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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2025

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THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

CRP NO. 3168 of 2023

M/s. A.V.R.N. Hotels Pvt Ltd.,
Rep by its managing Director, Mr. A.
Vijayaraghavan, 12, Jawaharlal Nehru Salai, Inner
Ring Road, Arumbakkam, Chennai 106.

Petitioner(s)

Vs

M/s.Miraj Entertainment Ltd.,
Rep by Mr. Samir Subhash Samant, Vice President
Legal 705-796, Eureka towers, Wing B, Mind
Space, Off Link Road, Behind Toyota Show Room,
Malad (WEst) Mumbai 400 064, Maharashtra.

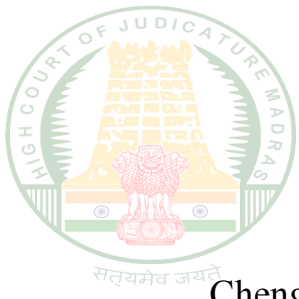
Respondent(s)

For Petitioner : Mr.R.Srinivas Senior counsel
For Mr.M.Santhanaraman

For Respondent : M/s.Dhanaram Ramachandran
For M/s.D.R.Law Chambers

ORDER

The Learned Counsel for the respondent/plaintiff submits that the
Civil Revision Petition No. 3168 of 2023 against the dismissal order
dated 28.07.2023 for rejection of plaint by the Principal District Judge,



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Chengalpet in C.O.S. No. 139 of 2023 preferred by the petitioner/defendant was allowed by this Court by order dated 24.06.2024.

2. The sum and substance of the respondent/plaintiff's grievance is that this Court has not passed any order of refund of court fee paid by the respondent/plaintiff in the C.O.S. No. 139 of 2023.

3. Therefore, the respondent/plaintiff prayed that the Principal District Judge, Chengalpet be ordered either to refund the Court fee paid in INR 25,85,060/- (Twenty- Five Lakhs Eighty-Five Thousand and Sixty Rupees) in C.O.S. No. 139 of 2023 to the respondent/plaintiff herein or to adjust the said refund amount, without insisting on fresh payment of court fees for the suit which is subsequently filed by the respondent/plaintiff herein relating to the same subject matter.

4. The plaint was ordered to be rejected by this Court for non-compliance of the mandate of Section 12 A of the Commercial Courts Act, 2015.

5. The issue involved in the prayer of the respondent/plaintiff under the caption "For Clarification" is that:

- i. Whether the respondent/plaintiff is entitled for refund of Court fee paid in C.O.S. No. 139 of 2023 before the Principal District Judge, Chengalpet or can the same be ordered to be adjusted for the subsequently filed suit relating to the same subject matter especially when the plaint was



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rejected under Order VII Rule 11 of CPC for non-compliance of Section 12 A of the Commercial Court Act, 2015.

- ii. Whether the above prayer of the respondent/plaintiff be granted by invoking the jurisdiction of this Court under Article 227 of the Constitution of India.

6. It is pertinent that the Learned Counsel for the petitioner/defendant contended that the respondent/plaintiff is not entitled for refund of Court fee on account of rejection of plaint under Order VII Rule 11 for non-compliance of Section 12 A of the Commercial Courts Act, 2015 by invoking Article 227 of the Constitution of India, in the absence of a specific statute for refund of Court Fee on rejection of plaint.

7. The Counsel for the respondent/plaintiff submitted that this is the first instance of a rejection of plaint arising out of non-compliance of Section 12 A of Commercial Courts Act, 2015 being heard by the High Court of Madras under Article 227 of the Constitution of India where refund of Court Fee is also prayed for. He submitted that therefore, he could not cite any landmark judicial precedent which has settled similar lis.

8. In view of the aforesaid peculiar issues, Mr. E.V.Chandru (Enrolment Number: 645/1997), Advocate, is appointed as Amicus Curiae to assist this Court in this aspect vide order dated 08.01.2025.

