



2026:DHC:4655



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

% *Judgment Delivered on: 23.05.2026*

+ **CM(M) 82/2025**

SUPER AGENCIES

.....Petitioner

Versus

RAVINDRA BROTHERS

.....Respondent

Advocates who appeared in this case

For the Petitioner : Mr. Ronak Gupta, Advocate

For the Respondent : Mr. Sahil Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. The present Petition has been filed under Article 227 of the Constitution of India, 1950, challenging the order dated 30.09.2024 ("**Impugned Order**") passed by the learned District Judge Commercial Court-03 Shahdara District, Delhi ("**Trial Court**") in Misc DJ No.63/2024 ("**Review Petition**").

2. The Petitioner is a registered partnership firm and indulges in the business of electrical goods. The Petitioner had supplied various electrical



goods to the Respondent between the years 2012 and 2016 and the same were accepted by the Respondent. The Respondent failed to pay an outstanding amount of ₹53,47,967/- and pre-suit interest of ₹41,46,046 on the outstanding amount, and accordingly, the Petitioner filed CS (Comm.) 13/2019 (“**Suit**”), before the learned Trial Court, against the Respondent for recovery of ₹94,94,013/- along with interest @24% per annum.

3. The Suit was filed under Order 37 of the Code of Civil Procedure (“**CPC**”) and subsequently the Suit was converted into an ordinary suit on 16.11.2019, thereafter, the Suit was transferred to Commercial Court on 06.01.2020. The Parties, through their respective counsels, expressed desire to try and amicably settle the dispute. The Suit was thereafter referred to Delhi Mediation Centre, Karkardooma on 04.02.2021. However, the Parties could not amicably settle the dispute.

4. *Vide* order dated 17.12.2022, the Trial Court observed that the Petitioner had not complied with the mandatory requirements under Section 12A of the Commercial Courts Act, 2015 (“**CC Act**”), accordingly, the Trial Court citing non-compliance of Section 12A of the CC Act, and relying upon the judgment of the Supreme Court in **Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.**, 2022 SCC OnLine SC 1028, rejected the Complaint in the Suit.

5. The Petitioner preferred the Review Petition against the order dated 17.12.2022, passed by the learned Trial Court, upon realization that the Petitioner had complied with the mandatory requirements under Section 12A of the CC Act in the year 2019 as the Petitioner had initiated pre-institution mediation before the filing of the Suit, and there is a non-starter report dated



02.04.2019 (“**Non-Starter Report**”) as evidence of compliance with the requirements under Section 12A of the CC Act. The Non-Starter Report was also filed along with the Suit, however, the erstwhile Counsel of the Petitioner did not bring this fact to the attention of the learned Trial Court which led to the rejection of the Plaint in the Suit.

6. The Review Petition was filed with a delay of 390 days and the Petitioner duly filed an Application for Condonation of Delay under Section 5 of the Limitation Act, 1963, along with the Review Petition explaining that the delay in filing the Review Petition was due to the time taken to retrieve the Non-Starter Report from the erstwhile Counsel of the Petitioner and the adverse medical condition of one of the partners of the Petitioner.

7. *Vide* the Impugned Order, the learned Trial Court dismissed the Application for Condonation of Delay in filing the Review Petition and accordingly, the Review Petition was dismissed as barred by limitation without going into the merits of the Review Petition.

8. The learned Counsel for the Petitioner submitted that the learned Trial Court failed to appreciate that the Non-Starter Report had been filed along with the documents in the Suit and the rejection of the Plaint in the Suit was made on the erroneous premise that the Petitioner had not complied with the requirements of Section 12A of the CC Act. The learned Trial Court failed to consider the principle of law that the litigant should not suffer on account of the mistakes of the erstwhile Counsel, who failed to show the learned Trial Court that the Non-Starter Report was on the record. The learned Trial Court failed to appreciate that the Petitioner has been unjustly deprived of its right to recover the legitimate dues from the Respondent,



amounting to approximately ₹94,94,013/-, due to an inadvertent omission / negligence by the erstwhile Counsel, through whom the Suit was filed.

9. The learned Counsel for the Petitioner submitted that the Plaint in the Suit was rejected solely on the ground of non-compliance with Section 12A of the CC Act, however, as evidenced by the Non-Starter Report, the Petitioner had complied with the requirements under Section 12A of the CC Act. The learned Trial Court did not heed to the fact that the Parties had undergone pre-institution Mediation in 2019 and that the Non-Starter Report was part of the documents filed along with the Suit. The Non-Starter Report has also been verified by the Delhi Legal Services Authority, Shahdara. Therefore, the order dated 17.12.2022, passed by the learned Trial Court, rejecting the Plaint in the Suit is based on an error of fact and law, as the Petitioner had already complied with the requisite formalities under Section 12A of the CC Act. The learned Trial Court failed to appreciate that the judgment of the Supreme Court in **Patil Automation** (supra) has retrospective application only. The learned Trial Court failed to appreciate a review of a judgment or order can be sought on the grounds of an error apparent on the face of the record, or the discovery of new and important evidence. The discovery of the Non-Starter Report constitutes justifiable grounds for review of the order dated 17.12.2022.

10. The learned Counsel for the Petitioner submitted that the learned Trial Court, while dismissing the Application for Condonation of Delay in filing the Review Petition failed to appreciate that the delay was attributable to the time taken to retrieve the Non-Starter Report from the erstwhile Counsel of the Petitioner and due to the adverse health condition of one of its partners



and therefore, the Petitioner had shown sufficient cause for not preferring the Review Petition within the prescribed period.

