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

Date of decision: 11.08.2023

+ CM(M) 1288/2023 & CM APPLs. 41208-09/2023

SH. JAI PAL SINGH SHARMA TRUST Petitioner

Through: Mr. Karunesh Tandon and Mr. Rahul Chauhan, Advocates.

versus

SRM EDUCATION AND FINANCIAL CONSULTANT PVT LTD Respondent

Through: None

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the orders dated 25.08.2022 and 28.03.2023 passed by the District Judge (Commercial Court) – 02, South-East District, Saket, Delhi ('Trial Court') in the Civil Suit bearing no. 1332/2018, titled as "*M/S SRM Education & Financial Consultant Pvt. Ltd. v. Sh. Jai Pal Singh Sharma Trust*".

1.1. The Petitioner is the original defendant and the Respondent is original plaintiff in the civil suit.

1.2. The Trial Court *vide* order dated 25.08.2022 permitted the Respondent to explore the pre-institution mediation in terms of Section 12A of Commercial Courts Act, 2015 ("Commercial Court Act" or 'Act of 2015').

1.3. The Trial Court *vide* order dated 28.03.2023 permitted the Respondent



to amend its original plaint dated 04.09.2018 so as to comply with the provisions of the Code of Civil Procedure ('CPC') as amended by the Act of 2015. The Respondent was permitted to file the Statement of Truth under Order 6 Rule 15 A and file a declaration of oath under Order 11 Rule 1 (3) CPC as amended by the Act of 2015.

2. Learned counsel for the Petitioner states that though the said suit bearing No. 1332/2018 was initially instituted as an ordinary civil suit however the matter was transferred by the then Trial Court to the District Judge for assigning the same to the concerned Commercial Court *vide* order dated 16.08.2022.

2.1. He states that in the written statement filed on 18.01.2019 by the Petitioner herein a preliminary objection has been raised at paragraph 2 that the mandate of Section 12A of the Commercial Courts Act has not been complied with by the Respondent before instituting the said suit and therefore the suit is not maintainable.

2.2. He states that concerned Commercial Court *vide* impugned order dated 25.08.2022 erred in granting liberty to the Respondent to explore mediation. He states that the Trial Court could not have permitted the Petitioner to initiate mediation during the pendency of the suit. He states that the said defect cannot be cured and relied upon the judgment of Supreme Court in *M/s Patil Automation Pvt Ltd & Ors. v. Rakheja Engineers Pvt Ltd, (2022) 10 SCC 1*. He states that the suit ought to have been dismissed for the non-compliance of the mandatory requirement.

2.3. He states that the Respondent herein on 12.11.2022 filed an application under Order 6 Rule 17 CPC read with section 151 of CPC seeking permission to sign each page of the plaint to bring in conformity with the provisions of Commercial Courts Act. He states that the proposed amended plaint was duly



accompanied by a statement of truth, the non-starter report of the mediation centre from Saket and an affidavit in terms of the order 11 Rule 1 (3) of the Code as amended by the Act of 2015.

2.4. He states that the Trial Court erred in allowing the said application *vide* impugned order dated 28.03.2023. He states that the Trial Court could not have permitted the said amendment to the plaint or permitted the Respondent to cure the defects in the plaint in view of the objection raised by the Petitioner herein with regards to preliminary objection no.2 and since the application of the Respondent as well does not specifically seek permission to file the statement of truth or the declaration.

2.5. He also places reliance on the order dated 22.09.2018 initially passed in the proceedings of the said suit wherein the Civil Court had observed that an ordinary civil suit is not maintainable with regards to the facts of the present case and the suit should be filed as a commercial suit. He states therefore the Respondent had due notice as regards to the non-maintainability of the plaint as an ordinary suit as early as on 22.09.2018.

3. This Court has considered the submissions of the learned counsel for the Petitioner and peruse the record.

Challenge to the order dated 25.08.2022

4. This Court is of the opinion that there has been no finding returned by the Trial Court till date with respect to the preliminary objection no.2 raised by the Petitioner in his written statement.

5. The concerned Commercial Court *vide* impugned order dated 25.08.2022 granted liberty to the Respondent to explore mediation as per mandate of Section 12A of the Act of 2015. No objection was raised by the Petitioner herein at the relevant time.

