

Present: Sri Utpal Misra (JO Code:WB00659)
Judge, Commercial Court at Alipore
Money Suit No. 22 of 2022
CNR No. WBSP18-000071-2022

Order No. 15

Date: 30.08.2023

In the matter of:

Suit for recovery of money and damages valued at Rs. 1,95,01,095.89/-.

AND

In the matter of:

Messers. Navayuga Engineering Ltd.

Vs.

In the matter of:

Messers. National Trailer Transport Company.

Order

Today is fixed for passing order of the application being **I.A. No. 02 of 2022**.

Both sides have filed their respective haziras.

I.A. No. 02 of 2022

1. Plaintiff filed the instant suit on 30.05.2022 for recovery of money, damages and other reliefs with insufficient court-fees without any order from the competent authority showing due compliance of the mandatory provision of pre-institution mediation under section 12-A of the Commercial Courts Act, 2015 (hereinafter referred to as CCA, 2015). Moreover, no separate application praying for leave under section 12-A of the CCA, 2015 was also filed. Hence, there was a direction upon the plaintiff/petitioner to file necessary order pf the Competent authority and/or application for due compliance of Section 12-A of the CCA, 2015.

2. Thereafter, on 31.05.2022, the plaintiff/petitioner filed one application praying for leave of the Court for non-compliance under Section 12A of the CCA, 2015, which has duly been registered as I.A. No. 02 of 2022. That apart, the plaintiff / petitioner filed e-challan showing payment of requisite DCF of Rs. 49,900/- and also filed another application under Order XXXIX Rules 1&2 read with Section 151 of the CPC and which was registered as I. A. No. 03 of 2022.

3. Ld. Counsel appearing for the Plaintiff has submitted that there is an extreme urgency to roll on this suit before this Court as Defendant is trying to dispose of the gantry weighing 80 tons and the feet of the crane machine being an intrinsic part of the said EOT cranes, which were loaded in the said trailer bearing no. NL O1AA 2886. As such, Plaintiff prays before this Court to pass an order of thereby dispensing with the requirement of the pre-institution mediation and settlement under Section 12A of CCA.

4. *Per contra*, during the course of argument Ld. Counsel for the Defendant has vehemently opposed the said contention as raised by the Plaintiff.

5. I have heard both sides and perused the application as well as the plaint.

6. The fact remains that that the instant suit was instituted without exhausting the mandatory provision under Section 12A of the CCA, 2015.

7. Therefore, the sole issue that is to be decided as to whether the Plaintiff in the suit which does not contemplate any urgent relief under the CCA, 2015 exhausted the remedy of pre-institution mediation in accordance with the manner and procedure prescribed or not. As per Sub-section (1) of Section 12A of the CCA, 2015 this Court is to ensure that a suit is instituted by a Plaintiff in accordance with

the procedure laid down therein, regarding reliance is made on *LaxmiPolyfab Private Limited v. Eden Realty Ventures Private Limited and Ors*¹.

8. In this case, it is not found that the Plaintiff has made such dispensation of remedy as laid down in Section 12A of CCA, 2015.

9. Now, in such a situation it is to be decided whether the Plaintiff can be non-suited or not.

Section 12A of CCA, 2015 read as follows:

“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 institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.”

10. With a simon pure objective to minimize the burden of the existing commercial courts along with avowed object of securing speedy disposal of high value commercial disputes so as to firm economic ascending of our country, the legislature by virtue of the 2018 amendment, enacted Section 12A. Section 12A of the CCA mandates mediation for any commercial dispute arising under the Act, barring the institution of a suit for the same unless an urgent interim relief is claimed. From the statement and object of reasons purported in the said Section, it is clear that legislature was conscious that every litigation must not mandatorily undergo with the pre-institution litigation and taking into consideration where an urgent interim relief is sought, the plaintiff can approach the special forum without exhausting such a statutory provision which can be conspicuously visualized from Section 12(A) of the CCA.

¹Reported in 2021 SCC Online Cal 1457.

11. However, the conundrum existed around interpreting the mandatory nature of the provision which previously had been declared directory in a number of rulings by various High Courts. Recently, the Apex Court in *M/s Patil Automation Private Limited and Others v. Rakheja Industries Private Limited* has put an end to this conundrum by flagrantly upholding the mandatory nature of mediation and thereby obliging parties to firstly restore to an alternate form of dispute resolution before directly approaching the commercial courts.

12. The Apex Court in this case considered the various decisions expressed by various Hon'ble Court in respect of Section 12A of the CCA, 2015 and Finally, the Apex Court in *Patil Automation Case (supra)* held that the provision contained under Section 12A of CCA is mandatory and the suit instituted without exhausting the pre-institution litigation must visit with the rejection of the plaint under Order VIII Rule 11 of the CPC. Even, further holding so, the Apex Court held that such power relating to rejection of the plaint can be exercised *suo moto* and not depended upon any application to be taken out by the defendant. The said paragraph of the *Patil Automation Case (supra)* is as follows: ***“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 VII 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 stake-holders become sufficiently informed. 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 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.”

