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

+ CS(COMM) 899/2023 & I.As. 25472-25473/2023, 4893/2024

M/S SABSONS AGENCIES PRIVATE LIMITEDPlaintiff

Through: Ms. Kaveeta Wadia, Mr. Shashank
Tripathi and Mr. Majeibur
Rehman, Advocates.

versus

M/S HARIHAR POLYMERS & ANR.Defendants

Through: None

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **01.03.2024**

I.A. No. 803/2024 (*seeking exemption from pre-litigation mediation*)

1. This is an application by which the plaintiff seeks exemption from pre-litigation mediation, as required by Section 12-A of the Commercial Courts Act, 2015 [“the Act”],

2. This suit has been filed for recovery of an amount of Rs. 6,13,07,075/-, including principal amount of Rs.3,51,27,626/- and interest thereupon, and for future interest. No urgent interim relief is sought. However, Ms. Kaveeta Wadia, learned counsel for the plaintiff, seeks exemption from pre-institution mediation, on the ground that the parties made an attempt to settle the matter in mediation, in the course of proceedings under Section 138 of the Negotiable Instruments Act, 1881, but were unsuccessful.

3. Ms. Wadia relies upon the judgment of a Division Bench of this Court in *Amit Walia v. Shweta Sharma* [2023 SCC OnLine Del 6779] to submit that once mediation has taken place, albeit not in the manner prescribed under Section 12-A of the Act, the Court may not be required to relegate the matter to fresh mediation.

4. Section 12-A of the Act reads as follows:

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

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months 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 two months with the consent of the parties:

Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period 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 to the dispute and the mediator.

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]”

[Emphasis supplied.]

5. This provision has been held to be mandatory in the judgment of Supreme Court in *Patil Automation (P) Ltd. v. Rakheja Engineers (P)*

Ltd. [(2022) 10 SCC 1], which has been further explained in an order dated 13.10.2023 in *Yamini Manohar v. T.K.D. Keerthi* [2023 SCC OnLine SC 1382].

6. In *Patil Automation [supra]*, the Court has examined the purpose behind the requirement for pre-institution mediation, and held that any suit instituted, violating the mandate under Section 12-A of the Act, must be visited with the rejection of the plaint, which power can be exercised *suo moto*. This declaration has been made effective from 20.08.2022. The present suit was instituted well after the said date.

7. In *Yamini Manohar [supra]*, the Supreme Court has examined the exception, which is applicable in case the plaintiff seeks an urgent interim relief. The said exception is not applicable in the present case, as no urgent interim relief is contemplated.

8. The plaintiff's case here is predicated only on the fact that it has already undertaken efforts to settle the disputes between parties. Ms. Wadia refers to in paragraph 3 of the application, wherein it is stated that the parties were also referred to mediation. However, I do not find this case to be supported by the documents annexed to the application. There is no report of any mediation centre stating that mediation has failed. The orders of the learned Judicial Magistrate, Chandigarh, annexed to the application, also demonstrate only that the parties submitted before the Court that there was chance of compromise, but the attempt was ultimately found to be futile.

9. I am of the view that this position renders the present case distinguishable from the facts in *Amit Walia [supra]*, cited by Ms. Wadia. That judgment was rendered in a case where mediation had taken place

under the aegis of Delhi High Court Mediation and Conciliation Centre. The Court held that this would be sufficient compliance with Section 12-A, even though the mediation had not taken place before the District Legal Services Authority, as required under the Act.

10. As explained by the Supreme Court in *Patil Automation [supra]*, mediation is a potent tool for settlement of disputes, and is mandatory as a pre-litigation exercise in commercial disputes. Paragraphs 99.3 and 99.4 of the judgement explain the rationale thus:

*“99.3. The language used in Section 12-A, which includes the word “shall”, certainly, goes a long way to assist the Court to hold that the provision is mandatory. **The entire procedure for carrying out the mediation, has been spelt out in the Rules.** The parties are free to engage counsel during mediation. The expenses, as far as the fee payable to the mediator, is concerned, is limited to a one-time fee, which appears to be reasonable, particularly, having regard to the fact that it is to be shared equally. **A trained mediator can work wonders.**”*

99.4. Mediation must be perceived as a new mechanism of access to justice. We have already highlighted its benefits. Any reluctance on the part of the Court to give Section 12-A, a mandatory interpretation, would result in defeating the object and intention of Parliament. The fact that the mediation can become a non-starter, cannot be a reason to hold the provision not mandatory. Apparently, the value judgment of the lawgiver is to give the provision, a modicum of voluntariness for the defendant, whereas, the plaintiff, who approaches the court, must, necessarily, resort to it. Section 12-A elevates the settlement under the Act and the Rules to an award within the meaning of Section 30(4) of the Arbitration Act, giving it meaningful enforceability. The period spent in mediation is excluded for the purpose of limitation. The Act confers power to order costs based on conduct of the parties.”

[Emphasis supplied.]

11. The upshot of this discussion is that, in the present case, there is no record that an attempt has been made in mediation, and that no urgent relief is sought. Pre-litigation mediation was therefore mandatory.

12. The application is consequently dismissed, and the plaint is also

rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908.
The suit is accordingly dismissed.

13. Needless to say, the plaintiff will be at liberty to institute a fresh suit, in accordance with law, after compliance with Section 12-A of the Act.

PRATEEK JALAN, J

MARCH 1, 2024

Ssc/

