

15.07.2025
Item no. 5
Court No.37.
AB
(ID 266019)

FMAT 176 of 2023

**IPJ Industrial Corporation
Vs
M/s Esskay Machinery Pvt. Ltd.**

Mr. Amitava Mukherjee, Sr. Advocate
Mr. Sandipan Banerjee,
Ms. Utsa Datta,
Ms. Antara Das,
Mr. Sourish Dasfor the Appellant.

Mr. Mainak Bose, Sr. Advocate
Mr. Suvadeep Sen,
Sm. Sucheta Dasfor the Respondent.

Dictated by Arijit Banerjee, J.

1. This appeal is directed against an order dated February 28, 2023, passed by the learned Judge, Commercial Court at Rajarhat, North 24 Parganas, in M.S.- 1/2022(CC), being a Money Suit instituted by the present appellant against the respondent herein. The appellant's suit was for recovery of price of goods sold and delivered to the respondent.
2. The respondent took out an application for rejection of the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure contending that the suit is barred by law inasmuch as the requirement of pre-suit mediation under Section 12A of the Commercial Courts Act, 2015 had not been complied with by the plaintiff.

3. Learned Judge noted that although there was an application which was filed by the plaintiff seeking dispensation of the requirements under Section 12A of the Commercial Courts Act, in the plaint there was no averment showing any degree of urgency. Learned Judge held that for the purpose of deciding a demurrer application, only the statements in the plaint are relevant. Nothing else can be looked into. The statements in the plaint do not justify institution of the suit by dispensing with the requirement of pre-suit mediation under Section 12A of the 2015 Act. Accordingly, learned Judge, rejected the plaint.
4. Appearing for the appellant, Mr. Mukherjee, learned Senior Counsel submitted that, the learned Judge ought to have taken into consideration the application filed by the plaintiff for dispensing with the requirement of pre-suit mediation since the plaintiff needs urgent interim relief. He further submits that, the Hon'ble Supreme Court in the case of **Patil Automation Private Limited And Others versus Rakheja Engineers Private Limited** reported in **(2022) 10 Supreme Court Cases 1** while declaring that Section 12A of the 2015 Act, is mandatory and holding that any suit instituted in violation of the mandate of Section 12A must be visited with the rejection of the plaint under Order 7 Rule 11

C.P.C, made such declaration effective from 20.08.2022. The plaint in the present case, was filed in December 2021. Therefore, Section 12A of the 2015 Act did not hit the plaint.

5. Learned Senior Counsel further submitted that the appellant/plaintiff wrote several letters to the respondent/defendant calling upon the latter to settle the dispute amicably, but in vain. Hence, pre-suit mediation would have been an exercise in futility.
6. We have also heard Mr. Sen learned Counsel for the respondent. He points out, and rightly so, that in **Patil Automation Private Limited (supra)** the Hon'ble Supreme Court also held that if a plaint is filed violating Section 12A "after the jurisdictional High Court has declared Section 12A mandatory", the plaint has to be rejected.
7. The judgment of a learned Judge of this Court in the case of **Laxmi Polyfab Pvt. Ltd. Versus Eden Realty Ventures Pvt. Ltd. and Another** reported in **AIR 2021 Cal 190** has been placed before us. By that judgment the learned Judge has held that Section 12A of the 2015 Act is mandatory. We see that the said judgment was delivered on April 7, 2021. Hence, on a conjoint reading of **Patil Automation Private Limited (supra)** and **Laxmi Polyfab Pvt. Ltd. (supra)**, the appellant's plaint was liable to be rejected for non compliance with

the provisions of Section 12A of the Commercial Courts Act, 2015.

8. In so far as the other point of the appellant is concerned, i.e., its application seeking dispensation of the requirements under Section 12A of the said Act should have been considered, we are of the view that the plaint itself must reflect the urgency, if any, which would justify permission being granted to a party to file a suit without satisfying the requirement of pre-litigation mediation under Section 12A of the 2015 Act. In the present case, there is nothing in the plaint demonstrating any urgency.
9. The learned Trial Court has also rightly held that no amount of pre-suit correspondence between the parties whereby the plaintiff may have called upon the defendant to settle the matter or honour its claim, would suffice. What Section 12A of the 2015 Act contemplates is institutional mediation.
10. In view of the aforesaid, we find no infirmity in the order under appeal. The appeal stands dismissed. This will not prevent the appellant to present its plaint once again before the appropriate Court after complying with the relevant provisions of law.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)

