



\$~50

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 807/2025 & CM APPL. 26518-26519/2025**

HARISH KUMAR GABAPetitioner

Through: Dr. Alok with Mr. Mayank,
Advocates.

versus

SAURABH GUPTA

.....Respondent

Through: Mr. J C Mahindro with Mr. Aman,
Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

ORDER

% **02.05.2025**

1. Petitioner is defending a suit which is commercial in nature.
2. During midway of the trial, when the plaintiff had already concluded his evidence, the defendant moved application under Order VII Rule 11 CPC, and sought rejection of suit on three grounds.
3. Firstly, the suit property could have been used, only, for residential purpose and, therefore, the jurisdiction of Commercial Court was barred. Secondly, there was non-compliance of Section 12A of Commercial Courts Act, 2015 as there was no “real and actual” intent of the plaintiff to invoke and participate in Pre-Institution Mediation. Thirdly, the requisite court fee had not been affixed.
4. It is, however, noticed that when the abovesaid application was taken up by learned Trial Court, instead of answering those issues, the learned Trial Court has chosen to frame additional issues, which read as under:-

“a. Whether the present suit is not maintainable under Commercial Courts Act, 2015 as the suit property is the residential property as averred by the defendant? (OPD)

b. Whether the present suit is not maintainable because of faulty



procedure of Section 12A of the Commercial Courts Act, 2015 as averred by the defendant? (OPD)

c. Whether the plaintiff has not paid proper court fee as averred by the defendant? (OPD)”

5. Learned counsel for respondent appears on advance notice.
6. Though, this Court feels these issues could have been answered without asking the parties to lead evidence with respect to the abovesaid issues, after hearing arguments for some time, learned counsel for petitioner/defendant, without prejudice to his rights and contentions, does not press the present petition.
7. Present petition is dismissed as not pressed. All rights and contentions of the parties are left open.
8. Pending applications, if any, also stands disposed of.

MANOJ JAIN, J

MAY 2, 2025/sw/JS