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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision:- 18.11.2024***

+ RFA(COMM) 489/2024 & CM APPL. 66970/2024 –Stay., CM APPL. 66971/2024 –Ex.

M/S CHIBBA AGRO PVT LTD**.....Appellant**

Through: Mr. Gaurav Puri with Mr. Sarthak Gupta, Advs.

versus**NARENDER KUMAR GUPTA****.....Respondent**

Through: None.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****SAURABH BANERJEE, J(ORAL)**

1. The present appeal under Section 96 of the Civil Procedure Code, 1908 (CPC) seeks to assail the judgment and decree dated 31.08.2024 passed by the learned District Judge, Commercial Courts, Tis Hazari Courts, New Delhi in CS(COMM) 260/2019 and CS(COMM) 04/2020, the latter being the counter claim raised by the appellant.

2. Vide the impugned judgment, the suit preferred by the respondent/plaintiff (respondent) has been decreed for a sum of Rs.4,22,620/- alongwith *pendente lite* interest and future interest @ 8% per annum.



3. The sole submission of learned counsel for the appellant/ defendant (appellant) is that the suit ought to have been rejected at the very outset as the respondent had refused to participate in the pre-litigation mediation envisaged under Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as 'the Act').

4. By drawing our attention to the 'Non-Starter Report' dated 28.02.2019 issued by the Central District Legal Service Authority, Tis Hazari Courts, Delhi, (hereinafter referred to as 'CDLSA'), learned counsel for the appellant submits that the mediation proceedings had failed as the sole proprietor of the respondent had refused to participate in the mediation proceedings at that stage. He, therefore, contends that once the respondent itself refused to participate in the mediation proceedings, the learned Trial Court ought to have drawn an adverse inference against him and ought to have come to a conclusion that the provisions of Section 12A of the Act, which are mandatory in nature, were not complied with in its letter and spirit. The learned Trial Court has, however, rejected this plea of the appellant by wrongly presuming that it is the appellant who had not participated in the mediation proceedings. He, therefore, contends that the impugned judgment and decree are liable to be set aside on this ground alone.

5. Learned counsel next submits that since the 'Non Starter Report' does not record that the appellant had refused to settle the matter, it ought to be presumed that the said appellant was willing to mediate and it was only the respondent who was not interested in participating in the pre-litigation mediation proceedings.



6. Having perused the impugned judgment and considered the aforesaid submissions of learned counsel for the appellant, we are of the view that since the entire case of the appellant is based on Section 12A of the Act, it would be apposite to begin by noting the said provision in its entirety. The same reads as under:-

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

(2) For the purposes of pre-litigation mediation, the Central Government may, by notification, authorise —

(i) the Authority, constituted under the Legal Services Authorities Act, 1987 (39 of 1987); or

(ii) a mediation, service provider as defined under clause (m) of section 3 of the Mediation Act, 2023.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority or mediation service provider authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of one hundred and twenty days from the date of application made by the plaintiff under sub-section (1):

Provided further that, the period during which the parties spent for pre-litigation mediation shall not be computed for the purposes of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and



shall be signed by the parties and the mediator.

(5) The mediated settlement agreement arrived at under this section shall be dealt with in accordance with the provisions of sections 27 and 28 of the Mediation Act, 2023.]

7. A perusal of the aforesaid provision of the Act reveals that prior to any party approaching a Court by way of a suit, other than where any urgent interim relief is sought, resorting to pre-litigation mediation in terms of the Act by such a party is mandatory. Further, should the parties reach a settlement in the mediation proceedings, the said terms of the settlement, after reduction in writing in the form of a 'Settlement Agreement' have to be duly signed by each of the parties which would then be treated as final and binding upon all the parties to settlement. However, in case the parties are unable to reach any terms for a settlement, the mediation proceedings will have to be closed with a 'Non Starter Report'.

8. In the present case, admittedly, since the parties herein were unable to arrive at any settlement before the CDLSA, it resulted in closure of the mediation proceedings with a 'Non Starter Report'. To reiterate, it is by placing reliance on the aforesaid provision read with the observations made in the 'Non Starter Report' that the learned counsel for the appellant has urged that since the respondent had himself refused to participate in the mediation proceedings, a presumption had to be drawn that the mediation proceedings as envisaged under the Act had not taken place between the parties and, therefore, the suit ought to have been rejected for non-compliance of Section 12A of the Act.

