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

+ **RFA(COMM) 218/2023 & CM APPL. 51228/2023**

HQ LAMPS MANUFACTURING CO. PVT. LTD. ... APPELLANT

Through: Mr. Vipin Singh Bansal with Ms.
Amrita Verma and Mr. Sushant
Singh, Advocates.

versus

**EVERLIGHT ELECTRONICS INDIA PVT. LTD. &
ANR.**

..... RESPONDENTS

Through: Mr. Venamra Mahaseth with Mr.
Himanshu Kumar, Advocates.

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Date of Decision: 07th November, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present appeal has been filed against the judgment dated 25th July, 2023 passed by the District Judge (Commercial - 03), Patiala House, New Delhi in *CS (COMM) No. 200/2023*. By way of the impugned judgment, the suit for recovery filed on behalf of appellant herein was rejected under provisions of Order VII Rule 11 of Code of Civil Procedure, 1908 ("CPC") for violating the mandate of Section 12A of The Commercial Courts Act, 2015 as amended by Amendment Act, 2018 ("Commercial Courts Act").



2. As per the facts canvassed before this Court, the appellant had business dealings with the respondents being engaged in the business of manufacturing, trading, export and import of wide range of LED lights, lamps, compact fluorescent lamps, etc. During the course of business, the appellant started facing rejections and replacements from major clients, due to sub-standard quality of LED chips supplied by respondent no.2 and suffered a loss to the tune of Rs. 1,87,00,499/-. Thus, a suit for recovery, being *CS (COMM) No. 200/2023* was filed on behalf of the appellant. The said suit was rejected by the impugned judgment dated 25th July, 2023 passed by the District Judge (Commercial - 03), Patiala House, New Delhi since the appellant had instituted the said suit without exhausting the remedy of Pre-Institution Mediation, thereby violating the mandate of Section 12A of the Commercial Courts Act. Hence, the present appeal has been filed before this Court.

3. At the outset, this Court finds that notice was issued by this Court in the present appeal on account of the submission on behalf of the appellant that it was willing to resolve the disputes amicably through the process of mediation. However, today learned counsel appearing for respondents submit that they are not willing for any mediation. It is submitted that the appellant is liable to pay more than Rs. 9 crores to the respondents for the goods supplied by the respondents to the appellant. The suit for recovery for alleged losses incurred by appellant was filed despite the fact that large sums are due and payable by the appellant to the respondents.

4. Having heard learned counsel for the parties and having perused the record, it transpires that the appellant had filed the suit without filing Pre-Institution Mediation as provided under Section 12A of the Commercial



Courts Act. An application seeking exemption from institution of Pre-Institution Mediation was filed by the appellant along with the said suit. The only ground taken by the appellant in the said application was that the respondent no.2 herein had earlier approached the Delhi High Court Legal Services Committee (“DHCLSC”) to mediate the disputes between the appellant and the respondents herein. However, after few dates the said mediation proceedings eventually culminated into a Non-Starter Report. It is on the basis of this Non-Starter order dated 10th April, 2019 passed by DHCLSC that the appellant intended the same to be substituted as compliance of Section 12A of the Commercial Courts Act in the suit proceedings.

5. Non-Starter mediation proceedings initiated by the respondents for their own claims against the appellant herein, cannot be treated as compliance of the requirement of Pre-Institution Mediation proceedings in terms of Section 12A of the Commercial Courts Act in the suit filed on behalf of the appellant. The appellant has clearly violated the mandate of the aforesaid provisions of the Commercial Courts Act. This Court notes that the appellant had filed suit for recovery of Rs. 1,87,00,499/- on account of inferior quality of goods supplied by the respondents. This particular dispute was never referred to the mediation proceedings initiated on behalf of respondents, as the same pertained to the claim of the respondents against the appellant for supply of goods to the appellant. Besides, it is to be noted that the appellant herein never participated in the earlier mediation proceedings initiated by the respondents. Therefore, the earlier mediation proceedings initiated on behalf of the respondents on account of their claims against the appellant herein cannot be relied upon by the appellant for the



purposes of compliance of the requirement of Pre-Institution Mediation in terms of Section 12A of the Commercial Courts Act.

6. It is no longer *res integra* that compliance of provisions of Section 12A of the Commercial Courts Act is mandatory and any suit which is instituted in violation of the mandate of Section 12A is not maintainable and shall be rejected in terms of Order VII Rule 11 of CPC. Thus, Supreme Court in the case of ***Patil Automation Private Limited and Others Versus Rakheja Engineers Private Limited***¹ has held as follows:

“83. We may proceed on the basis that if the suit is brought without complying with Section 12-A, where no urgent interim relief is sought, may not in one sense, affect the legal right of the defendant. But this argument overlooks the larger picture which is the real object of the law. This object is not to be viewed narrowly with reference to the impact on the parties alone. This is apart from also remembering that if the parties were to exhaust mediation under Section 12-A, the opposite side may be, if mediation is successful, saved from the ordeal of a proceeding in court, which, undoubtedly, would entail costs, whereas, the mediation costs, as we have noticed, is minimal, and what is more, a one-time affair, and still further, to be shared equally between the parties. Each time the plaintiff is compelled to go in for mediation under Section 12-A there is a ray of hope that the matter may get settled. The chief advantage and highlight of mediation is that it is a win-win for all sides, if the mediation is successful. Therefore, it cannot, in one sense, be argued that no legal right of the defendant is infringed. Further, on the same logic, Section 80(1) CPC and Section 69 of the Partnership Act would not be mandatory. This is however not the case.

