courts Act, 2015 are applicable to the suit instituted by the appellant.*

28. *Section 12A of the Commercial Courts Act, 2015 reads as under:*

“12A. (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, for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 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.

(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.”.

29. A plain reading of Sub-section (1) of Section 12A of the Commercial Courts Act, 2015 indicates that the institution of a suit, which does not contemplate any urgent interim relief, is proscribed unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with the procedure as may be prescribed. There is no ambiguity that a suit, which contemplates urgent interim relief, is excluded from the rigor of Section 12A(1) of the Commercial Courts Act, 2015. Thus, a plaintiff seeking to institute a suit involving urgent interim relief(s) is not required to exhaust the remedy of pre-institution mediation.

30. The contention that it would be necessary for the plaintiff to file an application seeking exemption from the provisions of Section 12A of the Commercial Courts Act, 2015, is unmerited. This Court cannot accept the said contention for several reasons.

31. First of all, there is no provision under Section 12A of the Commercial Courts Act, 2015 that requires the plaintiff to make any such application in a suit which involves urgent interim reliefs. As stated above, if the suit involves urgent interim relief, Section 12A of the Commercial Courts Act, 2015 is inapplicable and it is not necessary for the plaintiff to enter into a pre-institution mediation.

32. Second, a suit, which does not contemplate urgent interim relief, cannot be instituted without exhaustion of pre-institution mediation, as required under Section 12A(1) of the Commercial Courts Act, 2015. As noted above, the Supreme Court has held that the said provision is mandatory and it is compulsory for a plaintiff to exhaust the remedy of pre-institution mediation, in accordance with the rules before instituting a suit. The Court has no discretion to exempt a plaintiff from the applicability of Section 12A(1) of the Commercial Courts Act, 2015. It is not permissible for the court to pass an order contrary to law; therefore, an application seeking exemption from engaging in pre-institution mediation, in a suit that does not involve urgent interim reliefs, would not lie.

33. This Court also finds it difficult to accept that a commercial court is required to determine whether the urgent interim reliefs ought to have been claimed in a suit for determining whether the same is hit by the bar of Section 12A(1) of the Commercial Courts Act, 2015. The question whether a plaintiff desires any urgent relief is to be decided solely by the plaintiff while instituting a suit. The court may or may not accede to such a request for an urgent interim



relief. But that it not relevant to determine whether the plaintiff was required to exhaust the remedy of pre-institution mediation. The question whether a suit involves any urgent interim relief is not contingent on whether the court accedes to the plaintiff's request for interim relief.

34. *The use of the words “contemplate any urgent interim relief” as used in Section 12(1) of the Commercial Courts Act, 2015 are used to qualify the category of a suit. This is determined solely on the frame of the plaint and the relief sought. The plaintiff is the sole determinant of the pleadings in the suit and the relief sought.*

35. *This Court is of the view that the question whether a suit involves any urgent interim relief is to be determined solely on the basis of the pleadings and the relief(s) sought by the plaintiff. If a plaintiff seeks any urgent interim relief, the suit cannot be dismissed on the ground that the plaintiff has not exhausted the pre-institution remedy of mediation as contemplated under Section 12A(1) of the Commercial Courts Act, 2015.*

36. *The order dated 30.09.2018, passed by the learned Single Judge in Anil Gupta v. Baburam Singla, Proprietor of Singla Sweets (supra), is of little assistance to the respondent. The observations made in the said order are not dispositive of any question whether a separate application is required to be made under Section 12A of the Commercial Courts Act, 2015. The contention that such an application is required to be made on an analogy of Section 80 of the CPC is also erroneous. In Patil Automation Private Limited v. Rakheja Engineers Private Limited (supra), the Supreme Court had pointed out that unlike the provisions of Section 80 of the CPC, there is no provision in Section 12A of the Commercial Courts Act, 2015 that contemplates a procedure for seeking leave of the court. Paragraph 81 of the said decision is relevant and set out below:*

