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Appeal (CAD) No.26 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

Appeal (CAD) No.26 of 2023

M/s.Dimensions, a Partnership Firm
rep. By its Partner Dr.A.Sudhahar,
S/o. I.Adithan, having office at
57, Krishnaswamy Mudaliar Street,
R.S.Puram, Coimbatore.

.. Appellant

Vs

1.M/s.Hethaiamman Charitable Trust
rep. By its Chairman/Managing Trustee
Hallan,
S.F. No.992, Onnipalayampudur,
Karamadai to Airport Road,
Coimbatore – 641 019.

2.Hallan,
Managing Director of
M/s.Hethaiamman Charitable Trust
Having Office at S.F. No.992, Onnipalayampudur,
Karamadai to Airport Road,
Coimbatore – 641 019.

.. Respondents

Appeal filed under Order XLI Rule 1 r/w Section 96 of The Code of Civil Procedure, 1908 and Section 13(1A) of The Commercial Courts Act, 2015 against the judgment and decree dated 12.09.2023 made in I.A. No.2 of 2023 in C.O.S. No.59 of 2023 on the file of the Commercial Court (District Judge Cadre), Coimbatore.



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For Appellant : Mr.N.Manokaran

For Respondents : Mr.R.Balasubramanian

JUDGMENT

(Judgment of the Court was delivered by **M.Sundar, J.**)

Captioned appeal is directed against an order dated 12.09.2023 made in I.A.No.2 of 2023 in C.O.S. No.59 of 2023 {[Coimbatore P.D.J. Court Old C.O.S. No.11 of 2021] (CNR No.TNCB01-000626-2021)} on the file of the Commercial Court (District Judge Cadre), Coimbatore. This '12.09.2023 order' shall be referred to as 'impugned order' and 'Commercial Court (District Judge Cadre), Coimbatore' shall be referred to as 'said Commercial Court' both for the sake of convenience and clarity.

2. In and by the impugned order, said Commercial Court has rejected a plaint dated 27.01.2021 for non-compliance of Section 12A of 'The Commercial Courts Act, 2015 (4 of 2016)' [hereinafter 'CCA' for the sake of brevity].

3. The proceedings made in the listing on 24.09.2024 can be usefully referred to and the same reads as follows:



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M. SUNDAR, J.
and
DR. A.D. MARIA CLETE, J.

(Order of the Court was made by M. SUNDAR, J.)

A plaint with a prayer for recovery of money predicated on an agreement for construction of a school (money suit) was presented on the file of the Principal District Court, Coimbatore on 27.01.2021. The institution of the said suit was on 01.02.2021 (as per e-Court portal). To be noted, the suit, on institution, manifested itself as C.O.S.No.11 of 2021. Thereafter, dedicated Commercial Courts were constituted in Coimbatore. Suits stood transferred to the file of the Commercial Court inter-alia under Section 15(4) of the 'Commercial Courts Act, 2015' ('CCA' for the sake of brevity) and the suit became C.O.S.No.59 of 2023 (CNR No.TNCB01-000626-2021) on the file of the Commercial Court (District Judge Cadre) in Coimbatore [This 'Commercial Court (District Judge Cadre), Coimbatore' shall hereinafter be referred to as 'said Commercial Court' for the sake of convenience and clarity].

2. The two defendants in the suit took out an application in I.A. No.2 of 2023 with a prayer for rejection of plaint (Order VII Rule 11 CPC) primarily on the ground that it is barred by Section 12A of CCA, i.e., owing to non-compliance qua section 12A of CCA. This application was allowed vide order dated 12.09.2023 and the plaint was rejected. Therefore, the plaintiff is on appeal before us.



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3. Mr. N. Manokaran, learned counsel for appellant/plaintiff and Ms. D. Kalaiselvi, learned counsel for respondents/defendants are before us.

4. Mr. N. Manokaran, learned counsel for appellant/plaintiff, adverting to paragraph 8 of the impugned order, makes a short point. Learned counsel submits that said Commercial Court has clearly noted that the Hon'ble Supreme Court, in **Patil Automation Pvt. Ltd and vs. Rakheja Engineers Pvt. Ltd.**¹, has made it clear that Section 12A of CCA is mandatory and has held the same to be prospective but has rejected the plaint in his case notwithstanding the same being well and truly prior to 20.08.2022 which is the appointed prospective day qua the legal principle that Section 12-A of CCA is mandatory laid down by **Patil Automation** rendered on 17.08.2022.

