



WEB COPY



C.R.P.No.3470 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.3470 of 2024

Dr.Mumtaz Kutty

... Petitioner

Vs.

Dr.Rahmath Banu

...Respondent

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Docket order dated 07.08.2024 in O.S.SR.No.1646 of 2024 on the file of the Principal District and Sessions Judge, Chengalpattu and consequently, direct the Authority to receive the Mediation Application Form in accordance with the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018.

For Petitioner : Mr.Adarsh Mohandas



C.R.P.No.3470 of 2024

ORDER

WEB COPY

This revision petition has been filed seeking to set aside the Docket order dated 07.08.2024 in O.S.SR.No.1646 of 2024 on the file of the Principal District and Sessions Judge, Chengalpattu returning the Mediation Application Form filed under Rule 3(1) of the Commercial Courts (pre-Institution Mediation and Settlement) Rules, 2018 and consequently direct the Authority to receive the Mediation Application Form in accordance with law.

2. Brief facts of the case:

The petitioner is landlady and she had rented out the premises in question to the respondent for running a diagnostic centre (for commercial purpose) for a period of 11 months and the monthly rent was fixed at Rs.1,37,500/- p.m. The respondent/tenant had failed to pay the rents. The petitioner had intended to file a commercial suit for recovery of outstanding rental amount, however, in view of the mandate under Section 12A of the Commercial Courts Act, the petitioner had filed an application for Pre-Institution Mediation in accordance with Rule 3 (1) of the said Rules for the recovery of outstanding rental amount of Rs.8,25,000/- (From January 2024 till the date of filing the application). The learned Principal District



C.R.P.No.3470 of 2024

and Sessions Judge, Chengalpattu, by docket order dated 07.08.2024, had returned the papers directing the petitioner to file the plaint copy. Challenging the same the present revision has been filed.

3. Mr.Adarsh Mohandas, learned counsel appearing for the petitioner would submit that the Principal District and Sessions Judge, Chengalpattu/the designated Commercial Court has erred in returning the Pre-Institution Mediation Application Form filed by the petitioner insisting the petitioner to file the plaint copy along with the Pre-Institution Mediation Application Form. He would submit that the Rules do not prescribe that the plaint should be filed along with the pre-Institution Mediation Application Form and the intention of the legislature for introduction of Section 12A of the Commercial Courts Act is that a suit shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation. The pre-institution mediation must be carried out even prior to the filing of the suit unless it contemplates for any urgent interim relief under the Act and depending upon the same, the suit proceedings may eventually be instituted in case of failure of mediation or non starter of mediation. As per the mandate, the Commercial Court cannot insist for the plaint to be accompanied with the Mediation Application Form and if the prescribed fee is paid, the Court should forward it to the Legal Services



C.R.P.No.3470 of 2024

Authority. He further submitted that as per Rule 3(1) of the Said Rules, the pre-requisites are that the party to a commercial dispute should make an application to the Authority as per Form-I Specified in schedule I, either online or by post or by hand along with fee of Rs.1000/- payable to the authority either by way of demand draft or through online. The petitioner in due compliance of Rule 3(1) of the said Rules, had also enclosed a demand draft payable to the Chairman, District Legal Services Authority, Chengalpattu, dated 10.07.2024. In such circumstances when the conditions have been complied, the application has to be taken on file without insisting for the plaint copy and he would seek to set aside the order of the learned Principal District and Sessions Judge, Chengalpattu returning of the Mediation Application Form and subsequently direct the District Legal Services Authority to take the application and proceed in accordance with law.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. It is seen that the application filed by the petitioner for pre-institution mediation has been returned by the Court below insisting the petitioner to enclose the copy of the plaint along with the Pre-Institution Mediation Application Form. Thus, the dispute in question arising from the order passed by the Court below, is



strictly a matter between the Court and the petitioner and therefore, no notice is required to be sent to the respondent in the present petition.

6. For the sake of convenience, Section 12A of the Commercial Courts Act, 2015 and Rule 3 of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 are extracted hereunder:

12A. Pre-litigation 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-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) For the purposes of pre-litigation mediation, the Central Government may, by notification, authorise-

(i) the Authority, constituted under the Legal Services Authorities Act, 1987 (39 of 1987); or

(ii) a mediation service provider as defined under clause (m) of Section 3 of the Mediation Act, 2023.



(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority or mediation service provider authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of one hundred and twenty days 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 sixty days with the consent of the parties:

PROVIDED FURTHER that, the period during which the parties spent for pre-litigation mediation shall not be computed for the purposes of limitation under 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 and the mediator.

(5) The mediated settlement agreement arrived at under this section shall be dealt with in accordance with the provisions of sections 27 and 28 of the



Mediation Act, 2023.

Rules 3 of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018:

1. ...

2. ...