9. Heard the Learned Amicus Curiae for the issues referred to in



CRP. No. 3168 of 2023 vide order dated 08/01/2025.

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10. The Learned Amicus Curiae at the outset invited the attention of this Court to the provisions of The Tamil Nadu Court Fee and Suit Valuation Act, 1965 wherever refund is specifically provided under different heads, in **Chapter VII from Sections 66 to 73 of the said Act.**

“Section 66. Refund in cases of delay in presentation of plaint, etc.

(1) Where a plaint or memorandum of appeal is rejected on the ground of delay in its representation, or where the fee paid on a plaint or memorandum of appeal is deficient and the deficiency is not made good within the time allowed by law or granted by the Court, or the delay in payment of the deficit fee is not condoned and the plaint or memorandum of appeal is consequently rejected, the Court shall direct the refund to the plaintiff or the appellant, of the fee paid on the plaint or memorandum of appeal which has been rejected.

(2) Where a memorandum of appeal is rejected on the ground that it was not presented within the time allowed by the law of limitation, one-half of the fee shall be refunded.

Section 67. Refund in cases of remand

(1) Where a plaint or memorandum of appeal which has been rejected by the lower Court is ordered to be received; or where a suit is remanded in appeal for a fresh decision by the lower Court, the Court making the order or remanding the appeal may direct



the refund to the appellant of the full amount of fee paid on the memorandum of appeal; and, if the remand is on second appeal, also on the memorandum of appeal in the first appellate Court and, if the remand is in Letters Patent Appeal, also on the memorandum of second appeal and memorandum of appeal in the first appellate Court.

(2) Where an appeal is remanded in Second Appeal or Letters Patent Appeal for a fresh decision by the lower appellate Court, the High Court remanding the appeal may direct the refund to the appellant of the full amount of fee paid on the memorandum of Second Appeal if the remand is in Second Appeal, and of the full amount of fee paid on the memorandum of Second Appeal and the Memorandum of Letters Patent Appeal if the remand is in Letters Patent Appeal:

Provided that, no refund shall be ordered if the remand was caused by the fault of the party who would otherwise be entitled to a refund:

Provided further that, if the order of remand does not cover the whole of the subject-matter of the suit, the refund shall not extend to more than so much fee as would have been originally payable on that part of the subject-matter in respect whereof the suit has been remanded.

Section 68. Refund where Court reverses or modifies former decision on ground of mistake



Where an application for a review of judgment is admitted on the ground of some mistake or error apparent on the face of the record, and on the rehearing the Court reverses or modifies its former decision on that ground, it shall direct the refund to the applicant of so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under Article 11 (g) and (u) of Schedule II.

Section 69. Refund on settlement before hearing

Whenever any suit is dismissed as settled out of Court before any evidence has been recorded on the merits of the claim, half the amount of all fees paid in respect of the claim or claims in the suit shall be ordered by the Court to be refunded to the parties by whom the same have been respectively paid.

Explanation -- The expression 'merits of the claim' shall have the meaning assigned to it in section 12.

Section 70 - Refund of fee paid by mistake or inadvertence

The fee paid by mistake or inadvertence shall be ordered to be refunded.

Section 71. Instruments of partition

Where the final decree in a partition suit has been engrossed on non-judicial stamps furnished by the parties, the Court shall order the refund to the parties of so much of the valued fee paid by them as is equal to the value of the non-judicial stamps furnished by them.



Section 72. Exemption of certain documents

Nothing contained in this Act shall render the following documents chargeables with any fee:-

- (i) mukhtarnama, vakalatnama or other written authority to institute or defend a suit when executed by a member of any of the Armed Forces of the Union not in civil employment;*
- (ii) memorandum of appearance filed by advocates or pleaders when appearing for persons proceeded against in criminal cases;*
- (iii) plaints and other documents in suits filed in village Courts;*
- (iv) plaints in suits before Collectors under [Tamil Nadu] Regulation XII of 1816;*
- (v) application or petition to a Collector or other officer making a settlement of land revenue, or to the Board of Revenue relating to matters connected with the assessment of land, or with the ascertainment of rights thereto or interest therein, if presented previous to the final confirmation of such settlement;*
- (vi) application relating to a supply for irrigation of water belonging to Government;*
- (vii) application for leave to extend cultivation or to relinquish land, when presented to an officer of land revenue by a person holding, under a direct engagement with Government, land of which revenue is settled but not permanently;*
- (viii) application for service of notice of relinquishment of land or of enhancement of rent;*



