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

% ***Date of Decision: 28th October, 2026***

CNR No. DLHC010514662026

\+ CS(COMM) 1163/2026 & I.A. 29579-29582/2026

INNOVATIVIEW INDIA LIMITED .....Plaintiff

Through: Ms. Shagun Shahi Chugh, Mr. Varun Chugh and Ms. Ayushi Bansal, Advocates.

versus

BOARD OF SECONDARY EDUCATION RAJASTHAN .....Defendant

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T *(oral)*

1. The present suit is a commercial suit which seeks recovery of Rs.3,58,80,205/- , besides the interest accrued upon the abovesaid amount.

2. Though, the suit accompanies four applications, none of the application contemplates any urgent interim relief of any nature whatsoever.

3. As per the Section 12A of *Commercial Courts Act, 2015* (hereinafter referred to as *'the Act'*), a suit, which does not contemplate any urgent interim relief under *the Act,* shall not be instituted unless the plaintiff exhausts the remedy of *pre-institution mediation*.

4. Learned counsel for plaintiff, in all fairness, acknowledges the fact that neither any interim relief has been prayed nor the plaintiff had availed the abovesaid remedy of *pre-institution mediation*.

5. In view of the specific directions contained in *Patil Automation (P) Ltd. Vs. Rakheja Engineers (P) Ltd*.: 2022 SCC Online SC 1028 the suit is, therefore, liable to be rejected for non-compliance of the abovesaid

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mandatory provision.

6. The suit is, accordingly, rejected.

7. Learned counsel for the plaintiff submits that plaintiff would comply with the abovesaid mandatory requirement of *pre-institution mediation* and, thereafter, plaintiff be permitted to file suit afresh. She also prays that since there is no decision on merits and since the rejection of plaint is at a very threshold, the Court Fee be also refunded. In this regard, she strongly relies upon *Mr Rakesh Mediratta vs. Asian Hotels (North) Limited & Anr*: 2026 DHC 7988. Relevant paragraphs of the abovesaid judgment read as under:-

> *"7. Particular attention is drawn to the observations of the Supreme Court in Dr. (Col.) Subhash Chandra Talwar v. T. Choithram and Sons & Ors. (supra), wherein the suit had been directed to be returned for presentation before the court of competent jurisdiction. The Supreme Court took the view that an order returning the plaint under Order VII Rule 10 of the Code of Civil Procedure was not an order on the merits of the suit, and that the effect thereof was that the petitioner therein was entitled to refund of the Court fee. The relevant observations are as under:-*
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> > *"3. The appeal filed by the petitioner was dismissed. However, the plaint was ordered to be returned with liberty to file it before the court of competent jurisdiction.*
> >
> > *4. Thereafter, the petitioner filed an application for refund of the court fees. This application has been rejected only on the ground that the appeal has been disposed of on merits. We are unable to agree with the High Court. What has been disposed of is only the rejection order under Order VII Rule 10 of the Code of Civil Procedure. This is no order on the merits of the suit. The effect is that the plaint has been ordered to be returned to be filed in the appropriate Court. Therefore, the petitioner was entitled to refund of the court fees so that he can fix the court fee in the State where he would like to file the suit. We therefore set aside the order of the High Court and direct that the entire court fees be refunded to the petitioner.*
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> > *The special leave petition is disposed of accordingly."*
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> *8. Reliance is also placed on the judgment of a Division Bench of the High Court at Calcutta in IPJ Industrial Corporation (supra), rendered in an analogous situation, namely where a plaint had been rejected under Order VII Rule 11(d) CPC for non-compliance with Section 12A of the Commercial Courts Act, 2015. Specific attention is drawn to the following observations:-*
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> > *"28. The Court's conclusion and operative reasoning as enumerated*

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therein struck balance between two competing considerations - first, that Section 12A(1) of the Commercial Courts Act, 2015 is mandatory in nature, and second, that a litigant who has instituted suit earlier should not be unfairly prejudiced retrospectively. The Court was consciously adopting a pragmatic and equitable approach rather than imposing an inflexible procedural penalty in every case. It reflects that the Court did not treat Section 12A violation as involving adjudication on merits, but as a threshold procedural defect capable of attracting equitable considerations. The finding of the Court, as quoted above also strengthens that ancillary consequence, such as forfeiture of Court fees need not automatically follow upon rejection of the plaint. The Supreme Court in Patil Automation (supra), though might have laid down the principle, for concerning suits lodged prior to coming into force of Section 12A(1) of the Commercial Courts Act, 2015, still, so far as forfeiture of Court fees is concerned due to rejection of plaint on account of breach of provision under Section 12A(1) of the Act, the said principles may be applied, which are in consonance with the broader scheme as provided under the Commercial Courts Act, 2015.