3. Initiation of mediation process

(1) A party to a commercial dispute may make an application to the Authority as per Form-1 specified in Schedule-I, either online or by post or by hand, for initiation of mediation process under the Act along with a fee of one thousand rupees payable to the Authority either by way of demand draft or through online.

(2) The Authority shall, having regard to the territorial and pecuniary jurisdiction and the nature of commercial dispute, issue a notice, as per Form-2 specified in Schedule-I through a registered or speed post and electronic means including e-mail and the like to the opposite party to appear and given consent to participate in the mediation process on such date not beyond a period of ten days from the date of issue of the said notice.

(3) Where no response is received from the



opposite party either by post or by e-mail, the Authority shall issue a final notice to it in the manner as specified in sub-rule (2).

(4) Where the notice issued under sub-rule (3) remains unacknowledged or where the opposite party refuses to participate in the mediation process, the Authority shall treat the mediation process to be a non-starter and make a report as per Form-3 specified in the Schedule-I and endorse the same to the applicant and the opposite party.

(5) Where the opposite party, after receiving the notice under sub-rule (2) or (3) seeks further time for his appearance, the Authority may, if it thinks fit, fix an alternate date not later than ten days from the date of receipt of such request from the opposite party.

(6) Where the opposite party fails to appear on the date fixed under sub-rule (5), the Authority shall treat the mediation process to be a non-starter and make a report in this behalf as per Form-3 specified in Schedule-I and endorse the same to the applicant and the opposite party.

(7) Where both the parties to the commercial dispute appear before the Authority and give consent



to participate in the mediation process, the Authority shall assign the commercial dispute to a Mediator and fix a date for their appearance before the said Mediator.

(8) The Authority shall ensure that the mediation process is completed within a period of three months from the date of receipt of application for pre-institution mediation unless the period is extended for further two months with the consent of the applicant and the opposite party.

7. One of the objectives of Section 12A of the Commercial Court Act is that, after 03.05.2018, no fresh suit involving a 'commercial dispute' of a 'specified value' shall be instituted, unless the (proposed) plaintiff first exhausts the remedy of pre-institution mediation. That is the exact prescription made by Section 12A(1) of the Act. The only exception may arise if such a suit carries an urgent interim relief application. In that case the suit proceeding may be instituted even without seeking pre-institution mediation. As a result, once it is disclosed that the proposed plaintiff proposes to institute a suit proceeding involving a 'commercial dispute' of a 'specified value' not involving any urgent interim relief, the Commercial Court,



before whom such suit proceedings is proposed to be instituted, must enforce on such proposed plaintiff the mandatory pre-condition of pre-institution mediation, prescribed by the Act. The legislature has left no discretion with the Courts, in that regard, by using words - "shall not" in sub-section (1) of Section 12A of the Act before the words - "be instituted" and the word "unless" thereafter.

8. Once the institution of the suit proceeding itself has been put in abeyance by the legislature, unless a pre-institution mediation is first carried out (except where urgent interim relief is sought), it cannot be contemplated how a condition to enclose the copy of the plaint could be enforced at the stage of pre-institution mediation.

9. In the opinion of this Court, it cannot be said that an application for pre-institution mediation may be entertained only after the suit proceeding had been first instituted. If the pre-institution mediation is a non starter, then a report on Form 3 in Schedule 1 to the Rules would be submitted and it would allow for the exclusion of time starting from the date of application for pre-institution mediation is filed, to the date of receipt of the non-starter report (by the proposed plaintiff) towards the computation of limitation to institute the suit. It is the plain effect of the Second proviso to Section 12A(3) of the Act read with Rule 3(4) of the Rules.



WEB COPY



C.R.P.No.3470 of 2024



C.R.P.No.3470 of 2024

10. In such circumstances, when the application for pre-institution mediation is mandatory in nature, the return of the Mediation Application Form cannot be accepted and the application must be entertained and dealt with independent to the institution of the suit proceedings. The position remains that the institution of a suit would depend directly on the fate of the pre-institution mediation and not vice-versa.

11. In view of the above, this Civil Revision Petition is allowed. The Docket Order dated 07.08.2024 in O.S.SR.No.1646 of 2024 passed by the Principal District and Sessions Judge, Chengalpattu returning the Mediation Application Form insisting the petitioner to file the plaint copy is set aside and the learned Principal District and Sessions Judge, Chengalpattu is directed to forward the application to the District Legal Services Authority, Chengalpattu who in turn shall proceed in accordance with law.

13. There shall be no order as to costs.

11.09.2024

Index : Yes / No

Neutral Citation : Yes / No

ksa-2

Note: Registry is directed to return the original Mediation Application Form to the petitioner.

12 / 14



C.R.P.No.3470 of 2024

To
The Principal District and Sessions Judge,
Chengalpattu

WEB COPY



WEB COPY



C.R.P.No.3470 of 2024

A.D.JAGADISH CHANDIRA, J.

ksa-2

C.R.P.No.3470 of 2024

11.09.2024