



\$~7

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

+ **CS(COMM) 352/2024 & I.A. 9753/2024**

WPG C C COMPUTERS AND PERIPHERAL INDIA PVT LTD

.....Plaintiff

Through: Mr. Kirti Uppal, Sr. Adv. with Mr. Apoorv Shukla, Ms. Prabhleena Shukla, Mr. Puneet Chahar, Mr. Ayush Acharjee, Mr. Shekhar Kumar, Mr. Harsh Kumar, Ms. Riya Gulati and Ms. Vidhi Uppal, Advs.

versus

GENERATION NXT COMPMART PVT LTD & ORS.

.....Defendants

Through: Ms. Sanya Kumar and Mr. Harsh Jain, Advs. for D-1 to D-5.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

%

18.10.2024

CS(COMM) 352/2024 and I.A 38244/2024 (under Order VII Rule 11 by D-2 seeking rejection of plaint for non-compliance with Section 12A of Commercial Courts Act, 2015)

1. The plaintiff has filed the present suit for recovery of Rs.27,34,42,098/- along with *pendente lite* and future interest @ 24% from 01.03.2024 till its realisation.
2. Summons in the suit were issued on 02.05.2024.
3. After being served the defendant no.2 before filing the written statement, filed captioned I.A. under Order VII Rule 11 CPC praying for rejection of plaint on the ground of non-compliance of the mandate of Section 12A of the Commercial Courts Act, 2015 (hereinafter the 'Act'), the



relevant part of which reads thus:

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

4. The said application was listed before Court on 03.09.2024 for the first time, when the learned counsel for the plaintiff without contest, fairly conceded that provisions of Section 12A of the Act have not been complied with. She further submitted that she has instructions to withdraw the suit but the issue of refund of Court Fee may be considered by the Court.
5. The learned Senior Counsel for the plaintiff on 03.09.2024 also fairly stated that the defendants have no objection in case, the Court Fee is refunded to the plaintiff.
6. Accordingly, the matter has been listed for considering the refund of Court Fee in the event plaintiff withdraws the present suit.
7. Mr. Kirti Uppal, the learned Senior Counsel for the plaintiff relies upon the decision of a Coordinate Bench passed in **Paul Sales Pvt. Ltd vs. Hari Darshan Sev Ashram Pvt. Ltd & Ors.**, [CS(COMM) 499/2022, DOD 31.10.2022], and of the Division Bench of this Court in **Amit Jain vs. Mahavir International Pvt. Ltd and Ors.**, 2023 SCC OnLine Del 2657, to contend that at the initial stage itself, the learned counsel for the plaintiff realising that the mandatory provision of Section 12A of the Act providing for the pre-institution mediation had not been complied with, has fairly conceded and is seeking permission to withdraw the suit, therefore, it would be too onerous on the plaintiff to make him pay the Court Fee again.
8. Though the defendants have stated that they have no objection if the



court fee is refunded to the plaintiff, however, a decision of this Court in ***Mahaveer Tiwari vs. Mr. Ramvir Sharma*** [CM(M) 1688/2023 dated 12.12.2023], which in turn relies upon the decision in ***Devender Pratap Singh & Anr., vs, M/s Land Mark Infracon Pvt. Ltd & Ors.***, has been brought to the notice of this Court by the learned Counsel for the defendant to enable this Court to arrive at just decision as to the refund of Court fee in accordance with law.

9. I have considered the rival submissions of the learned counsel for the parties and have examined the decisions cited at bar. It is not in dispute that the present is a commercial suit and the plaintiff in terms of Section 12A of the Act was obliged to first exhaust the remedy of pre-institution mediation¹ which admittedly was not exhausted before filing the present suit.

10. This Court had directed issuance of summons in the suit without noticing the non-compliance of the mandatory provisions of Section 12A of the Act. Incidentally, no objection was raised by the Registry as well, in that behalf.

11. However, before filing the written statement, when the said infirmity was pointed out by the defendant by filing an application under Order VII Rule 11 CPC, on the very first day when the said application was listed, the learned counsel for the plaintiff, without any contest, conceded the mistake committed by her and submitted that she has instructions to withdraw the suit but urged that the issue of refund of Court Fee may be considered by the Court.