11. The learned Counsel for the Respondent submitted that the Petitioner should have brought the Non-Starter Report to the attention of the learned Trial Court and the learned Trial Court has, *vide* order dated 17.12.2022, granted liberty to the Petitioner to file a fresh suit for the adjudication of disputes between the Parties and the Petitioner could have filed a fresh suit after complying with Section 12A of the CC Act. The Review Petition filed by the Petitioner was filed beyond the limitation period and the learned Trial Court has correctly dismissed the Review Petition being barred by limitation.

12. The learned Counsel for the Petitioner submitted that the Plaint in the Suit had been rejected on the ground of alleged non-compliance with the mandatory requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 prior to the institution of the Suit. It was contended, however, that the erstwhile counsel for the Petitioner had failed to draw the attention of the learned Trial Court to the fact that the parties had, in fact, undergone pre-institution mediation under Section 12A of the CC Act and that the Non-Starter Report formed part of the documents filed along with the Suit. It was, therefore, submitted that, since the requirements of Section 12A of the CC Act had been duly complied with, the learned Trial Court ought not to have rejected the Plaint in the Suit.

13. The learned Counsel for the Petitioner further submitted that, once the aforesaid error had been brought to the notice of the learned Trial Court by way of the Review Petition, the learned Trial Court ought to have allowed



the same. It was contended that the learned Trial Court, without examining the merits of the Review Petition, proceeded, *vide* the Impugned Order, to dismiss the same solely on the ground of limitation.

14. The learned Counsel for the Respondent submitted that it was incumbent upon the Petitioner to bring to the attention of the learned Trial Court that the Petitioner had initiated pre-institution mediation and had complied with the requirements of Section 12A of the CC Act. It was further submitted that the Review Petition had been filed beyond the prescribed period of limitation and had, therefore, been rightly dismissed by the learned Trial Court, and that no infirmity could be found in the Impugned Order.

15. It is a settled position of law that the scope and ambit of the Court's power under Section 114 read with Order XLVII Rule 1 of the CPC is extremely limited, and a review petition is maintainable only where there is discovery of new and important matter or evidence which, despite exercise of due diligence, was not within the knowledge of the applicant, or where there exists some mistake or error apparent on the face of the record. It is equally well settled that an error apparent on the face of the record must be one which strikes on a mere perusal of the record and does not require any long drawn process of reasoning.

16. In the present case, the Plaint in the Suit came to be rejected on the ground of non-compliance with the mandatory requirement of pre-institution Mediation under Section 12A of the CC Act. However, a bare perusal of the Non-Starter Report clearly demonstrates that the Petitioner had, in fact, initiated the process of pre-institution Mediation and that it was the Respondent who neither acknowledged the notice nor appeared for



Mediation proceedings. The Non-Starter Report, therefore, clearly demonstrates compliance with Section 12A of the CC Act and establishes an error apparent on the face of the record in the order dated 17.12.2022.

17. Aggrieved by the order dated 17.12.2022 passed by the learned Trial Court, the Petitioner preferred the Review Petition. However, the learned Trial Court, without going into the merits of the Review Petition, dismissed the same as being barred by limitation. Undoubtedly, while dealing with applications seeking Condonation of Delay, courts are expected to adopt a liberal approach in determining whether sufficient cause has been shown, rather than proceeding on a hyper technical basis. The Petitioner has been able to demonstrate from the record that there existed sufficient *bona fide* reasons for the delay in filing the Review Petition.

18. A hyper technical approach ought not to result in rejection of the explanation furnished in an Application for Condonation of Delay, particularly where substantial stakes are involved and disputed questions of fact and law arise for consideration, since such rejection may occasion enormous loss and irreparable prejudice to the party against whom the lis stands terminated, whether by default or inaction, thereby defeating its valuable right to have the matter adjudicated on merits. While considering such matters, courts are required to strike a balance between the consequences that the order proposed to be passed may entail for either party. In the present case, the Petitioner has demonstrated sufficient cause for the delay in filing the Review Petition occurred due to reasons beyond its control.



19. From the present facts and circumstances, it appears that the erstwhile counsel for the Petitioner was not diligent in pursuing the matter before the learned Trial Court. Despite the Non-Starter Report being available on record, the erstwhile counsel failed to bring the same to the attention of the learned Trial Court. A *bona fide* litigant ought not to be made to suffer for the negligence of its counsel. The Plaint in the Suit was rejected on the ground of non-compliance with Section 12A of the CC Act, however, a bare perusal of the Non-Starter Report demonstrates that the Petitioner had duly complied with the requirements of Section 12A of the CC Act. In these facts and circumstances, the learned Trial Court ought to have allowed the Application seeking Condonation of Delay filed along with the Review Petition and ought to have allowed the Review Petition as well, particularly when an error apparent on the face of the record had been specifically brought to its attention during the review proceedings and, accordingly, the Suit ought to have been adjudicated on merits rather than being rejected on the ground of non-compliance with Section 12A of the CC Act.

20. Accordingly, the Impugned Order dated 30.09.2024 is set aside and the Suit, CS (Comm.) 13/2019 stands restored, to its original number, to the Court of the learned District Judge, Commercial Court, Shahdara District, Delhi, who will proceed with the Suit in accordance with law.

21. The present Petition is allowed in the aforesaid terms. Pending applications, if any, stand disposed of.

TEJAS KARIA, J

MAY 23, 2026

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