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

% ***Date of decision: 25th September, 2024***

+ **CM(M) 2817/2024 & CM APPL. 35996-35997/2024**

RAJESH GARG

....Petitioner

Through: Mr. Ankit Rana, Advocate.

versus

NAPIN IMPEX LTD.

.....Respondent

Through: Mr. Avneesh A. with Mr. Ankit
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defendant before the learned Trial Court and is defending a commercial suit.
2. It is a simple suit for recovery which does not contemplate any urgent relief and defendant, contending that there was no compliance of Section 12A of Commercial Courts Act, 2015, moved an application under Order VII Rule 11 CPC.
3. The defendant is aggrieved by dismissal of his said application.
4. The issue is somewhat unusual herein.
5. It is not a case where the plaintiff had not approached the concerned Legal Services Authority. He did approach North District, Legal Services Authority, before filing the suit in question. According



to the plaintiff, when he knocked the doors of said Legal Services Authority, he requested notice to be issued to M/s Tirupati Barrel Co. (a proprietorship firm) and Sh. Rajesh Garg, its proprietor. Such notice was sent as well but since despite due service upon them, there was no appearance from their side, the concerned Authority gave a report of *non-starter*.

6. Such certificate of non-starter is dated 18.02.2022.

7. However, when such certificate of *Non-Starter Report* was issued by said Legal Services Authority, it, somehow, mentioned the name of the opposite party as *M/s Tirupati Barrel Co. (a partnership firm)*.

8. Quite possibly, taking advantage thereof, the defendant seems to contend that when the plaintiff had approached the concerned Legal Services Authority, it had, rather, attempted to get notice issued to a partnership firm instead of proprietorship firm and viewed thus, there is not requisite compliance of Section 12A of the Commercial Courts Act, 2015.

9. To counter the above said contention, learned counsel for the respondent/plaintiff states that it was merely a case of inadvertent clerical error on the part of the concerned Authority and, therefore, when he approached them again, said authority issued a fresh certificate in which they have, categorically, specified the name of the opposite party as *proprietorship firm and its proprietor as Sh. Rajesh Garg*.



10. If the above said certificate issued by said authority on 24.01.2024 is seen, it becomes quite manifest that there is no merit in the contention raised by the petitioner herein who seems to be trying to take some undue advantage of said clerical error. Interestingly, there is no qualm that defendant had received notice and did not participate in such mediation.

11. Be that as it may, plaintiff, before instituting suit in question, had approached the concerned Authority in due compliance of the mandatory provision of Section 12A of Commercial Courts Act, 2015, and, therefore, the learned Trial Court was fully justified in dismissing the above said application moved under Order VII Rule 11 CPC. It also, really speaking, does not make any difference if, subsequently, the plaintiff had contacted said authority again and obtained a fresh report regarding non-starter, depicting the correct names of the opposite party. Such report was also placed before the learned Trial Court.

12. As a last ditch effort, learned counsel for the petitioner states that such report was taken on record without adhering to the relevant provisions meant for Commercial Courts and, therefore, such report should not be read.

13. However, the grievance in the present case, is totally different. It only requires to be seen whether before filing the recovery suit in question, the concerned plaintiff had exhausted the mandatory process of pre-institution mediation as envisaged under Section 12A of the



Commercial Courts Act and it is quite apparent that it had, actually, availed such remedy. Merely because there was some inadvertent typographical error in describing the name of the opposite party, it would not mean and indicate that the remedy was not exhausted in the desired manner, thereby entailing rejection of the suit.

14. No other contention has been raised by petitioner during the course of oral arguments.

15. Finding no merit or substance, the present petition is hereby dismissed.

(MANOJ JAIN)
JUDGE

SEPTEMBER 25, 2024/st