

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE
(BANK CASES) SRINAGAR**

File No.	Date of Institution	Date of Order
31/N	19/09/2022	16/05/2023

CNR No. JKSG020044382022

M/S Gh. Mohammad Dar
Govt. Contractor & General Order Supplier
S/o Gh. Ahmed Dar
R/o Rohmoo Pulwama Kashmir
(Regd No. 2-AAY/DSET/1980-81
(...Plaintiff)

Through: Mr. G. R Rah (Advocate)

Versus

1. Managing Director J&K Tourism Dev. Corporation Ltd
Srinagar/Jammu
2. Executive Engineer J&K Tourism Dev. Corporation Ltd
TRC, Srinagar/Jammu
3. Financial Advisor/Chief Accounts Officer J&K Tourism
Dev. Corporation Ltd. TRC, Srinagar/Jammu
(...Defendants)

Through: Mr. Mufti Muhtasim (Advocate)

In the matter of:

Suit for recovery of an amount of Rs. 78,20,784/- (Seventy Eight Lacs Twenty Thousand Seven Hundred and Eighty Four Rupees) with upto date interest @ 18% from the date of accrual of the cause of action till its final realization as mentioned below.

CORAM: Arvind Sharma, J.
JO Code: JK00123

O R D E R

Point of Controversy

1) The brief point of controversy in hand is that the above titled suit stands filed by the plaintiff without following the

statutory pre-litigation mediation process contemplated under section 12A of the Commercial Courts Act, 2015 which stood amended by the Amendment Act of 2018 wherein the compliance of Section 12A has been made “Mandatory”.

Judicial Reasoning

2) After hearing arguments from both sides it is found that the similar question stood arise before Hon'ble Apex Court and stands decided in Civil Appeal arise out of SLP © No. 14697 of 2021) and SLP (C) No. 5737 of 2022) in case titled M/S Patil Automation Private Limited and Ors Versus Rakheja Engineers Private Limited wherein para 84 of said judgment the Apex Court held that...

“...Having regard to all these circumstances, we would dispose of the matters in the following manner. We declare that Section 12A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VUU Rule 11. This power can be exercised even suo moto by the court as explained earlier in the judgment. We, however, make this declaration effective from 20/08/2022 so that concerned stakeholders become sufficiently informed. Still further, we however direct that in case complaints have been

already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff. Finally, if the plaint is filed violating Section 12A after the jurisdictional High Court has declared Section 12A mandatory also, the plaintiff will not be entitled to the relief...”

Decision

3) Thus in light of settled law laid down by Apex Court discussed supra, the suit in hand stands rejected considering the fact that the suit in hand stood instituted violating the mandate of Section 12A of Commercial Courts Act, 2015 read with Amendment Act of 2018 under order VII Rule 11 of the Code of Civil Procedure. The suit stands disposed of and consigned to records after its due completion.

Announced
May 16th, 2023
“Abid”

Additional District Judge (Bank Cases)
Srinagar