5.1. The Respondent herein in terms of the liberty granted *vide* order dated



25.08.2022, approached the mediation centre at Saket District Court

5.2. The Petitioner herein has duly received a notice to participate in the mediation in September 2022, however, the Petitioner herein elected to not participate in the same and therefore, a non-starter report was issued by the mediation centre.

5.3. The learned counsel for the Petitioner fairly admitted during the hearing that the Petitioner herein does not wish to mediate the matter with the Respondent even as on date.

5.4. The Supreme Court in *M/s Patil Automation Pvt Ltd & Ors. (supra)* has expressly held that the declaration of law made in the said judgment is effective from 20.08.2022 so that the stakeholders are sufficiently informed. In the present case, the suit was initially filed as an ordinary civil suit on 04.09.2018 and thereafter directed to be transferred to the concerned Commercial Court on 16.08.2022. In the facts of this case, the Respondent's suit is therefore saved by the clarification issued by the Supreme Court. Further, the Respondent at the first instance thereafter sought recourse to mediation which was declined by the Petitioner herein as noted above.

5.5. This Court is also of the view that Petitioner's unequivocal stand that he does not wish to enter into any mediation talks with the Respondent is also a factor which cannot be lost sight of. The Petitioner's failure to participate in the mediation proceedings in the month of September, 2022 and its continuing unwillingness to participate in the mediation proceedings also weighs with this Court in considering the effect, if any, about the preliminary objection no.2 raised in the written statement. The laudable purpose of Section 12A of the Act of 2015 is being relied upon by the Petitioner merely to non-suit the Respondent. In the facts of this case where the suit was initially filed as an ordinary suit in 2018 and permitted by the Petitioner to be transferred to the



concerned commercial court without any demur by the defendant on 16.08.2022, the maintainability of this objection raised by the Petitioner appears to be doubtful to this Court.

5.6. This Court finds no infirmity in the order dated 25.08.2022 granting liberty to the Petitioner as the concerned Commercial Court has in the facts of this case only facilitated the compliance of the mandate of Section 12A of the Act of 2015, immediately on receipt of the plaint from the ordinary Civil Court. The plaint was directed to be transferred on 16.08.2022 and this impugned order was passed immediately thereafter.

6. The present petition first listed on 11.08.2023, impugning the order dated 25.08.2022 after a period of 12 months is barred by delayed and laches. This Court finds no merit in the challenge to the said order.

Challenge to the order dated 28.03.2023

7. Similarly, this Court finds no infirmity in the impugned order dated 28.03.2023 allowing the application filed by the Respondent to amend his plaint to bring it in conformity with the provisions of the CPC as amended by the Commercial Courts Act. The Respondent has not made any amendment to the pleading in the suit. The amendment has been made to sign each of the pages of the plaint, file a statement of truth and place a declaration of oath.

7.1. This Court is of the view that no prejudice has been caused to the Petitioner by the said order of the Trial Court. The Petitioner has failed to point out any provision of law which bars permitting the said amendment to the plaint. The original plaint was duly supported by the affidavit of the plaintiff filed as an ordinary suit. Upon suit being transferred to the commercial court the filing of the Statement of Truth and declaration as per Order 11 Rule 1 (3) is the mandate of Act of 2015 so as to bring the plaint in compliance with the mandate of law. This Court finds that the objections



raised are pedantic and intended to stall the proceedings.

7.2. This Court also takes note that though there is no challenge in this petition to the order dated 16.08.2022 whereby the then Trial Court had initially transferred the matter to the commercial court. The order permitting the Respondent to make amendments in the initial plaint is a necessary consequence to maintain the said plaint in the commercial court.

8. Therefore, the present petition impugning the order dated 28.03.2023 permitting amendment to the plaint almost after a period of four (4) months is also barred by delay and laches.

9. This Court finds no infirmity in the orders passed by the Trial Court on 25.08.2022 and 28.03.2023, which are only ensuring that the due progress of the proceedings are duly compliant with the provisions of CPC as amended by the Act of 2015.

10. The sum and substance of the Petitioner's arguments emanate from the preliminary objection no.2 raised in the written statement. The same has not been adjudicated by the Trial Court and the impugned orders are not an expression or adjudication of the said objection, which will be decided in accordance with law.

11. The petition is accordingly dismissed along with pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

AUGUST 11, 2023/msh/ms

Click here to check corrigendum, if any