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

+ **CS(COMM) 1178/2024, I.A. 49469/2024, I.A. 49470/2024 & I.A. 49471/2024**

M/S R. K. ASSOCIATES AND HOTELIERS PVT. LTD.

.....Plaintiff

Through: Mr. Rajat Aneja, Mr. Jasmeet Singh,
Mr. Mahendra S. Hura, Mr. Saif Ali,
Mr. Pushpendra S. Bhadoria, Mr.
Vijay Sharma, Mr. Pranav Menon,
Mr. Saurav and Mr. Aditya Sharma,
Advs.

versus

CAPITAL EQUIPMENT INDIA

.....Defendant

Through: Mr. Vishwendra Verma, Ms. Shivali
and Mr. Abhishek Nagar, Advs.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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09.01.2025

1. An application is filed on behalf of the plaintiff, bearing no. *I.A. 49470/2024*, seeking exemption from instituting pre-mediation under Section 12A of the Commercial Courts Act, 2015 (the Act). Upon consideration of the said application, the Court is of the considered opinion that the provision under Section 12A is mandatory and the same would not be exempted in a routine fashion unless the facts so warrant.

2. The Supreme Court, on various occasions, has considered the question of whether the statutory pre-litigation mediation envisaged under Section 12A of the Act is a mandate. The Supreme Court in *Patil*



Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.¹ has held that Section 12A of the Act cannot be described as a mere procedural law. It was also held that the scope of the Act, as amended in 2018, by which Section 12A was inserted, would make it untenable that legislature intended to accord the said provision a mandatory flavour and any other interpretation would not only be in the teeth of the express language used but would also result rendering the object of the provision otiose. The relevant extracts of the decision of the Supreme Court in ***Patil Automation Private Ltd.***, reads as under:-

"9.1. The Act did not originally contain Section 12-A. It is by amendment in the year 2018 that Section 12-A was inserted. The Statement of Objects and Reasons are explicit that Section 12-A was contemplated as compulsory. The object of the Act and the Amending Act of 2018, unerringly point to at least partly foisting compulsory mediation on a plaintiff who does not contemplate urgent interim relief. The provision has been contemplated only with reference to plaintiffs who do not contemplate urgent interim relief. The legislature has taken care to expressly exclude the period undergone during mediation for reckoning limitation under the Limitation Act, 1963. The object is clear.

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."

(emphasis supplied)

3. The Division Bench of this Court in ***Amit Walia v. Shweta Sharma***² has also reiterated the view expressed by the Supreme Court in ***Patil Automation Private Ltd.***, to the effect that the legislative intent for the provision under Section 12A was to give it a mandatory nature.

¹ (2022) 10 SCC 1



4. *Albeit*, the provisions under Section 12A mandate exhaustion of mediation as a remedy to disputes that have arisen between the parties, the only exception expressly allowed is the plaintiff seeking urgent interim relief.

5. While discussing the purview of the exemption from Section 12A when the pleadings contemplate urgent interim relief, the Supreme Court in ***Yamini Manohar v. T.K.D. Keerthi***,³ has held that the language used in the provision to the effect "*contemplate any urgent interim relief*" stipulates the discretion of the Court to examine the plaint, cause of action, and documents attached thereto, to determine whether there arises an urgent relief or not.

Paragraph No.12 of the aforesaid decision reads as under:-

"12. The words "contemplate any urgent interim relief" in Section 12-A(1) of the CC Act, with reference to the suit, should be read as conferring power on the court to be satisfied. They suggest that the suit must "contemplate", which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and ensure that the legislative object/intent behind the enactment of Section 12-A of the CC Act is not defeated."

6. In ***Yamini Manohar***, the Supreme Court observed that the plaintiff does not have an absolute and unfettered right to determine whether the suit qualifies for an exemption as the same would be against the intent of the legislature and decision rendered by the Supreme Court in ***Patil Automation Private Ltd.*** The Supreme Court, while analyzing various approaches taken by the High Courts, interpreted Section 12A as conferring the discretion on the commercial court to determine whether the plaintiff has made a frivolous

² 2023 SCC OnLine Del 6779



prayer for interim urgent relief to circumvent the mandate of Section 12A or there is an actual exigency. This is the precise and limited exercise that the commercial courts will undertake.⁴

7. In view of the legal exposition hereinabove, it is apparent from a bare reading of the plaint that the instant commercial suit has been filed by the plaintiff for recovery of money on account of financial loss and opportunity costs incurred by the plaintiff, *inter alia*, due to the supply of alleged defective, inferior quality and substandard goods. It is also seen from the plaint that in March 2024, the parties had arrived at a mutual understanding of terms and conditions for the construction and installation of the base kitchen, and the stipulated time period for the delivery of kitchen equipment/construction was 31.10.2024. As per the plaint, from 30.03.2024 to 10.10.2024 various purchase orders came to be issued by the plaintiff in favour of the defendant. Moreover, it is the case of the plaintiff that the cause of action arose during an internal audit/due diligence exercise conducted by the plaintiff on 23.10.2024 as it was found the defendant was supplying subpar and inferior quality kitchen equipment at exorbitantly high prices compared to the standard market prices, in contravention of the mutual understanding of the terms so entered into by the parties.

8. Therefore on 17.12.2024, the plaintiff filed the instant commercial suit alongwith an application bearing no *I.A. 49464/2024* under Order XXXIX Rule 10 read with Section 151 of Code of Civil Procedure, 1908 seeking direction for deposit of monies by the defendant and an application seeking exemption from pre-institution mediation under Section 12A of the

³ (2024) 5 SCC 815

⁴ See *Yamini Manohar v. T.K.D. Keerthi* (2024) 5 SCC 815



Act.

9. It is evident that the nature of the relief sought in the prayer of the instant suit and in the application of interim relief is only for recovery of opportunity costs and financial losses to the plaintiff. It is also evident that neither the plaint nor the interim relief application stipulates any urgency expressed by the plaintiff. Furthermore, the plaintiff has not specified in the interim application as to why he has sought an interim relief of deposit monies. An upshot of the aforesaid facts as presented by the plaintiff, *prima facie*, indicates no pressing urgency warranting exemption from the provision of Section 12A of the Act.

10. As delineated in various judicial pronouncements, exemption from pre-institution mediation is permissible solely in cases where urgency is demonstrated through the averments made in the plaint or the accompanying application seeking interim relief. Pre-institution mediation is the rule and exemption is an exception. To ascertain the existence of such exigency, the Court is empowered to scrutinize the pleadings to assess the veracity of the urgency as pleaded by the plaintiff. The facts and circumstances of each case must unequivocally establish the necessity for urgent relief, and such exigency must be explicitly pleaded by the plaintiff in the pleadings. The same must be determined by the Court in accordance with the facts and circumstances of each case.

11. Therefore, in the considered opinion of this Court, the plaintiff has failed to demonstrate any exigency or urgency that would justify an exemption from the statutory requirement of pre-institution mediation under Section 12A of the Act. Consequently, relief sought by the plaintiff cannot be granted.



12. In light of the above findings, the present civil suit is dismissed at this stage, along with all pending applications. However, it is clarified that the plaintiff is at liberty to initiate a fresh suit if the dispute remains unresolved post pre-institution mediation.

13. Furthermore, in the event of filing a fresh suit for the present cause, the plaintiff shall be entitled to an equitable set-off of the Court fee already paid.

PURUSHAINDRA KUMAR KAURAV, J
JANUARY 9, 2025/P/MJo