

[1]

Com. Suit No 04/2019 (Exh.54)

CNRMHSN040011152019

Commercial Suit No. 04/2019

**B. Kumarswamy Reddy- Plaintiff
Vs**

**Maharashtra Krishna Valley
Development Corporation- Defendant**

Order below Exh. 54

1] This is an application under order 7 Rule 11 of Code of Civil Procedure filed by defendants inter-alia praying that plaint shall be rejected for non compliance of mandatory provision of section 12-A of the Commercial Courts Act 2015 (Hereinafter referred as the Act of 2015 for the sake of convenience.)

2] Perused the application and say given by plaintiff at Exh.56.

3] I have heard advocate Smt. Kabbur for applicant/defendant and advocate Shri. Shah for the plaintiff. The defendant has placed on record written notes of argument at Exh.58. The learned advocate for defendant also placed reliance on few reported judgments viz-

**A] In the case of Sharif-ud-Din Vs. Abdul Gani Lone,
AIR 1980 Supreme Court 303**

- B] In the case of Play Games 24 x 7 Pvt. Ltd. Vs. Loran Leasing and Infotech Pvt. Limited, AIR Online 2023 BOM 2200
- C] In the case of Patil Automation Private Limited Vs. Rakhceja Engineers Private Limited, (2022) 10 Supreme Court Cases 1.
- D] In the case of Forbes Technosyes Limited Vs. Vinod Devilal Panchal Proprietor of Star Enterprises.

By taking me through section 12-A of the Act, Rule 3 of the Commercial Courts Act pre-institution Mediation and Settlement Rules and also through the order passed by this court on 14-06-2019, it is argued that in view of the express provision under section 12-A of the Commercial Courts Act, since there was no compliance of the provision by moving an application for pre-institution mediation, the plaint is liable to be rejected in view of the judgment of Hon'ble Supreme Court in the case of Patil Automation Pvt. Ltd.(supra). It was further argued that the suit was initially filed in the Commercial Division, District Court Sangli having Commercial Suit No.5/2019 on 06-06-2019. The order for registration of the suit came to be passed on 12-06-2019 and the court passed first order on 14-06-2019. It is argued that the first order that came to be passed on 14-06-2019 was directing the plaintiff to go for mediation and same day the

second order came to be passed of issuing summons. In spite of the specific order by the court no steps were taken by the plaintiff for moving an application in the prescribed form for pre-litigation mediation before the competent authority and therefore in view of the judgments of the Hon'ble Bombay High Court as well as the Hon'ble Supreme Court which the defendant has relied, the plaint is liable to be rejected for non compliance of mandatory provisions.

4] Adv. Shah for the plaintiff argued that the suit was instituted on 06-06-2019. As per the direction of the Hon'ble Supreme Court in the case of Patil Automation Pvt. Limited (supra) the direction for mandatory effect of section 12-A of the Act would come into force on 20-08-2022. However, so far as Maharashtra is concerned, since the Division Bench of Hon'ble Bombay High Court by its judgment has held that provision is mandatory vide judgment dated 1-10-2021 as it is reflected in the judgment of Hon'ble Bombay High Court in Forbes Technosyes Limited (supra), the plaint would have been rejected if this suit was filed on or after 01-10-2021 but since the suit is filed in 2019, the plaint can not be rejected as prayed. He further submitted that even today also the plaintiff is ready to go for mediation.

5] At the outset I may note, it is undisputed position that this is the commercial suit filed under the Act of 2015. It

is also undisputed position that no urgent relief was asked when the suit was filed.

6] Section 12-A of the Act provides-

“12A.Pre-institution Mediation and Settlement.-

(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) For the purpose of pre-litigation mediation the Central Government may, by notification, authorise

(i) the Authority constituted under the Legal Services Authorities Act, 1987 (39 of 1987) or
(ii) a mediation service provider as defined under clause (m) of section 3 of the Mediation Act, 2023.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority of mediation service provider authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of one Hundred and Twenty days from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of sixty days with the consent of the parties:

Provided further that, the period during which the parties spent for the pre-litigation mediation shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties and the mediator.

(5) The mediated settlement agreement arrived at under this section shall be deal with in accordance with the provisions of section 27 and 28 of the Mediation Act,2023”

7] Thus, in view of the fact that there was no urgent relief is prayed, in view of the mandate under section 12-A the steps should have been taken by applying to the competent authority for pre-litigation mediation. Rule-3 of Rules so made provides- a party to commercial dispute may make an application to the authority as per Form 1 specified in the schedule to the rule. On receiving the application the authority is expected to issue notice as per Form-2 to the opposite party to appear and give consent to participate in

the mediation. Sub-Rule 3 further provides, where no response is received from the opposite party to the first notice issued, the authority shall issue final notice to the opposite party i.e .the second notice and even after issuance of second notice, if opposite party does not respond to the notice, the authority it shall treat the mediation process to be non starter and make a report as per Form A and endorse the same to the applicant and opposite party.

8] Now by keeping in the mind section 12-A of the Act of 2015 and Rule- 3, let us deal with the case in hand. As already stated above the present suit was instituted on 06-06-2019. The order for registration of suit came to be passed on 12-06-2019 and the suit come up before the court for passing first order on 14-06-2019. That day two order were passed by this court. The first order was for issuing summons to the defendant returnable on 29-06-2019 and the second order came to be passed on the last page of the plaint thereby taking note of the fact that this litigation being a commercial suit the pre-litigation mediation was mandatory and the court referred matter for mediation.

