



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4609 of 2024
and C.M.P.No.25778 of 2024

M/s.Techmates Marketing Services
Represented by Mr.Anand G.Hanji
(Managing Partner)
Mahatma Gandhi Bhawan, No.9
New No.22, 1st Floor, College Road,
Belagavi, Karnataka-590 001.

..

Petitioner

Versus

M/s.ION Exchange India Limited,
Represented by Mr.Krishnan Kant Rawat
(Divisional Manager Finance)
Plot No.105, SIPCOT Industrial Complex,
Hosur-635109.

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Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 17.04.2024 passed by the Learned Principal District Judge, Krishnagiri in I.A. No. 2 of 2023 in O.S. No. 197 of 2021.

For Petitioner : Mr.Sricharan Rangarajan
Senior Counsel
for Mr.Rahul Shankhar
For Respondents : Mr.Ashok Menon
for Mr.S.Sathya Ganesh



ORDER

WEB COPY This civil revision petition arises against the order of the learned Principal District Judge at Krishnagiri in I.A. No. 2 of 2023 in O.S. No. 197 of 2021 dated 17.04.2024.

2.The civil revision petitioner is the defendant in the suit. O.S. No. 197 of 2021 has been presented for recovery of a sum of Rs.28,03,310/- . This amount represents the balance payable, under a purchase order dated 20.04.2016. For the purpose of disposal of the revision, the facts of the case are not necessary.

3.The defendant, on appearance, filed its written statement. Thereafter, it took out an application under Order VII Rule 11 (d) of the Code of Civil Procedure r/w. Section 12A of The Commercial Courts Act, 2015 (in short 'the Act'). The plea is an extremely simple one. According to the defendant, the Supreme Court had held in ***Patil Automation Private Limited & Ors Vs. Rakheja Engineers Private Limited, 2022 (10) SCC 1*** that Section 12-A of the Act is mandatory. Since the plaintiff had not followed the mandatory mediation process, the plaint is liable to be rejected. This application was



numbered as I.A. No. 2 of 2023 in O.S. No. 197 of 2021. Notice was issued to the respondent/plaintiff. The plaintiff filed a counter denying the averments of the petition filed by the defendant.

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4. The learned Trial Judge took up the application for disposal and held as follows:

(i) The declaration of law in ***Patil Automation*** is prospective in its application from 20.08.2022. The suit having been filed earlier, it is not barred.

(ii) That requisite infrastructure under Section 12A of the Act, came into place at Krishnagiri only in December 2020. Therefore, the party could not have resorted to the same.

Consequently, she dismissed the rejection of plaint petition.

5. Aggrieved by the same, the present civil revision petition is filed.

6. When the matter came up for admission on 19.11.2024, I requested Mr.Rahul Shankar to serve papers on the counsel who represented the



plaintiff in the Court below. The papers were served and Mr. S. Sathya Ganesh has entered appearance.

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7. I heard Mr.Sricharan Rangarajan learned Senior Counsel for Mr. Rahul Shankar and Mr. Ashok Menon for Mr. S. Sathya Ganesh.

8. Mr. Sricharan Rangarajan invited my attention to paragraph 113.3 of the Judgment in ***Patil Automation***, mentioned supra. He argues that the Supreme Court had culled out an exception to the prospective application of the Judgment as found under Paragraph 113.1, by stating that, if the jurisdictional of High Court had already declared that Section 12A to be mandatory, then, the plaintiff will not be entitled to the benefit granted under Para 113.1.

9. He points out that this Court in ***Sathyam Wood Industries Vs. Adoniss Pvt. Ltd.***, C.R.P.(MD)No.804 of 2019 dated 10.06.2019, had held that Section 12A is mandatory and therefore the plaintiff is not entitled to the benefit under paragraph 113.1. He took me through the Judgments of the Supreme Court in ***Amalgamated Coalfields Vs.. Janapada Sabha***



Chhindwara, 1963 Supp (1) SCR 172 and **S. Shanmugavel Nadar Vs. State of Tamil Nadu & Anr, (2002) 8 SCC 361** to urge that even if I were to come to a conclusion that the Judgment in **Sathyam Wood Industries** had not specifically declared Section 12A to be mandatory, by necessary implication, it had been declared so in **Sathyam Wood Industries** case. Hence, para 113.3 of **Patil automation** will apply and not para 113.1, as held by the learned Commercial Judge.

