



\$~46

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision : 08.05.2024+ **RFA(COMM) 68/2023**

M/S HAREY KRISHNA CORPORATION

..... Appellant

Through: Mr.Varun Dewan, Mr.Pranav
Krishna, Mr.Abhishek Sharma and
Mr.Vikrant, Advocates.

versus

SERVOTECH POWER SYSTEMS LTD & ANR. Respondents

Through: Mr.Kamal Gupta, Advocate.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J. (Oral)**

1. The appellant has filed the present appeal impugning an order dated 08.02.2023 (hereafter *the impugned order*) passed by the learned Commercial Court in CS (COMM) No.272/2020 captioned *Harey Krishna Corporation v. Servotech Power Systems Ltd & Anr.*, whereby the suit filed by the appellant was dismissed. The learned Commercial Court found that the suit was non-maintainable for want of recourse to Pre-Institution Mediation as contemplated under Section 12A of the Commercial Courts Act, 2015 (hereafter *the CC Act*).

2. The appellant had instituted the aforesaid suit as a summary suit under Order XXXVII of the Code of Civil Procedure, 1908 (hereafter *the CPC*) for



recovery of ₹8,22,534/- along with interest @18% per annum. However, the impugned order notes the same was treated as an ordinary recovery suit and subsequently transferred to the learned District Judge (Commercial) on 18.02.2020.

3. Admittedly, the appellant had not taken steps for Pre-Institution Mediation as required in terms of Section 12A of the CC Act. There is no dispute that the appellant was required to exhaust the recourse to Pre-Institution Mediation in terms of Section 12A of the CC Act before institution of the suit. The only controversy is, whether the consequence for failure to do so warrants dismissal of the suit.

4. The question whether the provisions of Section 12A of the CC Act are mandatory and any suit filed without recourse to Pre-Institution Mediation requires to be dismissed under Order VII Rule 11 of the CPC is no longer *res integra*. The said question was considered by the Supreme Court in ***Patil Automation Private Limited & Ors. v. Rakheja Engineers Private Limited***¹. And, the Supreme Court authoritatively held that the said provisions are mandatory and failure to comply with the provisions under Section 12A of the CC Act would result in rejection of the plaint under Order VII Rule 11 of the CPC. The relevant extract of the said judgment is set out below:-

“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

¹ 2022 SCC OnLine SC 1028



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 20-8-2022 so that stakeholders concerned become sufficiently informed.

113.2. 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.

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.”

5. The present suit was instituted on 01.08.2019, which was prior to the decision rendered in ***Patil Automation Private Limited & Ors. v. Rakheja Engineers Private Limited¹***.

6. It is the case of the appellant that the dicta of the Supreme Court in ***Patil Automation Private Limited & Ors. v. Rakheja Engineers Private Limited¹*** does not apply to suits instituted prior to the delivery of the said decision. In terms of Paragraph no.113.1 of the said decision, the same operates prospectively with effect from 20.08.2022. There is no cavil with this contention as well. It is the respondent’s case – which was accepted by the learned Commercial Court – that this Court had declared Section 12A of the CC Act to be mandatory prior to the decision of the Supreme Court; therefore, in terms of Paragraph no.113.3 of the decision in ***Patil Automation Private Limited & Ors. v. Rakheja Engineers Private Limited¹***, the appellant would not be entitled to any relief. The said contention is central to the controversy in the present appeal.



7. The learned Commercial Court had held that the suit instituted by the appellant was liable to be rejected on the premise that this Court had declared the provisions of Section 12A of the CC Act to be mandatory prior to the appellant (plaintiff) instituting the suit. The learned Commercial Court referred to a letter dated 27.11.2018 issued by the Registrar General of this Court forwarding a copy of the Standard Operating Procedure (hereafter *the SOP*) as received from the Member Secretary, Delhi State Legal Services Authority (DSLISA) on the subject of mandatory Pre-Institution Mediation in cases of commercial matters. The said letter was forwarded to the Judges-incharge of the Delhi Mediation Centers to facilitate Pre-Institution Mediation Settlement.

8. The learned Commercial Court had also relied upon the SOP and had proceeded on the basis that the same constituted a declaration that Section 12A of the CC Act is mandatory.

9. We are unable to concur with the said conclusion of the learned Commercial Court. A plain reading of the SOP indicates that it seeks to set the procedure for conducting mediation in matters relating to 'Commercial Disputes'. The opening page of the SOP refers to the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018 and states that in view of the said ordinance the Delhi State Legal Services Authority/ Delhi High Court Legal Services Committee is mandated to facilitate conduct of mediation in all matters covered by the CC Act as amended by the said ordinance. The SOP is neither a declaration as to the nature of Section 12A of the CC Act nor does it provide for the consequences of non-compliance with the same.



10. The learned Commercial Court has erred in construing the SOP issued for streamlining the procedure for conduct of mediation and attendant matters as a declaration that the provisions of Section 12A of the CC Act are mandatory as contemplated in Paragraph no.113.3 of the decision in ***Patil Automation Private Limited & Ors. v. Rakheja Engineers Private Limited***¹.

11. It is also relevant to mention that this question has been considered by this Court in several decisions including by a Co-ordinate Bench of this Court in ***Santosh Kumar Aggarwal v. M/s. Aluco Panel Limited***². In the said case, the Co-ordinate Bench of this Court held as under:-

‘8.This Court is further of the view that the judgment interpreting Section 12A of the Commercial Courts Act, prospectively declares the law w.e.f. 20th August, 2022. Since the suit in the present case had been filed in 2018, the said judgment does not offer any assistance to the appellant.’

12. A similar view was also expressed by the learned Single Judges of this Court in ***CEPCO Industries Private Limited v. Tewari Restaurant Private Limited***³; ***Jai Pal Singh Sharma Trust v. SRM Education & Financial Consultant Pvt. Ltd***⁴; and ***Odeon Builders Pvt. Ltd. v NBCC (India) Limited***⁵.

13. In view of the above, the impugned order is set aside. Consequently, the suit of the appellant stands restored before the learned Commercial Court

² Neutral Citation: 2023: DHC:4554-DB

³ 2023 SCC OnLine Del 87

⁴ 2023 SCC OnLine Del 4992

⁵ 2023 SCC OnLine Del 3798



2024:DHC:3717-DB



to its original number and stage as was obtaining on 08.02.2023. The parties are directed to appear before the learned Commercial Court on 29.05.2024.

14. The appeal stands allowed in the above terms.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 08, 2024

M

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: DUSHYANT
RAWAL
Signing Date: 13.05.2024

RFA (COMM) 68/2023

Page 6 of 6