



2024:DHC:7724



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 3rd October, 2024***+ **CM(M) 3529/2024 & CM APPL. 57985/2024****M/S LENSWARE INNOVATIONS PRIVATE LIMITED & ANR.**

.....Petitioners

Through: **Mr. Soibal Gupta, Advocate (Through VC)**

versus

INDIAN BANK

....Respondent

Through: **Mr. Satyam Khare, Advocate****CORAM:****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)****CM APPL. 57985/2024 (exemption)**

Exemption allowed, subject to all just exceptions.

CM(M) 3529/2024

1. Petitioner is defending a commercial suit.
2. Case is already at the stage of plaintiff's evidence.
3. During the course of the pendency of the aforesaid suit, defendant moved an application under Order XIII A CPC seeking *summary dismissal* on the ground that there was no compliance of Section 12A of Commercial Courts Act, 2015 which was mandatory in nature.
4. Such application has been put on hold by the learned Trial Court, observing that it raises mixed question of facts and law which can only be decided by way of evidence.
5. It is apprised that an issue to the above effect has also been framed by



the learned Trial Court vide order dated 04.09.2024.

6. This Court has been shown *non-starter report* given by *West District Legal Services Authority* on 22.11.2021.

7. According to the learned counsel for petitioner (defendant), report itself indicates that there was no service upon opposite party and in such a situation, there was no compliance and it was obligatory for the plaintiff to have taken fresh steps for proper and effective service. It is also stated that the petitioner never received any notice from said Authority.

8. According to learned counsel respondent (plaintiff), when the affidavit of admission/denial of document was submitted before the learned Trial Court, it admitted the aforesaid non-starter report and, therefore, it now cannot be permitted to raise any grievance in this regard.

9. Fact however, remains that the report itself does not categorically indicate that defendant was duly served. Such issue could have been easily resolved by seeking the requisite process reports from the Legal Services Authority, instead of deferring the issue on the ground that it was mixed question of facts and law.

10. At such initial juncture, the Court is merely required to see whether the opposite party was served or not. Needless to say, even a refusal would be assumed to be a case of deemed service.

11. It also needs to be highlighted right here that such non-compliance would not invite dismissal of the suit which has larger adverse implication. It may only invite rejection of suit under Order VII Rule 11 CPC.

12. Be that as it may, there was no requirement of putting the above-said issue on hold and, therefore, the petition is disposed of with the direction that learned Trial Court would call for the "*process reports*" from the concerned



2024:DHC:7724



District Legal Services Authority and after perusal of the same and after hearing the parties would see whether there is due compliance of Section 12A of Commercial Courts Act, 2015 or not and if it comes to the opinion that there was no due compliance, it would be at liberty to pass appropriate order in accordance with law.

13. Present petition stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

OCTOBER 03, 2024/dr