



2024:DHC:6760



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 03rd September, 2024***
+ **CM(M) 3318/2024 & CM APPL. 51084-51086/2024**
CENTRE FOR DEVELOPMENT OF TELEMATICS

.....Petitioner
Through: Mr. Anil Tiwari with Mr. Nicholas
Choudhary and Mr. Sidharth Sharma,
Advocates.

versus

M/S AMRITA TRAVELSRespondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN
J U D G M E N T (oral)

1. Petitioner is defending a commercial suit.
2. According to learned counsel for petitioner, such suit was a simple recovery suit, not contemplating any urgent relief and since the plaintiff had not resorted to mandatory provision of pre-institution Mediation, the suit was liable to be rejected. However, when an application under Order VII Rule 11 of CPC was moved in this regard, the learned Trial Court, instead, dismissed the same.
3. The legal position is no longer *res integra* and the compliance of Section 12A of Commercial Courts Act, 2015 which provides for pre-institution Mediation with respect to a suit, which does not contemplate any urgent relief, is mandatory.



4. The Hon'ble Supreme Court in *Patil Automation Private Limited v. Rakheja Engineers Private Limited*: 2022 SCC OnLine SC 1028 has, in no uncertain words, laid down that the process is mandatory and its non-compliance would entail rejection of the plaint. The relevant paras read as under: -

“48. In contrast, Section 12-A cannot be described as a mere procedural law. Exhausting pre-institution mediation by the plaintiff, with all the benefits that may accrue to the parties and, more importantly, the justice delivery system as a whole, would make Section 12-A not a mere procedural provision. The design and scope of the Act, as amended in 2018, by which Section 12-A was inserted, would make it clear that Parliament intended to give it a mandatory flavour. Any other interpretation would not only be in the teeth of the express language used but, more importantly, result in frustration of the object of the Act and the Rules.

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74. It is noteworthy that Section 12-A provides for a bypass and a fast-track route without for a moment taking the precious time of a court. At this juncture, it must be immediately noticed that the lawgiver has, in Section 12-A, provided for pre-institution mediation only in suits, which do not contemplate any urgent interim relief. Therefore, pre-institution mediation has been mandated only in a class of suits. We say this for the reason that in suits which contemplate urgent interim relief, the lawgiver has carefully vouchsafed immediate access to justice as contemplated ordinarily through the courts. The carving out of a class of suits and selecting them for compulsory mediation, harmonises with the attainment of the object of the law. The load on the Judges is lightened. They can concentrate on matters where urgent interim relief is contemplated and, on other matters, which already crowd their dockets.

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83. We may proceed on the basis that if the suit is brought without complying with Section 12-A, where no urgent interim relief is sought, may not in one sense, affect the legal right of the defendant. But this argument overlooks the larger picture which is the real object of the law. This object is not to be viewed narrowly with reference to the impact on the parties alone. This is apart from also remembering that if the parties were to exhaust mediation under Section 12-A, the opposite side may be, if mediation is successful, saved from the ordeal of a proceeding in court, which, undoubtedly, would entail costs, whereas, the mediation costs, as we have noticed, is minimal,



and what is more, a one-time affair, and still further, to be shared equally between the parties. Each time the plaintiff is compelled to go in for mediation under Section 12-A there is a ray of hope that the matter may get settled. The chief advantage and highlight of mediation is that it is a win-win for all sides, if the mediation is successful. Therefore, it cannot, in one sense, be argued that no legal right of the defendant is infringed.....

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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 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.

114. In civil appeal arising out of SLP (C) No. 14697 of 2021 taking note of the fact that it is a case where the appellant would have succeeded and the plaint rejected, it is also necessary to order the following. The written statement filed by the appellant shall be treated as the application for leave to defend filed within time within the meaning of Order 37 and the matter considered on the said basis.

115. While we disapprove of the reasoning in the impugned orders we decline to otherwise interfere with the orders and the two appeals shall stand disposed of accordingly.

116. In civil appeal arising out of SLP (C) No. 5737 of 2022, we set aside the order directing payment of costs of Rs 10,000. The petition for permission to file SLP in SLP (C) Diary No. 29458 of 2021 and the said SLP shall stand disposed of as already indicated in the judgment.”

5. To that extent, the observation of the learned Trial Court seems to be in consonance with the above said judgment of the Hon’ble Supreme Court.
6. However, fact remains that the suit in question had been instituted on



20.12.2019. As per the learned counsel for the petitioner, suit was initially filed on 06.12.2019 and it was, subsequently, amended as a commercial suit and instituted as commercial suit on 20.12.2019.

7. As per the above said judgment of *Patil Automation* (supra), the consequence of rejection has been made prospective i.e. from 20.08.2022.

8. This Court in judgment dated 02.09.2024 passed in CM(M) No. 459/2023 titled as *Adity A Birla Fashion And Retail Limited vs Mrs Saroj Tandon* has observed as under:-

“59. Undoubtedly, as per the directions contained in Patil Automation Private Ltd. (supra), such recourse to rejection has been made prospective and the effective date in this regard is 20th August, 2022. It has also been observed in the said judgment in Para-113.3 that if any such plaint is filed violating Section 12-A of Commercial Courts Act after the jurisdictional High Court has declared said section to be mandatory and consequently directing rejection of such suit, such plaintiff shall not be entitled to any relief.

60. As far as this High Court is concerned, the petitioner has referred to Extreme Coating Private Ltd. Vs. Jotun India Private Ltd.: 2022 SCC OnLine Del 2341 which though observes that pre-institution mediation is mandatory but fact remains that therein, the application seeking rejection was rather not allowed as by that time, the mechanism for enabling holding of pre-institution mediation was not in place and the learned coordinate Bench of this court, therefore, observed that the suit could not have been returned subsequently, merely on creation of such mechanism.



2024:DHC:6760



61. This court may, however, usefully refer to *Harey Krishna Corporation Versus Servotech Power Systems Ltd. and Another*: 2024 SCC OnLine Del 3526. In the above recent pronouncement, the learned Division bench of this Court while referring to other precedents of this court, reiterated the mandatory nature of section 12A of Commercial Courts Act and also held the cut-off date, in context of rejection of suit, as 20th August, 2022, as stated in *Patil Automation Private Ltd. (supra)*.

62. Therefore, it will be in the fitness of things, if the abovesaid prospective date i.e. 20th August, 2022, as declared in *Patil Automation Private Ltd. (supra)*, is held as cut-off date for the case in hand as well.”

9. Since in the present case, the suit was instituted in the year 2019, it cannot be visited with the adverse consequence of rejection.

10. Viewed thus, I do not find any merit and substance in the present petition, the petition is, accordingly, dismissed.

(MANOJ JAIN)
JUDGE

SEPTEMBER 3, 2024/sw