



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION (CRA) NO.120 OF 2022**

Associated Machinery Corporation Ltd.,
through its Representative Pawankumar Tyagi ...Applicant

Versus

Sangkaj Engineering Pvt. Ltd.
Through its Representative Anil Kumar Ray ...Respondent

Mr. Suresh P. Salgar for Applicant.

Mr. Dinesh L. Vakil for Respondent.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 18th NOVEMBER 2024.

JUDGMENT:- (Per S. G. Chapalgaonkar, J.)

1. The Applicant seeks to challenge the order dated 2nd July 2022 passed by learned Civil Judge, Senior Division/Commercial Court, Aurangabad in Commercial Suit No.1 of 2021, below Exhibit-17/D.

2. Mr. Salgar, learned Advocate appearing for the Applicant submits that the Respondent filed Commercial Suit No.1 of 2021 for recovery of amount of Rs.94,46,387/- from the Applicant. The Applicant was served with suit summons on 30th October 2021. Consequent to service of summons, Applicant appeared before commercial court filed his written statement below Exhibit 13-B and raised the objection as to maintainability of the suit for non-adherence to provisions of Section 12A of the Commercial Courts Act, 2015. The

Applicant moved specific application below Exhibit 17-D and prayed for dismissal of suit under Section 12A of the Commercial Courts Act, 2015. However, vide impugned order, application has been rejected on flimsy ground. Mr. Salgar invites attention of this Court to non-starter report to contend that application for pre-institution mediation was moved on 11th January 2021, i.e., after institution of the suit. Further without service of notice of such application, non-starter report dated 17th February 2021 has been submitted. According to him, non-observance of mandate of Section 12A of the Commercial Courts Act, 2015 would entail dismissal of the suit under order VII Rule 11 of the Code of Civil Procedure, 1908. In support of his contention, he relies on the judgment of the Supreme Court of India in the case of *M/s. Patil Automation Pvt. Ltd. Vs. Rakheja Engineers Pvt. Ltd.*¹.

3. Per contra, Mr. D. L. Vakil, learned Advocate appearing for the Respondent submit that although suit was presented on 28th February 2020, it was not registered and numbered as Pre-institution Application No.1 of 2021. The Applicant was served with the notice for pre-institution mediation. However, no appearance was caused. Consequently, non-starter report was submitted with the reason “opposite parties failed to appear”. Mr. D. L. Vakil would further submit that the Supreme Court in the case of *M/s. Patil Automation Pvt. Ltd. (supra)* laid down that mandate under Section 12A would be

1 (2022) 10 SCC 1

effective from 20th August 2020. The suit instituted before that date cannot be subjected mandate under Section 12A of the Commercial Courts Act, 2015. In support of his contention, he relied upon the judgment of this Court in the case of *Play Games 24X7 Pvt. Ltd. Vs. Loran Leasing & Infotech Pvt. Ltd.*², the judgment of High Court of Kolkata in the case of *Samar @ Samar Infrastructure Vs. Mackintosh Burn Ltd.*³, the judgment of Madras High Court in the case of *Vinayaka Alloys Pvt. Ltd. Vs. Annam Steels Pvt. Ltd., Chennai*⁴ and the judgment of the Division Bench of the High Court of Delhi in the case of *Mahesh Chander Kumar Vs. Bhagwan Sigh Saini*⁵.

4. Having considered submissions advanced and after going through the record, it can be observed that the Respondent presented commercial suit on 28th February 2020. However, because of out-break of Covid-19 Pandemic, it was belatedly registered on 11th January 2021 as application for pre-institution mediation. The order sheet depicts that on 2nd March 2020, the matter was sent to DLSA, Aurangabad for mediation and after registration as Pre-institution Application No.1 of 2021, the matter was scheduled for appearance of opposite parties on 21st January 2021 and 16th February 2021. Thereafter, under Rule 3(4) or 3(6) of mediation rules, non-starter report has been forwarded to the Court. Thereafter, on 18th February

2 2023 SCC OnLine Bom 2042

3 2023 SCC Online Cal 462

4 Air Online 2022 MAD 113

5 2023 SCC OnLine Del 5509

2021, the Commercial Suit No.1 of 2021 has been registered. The aforesaid sequence of events would show that the procedure contemplated under Section 12A of the Commercial Courts Act, 2015 was undertaken before registration of the suit. Although, Mr. Salgar, learned Advocate appearing for the Applicant endeavors to contend that there was non-compliance of Rule 3 of mediation rules, since there was no service of second notice. However, assuming some procedural lacuna in issuance of notices in terms of Rule 3, Plaintiff-Respondent cannot unsuited.

5. As rightly pointed out by Mr. D. L. Vakil, learned Advocate appearing for the Respondent, the Supreme Court of India in the case of *M/s. Patil Automation Pvt. Ltd. (supra)* laid down that mandate of Section 12A has been made prospectively applicable w.e.f. 20th August 2022. The instant suit was presented on 20th February 2020 and has been registered as commercial suit on 18th February 2021. Eventually, the mandate under Section 12A of the Commercial Courts Act, 2015 would not be applicable in the facts of the present case. Hence, no fault can be found in approach of the Trial Court and consequential order impugned in this Revision Petition.

6. Resultantly, Civil Revision Application stands rejected.

(S. G. CHAPALGAONKAR, J.)