



September 2022

Supreme Court: Section 12A of the Commercial Courts Act, 2015 mandatory.

In the case of *Patil Automation Private Limited and Others vs. Rakheja Engineers Private Limited*¹, the Supreme Court of India (“**Supreme Court**”) held that Section 12A of the Commercial Courts Act, 2015 (“**Act**”) is mandatory and that any suit instituted violating the mandate of Section 12A of the Act must be visited with rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (“**CPC**”).

Brief Facts

1. A commercial suit under Order XXXVII of CPC (“**Suit**”) was filed by Rakheja Engineers Private Limited before Additional District Judge, District Court, Faridabad (“**Trial Court**”) seeking certain sums of money. Patil Automation Private Limited i.e., defendant in the Suit (“**Patil**”) filed an application under Order VII Rules 10 and 11 read with Sections 9 and 20 of the CPC, contending that the suit was filed without adhering to Section 12A of the Act. It was contended by Patil that the Suit was barred for non-compliance of Section 12A of the Act.
2. The Trial Court rejected the contention of Patil and held that although the procedure under Section 12A of the Act is mandatory in nature, however, the legislature has no such intention to frame such stringent provisions in the said rules. The Trial Court while placing reliance on “*Ganga Taro Vazirani v. Deepak Raheja*”² held that “*the procedure provided under Section 12A of the Act is not a penal enactment for punishment and there is no embargo in filing the Suit without exhausting the remedy of mediation especially when an attempt is clear to show that the intention of the applicant has already been made and failed*”. The Trial Court, keeping in mind the larger interest, nevertheless directed that the Suit be kept in abeyance and directed both the parties to appear before the relevant authority for the purpose of mediation.
3. Aggrieved, by the order of the Trial Court, Patil filed civil revision petition before the Punjab and Haryana High Court (“**P&H High Court**”). The P&H High Court confirmed the findings of the Trial Court and observed that courts are meant to deliver substantial justice. The P&H High Court also held that if a suit is filed without taking recourse to the procedure, it should not entail rejection of the plaint. The P&H High Court while deciding the matter placed reliance on the single bench judgment of the Bombay High Court in “*Ganga Taro Vazirani v. Deepak Raheja*”³.
4. In a challenge to the order of the P&H High Court, a special leave petition being SLP (C) No. 14697 of 2021 was filed before the Supreme Court.

¹ 2022 SCC OnLine SC 1028

² 2021 SCC OnLine Bom 195

³ *Ibid*

Issues

1. Whether the statutory pre-litigation mediation contemplated under Section 12A of the Act is mandatory?
2. Whether the Courts have erred in not allowing the applications under Order VII Rule 11 of CPC to reject the complaints filed by the respondents in the appeals without complying with the procedure under Section 12A of the Act?

Analysis and Findings of the Supreme Court

After appreciating the submissions advanced by the parties and having regard to settled law, the Supreme Court held as follows:

1. On the question concerning the statutory pre-litigation mediation contemplated under Section 12A of the Act being mandatory, the Supreme Court held that on a perusal of Section 12A of the Act, it is evident that the legislature intended it to be mandatory. However, the Supreme Court observed that the same would not be applicable in suits where certain urgent interim reliefs have been contemplated. The Supreme Court also observed that nobody has an absolute right to file a civil suit. Further, a civil suit can be barred absolutely or the bar may operate unless certain conditions are fulfilled.
2. Exhausting pre-institution mediation by the plaintiff, with all the benefits that may accrue to the parties and the justice delivery system as a whole, would not make Section 12A a mere procedural provision.
3. On the second issue, the Supreme Court held that any suit instituted violating the mandate of Section 12A of the Act must be visited with rejection of the complaint under Order VII Rule 11 of the CPC. The Supreme Court also held that the power under Order VII Rule 11 of the CPC can also be exercised by a court *suo moto*.
4. The Supreme Court after, observing the aforesaid noted that the applicability of the present judgment could cause issues to cases that have been instituted without complying with Section 12A of the Act and for the same it stated as follows:
 - (a) The applicability of the aforesaid declaration would be from August 20, 2022;
 - (b) 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, and
 - (c) If the order of rejection of the complaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff.
5. In addition to the above the Supreme Court has also held that if a high court has declared Section 12A of the Act to be mandatory, then any complaint filed within the jurisdiction of such high court which has not complied with Section 12A of the Act, then such plaintiff would not be entitled to any relief.

Conclusion:

The Supreme Court has observed that Section 12A of the Act was brought in as it was intended to help reduce the burden on the courts. The Supreme Court by way of the present judgment has settled the position with regard to applicability of Section 12A of the Act by holding that the same is mandatory in nature.

Though this is a step in the right direction, however the same would require more clarity. There appears to be no mechanism in the Act which would entitle a court to satisfy itself whether any urgent interim relief is being contemplated (as contained in the proviso to Section 80(2) of the CPC, which states that the court must satisfy itself whether any urgent interim relief is being contemplated and if not, return such complaint for presentation to the court after due compliance of law).

Given the law as it stands, there could be a possibility of litigants overcoming the mandatory import of Section 12A of the Act by merely filing applications for urgent interim reliefs (which in reality, lack any merit). Therefore, this position

of law needs to be addressed so as to ensure proper implementation of Section 12A of the Act thereby fulfilling the objective of pre-institution mediation.

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This Prism has been prepared by:



Varghese Thomas
Partner



Yohaann Limathwalla
Senior Associate



Akhil Nene
Associate



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