5. Paragraph 8 of the impugned order reads as follows:

'8. To be noted, in **Patil Automation** case law, Section 12A of said Act being mandatory is held to be prospective. In the case on hand, there is clear non compliance of Sec.12A. The reason is, the legal notice is dated 28.07.2020 and it was replied by the defendant on 28.08.2020 itself. Thereafter, the plaintiff had all the time in the world to take recourse to Section 12A but from the plaint averment and plaint documents, it is clear that plaintiff did not move its little finger in this direction. On the contrary, the plaintiff has allowed the matter to go into slumber, i.e., a lull. After a lull and after going into slumber without taking any effort to take recourse to Section 12A, plaintiff has casually presented the plaint in this Court on 21.01.2021 after

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four and half months later. Therefore, there is no doubt in the mind of this Court that it is a clear case of infraction of Section 12A and if Patil Automation principle is applied, it calls for rejection of plaint. This also takes this Court to the Court fee that has been paid by the plaintiff. In Patil Automation, the Hon'ble Supreme Court addressed itself to this Court fee issue also and has made it clear that the plaintiff has to forego the Court fee paid and has to come up with a fresh suit. Be that as it may, it is well open to the plaintiff to resort to Section 12A of said Act and then come to this Court if so advised and if so desired. In this regard, all the rights and contentions of the plaintiff are preserved. In this view of the matter, the plaint stands rejected albeit preserving all the rights and contentions of the plaintiff in the aforesaid manner. In other words, it is open to the plaintiff to come to this Court again on the same cause of action after complying with the requirements under Section 12A of said Act.'

6. *Learned counsel for appellant/plaintiff submits that a sum of a little over Rs.1.79 lakhs (Rs.1,79,617/- to be precise) is what the appellant/plaintiff has lost as Court fee.*

7. *Ms.D.Kalaiselvi, learned counsel for respondents/defendants requests for a short accommodation citing difficulty for her senior Mr.R.Balasubramanain who is to argue the matter.*

8. *Request acceded to.*

9. *List on 26.09.2024.'*

4. The aforementioned proceedings shall now be read as an integral part and parcel of this order.



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5. Further dates as they emerge from the submissions today are as follows:

<i>Sl.No.</i>	<i>Date</i>	<i>Event</i>
1	25.06.2020	Pre-suit notice
2	28.07.2020	Reply to pre-suit notice
3	28.08.2020	Rejoinder
4	14.10.2020	Reply to the rejoinder dated 28.08.2020
5	27.01.2021	Date of plaint
6	27.01.2021	Date of presentation of plaint
7	01.02.2021	Institution of suit
8	12.09.2023	Impugned order vide which plaint was rejected

6. Mr.N.Manokaran, learned counsel for appellant, as already captured in 24.09.2024 proceedings (extracted and reproduced supra), predicated his argument on the short point that date of plaint, date of presentation of plaint as well as institution of the suit are all prior to 20.08.2022 which is the reckoning date vide **Patil Automation** and therefore, the plaint ought not to have been rejected.

7. Mr.R.Balasubramanian, learned counsel for respondents submitted that Sections 21 and 22 of CCA come to his aid. It is the



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submission of learned counsel for respondents that the provisions of CCA shall have effect notwithstanding anything inconsistent in any other law and therefore rejection is correct and the impugned order deserves to be sustained. This is the burden of the song of submissions of learned counsel for respondents. The further point argued by learned counsel is predicated on paragraphs 113.1 and 113.3 of **Patil Automation** which read as follows:

'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 20.08.2022 so that stakeholders concerned become sufficiently informed.'

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



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8. Adverting to aforementioned proceedings, learned counsel submitted that **Patil Automation** provides for rejection. **Patil Automation** vide paragraph 113.3 makes it clear that if a plaint is filed in violation of Section 12A of CCA, the plaintiff will not be entitled to the relief, after the jurisdictional High Court has declared Section 12A as mandatory. In the case on hand, the jurisdictional High Court prior to **Patil Automation** has declared that Section 12A of CCA is not mandatory. This is vide order dated 17.08.2021 in **Shahi Exports Pvt. Ltd., Vs. Gold Star Line Limited and Others (A.No.35 of 2021 in C.S. No.669 of 2019)**. **Shahi Exports**, on facts (broadly stated) is a case of dispute between the shipping line/carrier and an importer. When Section 12A point was raised seeking rejection of plaint, the rejection of plaint application was dismissed and in paragraph 25, a Hon'ble Single Judge of this Hon'ble Court held as follows:

'25. In such circumstances, the Harmonious Interpretation takes us to the irresistible conclusion that Section 12-A of the Commercial Courts Act, is not a mandatory provision. The right to access justice which is a Constitutional right cannot be denied or deprived for not resorting to mediation. The Court is not substitute to Alternative Dispute Redressal, it is otherwise. The litigant



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cannot be denied the doors of justice for directly approaching the Court without exploring the possibility of mediation. There can be no prejudice to the defendant, if the defendant is ready for mediation, even after institution of the suit. Also there is no impediment either for the party or for the Court to refer the pending matter to be resolved through mediation or any other Alternative Dispute Redressal mechanism. This provision is meant for the parties to work out an amicably settlement without involving in the adversary system of litigation. The intention of this Section is not to prevent access to justice or to aid anyone who refuse to subject himself to the judicial process. The intention is to avoid the procedural rigor and to arrive an amicable win-win settlement. Any other interpretation to Section 12-A of the Act contrary to the intention will amount to miscarriage of Justice. Therefore, this Court holds that there is no ground to entertain this Application seeking rejection of plaint. Hence, Application is dismissed with costs of Rs.10,000/-.'

9. To be noted, this learned Single Judge's decision was not



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carried in intra-court appeal and it was holding the field until **Patil Automation** declared the law i.e., declared that Section 12A of CCA is mandatory and fixed a prospective date i.e., 20.08.2022 as reckoning date. Therefore, the said Commercial Court was bound by *Shahi Exports principle* and in any event going by paragraph 113.3 of **Patil Automation** on a demurrer also, this is not a case where the jurisdictional High Court has declared Section 12A of CCA to be mandatory, on the contrary, this is a case where the jurisdictional High Court has held Section 12A of CCA to be not mandatory.

10. As regards the argument learned counsel for respondents predicated on Sections 21 and 22 of CCA, we find that Sections 21 and 22 of CCA do not come to the aid of the respondents as in sum and substance they are clauses which provide for overriding and overarching effect of CCA in the event of anything inconsistent if contained in any other law in force or any other instrument having effect by virtue of any law for the time being in force other than CCA. It is nobody's case that there is anything inconsistent with the provision of CCA and therefore Sections 21 and 22 do not come to the aid of learned counsel for respondents.



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11. In **Patil Automation**, Hon'ble Supreme Court has resorted to a facet of prospective overruling though it was not a case of overruling, Hon'ble Supreme Court declared the law i.e., declared that Section 12A is mandatory and also held that the declaration of law will come into effect on and from 20.08.2022. Hon'ble Supreme Court has also given reasons for this and has made it clear that such a course is being adopted so that stakeholders concerned become sufficiently informed. In the case on hand, as would be evident from the chronology of dates captured supra, more so the chronology captured in the form of a tabulation supra, the date of plaint, the date of presentation of plaint and the date of institution of suit are all prior to 20.08.2022 and therefore, the said Commercial Court ought to have gone by *Shahi Exports* which means the plaint ought not to have been rejected. To be noted, this has been made clear even in **Patil Automation** in paragraph 113.3 about which there is allusion elsewhere supra.

12. We place on record our appreciation for Mr.R.Balasubramanian, learned counsel for respondents as well as Mr.N.Manokaran, learned counsel for appellant for making pointed and precise submissions on the bone of contention without entering upon disputation or contestation which are really not



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necessary to clinch the core point for consideration.

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13. In the light of the narrative, discussion and dispositive reasoning thus far, the order dated 12.09.2023 made in I.A. No.2 of 2023 in C.O.S. No.59 of 2023 by the Commercial Court (District Judge Cadre), Coimbatore is set aside. This means that the plaint will go back to file and the suit will proceed from the stage at which it stood when the plaint was rejected.

14. Ergo, the sequitur is, captioned appeal is allowed. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
03.10.2024

Index:Yes/No
Neutral Citation: Yes/No
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To

The Commercial Court (District Judge Cadre),
Coimbatore.

M.SUNDAR.J.,



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**and
K.GOVINDARAJAN THILAKAVADI, J.,**

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