13. The Apex Court in *Patil Automation Case (supra)* has categorically indicated that the law stated in the above stated case would apply prospectively i.e. w.e.f. 20.08.2022 but it can be reasonably inferred that the provision contained under Section 12A of the Act is mandatory in nature and if the jurisdictional High Court have declared it so it will disentitle the plaintiff to any reliefs. The meaningful reading of the aforesaid paragraph of the *Patil Automation Case (supra)* leads no ambiguity that the moment the jurisdictional High Court have taken a view that the provision contained under Section 12A is mandatory even if the suit filed prior to the judgment of *Patil Automation*, the same will be regarded as violative of said provision and there is no bar on the part of the Court to reject the plaint on such count supra. The Hon’ble Division Bench of the Calcutta High Court in the present case takes a Single Bench decision rendered in case of *Laxmi Polyfab Pvt. Ltd. (supra)* as a first view of jurisdictional High Court relating to whether the Section 12A of the CCA is mandatory or directory. The said judgment of the Hon’ble Single Bench of the Calcutta High Court was decided on 7th April, 2021 holding that Section 12A of the Act is mandatory as it achieved the twin object of expeditious disposal and avoidance of a docket explosive. In the said judgment of *Laxmi Polyfab Pvt. Ltd. (supra)* the Hon’ble Single Bench further held that the failure of the plaintiff to exhaust the remedy under Section 12A of the Act may result in dismissal of the suit provided the plaintiff does not seek an urgent interim relief in the following:

“52. The object of the Act of 2015 is to ensure expeditious and speedy disposal of commercial dispute. Expedition and speed in disposing of commercial dispute is attained, in the wisdom of the legislature, by a pre-institution mediation. Section 12A(1) of the Act

of 2015 distinguishes suits filed under the Act of 2015 into two categories. It treats the two categories of suits differently. Suits are categorized into two on the basis of need of the plaintiff to obtain urgent interim relief. One category is a suit where the plaintiff does not seek urgent interim relief. In such category Section 12A of the Act of 2015 debars the plaintiff from instituting mediation. The provisions of sub-Section (1) of Section 12A of the Act of 2015 are such that, a plaintiff is obligated to approach the appropriate authority for a pre-institution mediation, unless he seeks urgent interim relief, in respect of a commercial dispute to approach the court for resolution of the commercial dispute. Section 12A of the Act of 2015 prescribes an obligation on the plaintiff to undertake the pre-institution mediation and vests a corresponding right on the defendant. The defendant enjoys the right of a pre-institution mediation and in the default of the plaintiff not going for pre-institution mediation, then having suit against the defendant by such defaulting plaintiff, being barred by law. Failure of the plaintiff to exhaust pre-institution mediation, unless, he seeks urgent relief, in a commercial dispute, gives a corresponding right to the defendants to claim that, such suit could not have been instituted by the plaintiff. Such failure of the plaintiff will result in the dismissal of the suit if allowed to be instituted. The other category of suits under Section 12A of the Act of 2015 is a suit where the plaintiff seeks urgent interim reliefs.

53. The two categories of suits under Section 12A of the Act of 2015 are treated differently. In the category of suits where the plaintiff does not seek urgent interim relief, the plaintiff is statutorily required to exhaust pre-institution mediation, whereas a plaintiff seeking urgent interim relief is not required to do so. In a suit where the plaintiff does not seek urgent interim reliefs, limitation is extended or kept in abeyance, as one may perceive it, till the conclusion of the statutorily mandated period of mediation while in the other category no such benefit is extended.”

14. In the case of *Patil Automation (supra)* the Hon'ble Court has also clearly held that if the plaint is filed violating Section 12A of the Act of 2015 after the jurisdictional High Court has declared Section 12A mandatory also, the Plaintiff will not be entitled to the relief. The Hon'ble High Court at Calcutta being the

jurisdictional High Court in the **Laxmi Polyfab's** case (*supra*) has held that **on and after December 11, 2020**, a Plaintiff has to exhaust pre-institution mediation before instituting a suit in the commercial division or commercial court or seek appropriate dispensation of such mandatory requirement.

15. The Plaintiff in the present case has failed to do so, and therefore, the plaint is liable to be rejected.

16. From the afore-mentioned averment there is no ambiguity in the mind of this Court to reckon the cut-off date as contemplated by the Hon'ble Supreme Court in *Patil Automation Case (supra)* in view of Judgment [*Laxmi Polyfab Pvt. Ltd. (supra)*] of the Hon'ble High Court at Calcutta being jurisdictional court regarding Section 12A of CCA from **12th December, 2020**.

17. On the risk of repetition, it is stated that in the instant case, the plaint does not contemplate an urgent interim relief which would be evident from the reliefs claimed therein and therefore, mere filing an application of injunction cannot be regarded as dispensation of the rigor of Section 12A of the Act and therefore, is not maintainable. As, Section 12A of CCA is mandatory in absence of any urgent interim relief the suit which was instituted subsequent thereto is liable to fail and the courses to be adopted on the basis of decision rendered in *Patil Automation (supra) along with [Laxmi Polyfab Pvt. Ltd. (supra)]*, there is no other option but to reject the plaint. Accordingly, the plaint is rejected.

18. In the instant suit, the defendant has also filed written statement along with Counter Claim and the same is also rejected as this proposition of Law is also applicable to them also.

19. The Plaintiff is directed to exhaust the remedy provided under section 12A of the CCA and after the outcome of the same, if the cause of action still survive, may institute a suit.

20. The I.A. No. 02 of 2022 is thus accordingly disposed of on contest without any order as to costs.

21. Henceforth, the instant money suit being M.S. No. 22 of 2022 is disposed of in pursuance of rejection of the plaint by this order. Any pending application(s), if any, shall be disposed of accordingly.

Let the Court-fees paid by both the plaintiff and defendant be returned to them accordingly.

Parties are to act on the basis of the downloaded copy of the Order-sheet from the Web site/E-courts-app.

Dictated and corrected by me,

Sd/-

Judge, Commercial Court at Alipore,
for South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram.

Sd/-

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for South 24 Parganas, Purba Midnapore,
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