10. He also invited my attention to **Deepak Raheja Vs.Ganga Taro Vazirani, 2021 (6) Bom.CR 115** to argue that though Section 12A had been held mandatory in the said judgment, the Division Bench had taken a view that the suit can be kept in abeyance for a period of three months and that this position was specifically reversed by the Supreme Court in **Patil Automation Pvt. Ltd.** He points out from **Patil Automation** that discordant notes on Section 12A rendered by High Courts of Madras, Punjab and Haryana, Calcutta, Madhya Pradesh and Allahabad had been taken note of and it was only thereafter, the conclusions had been arrived at. He points out the view taken by the Madras High Court in **Shahi Exports Pvt. Ltd. vs. Gold Star Line Limited, 2021 SCC online Mad 16514** had been reversed by the



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Supreme Court. In *Shahi Exports*, this Court held that Section 12A is directory and not mandatory. In fine, his argument is that in view of the judgment rendered in *Sathyam Wood Industries* dated 10.06.2019, Section 12A had been held mandatory on 10.06.2019 and therefore, the plaint has to be rejected as it falls under the exception created under Para 113.3.

11. Per contra, Mr.Ashok Menon urges that the learned Trial Judge in paragraph 18 of the impugned order has found factually that the necessary infrastructure for pre-institution mediation was not available in Krishnagiri till December 2020 and therefore, the impugned order need not be interfered with. He also relies upon the judgment of this Court in *Shipping Corporation of India Limited Vs. Nicholas John Richardson, 2024 SCC online Mad 5671* and argues that this Court had accepted that, plaints presented before 20.08.2022, receive the protection of paragraph 113.1 of *Patil Automation*.

12. I have carefully considered the submissions of both sides and also gone through the papers.



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13. In this case, certain dates are relevant. When the Commercial Courts Act was enacted in 2015, Section 12A did not find a place. It came into effect by virtue of an amendment notified from **03.05.2018**. The amendment was given retrospective effect from **23.10.2015**. A notification was also issued by the Central Government on **03.07.2018**, authorising the State Legal Services Authority and District Legal Services Authority, as agencies, for the purpose of pre-institution mediation settlement under Chapter III A of the Act.

14. The suit in the present case was filed on **03.12.2019**. It was registered as a suit only on **02.09.2021**. This delay, perhaps, is attributable to the COVID-19 pandemic prevailing at that time. It was much later, on **25.07.2022**, on the directions of the learned Principal District Judge Krishnagiri, the suit was registered as a commercial suit. Within a month of registering it as a commercial suit, the Judgment of the Supreme Court in *Patil Automation* came to be pronounced.

15. A perusal of the Judgment in *Patil Automation*, shows the declaration of law that Section 12A is mandatory was made prospective from



20.08.2022. For ready understanding, the conclusion of the Supreme Court is extracted hereunder:

"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. The power can be exercised even suo motu by the Court as explained earlier in the judgment. We, however, make this declaration effective from 20.08.2022 so that stakeholders concerned become sufficiently informed.

113.3. Finally, if the plaint is filed violating Section 12-A after the jurisdictional High Court had declared Section 12-A mandatory, also, the plaintiff will not be entitled to the relief."

16. As rightly contended by Mr. Sricharan Rangarajan, the Supreme Court had culled out an exception to the prospective application of the law declared under paragraph 113.1. It held that if the jurisdictional High Court had declared Section 12A to be mandatory, then the party would not be entitled to the benefit of prospective operation of Section 12A.

17. Turning the first and foremost argument, I notice that the Judgment of ***Sathyam Wood Industries*** was pronounced on 10.06.2019. In the said



Judgment, this Court had directed the learned Principal District Judge at Thoothukudi to number a plaint which had been returned on 16.05.2019.

While allowing the revision, the Hon'ble Ms.Justice J.Nisha Banu had held as follows:

"6.The petitioner/plaintiff filed the suit for damages and also for consequential injunction. The petitioner/plaintiff also fled an interlocutory application seeking delivery of goods. It is seen from the plaint that the shipment was arrived at Tuticorin Port on 09.02.2019 and the goods are lying in the port for the past four months. The petitioner would state that delay will cause irreparable loss to the petitioner/plaintiff apart from the damages to the goods. Therefore, the petitioner/plaintiff has made out a case that there is an urgency for interim relief.

