299.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.6221 of 2023
Date of decision: 30.04.2024

Raj Bala and others .... Petitioners

Versus

M/s Jiya Lal Ram Kumar Commission Agent and another .... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr.Vishal Singh, Advocate, for the petitioners.

Mr. Devinder Kaushal, Advocate, for the respondents.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 06.03.2023 (Annexure P-1) passed by learned Additional Civil Judge (Senior Division), Narwana, District Jind, whereby the application moved by the petitioners-defendants for dismissal of the suit being barred by Section 12-A of Commercial Courts Act, 2015, has been dismissed.

2. Briefly stated, the respondents-plaintiffs filed a suit for recovery of Rs.8 lakhs (Rs.7,55,000/- as principal amount and Rs.45,000/- as interest on the principal amount) along with future and pendent-lite interest. Respondent-plaintiff No.2, being sole proprietor of M/s Jiya Lal Ram Kumar Commission Agent i.e. plaintiff No.1, regularly maintained the accounts of said firm. The petitioners-defendants are the legal heirs of Dalbir Singh, who borrowed the above said amount on interest from the

plaintiffs. However, on 08.12.2017, said Dalbir Singh settled the account and issued part payment cheque. But on presentation, it was dishonoured with the remarks “Funds Insufficient”. A complaint under Section 138 of Negotiable Instruments Act was filed against Dalbir Singh. However, during pendency of said complaint, Dalbir Singh died. The plaintiffs withdrew the complaint and requested the legal heirs of Dalbir Singh to pay the borrowed amount, but they refused to pay.

2.1 The petitioners-defendants moved an application that the plaintiff is a Commission Agent/Businessman as well as trader and the suit is relating to the business transaction and as per the provisions of Section 12-A of Commercial Courts Act, 2015 (for short, ‘the Act’), pre-institution mediation is necessary, but it has not been done in the present suit.

3. Learned counsel for the petitioners-defendants has argued that Section 12-A of the Act is a mandatory provision and non-compliance thereof would entail rejection of the plaint. Reliance is placed on case ***M/s Patil Automation Private Limited and others Versus Rakheja Engineers Private Limited, 2022 AIR (Supreme Court) 3848.*** Reliance is also placed on case ***M/s Sabsons Agencies Private Limited Versus M/s Harihar Polymers and another, Law Finder Doc Id # 2515816.***

4. Learned counsel for the respondents-plaintiffs has argued that instant suit was filed on 06.10.2018. Earlier, the plaintiffs filed a complaint under Section 138 of Negotiable Instruments Act but predecessor-in-interest of defendants, namely, Dalbir Singh expired and then the suit was

contested by his LRs. The defendants were proceeded against ex-parte on 26.11.2018 and lateron moved an application on 21.05.2019 for setting aside said ex-parte proceedings, which was allowed vide order dated 06.09.2021. Written statement was filed and thereafter, this application was moved at a belated stage. In ***M/s Patil Automation Private Limited and others' case (supra),*** the Hon'ble Apex Court has made declaration that provisions of Section 12-A of the Act are mandatory and made the same effective from 20.08.2022 onwards.

5. I have heard the submissions of learned counsel for the parties and have gone through the file.

6. Para 84 of ***M/s Patil Automation Private Limited and others' case (supra***) reads as under:-

> "84. Having regard to all these circumstances, we would dispose of the matters in the following manner. We declare that Section 12A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11. This power can be exercised even suo moto by the court as explained earlier in the judgment. We, however, make this declaration effective from 20.08.2022 so that concerned stakeholders become sufficiently informed. Still further, we however direct that in case plaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff. Finally, if the plaint is filed violating Section 12A after the jurisdictional High Court has declared Section 12A mandatory also, the plaintiff will not be entitled to the relief."

6.1 There is no doubt that the suit was filed on 06.10.2018, after the incorporation of Section 12-A of the Act, but the Hon'ble Apex Court held that Section 12-A of the Act is mandatory and any suit instituted violating the mandate of Section 12-A of the Act must be visited with rejection of the plaint under Order VII Rule 11 CPC and said power can be exercised suo moto by the Court. It has been further held that said declaration is effective from 20.08.2022 so that concerned stakeholders become sufficiently informed. Since the directions to reject the plaint if filed in violation of Section 12-A of the Act is effective from 20.08.2022 and the instant suit was filed prior to that, so I do not find any illegality in the order passed by the trial Court. The authority in ***M/s Sabsons Agencies Private Limited's case (supra)*** is of no help to the petitioners.

7. The revision petition is dismissed accordingly.

(GURBIR SINGH)
JUDGE

April 30, 2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No