- (ix) written authority to an agent to distrain;*
- (x) first application (other than a petition containing a criminal charge of information) for the summons of a witness or other person to attend either to give evidence or to produce a document or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court;*
- (xi) bail bonds in criminal cases other than bail bonds in village Courts, recognizances to prosecute or give evidence and recognizances for personal appearance or otherwise;*
- (xii) petition, application, charge or information respecting any offence when presented, made or laid to or before a police officer, or to or before the heads of villages or the village police;*
- (xiii) petition by a prisoner or other person in duress or under restraint of any Court or its officer;*
- (xiv) complaint of a public servant as defined in the Indian Penal Code (Central Act XLV of 1860) or an officer of the 3 State Railway;*
- (xv) application for permission to cut timber in Government forests or otherwise relating to such forests, not being applications from forest contractors for extending the period of their leases;*
- (xvi) application for the payment of money due by the Government to the applicant, other than an application for refund of lapsed deposit made six months after the date on which the amount*



lapsed to the Government;

(xvii) petition of appeal against any municipal tax;

(xviii) application for compensation under any law, for the time being in force relating to the acquisition of property for public purposes;

(xix) petition under section 48 of the Indian Christian Marriage Act, 1872 (Central Act XV of 1872);

(xx) petition or appeal by a Government servant or a servant of the Court of Wards when presented to any superior officer or Government against orders of dismissal, reduction or suspension; copies of such orders filed with such appeals, and applications for obtaining such copies.

Section 73. Power to reduce or remit fees

The State Government may, by notification in the Fort. St. George Gazette, reduce or remit, in the whole or in any part of the territory of this State, all or any of the fees chargeable under this Act, and may, in like manner, cancel or vary such notification.”

11. Referring to the above provisions, the Learned Amicus Curiae submitted that non inclusion of the relief of refund of Court Fee for rejection of plaint is clearly a case of casus omissus and that Courts while interpreting a provision only interpretes law and cannot legislate it, save in case of strong and clear necessity and when reason for it is found in the four corners of its statute itself. The Learned Amicus Curiae Mr.E.V.Chandru has vehemently contended that this Court under Article



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227 cannot legislate over and above the purview of the law for the purposes of granting the unwarranted reliefs prayed for refund of Court Fee on a grant rejection of plaint application.

12. The Learned Amicus Curiae has also gainfully referred to Article 284 (2) of the Constitution of India.

Emphasis was laid upon Article 284 which reads as follows:

Article 284 in Constitution of India – Custody of suitors' deposits and other moneys received by public servants and courts
All moneys received by or deposited with—

(a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of the State, as the case may be, or

(b) [HYPERLINK](https://indiankanoon.org/doc/1654454/)

["https://indiankanoon.org/doc/1654454/"](https://indiankanoon.org/doc/1654454/) any court within the territory of India to the credit of any cause, matter, account or persons, shall be paid into the public account of India or the public account of the State, as the case may be."

Emphasis was laid upon the word 'all money received or deposited with'.

13. He has referred to Article 284(b) and has lucidly argued that all monies received by or deposited with any court within the territory of India to the credit of any cause, matter, account or persons, shall be paid into the public account of India or the public account of the State as the



case may be.