7. In view of the above, this Court without adverting to the merits of the case, is inclined to direct the learned District Judge, Tuticorin, to number the plaint, consider the interim application if there is any real urgency in the matter and decide the same on merits and in accordance with law and if necessary refer the parties for mediation"

18. It is the argument of Mr. Sricharan Rangarajan that the aforesaid paragraphs, has declared that Section 12A to be mandatory. He expands his argument by stating that even if the declaration had not been specific, by necessary implication, I have to come to the conclusion that the learned



Single Judge had declared Section 12A to be mandatory. Therefore, he urges the plaintiff is not entitled to benefit under paragraph 113.1 of *Patil Automation*.

19. A reading of the judgment passed in *Sathyam Wood Industries* shows that the learned Judge had not given a specific declaration that Section 12A is mandatory. In fact, the learned Judge held that she is not going into the merits of the case at all. The case presented before the learned Single Judge arose on account of the following facts:-

- (i) Goods had arrived at Thoothukudi Port on 09.02.2019 and were not cleared. and
- (ii) The plaintiff feared if the shipment was not cleared by the defendants, it would result in damage to the goods, apart from huge demurrage charges.

20. When this plaint was presented before the Commercial Court at Thoothukudi, the learned Trial Judge returned the plaint on 16.05.2019 stating that pre-institution Mediation had not been followed and hence, he will not number the plaint.



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21. This Court referred to Section 12A and held that since urgent reliefs are sought for, the learned District Judge should number the plaint and consider the interim application. In paragraph no. 6 of the order, the learned Judge had found that delay will cause irreparable loss to the plaintiff and hence, the plaintiffs had made out a case for interim relief.

22. In other words, the point that had been presented before the Court was, whether Section 12A has to be followed in a case where urgent interim reliefs are sought for. No where did the learned Judge hold that Section 12A is mandatory. Infact reading the aforesaid paragraphs shows the issue whether Section 12A is mandatory or directory never arose for consideration. Therefore, I am not to able to come to a conclusion, which Mr. Sricharan Rangarajan wants me to, that the learned Judge has held Section 12A to be mandatory and since urgent interim reliefs are sought for, the compulsory pre-litigation mediation is not necessary.

23. A judgment can be cited as a precedent for law laid down in the Judgment. I do not have power to add to what has stated by the learned Single Judge in the order in ***Sathyam Wood Industries***.



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24. Anticipating this issue, Mr. Sricharan Rangarajan argues that by necessary implication I should come to the conclusion that such a declaration had been made. To that effect, he relies upon the Judgment of the Supreme Court in *Amalgamated Coalfields Vs. Janapada Sabha Chhindwara, 1962 SCC Online SC 72* and *S.Shanmugavel Nadar Vs, State of Tamil Nadu, (2002) 8 SCC 361*. He relies upon paragraph 24 of the judgment in *Amalgamated Coalfields* and paragraph 10 of the Judgment in *Shanmugavel Nadar's* case.

25. The Constitution Bench in *Amalgamated Coal Fields case* was dealing with the issue whether doctrine of constructive *res judicata* applies or not to the case before it. While discussing that issue, the Supreme Court held that the Supreme Court can declare, by implication, the position of law which would be binding in terms of Article 141 of the Constitution. In *Shanmugavel Nadar's* Case, the Supreme Court held, by virtue of the dismissal of an appeal without entering into the merits of the case, against an order, declaring a law as constitutional by a Division Bench of the High Court, no law has been laid down by implication.



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26. Both the judgments, in my view, were dealing with the scope of Article 141 of the Constitution of India, as regards the Constitutional validity of a legislation. Declaration of Constitutional validity of a law cannot be applied to this case and a conclusion arrived at holding, by implication, Section 12A had been held to be mandatory.

27. Since the Courts have not defined what is meant by the word 'implication', I necessarily have to refer to the Oxford English Dictionary as to the meaning of the said word. It reads as follows:

- (i) the implicit conclusion that can be drawn from something.
- (ii) likely consequence.
- (iii) The action or state of being implicated

28. The third definition obviously refers to criminal proceedings and not to a civil one. Therefore, it is ignored. Applying the definitions (i) and (ii), I am not able to come to the conclusion that the likely consequence or the implicit conclusion of the Judgment (in *Sathyam Wood Industries case*) is



that Section 12A is mandatory.

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29. At this stage, Mr. Sricharan draws my attention to the definition under **Black's Law Dictionary**, which defines *necessary implication* - “an implication so strong in its probability that anything to the contrary would be unreasonable.” Is there such a strong implication in ***Sathyam Wood Industries*** case? I think not.