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94. On a consideration of the scheme of Orders 4, 5 and 7CPC, we arrive at the following conclusions:

94.1. A suit is commenced by presentation of a plaint. The date of the presentation in terms of Section 3(2) of the Limitation Act, 1963 is the date of presentation for the purpose of the said Act. By virtue of Order 4 Rule 1(3), institution of the plaint, however, is complete only when the plaint is in conformity with the requirement of Order 6 and Order 7.

¹ (2022) 10 SCC 1



94.2. When the court decides the question as to issue of summons under Order 5 Rule 1, what the court must consider is whether a suit has been duly instituted.

*94.3. Order 7 Rule 11 does not provide that the court is to discharge its duty of rejecting the plaint only on an application. Order 7 Rule 11 is, in fact, silent about any such requirement. Since summon is to be issued in a duly instituted suit, in a case where the plaint is barred under Order 7 Rule 11(d), the stage begins at that time when the court can reject the plaint under Order 7 Rule 11. No doubt it would take a clear case where the court is satisfied. The Court has to hear the plaintiff before it invokes its power besides giving reasons under Order 7 Rule 12. **In a clear case, where on allegations in the suit, it is found that the suit is barred by any law, as would be the case, where the plaintiff in a suit under the Act does not plead circumstances to take his case out of the requirement of Section 12-A, the plaint should be rejected without issuing summons.** Undoubtedly, on issuing summons it will be always open to the defendant to make an application as well under Order 7 Rule 11. In other words, the power under Order 7 Rule 11 is available to the court to be exercised suo motu. (See in this regard, the judgment of this Court in Madiraju Venkata Ramana Raju [Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy, (2018) 14 SCC 1].)*

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99. We may sum-up our reasoning as follows:

*99.1. **The Act did not originally contain Section 12-A. It is by amendment in the year 2018 that Section 12-A was inserted. The Statement of Objects and Reasons are explicit that Section 12-A 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.** The provision has been contemplated only with reference to plaintiffs who do not contemplate urgent interim relief. The legislature has taken care to expressly exclude the period undergone during mediation for reckoning limitation under the Limitation Act, 1963. The object is clear.*

99.2. It is an undeniable reality that courts in India are reeling under an extraordinary docket explosion. Mediation, as an alternative dispute mechanism, has been identified as a workable solution in commercial matters. In other words, the cases under the Act lend themselves to be resolved through mediation. Nobody has an absolute



right to file a civil suit. A civil suit can be barred absolutely or the bar may operate unless certain conditions are fulfilled. Cases in point, which amply illustrate this principle, are Section 80CPC and Section 69 of the Partnership Act.

99.3. The language used in Section 12-A, which includes the word “shall”, certainly, goes a long way to assist the Court to hold that the provision is mandatory. The entire procedure for carrying out the mediation, has been spelt out in the Rules. The parties are free to engage counsel during mediation. The expenses, as far as the fee payable to the mediator, is concerned, is limited to a one-time fee, which appears to be reasonable, particularly, having regard to the fact that it is to be shared equally. A trained mediator can work wonders.

99.4. Mediation must be perceived as a new mechanism of access to justice. We have already highlighted its benefits. Any reluctance on the part of the Court to give Section 12-A, a mandatory interpretation, would result in defeating the object and intention of Parliament. The fact that the mediation can become a non-starter, cannot be a reason to hold the provision not mandatory. Apparently, the value judgment of the lawgiver is to give the provision, a modicum of voluntariness for the defendant, whereas, the plaintiff, who approaches the court, must, necessarily, resort to it. Section 12-A elevates the settlement under the Act and the Rules to an award within the meaning of Section 30(4) of the Arbitration Act, giving it meaningful enforceability. The period spent in mediation is excluded for the purpose of limitation. The Act confers power to order costs based on conduct of the parties.

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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 plaints 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 plaint has



been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff.

113.3. Finally, if the plaint 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.”

(Emphasis Supplied)

7. In view of the aforesaid, it is clear that any commercial suit which is instituted after 20th August, 2022 will not be maintainable if the same has been filed without following the mandatory provisions of Section 12A of the Commercial Courts Act of institution of Pre-Institution Mediation. The present suit having been filed on 10th April, 2023 is clearly covered by the mandate of the aforesaid judgment in the case of ***Patil Automation (Supra)***. Since the suit was filed on behalf of the appellant without exhausting the remedy of Pre-Institution Mediation in violation of the mandate of Section 12A of the Commercial Courts Act, the same was clearly not maintainable. Consequently, this Court holds that the learned Trial Court has rightly rejected the suit of the appellant.

8. It is also to be noted that the appellant herein had earlier filed a civil suit, being *CS No. 418/2019*, which was dismissed as withdrawn on 03rd February, 2023 on the ground that there were certain defects in the plaint. Thereafter, the present commercial suit was filed on behalf of the appellant.

9. Accordingly, in view of the detailed discussion hereinabove, the present appeal is dismissed.

10. This Court notes that no court fee has been filed on behalf of the appellant and the appellant has filed an application being *CM APPL. No. 51228/2023* along with the present appeal for extension of time for filing the requisite court fees. In view thereof, list *CM APPL. No. 51228/2023* before



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the learned Registrar on 24th November, 2023 for the purposes of deposit of requisite court fees by the appellant.

MINI PUSHKARNA, J

MANMOHAN, J

NOVEMBER 7, 2023

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Signature Not Verified

Digitally Signed By: CHARU
CHAUDHARY
Signing Date: 17.11.2023
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