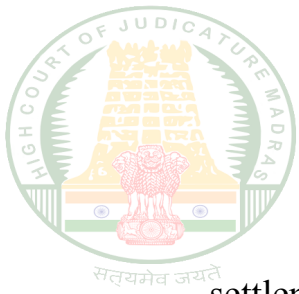
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14. In this context, the learned Amicus Curiae Mr. E.V. Chandru laid emphasis that Article 284 is a one way traffic, where, if a money is deposited either by a way of court fee or by any other means into the court, it shall be credited to the public account of the state and if at all that has to be claimed back from the public account, there should be a law made by the competent Legislature either under the state legislature or by the central laws.

15. The learned Amicus Curiae has also referred to the various provisions of The Court Fee Act of 1870 and the Court Fee act of Tamil Nadu Court Fee and Suit Valuation Act, 1965 and has argued that in both these legislations, there is no specific provision enabling this Hon'ble Court to refund the money if the decree is passed under Order 7 Rule 11 of CPC i.e., Rejection of Plaint.

16. When the Legislature has made specific provisions for refund of money or Court Fee on many other heads, it has left out such a relief for the provisions of Order 7 Rule 11, which would mean in the submissions of the learned Amicus Curiae that, it is not a negligent omission but it falls under the caption 'Caus Omissus'.

17. The Learned Amicus Curiae has also referred to Judgment in **Jage Ram Vs. Ved Kaur and Others SC on 28/01/2025**, wherein the Hon'ble Supreme Court has laid down that the refund of Court Fee is permissible only if the matter is referred to arbitration, conciliation, judicial settlement, including through Lok Adalat or mediation for



settlement and the cases decided in terms of such a settlement and not otherwise.

18. In the case at hand before the Hon'ble Supreme Court, the settlement in terms of it, the second appeal was decided by the High Court is not on reference to any of the above authorities or fora rather it was an amicable settlement out of court and the Hon'ble Supreme Court has also opined that the petitioner is not entitled to refund of the court fee and the High Court has not committed any error or illegality in refusing such a prior.

19. In this context also the Learned Amicus Curiae has pointed out that return of court fee has to be made only if there is a provision in accordance with law and Article 227 is non-elastic for such an impermissible relief.

20. Furthermore, it was argued by Mr.E.V.Chandru by referring to **M/s Patil Automation Private Limited Vs. Rakheja Engineers Private Limited on 17 August, 2022 SC**, which is a division bench judgment of the Hon'ble Supreme Court where the seminal question is with regard to whether the provisions of Section 12A of the Commercial Courts Act, 2015 is mandatory or directory. Even though this was the seminal question which was answered in favour of the defendant in that suit to the effect that if a matter is not referred to pre-suit mediation, then such a suit is liable to be dismissed under Order 7 Rule 11 of CPC that is rejection of plaint and a decree is to be passed in consequence of the said rejection.



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21. The Learned Amicus Curiae has brought to the knowledge of this Court that para 24, 30 and 33 of the judgment of the Hon'ble Supreme Court reported in **2022 Live Law SC 678** that is **M/s Patil Automation Private Limited Vs. Rakheja Engineers Private Limited on 17 August, 2022 SC Bench: [Hrishikesh Roy](#), [K.M. Joseph](#)**, that has ancillary answered the issue of non-refund of court fee also.

22. The relevant portions on which the Learned Amicus Curiae has referred to are reproduce here for gain:

“24. [Section 12A](#) of the Act reads as follows:

12A. Pre-Institution Mediation and Settlement— (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](#) (39 of 1987), for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the [Legal Services Authorities Act, 1987](#) (39 of 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](#) (36 of 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 (26 of 1996).”

30. In Bhikraj Jaipuria v. Union of India⁶, a Bench of five learned Judges dealt with the question arising out of [Section 175\(3\)](#) of the Government of India Act, 1935. The Court, inter alia, had to deal with the question, whether enactment should be considered directory or obligatory:

“17. The question still remains whether the purchase orders executed by the Divisional Superintendent but which were not expressed to be made by the Governor-General and were not executed on behalf of the Governor-General, were binding on the Government of India. Section 175(3) plainly requires that contracts on behalf of the Government of India shall be executed in the form prescribed thereby; the section however does not set



out the consequences of non-compliance. Where a statute requires that a thing shall be done in the prescribed manner or form but does not set out the consequences of non-compliance, the question whether the provision was mandatory or directory has to be adjudged in the light of the intention of the legislature as disclosed by the object, purpose and scope of the statute. If the statute is mandatory, the thing done not in the manner or form prescribed can have no effect or validity:

if it is directory, penalty may be incurred for non-compliance, but the act or thing done is regarded as good. As observed in Maxwell on Interpretation of Statutes, 10th Edn., p. 376:

“It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequence in its disregard, or as imperative, with an implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment. It may perhaps be found generally correct to say that nullification is the natural and usual consequence of disobedience, but the question is in the main governed by considerations of convenience and justice, and when that result would involve general inconvenience or injustice to innocent persons, or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment, such an intention is not to be attributed to the legislature. The whole scope



and purpose of the statute under consideration must be regarded.”

Lord Campbell in Liverpool Borough Bank v. Turner [(1861) 30 LJ Ch 379] observed:

“No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed.”

33. In fact, Sub-sections (2) and (3) of Section 80 came to be inserted by virtue of the amendment. In Section 80(1), in view of the insertion of Sub-Section (2), the opening words “save as otherwise provided in sub-Section (2)” came to be inserted. There were other changes which were brought about in Section 80 as it stood, as can be discerned from Section 80(1) as substituted. The judgment of the Privy Council, in the decision reported in Bhagchand Dagadusa Gujrathi and Ors. v. Secretary of State for India⁸, set at rest the controversy about the mandatory nature of the requirement of a previous notice to be given to comply with Section 80. We need only notice what this Court held in the Judgment in State of Madras v. C.P. Agencies and others⁹:

“1. ... The very language of Section 80 makes it clear;-- and it has been so held by the Judicial Committee in Bhagchand Dagdusa v.



Secy. of State, 54 Ind App 338:(AIR 1927 PC 176) which decision has been adopted by the same tribunal in many later cases--that Section 80 is express, explicit and mandatory and admits of no implications or exceptions. ...”

In Page 24 and Para 62, the Learned Amicus Curiae has argued that the counsel for the plaintiff in the suit, has attempted to enlighten the Hon'ble Supreme Court that if the plaint is under Order 7 Rule 11 CPC, the plaintiff would be saddled with the deprivation of the court fee. He would also contend therein that such an aspect of refund of court fee has to be considered. When the court decides the question as to whether the provision is mandatory or not, whenever a plaint is rejected on the ground that the suit is barred by any law, this is in

62. One of the arguments of Shri Saket Sikri is that, if a plaint is rejected under Order VII Rule 11, the plaintiff would be saddled with the deprivation of the court fee paid. He would contend that this aspect may be considered, when the Court decides the question as to whether the provision is mandatory or not. Whenever a plaint is rejected on the ground that the suit is barred under any law, this consequence is inevitable. [We may only, in this context, observe, that under Section 4A of the Kerala Court Fee and [Suit Valuation Act, 1959](#), the plaintiff needs to pay only one-tenth of the total court fee at the time of institution of the suit. The balance is to be paid not later than fifteen days from the



date of framing of issues, inter alia. Section 4A further provides that if the parties further settle the dispute within the period specified or extended by the Court for payment of the balance court fee, the plaintiff shall not be called upon to pay the balance court fee.] If a plaint is rejected for failure to give a notice, as contemplated in [Section 80](#) of the CPC, the court fee paid, may be lost. Equally, for violation of [Section 69](#) of the Indian Partnership Act, if the plaint is rejected, the plaintiff loses the court fee. While it may appear to be hard on the plaintiff, the effect of the provision contained in Order VII Rule 11, cannot be diluted. Therefore, we are not impressed by the argument, subject to what we will hold later on.

The Hon'ble Supreme Court has discussed such a provision in page 30, more specifically in para 76 under the caption 'the relief'. Such a paragraph is reproduced herein.