29. The judgment of Supreme Court in Patil Automation (supra), therefore, leaves sufficient doctrinal space for a liberal interpretation in an appropriate case, that where the plaint is rejected solely on account of non-compliance with the pre-institution mediation requirement, without any adjudication on merits and without the suit being effectively entertained by the Court, the litigant ought not to suffer automatic forfeiture of Court fee. This approach only would be consistent with the broader object underlying Section 12A of the Commercial Courts Act, 2015, namely facilitation of dispute resolution and procedural discipline, rather than imposition of a punitive financial consequence for a defect in procedure, which can be cured. The litigant has not effectively invoked the adjudicatory jurisdiction of the Commercial Court on merits, and therefore, the Court fees paid for such abrogated proceeding should be returnable, particularly because the defect is inherently procedural and curable in nature rather than that being adjudicatory in nature.

30. This would also accord with the equitable principle that Court fee is essentially a fee for consideration of a cause by the Court and where the law deems that no valid suit had come into existence at all, retention of the fee may operate harshly and contrary to the object of facilitating commercial dispute resolution.

xxx xxx xxx

33. <u>The entire discussion as above can be summed up in a manner that where a plaint is rejected under order 7, Rule 11(d) Civil Procedure Code solely on the ground of non-compliance with the mandatory requirement of pre-institution mediation under Section 12A(1) of the Commercial Courts Act, 2015, the Court fee ought ordinarily be returned to the plaintiff, since such rejection does not amount to an adjudication on merits but merely recognizes a procedural bar existing at the time of institution. The principle underlying Patil Automation (P)</u>

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Ltd. (supra) strongly supports this approach, because the Supreme Court contemplated that after due compliance with Section 12A of the Commercial Courts Act, a fresh suit may be instituted and even extended the equitable protection of Section 14 of the Limitation Act, 1963 for exclusion of time spent in prosecuting the defective proceeding. Once the law recognizes the right of reinstitution after curing the defect, retention of substantial Court fees paid in the earlier defective proceeding would operate oppressively and contrary to the remedial object of the procedural law. Further, order 7, Rule 13, Civil Procedure Code preserves the plaintiff's right to present a fresh plaint on the same cause of action, thereby indicating that, rejection under Rule 11(d) does not finally terminate the substantive claim."

9. In Amit Jain (supra), a Division Bench of this Court was concerned with a money recovery suit which had been erroneously instituted as a commercial suit before the Commercial Court instead of as an ordinary civil suit, and which the plaintiff was permitted to withdraw with liberty to file afresh before the appropriate court, whilst declining refund of Court fee. Holding that the application ought to have been treated as one under Order VII Rule 10 CPC, and that the refusal of refund could not be sustained, the Division Bench observed as under:-

> *"10. It is trite that while interpreting a fiscal legislation like Court Fees Act, the court should adopt liberal attitude so as to lessen and not add to the burden of the litigant. Especially where the court dealing with the lis is of the view that it is not competent to decide the same, there is no logic in depriving the litigant refund of the court fees.*
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> *11. In the case of Nagpur District Central Cooperative Bank (supra) relied upon by learned counsel for appellant, in a similar situation, a Division Bench of the Bombay High Court, while referring to various judicial precedents including the decision of its Full Bench, took a view that where the court fees on the institution of a suit has been paid in a court which cannot possibly afford the relief sought, it does not seem consistent with sound principle that the plaintiff should be condemned to lose the fees thus paid, or that he should not be allowed to ask without paying a second fee for an adjudication from a court which can really give one.*
>
> *12. Such refusal to refund court fees even in a lis which remained unadjudicated and expecting the litigant to pay up again would discourage the law-abiding litigant from approaching the justice dispensation system. Such a form of docket exclusion would be highly counterproductive for any civilized society."*

10. The same approach has been reiterated by a Division Bench of this Court in Ri Networks Private Limited (supra), where the plaint had been rejected at the threshold on the ground that the dispute lay within the exclusive jurisdiction of the Telecom Disputes Settlement and Appellate Tribunal. The Division Bench held that irrespective of whether the rejection is traced to Order VII Rule 10 or Order VII Rule 11 CPC, the Court fee is liable to be refunded where there has been no adjudication on the merits, observing that Court fee is not meant to operate as a

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penalty upon a litigant for approaching the Court. The relevant observation reads as under:-

> *"20. Court fee is not meant as a penalty upon the litigant to approach the Court. The Court is to always take an empathetic view towards a litigant especially when a litigant has been relegated to approach the appropriate forum and there has admittedly been no adjudication on the merits of the dispute."*

(emphasis supplied)

8. In view of the above and keeping in mind the identical position herein, the Court Fee affixed by the plaintiff in the present suit, is directed to be returned. Registry is directed to take requisite steps in this regard.

9. Needless to say, after compliance of section 12A of *the Act*, if required, the plaintiff would be at liberty to file suit afresh. This would be, however, without prejudice to the rights and contentions of the defendant.

10. The suit stands rejected and disposed of in aforesaid terms.

11. Pending applications also stands disposed of.

12. A copy of this order be given *dasti* under the signatures of Court Master.

(MANOJ JAIN)
JUDGE

OCTOBER 28, 2026/ss/sa

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