30. In my understanding, the “necessary implication” which flows out of the Judgment of the ***Sathyam Wood Industries*** is that, if an urgent interim relief is sought for, it is for the Trial Court to decide whether the urgent relief is actually a relief sought for in the suit. The view taken by ***Hon'ble Ms. Justice J.Nisha Banu*** is in line with the view taken by Supreme Court in ***Yamini Manohar Vs. T.K.D.Keerthi (2024) 5 SCC 815***. This is because ***Patil Automation*** did not deal with such a situation. In para 100 of ***Patil automation (2022 10 SCC 1)***, the Court held that it is not dealing with a case where urgent interim reliefs are sought for. In ***Yamini Manohar's*** case too, the Supreme Court held, in case of an urgent interim relief is sought for, then the requirement of pre litigation mediation need not be followed. It further observed if the urgent relief is one projected to avoid pre-litigation mediation,



then the Court should not permit a party to get around the provision.

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31. This position becomes clear from paragraph 7 of the order of Hon'ble Ms.Justice Nisha Banu. Her Lordship held that the learned District Judge should number the plaint and thereafter consider the interim application and find out if real urgency exists and if necessary, refer the parties to mediation.

32. If I have to agree with Mr. Sricharan Rangarajan, then the learned Judge would have held that if the urgent interim relief is found to be a make-belief one, then the Court would have to exercise Section 12A and reject the plaint. On the contrary, the learned Judge had directed, in case, the Trial Court comes to the conclusion that the matter is not one which suffers from real urgency, then the parties must be referred to mediation. This implies that the learned Judge did not consider Section 12A to be mandatory. Therefore, I am not able to come to a conclusion that the Court had held Section 12A to be mandatory in the case of ***Sathyam Woods Industries***, even by necessary implication.

33. Mr.Sricharan Rangarajan relying upon the Judgment in ***Tikamdass***



Vs. Deepak Raheja, 2022 SCC Online Bom.11617, argues that Section 12A had been held to be mandatory. That judgment relies upon a previous judgment of the same Court in ***Deepak Raheja Vs. Ganga Taro Vazirani, 2021 SCC OnLine Bom. 3124***. This necessarily requires that I refer to ***Deepak Raheja's*** case. A reading of Judgment shows the Division Bench disagreed with the view of a learned Single Judge, who held on Section 12A to be directory and as a option given to the plaintiff, which can be waived. In paragraph 37 of the said judgment, the bench categorically declared as follows:

"37. Thus, we hold that Section 12-A of the Act of 2015, is mandatory, and a commercial suit of specified value which does not contemplate any urgent interim relief under the Act on 2015, cannot 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. Considering the object and purpose of Section 12-A of being rooted in the public interest, there is no question of it being waived by a party. The findings in the impugned order to the contrary are set aside.



WEB COPY 34.This shows that, even prior to the Jugement in ***Patil automation***, the Bombay High Court had declared that Section 12A is mandatory. As it is the jurisdictional Court for the State of Maharastra and Goa, the learned Judge in ***Tikamdass*** case applied the said judgment when it was cited before him. Even in that case, he points out that as the suit had been presented prior to the law declared in ***Deepak Raheja's*** case, the suit is entitled to the benefit under paragraph 113.1 of the ***Patil Automation*** case.

35. Unfortunately, for the civil revision petitioner, there is no such clear and categorical declaration given by the Madras High Court. On the contrary, a learned Single Judge of this Court in ***Shahi Exports Vs Gold Star Line Limited, (2023) 6 CTC 671*** had held that Section 12A is only directory. Hence, I cannot come to the conclusion that the plaintiff is not entitled to the benefits of paragraph 113.1 of the ***Patil Automation*** case.

36. Before I conclude on this issue, I have to point out at the highest, the position urged by Mr.Sricharan is that the law has been declared *sub silentio* in ***Sathyam Wood Industries case***. I only need to refer to ***Bilkis***



Yakub Rasool Vs. Union of India (2024) 5 SCC 48. In that judgment, the

Court held a decision is passed *sub silentio*, when the particular point of law in a decision is not perceived by the Court or not present to its mind or is not consciously determined by the Court. It went on to hold such decisions cannot be held to be binding. The issue whether Section 12A is mandatory or directory not having been continuously determined in ***Sathyam Wood Industries*** case, at best, it is a decision rendered *sub silentio*. Hence, it cannot be elevated to the status of declaration of law.