76. On the findings we have entered, the impugned orders must be set aside and the applications under Order VII Rule 11 allowed. This would mean that the plaints must be rejected. Necessarily, this would involve the loss of the court fee paid by the plaintiffs in these cases. They would have to bring a fresh suit, no doubt after complying with Section 12A, as permitted under Order VII Rule 13. Moreover, the declaration of law by this Court would relate back to the date of the [Amending Act](#) of 2018."

23. The Hon'ble Supreme Court has held that on the findings, it

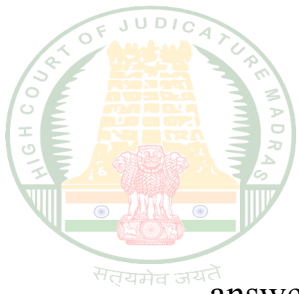


had entered, the impugned orders must be set aside and the application in Order 7 Rule 11 CPC allowed.

24. Thus Supreme Court further has categorically and conclusively held that this would mean that the complaints must be rejected. Necessarily this would involve the loss of the court fee paid by the plaintiff in these cases.

25. Further in page 33 paragraph 83, the Supreme Court has also held, in the concluding lines that, 'The imperative need to comply with the mandate of Section 12A which we have unravelled if it has not been shared by the parties on the advice they received or on the view prevailing in the High Courts would necessarily mean that unless we hold that the law, we declare is prospective such suits must perish. The court fee paid would have to be written off. In a fresh suit which would be otherwise barred by limitation, shelter can be taken only under [Section 14](https://indiankanoon.org/doc/409538/) of the Limitation Act. The availability of the power under Section 14 itself may have to be decided by the court.

26. Therefore, on a careful analysis of the above submissions and perusal of the Judgment of the Hon'ble Supreme Court in **M/S Patil Automation Private Limited Vs. Rakheja Engineers Private Limited on 17 August, 2022 SC**, this Court is duty bound to conclude that the Hon'ble Supreme Court has not only laid down the law that Section 12A of the Commercial Courts Act is mandatory but has also incidentally

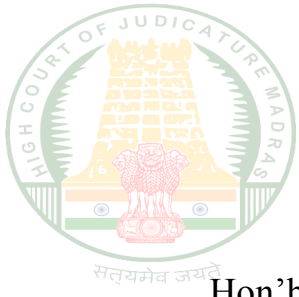


answered an issue which was raised by the Supreme Court, that any court fee paid while instituting the suit and the subsequent rejection of plaint based on the facts and circumstances that it was not referred to pre-mediation and if urgency not pleaded thereof, the court finds that the plaint ought to be rejected. The rejection of plaint would also involve a loss of court fee.

27. Therefore, refund of such court fee in the absence of any provision either in the Tamil Nadu Court Fee and Suit Valuation Act, 1965 or under the Court Fees Act of 1870, cannot be granted and the powers vested with this Hon'ble Court under Article 227 of Constitution of India cannot be extended or stretched in the absence of any specific provision, that too when there is a mandate in the constitutional provision Article 284 of Constitution of India, that it vests with the State Exchequer of Treasury. It is also added that the issue of refund of Court Fee on an application under Order VII Rule 11 arising out of a lis before Commercial Court, is no more res intergra in view of the landmark Judgment of the Hon'ble Supreme Court in **M/S Patil Automation Private Limited Vs. Rakheja Engineers Private Limited on 17 August, 2022 SC**

28. In view of the above discussions the above issue is clarified and is answered as against the prayers of the respondent/plaintiff in accordance with law.

29. This court extends its encomium for the well laid down meticulous arguments of the Learned Amicus Curiae who has taken this



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Hon'ble Court to the provisions of the Constitution of India and to the provisions of the Court Fee Act of 1870 and also to the relevant portions of the Tamil Nadu Court Fee and Suit Valuation Act, 1965 apart from referring to the various landmark judgments of the Hon'ble Supreme Court cited supra.

30. With these aforesaid discussions, the CRP is disposed of.

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T.V.THAMILSELVI,J.

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