9. Since this submission of the learned counsel for the appellant are



emanating from the 'Non Starter Report' rendered by the CDLSA on 28.02.2019, the contents thereof in its entirety are noted as under:-

"FORM 3: Non-Starter Report

[Sec Rule 3(4) and (6)]

Name of the Authority and address

- 1. Name of the applicant: Sh. Narender Kr. Gupta Sole Prop. Of M/s R.P. Gupta & Sons.*
- 2. Date of application for pre-institution mediation 05.02.2019.*
- 3. Name of the opposite party: Chibba Agro Private Limited.*
- 4. Date schedule for appearance of opposite party: 18.02.2019 & 27.02.2019.*
- 5. Report made under rule 3(4) or 3(6): Present: Sh. Narender Kumar Gupta, Proprietor on behalf plaintiff along with Sh. Rajeev Kumar, Counsel for plaintiff, Sh. Kamal Chibba, Director on behalf of respondent. Sh. Narender Kumar Gupta, Proprietor for plaintiff refused to participate in mediation process at this stage.*
- 6. Non Starter Report reason: Director for plaintiff refused to participate in the mediation process at this stage. Therefore, the present matter hereby stated as Non-starter."*

10. At this stage, we may also note that the learned Trial Court has, after taking into account the 'Non Starter Report' rendered by the CDLSA on 28.02.2019, not accepted the appellant's plea that the suit was liable to be rejected for non-compliance with Section 12A of the Act. The relevant findings as recorded in para 47 of the impugned judgment, read as under:-

"47. As per the mandate of section 12 (A) of the Commercial Courts Act, 2015, plaintiff was supposed to go for pre-litigation mediation. In the present case, plaintiff has admittedly



gone for the same and the defendants did not turned up and a non starter report dated 28.02.2019 was released by the Central District Legal Services Authority. Even if the affidavit filed alongwith the present suit was already prepared and ready to be filed, it would not make any difference. There is no as such prohibition that the party cannot prepare the plaint and the other documents before going to the pre-litigation mediation. It is not the case of the defendants that the plaintiff has filed the present suit prior to the release of the non-starter report. This objection, as raised by the ld. Counsel for the defendant has no base, hence, stands rejected.”

11. Upon a conjoint reading of the aforesaid, it is evident that it was actually the respondent, who had failed to mediate and arrive at any settlement with the appellant and not vice versa. Learned counsel for the appellant is, therefore, correct in urging that the learned Trial Court had erroneously recorded that it was the appellant who had failed to participate in the mediation proceedings. However, merely on account of this error, the impugned judgment cannot be set aside. Once it transpires that despite both parties being present for mediation before the CDLSA, no settlement could be arrived at between them, the provisions of Section 12A of the Act duly stood complied with. In our view, the mandate of Section 12A of the Act is not that the plaintiff must be ready and willing to enter into a settlement with the defendant. All that the provision of Section 12A requires is that before instituting a suit the parties must invoke and be referred to mediation in order to ensure that matters which can be settled without the parties being compelled to approach the Court are settled amicably. The purpose of introduction of Section 12A of the Act is, therefore, with respect to laying



emphasis on ‘invocation’ of mediation proceedings, which is very different from arriving at a settlement in such proceedings. We are, therefore, of the view that merely because no settlement could be arrived at during mediation, it could not be said that mediation as envisaged under Section 12A of the Act was not held.

12. In the present case, the parties were very much before the CDLSA and a reading of the ‘Non Starter Report’ mediation report by it as a whole shows that the respondent had duly invoked pre-litigation mediation proceedings. However, merely because the parties did not/ were not able to arrive at any settlement before the CDLSA during the course of such mediation proceedings, maybe on account of the respondent refusing to settle with the appellant, cannot in itself be a ground for us to presume that the respondent was, from the very beginning, not willing to invoke mediation as envisaged under Section 12A of the Act.

13. Lastly, though the ‘Non Starter Report’ does not record that the appellant had refused to settle the matter, it simplicitor cannot be presumed that the appellant was willing to mediate and it was the respondent who should be held to have violated the provision of Section 12A of the Act. In our view, just because the appellant was willing to settle with the respondent could not be a ground for compelling the respondent to enter into a settlement with appellant even if the offer made by the appellant is wholly arbitrary or unfair. Holding so would defeat the whole purpose of referring parties like those involved herein to mediation in terms of Section 12A of the Act.

14. Even otherwise, as per the statute also in no case is the Mediator



permitted to record what has transpired during the mediation proceedings. Under such circumstances, this Court also cannot, merely on the basis of the 'Non Starter Report' presume that it was the adamant attitude of the respondent, as the appellant wishes to urge, which led to the failure of the mediation proceedings.

15. In view of the aforesaid, we find absolutely no merit in this plea of the appellant that the suit was liable to be rejected for non-compliance with Section 12A of the Act. No other plea has been raised before us by learned counsel for the appellant. We, therefore, find no reason to interfere with the impugned judgment.

16. The appeal along with pending applications being meritless is, accordingly, dismissed.

(SAURABH BANERJEE)
JUDGE

(REKHA PALLI)
JUDGE

NOVEMBER 18, 2024

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