9] Both parties have relied on the judgment of Hon'ble Supreme Court in the case of Patil Automation(supra). In concluding para 113 it is held that-

‘Having regard to all these circumstances, we would dispose of the matters in the following manner.

113.1– We declare that section 12-A of the Ac is mandatory and hold that any suit instituted violating the mandate of section 12A me 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 22-08-2022 so that stakeholders concerned become sufficiently informed.”

113.2- Still further, we however direct that in case plaints have been already rejected and no steps have been taken within the period of limitation, the matter an not be responded 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.

113.3- Finally, if the plaint is filed violating Section 12-A after the jurisdiction High Court has declared Section 12-A mandatory also, the plaintiff will not be entitled to the relief.”

10] If we say the direction given by Hon’ble Supreme Court in case of Patil Automation(supra), section 12-A of the Act is mandatory and any suit instituted violating the mandate of section 12-A must be visited to the rejection of

the plaint under Order 7 Rule 11 of the C.P.C. and that power can be exercised sue moto by the court. But the Hon'ble Supreme Court made the declaration effective from 20-08-2022. But in para 113.3 it is further held that where the jurisdictional High Court has declared section 12-A mandatory, that would be the date on which it has to be held that case is covered under the judgment in Patil Automation (supra), where a plaint can be rejected under Order 7 Rule 11 of C.P.C. In the case of Forbes Technosyes Limited(supra), the Hon'ble Bombay High court has held that on 01-10-2021 the Bombay High Court declared section 12-A of the Commercial Courts Act 2015 mandatory. Therefore, the combine reading of the judgments in the case of Patil Automation(supra) and in the case of Forbes Technosyes Limited(supra) would show that in Maharashtra the effect to the directions given in Patil Automation Pvt. Ltd.(Supra) need to be given to the commercial suits which are instituted on or after 01-10-2021 and not on 20-08-2022.

11] So far as the judgment relied by the defendants in the case of Yamini Manohar Vs. T K D Keerthi (SC)Special Leave Petition (Civil)Diary No(s). 32275/2023 that case deals with the litigation were a frivolous application for urgent relief is moved by the parties to avoid to rigor of section 12-A of the Act. However, in the case hand admittedly no application for urgent relief was ever made by the plaintiff.

The plaintiff has relied on the judgment of Hon'ble Bombay High Court in the case of Play Games 24 x 7 Private Limited (supra), now the learned advocate for the plaintiff fairly conceded after the judgment in the case for Forbes Technosyes Limited(supra) and in view of the judgment in the case of Patil Automation (supra) in Maharashtra the mandate is applicable to the cases instituted on and after 01-10-2021.

12] Here in present case as discussed above two orders came to be passed on 14-06-2019, it was argued for the defendant that order directing mediation was passed first and then the order directing issuance of summons to the defendant and the learned advocate for the plaintiff argued opposite. According to him, the order issuance of summons came to be passed first. If we go through 12-A it says that no suit shall be instituted unless plaintiff exhaust remedy pre-institution mediation in accordance with such manner and procedure as may be prescribed. Therefore any order for referring matter for mediation after institution of suit can not be said to be an order directing pre-institutional mediation. If it is said the court took notice of the said fact first, in this case it appears after passing an order of issuing summons to the defendant, this court noted that this being the commercial suit the mandatory provision of pre-litigation mediation is to be exhausted and therefore second order came to be passed.

As per the second order this court had sent matter for mediation which was done by following due procedure of the law for the compliance of pre-mediation before litigation. The order is reproduced as -

“On perusal of documents and proceedings it appears that there is no urgent relief claimed by the plaintiff, however the Institution branch did not followed the provisions of Chapter III-A as amended on 20-08-2018. Hence the matter be sent for mediation for following the due procedure of law for compliance of mediation before institution. Inform accordingly to plaintiff and his counsel”.

Thus after noticing non compliance of Section 12-A of the Act of 2015, instead of rejecting plaint, this court referred the matter for mediation.

13] It was expected that after passing the order, the competent authority should have issued notice to the opposite party as provided in Rule 3. Admittedly till the date no such notice is issued by the defendant. In short neither plaintiff nor the defendant or even the authority took steps to comply the order for mediation passed on 14-05-2019. Under these circumstances, in view of the directions given by the Hon'ble Supreme Court in the case Patil Automation(supra) and the directions given in the case of

Forbes Technosyes Limited (supra), I find that as this suit being instituted on 06-06-2019 i.e. before 01-10-2021, the date when the Division Bench of Hon'ble Bombay High Court declared the provision mandatory, present application for rejection of the plaint can not be allowed.

14] The learned advocate for plaintiff has insisted for heavy cost for moving the application but considering the facts and circumstances as discussed above, I do not find it fit to impose the cost and it can not be ignored that after the order dated 14-06-2019 when this court directed the matter to be sent for mediation, steps were not taken even by plaintiff also for initiating mediation process. Hence the following order-

ORDER

- 1] Application Exh.54 is rejected. Costs in cause.
- 2] The matter is referred for mediation. The parties are directed to appear before Taluka Legal Services Authority, Islampur on 24-04-2025.

- 3] The Taluka Legal Services Authority, Islampur shall refer the matter to the Mediator after following the procedure prescribed in the Rules.

(Dictated and pronounced in open Court.)

Date : 17-04-2025.

(Aniruddha Y. Thatte.)
District Judge-2 Islampur.