“81. In the cases before us, the suits do not contemplate urgent interim relief. As to what should happen in suits which do contemplate urgent interim relief or rather the meaning of the word ‘contemplate’ or urgent interim relief, we need not dwell upon it. The other aspect raised about the word ‘contemplate’ is that there can be attempts to bypass the statutory mediation under Section 12A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis. Section 80(2) of the CPC permits the suit to be filed where urgent interim relief is sought by seeking the leave of the court. The proviso to Section 80 (2) contemplates that the court shall, if, after hearing the parties, is satisfied that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to the court after compliance. Our attention is drawn to the fact that Section 12A



does not contemplate such a procedure. This is a matter which may engage attention of the lawmaker. Again, we reiterate that these are not issues which arise for our consideration. In the fact of the cases admittedly there is no urgent interim relief contemplated in the plaints in question.”

[emphasis added]

37. This Court is unable to accept that it is necessary for a court to read in any procedure in Section 12A of the Commercial Courts Act, 2015, which makes it mandatory for a plaintiff to file an application to seek leave of the court for filing a suit without exhausting the remedy of pre-institution mediation, irrespective of whether the plaintiff seeks urgent interim relief or not.

38. In *Patil Automation Private Limited v. Rakheja Engineers Private Limited* (supra), the Supreme Court had considered the import of Section 12A of the Commercial Courts Act, 2015 in the context of the suits, which did not contemplate any urgent interim relief. It is relevant to refer to the following observations of the court:

“...The Act did not originally contain Section 12A. It is by amendment in the year 2018 that Section 12A was inserted. The Statement of Objects and Reasons are explicit that Section 12A was contemplated as compulsory. The object of the Act and the Amending Act of 2018, unerringly point to at least partly foisting compulsory mediation on a plaintiff who does not contemplate urgent interim relief...”

39. It is apparent from the above that the Supreme Court was also of the view that compulsory mediation is foisted only on a plaintiff who does not contemplate urgent interim relief. It is implicit that it is only the plaintiff, that can contemplate the relief that it seeks in a suit. And, pre-institution mediation is necessary only in cases where a plaintiff does not contemplate urgent interim relief.

40. In the present case, indisputably, the plaintiff has sought urgent interim reliefs. Thus, it is not necessary for him to have exhausted the remedy of pre-institution mediation as contemplated under Section 12A(1) of the Commercial Courts Act, 2015.”

13. This judgment was subsequently followed by a Co-ordinate Bench of this Court in ***Yamini Manohar v. TKD Keerthi*, 2023 SCC OnLine Del 2653** and it was held that the Commercial Court correctly came to a conclusion that the Plaintiff contemplated grant of urgent interim relief and was thus not required to exhaust the remedy of pre-institution mediation.



14. Therefore, in view of the judgment of the Division Bench in *Chandra Kishore Chaurasia (supra)*, both the contentions of the Defendant deserve to be rejected. The Court has clearly held that it is for the Plaintiff to decide whether he desires to seek an urgent interim relief and if so the nature of relief sought and secondly, whether or not the Court ultimately accedes to the relief is irrelevant to decide whether the Plaintiff was required to exhaust the remedy of pre-institution mediation. The Trial Court has come to a finding that the Plaintiff has sought an urgent interim relief as he has moved an application under Order XXXIX Rules 1 and 2 CPC read with Order XXXVIII Rule 5 CPC seeking attachment before judgment and was thus not required to exhaust the remedy of pre-institution mediation. Trial Court has also observed that whether the Court would ultimately grant the relief or not will be considered on merits and this would not be the causative factor to decide the issue of rejection of a plaint for failure to take recourse to pre-institution mediation. In my view, no infirmity can be found with the finding of the Trial Court and its ultimate conclusion in rejecting the application, as the same are clearly in consonance with the observations of the Division Bench in *Chandra Kishore Chaurasia (supra)*.

15. For all the aforesaid reasons, no merit is found in the revision petition and the same is accordingly dismissed along with the pending application.

JYOTI SINGH, J

MAY 31, 2023/kks/shivam