37. When Chapter III A was brought into Commercial Court Act, it held that the suit shall not be instituted unless the plaintiffs exhaust pre-institution mediation. There is a difference between “presentation / filing” of a suit and “Institution” of Suits. When the suit is presented, it is received by a Court, but it does not amounts to institution. As held in ***Patil Automation***, a suit is instituted only after the Court admits the plaint and registers it in the suit register. The word 'Institution' implies that the suit had been filed, registered and admitted. The question I have to answer is whether a suit filed as an ordinary suit, when subsequently transferred to the Commercial Court also requires compliance with Section 12A. When a suit has already been



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instituted before the regular Civil Court, by virtue of the suit sent being a Commercial Court, there is no fresh "Institution". This is because the suit has already been instituted before the regular Court. In the present case, the suit was filed/presented before the regular Court, instituted therein and thereafter on the order of the Principal Judge renumbered as a commercial suit. This shows there was no fresh "Institution" before the Commercial Court. Hence, I am not able to agree with Mr.Sricharan, even on the merits of the plea.

38. After the order had been pronounced, Mr.Sricharan Rangarajan brought to my notice a Judgment of a Division Bench of this Court, in ***Amaravathi Sri Venkatesa Paper Mills Limited Vs. Raju Thangavelu & Ors, Tr.C.M.P.(MD) No.742/2024 dated 09.12.2024***. Speaking for the Bench Hon'ble Mr.Justice G.R.Swaminathan has held that the regular suit instituted in an ordinary civil Court will not be governed by Section 12A. The learned Judge added that Section 12A will apply only in the case of a suit instituted in a commercial court. A declaration, in categorical terms, that Section 12A will not apply to a suit instituted in an ordinary Civil Court, which is transferred to a commercial Court, has been rendered. This Judgment directly applies to the facts of this case. As seen supra, the suit was originally



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instituted before the regular Civil Court and that it was transferred much later to the commercial Court in Krishnagiri. The fairness of the learned Senior Counsel in bringing to the notice of this Court a Judgment which is against the position which he argued is appreciated. It reminds me of the statements that were made by learned Seniors at the bar, while I was an advocate, that it is the duty of the counsel not only to cite judgments which are in their favour but also against them. May this be the beginning of the revival of the glorious practice of the past.

39. Apart from these aspects, the learned Principal District Judge has given a categorical finding that the requisite 'infrastructure' under Section 12A of the Commercial Courts Act was not available in Krishnagiri District prior to December 2020. To expect a party to comply with Section 12 A, when no infrastructure is available, is to expect the plaintiff to do an impossibility. I will apply the maxim- *lex non cogit ad impossibilia*. The law does not expect impossibilities from the litigants. This being a factual finding, which unless and until, is specifically adverted to be erroneous or perverse, cannot be revised, under Article 227 of Constitution of India.



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40. In so far as the Judgement, which is relied upon by Mr.Ashok Menon in *Shipping Corporation of India* case is concerned, the attention of the single Judge had not been drawn to the view taken by this Court in *Sathyam wood Industries*. Therefore, it cannot treat it as a precedent for the questions posed for me to answer.

41. At this stage Mr. Sricharan Rangarajan requests that the matter may be referred to Mediation. The purpose of mediation is to avoid an unnecessary litigation and thereby, prevent clogging of Courts with resolvable cases. The civil revision petitioner is in Belgaum, the plaintiff is in Mumbai and the litigation is in Krishnagiri. Taking into consideration the request made, which has been readily accepted by Mr.Ashok Menon. this Court appoints **Mr. P.H.Arvinth Pandian**, learned Senior Advocate, as a Mediator to resolve the issue. Both the parties agree that they will appear before the Mediator on **06.01.2025**.

42. **Mr.P.H.Arvinth Pandian** is requested to mediate the matter and attempt a settlement between the parties. In case, settlement is arrived at, needless to add, the plaintiff will be entitled to refund of the Court fee paid.



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As the date has been fixed by consent, the Mediation Centre attached to this Court need not send a separate notice to the parties. If, in the unfortunate circumstance, the mediation fails, then the parties are entitled to litigate before the Commercial Court at Krishnagiri.

43.In the light of the aforesaid discussions, I have no other option than to confirm the order of learned Principal District Judge at Krishnagiri. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.12.2024

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No

arr / krk

To

The Principal District Judge,
Krishnagiri.



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V.LAKSHMINARAYANAN, J

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