12. In somewhat similar circumstances in ***Amit Jain*** (supra), the suit was filed as Commercial Suit and it was withdrawn on objection being taken in

¹ *M/s Patil Automation Private Limited vs. Rakheja Engineers Private Limited*, 2022 SCC OnLine SC 1028



the written statement as well as in an application under Order VII Rule 11 CPC, to the effect that the dispute involved cannot be termed as Commercial dispute. The question arose as to the refund of court fee. The prayer for the refund of the court fee was rejected by the learned Trial Court. However, the Division Bench of this Court, while ordering for the refund of court fee, observed as under:

9. Coming to the other aspect, the question as to whether a money recovery suit should be filed before a commercial court or a ordinary civil court is too intricate a question of law to be fathomed by a lay person. The litigant in regard to such decisions goes completely by the advice of her counsel. Where a counsel in her wisdom arrives at a particular view on any point of law and acts accordingly, but subsequently feels not confident to proceed further, the litigant ought not to be punished monetarily.

10. It is trite that while interpreting a fiscal legislation like Court Fees Act, the court should adopt liberal attitude so as to lessen and not add to the burden of the litigant. Especially where the court dealing with the lis is of the view that it is not competent to decide the same, there is no logic in depriving the litigant refund of the court fees.

11. In the case of Nagpur District Central Cooperative Bank (supra) relied upon by learned counsel for appellant, in a similar situation, a Division Bench of the Bombay High Court, while referring to various judicial precedents including the decision of its Full Bench, took a view that where the court fees on the institution of a suit has been paid in a court which cannot possibly afford the relief sought, it does not seem consistent with sound principle that the plaintiff should be condemned to lose the fees thus paid, or that he should not be allowed to ask without paying a second fee for an adjudication from a court which can really give one.

12. Such refusal to refund court fees even in a lis which remained unadjudicated and expecting the litigant to pay up again would discourage the law-abiding litigant from approaching the justice dispensation system. Such a form of docket exclusion would be highly counterproductive for any civilized society.



13. In the present case, the fact remains that at the initial stage itself, on being pointed out the jurisdictional infirmity, the appellant fairly conceded and moved the application dated 05.11.2022 seeking permission to withdraw the suit with liberty to file fresh suit, the lis remains unsolved. There having been no formal adjudication of the dispute brought by the appellant before the trial court, we are of the opinion, that it would be too onerous on the appellant to make him pay court fees afresh.

14. In view of above discussion, we are unable to uphold the impugned order to the extent it rejects the prayer of the appellant for return/refund of the court fees and to that extent, the impugned order is set aside. Accordingly, the appeal is allowed.

(emphasis supplied)

13. The situation in the present case is squarely covered by the decision in ***Amit Jain*** (supra), inasmuch as the present suit was sought to be withdrawn at the initial stage without contesting an application filed by the defendant under Order VII Rule 11 CPC. Position would have been different if after contest this Court would have ordered rejection of plaint for non-compliance of Section 12A of the Act, which situation did not arise in the present case. Reference may also be had to the decision in ***Paul Sales Pvt. Ltd.*** (supra), wherein this Court ordered for the refund of entire Court Fee when the suit was withdrawn by the plaintiff realising that mandatory pre-litigation mediation in terms of Section 12A was not resorted to before filing the suit.

14. In ***Devender Pratap Singh & Anr.*** (supra), the decision cited by the learned counsel for the defendants, the suit was found to be not maintainable and accordingly the suit was dismissed as withdrawn with liberty to file fresh suit, but no fresh suit was filed but only an application for refund of Court fee was filed. In this factual backdrop this Court observed that if the suit is filed without cause of action and without there being any right in the plaintiff, the suit is liable to be dismissed. The plaintiff in such a case is not



entitled for refund of Court fee. Similar view has been taken in ***Mahaveer Tiwari*** (supra).

15. Both the above decisions are not applicable to the situation at hand for three reasons – *firstly*, the present is not a case where the suit is filed without cause of action, rather it is a case where there is non-compliance of Section 12A of the Act. *Secondly*, the decision in ***Mahaveer Tiwari*** (supra) which was rendered on 12.12.2023 does not take into account an earlier decision of the Division Bench that was rendered on 08.05.2023. Thirdly, in ***Paul Sales Pvt. Ltd.*** (supra), this Court *vide* order dated 31.10.2022 directed for the refund of entire Court Fee when the suit was withdrawn by the plaintiff realising that mandatory pre-litigation mediation in terms of Section 12A was not resorted to before filing the suit.

16. In view of the above, the plaintiff is granted liberty to withdraw the present suit. The suit is dismissed as withdrawn. In the event pre-litigation mediation proceedings are not successful, the plaintiff shall have liberty to file a fresh suit.

17. Further, since the suit has been withdrawn at the initial stage without contest and without there being any formal adjudication, this Court is of the view that the plaintiff is entitled to the refund of entire Court Fee. Accordingly, the Registry is directed to issue certificate of refund of entire Court Fees to the plaintiff.

18. The suit, alongwith pending application(s), if any, is disposed of.

VIKAS MAHAJAN, J

OCTOBER 18, 2024/dss