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

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Date of decision: 13.05.2024

+ **RFA(COMM) 168/2024**

M/S SATNAM AND COMPANY

..... APPELLANT

Through: Mr Dhruva Bhagat, Advocate.

versus

ICICI BANK LIMITED

..... RESPONDENT

Through: Mr Kartik Bhalla, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. On the previous date i.e., 06.05.2024, after hearing counsel for the parties, we had recorded the broad reasons as to why the appellant had approached this court. For convenience, the relevant part of the order is set forth hereafter:

"2. This appeal is directed against the judgment and order dated 02.02.2024 passed by the learned District Judge Commercial, Central District, Tis Hazari Courts.

3. Via impugned judgment, the trial court has dismissed the suit of the appellant/plaintiff on the ground that he had wrongly by-passed the provisions of Section 12A of the Commercial Courts Act, 2015.

4. According to trial court, since it was a suit for recovery, instituted against the respondent/ defendant, no emergent interim relief could have been sought, which was concededly the only exception available in law for side stepping the mandate of the provisions of Section 12 A of the Commercial Courts Act, 2015, requiring disputes to undergo pre-



litigation mediation.

5. Counsel for the appellant says that if the suit is revived, the appellant will withdraw the suit, with liberty to file a fresh suit.

6. In other words, once the fresh suit is filed, recourse to the provisions of Section 12A of the Commercial Courts Act, 2015 will be taken.

7. Given this submission, issue notice to the respondent/ defendant.

8. Mr Rachit Bigghe, learned counsel, accepts notice on behalf of the respondent.

9. Mr Bigghe says that he will return with instructions.

10. Meanwhile, counsel for the appellant will furnish a copy of case papers to Mr Bigghe. 11. List the matter on 13.05.2024.”

2. We may note that a typographical error has crept in the first line of paragraph 3 of the order dated 06.05.2024.

2.1 As opposed to what is noted in the above referred part of order dated 06.05.2024, the suit was not dismissed, instead, the plaint was rejected by the trial court by taking recourse to the provisions under Order VII Rule 11 of the Code of Civil Procedure, 1908 [in short, “CPC”].

2.2 The order dated 06.05.2024 shall stand corrected to the extent indicated above. Other parts of the said order shall remain unaltered.

3. Since the plaint was rejected and the appellant would have the right to file a fresh action under Order VII Rule 13 of the CPC, we are inclined to allow the appeal.

4. It appears that the appellant has approached this court by way of abundant caution.

5. We have put this aspect to the counsel for the respondent.

5.1 Counsel for the respondent agrees that in law, there is no bar, in the appellant filing a fresh action although, as things stand today, it would have to



comply with the provisions of Section 12A of the Commercial Courts Act, 2015 [hereafter referred to as “2015 Act”].

6. Counsel for the appellant says as indicated on the previous date i.e., 06.05.2024, if the appeal is allowed and the suit is revived, he has instructions to withdraw the suit, and if so advised, file a fresh action and also take recourse to the provisions of Section 12A of the 2015 Act.

6.1 Statement of the counsel for the appellant is taken on record.

7. The appeal is, accordingly, allowed.

8. The impugned judgment and order is set aside. The underlying suit shall stand revived.

9. As indicated to the court, the appellant will withdraw the suit with liberty to file a fresh suit.

10. However, if the appellant wishes to file a fresh action, it will comply with the requirement of pre-litigation mediation as prescribed under the provisions of Section 12A of the 2015 Act.

10.1 For this purpose, the parties and their respective counsel will appear before the trial court on 23.07.2024.

11. The parties will act based on the digitally signed copy of this order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

MAY 13, 2024/tr