



CIVIL

Bombay High Court Reiterates: Rejection Of Plaintiff To Be Directed Due To Non-Compliance With Mandatory Mediation Procedure Under Section 12A Of The Commercial Courts Act, 2015

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In a recent judgment[i], passed by the Ld. Single Judge of the Hon'ble Bombay High Court ("HC") rejected the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC"). The HC was hearing an application under Order VII Rule 11 (a) and/or (d) read with Section 151 of CPC[ii], to reject the Commercial Summary Suit No. 47 of 2023 as the mandatory pre-institution mediation procedure prescribed under section 12A of the Commercial Courts Act, 2015[iii] ("said Act") was not complied with by the Plaintiff.

Brief Facts of the Case:

The commercial summary suit was filed, in connection with a Development Management Agreement dated 28th December, 2017, executed between the M/s. Ekta Housing Private Limited ("Plaintiff") and Shraddha Shelters Pvt. Ltd ("Defendant No.1"). Subsequently, Deed of Guarantee dated 15th February, 2018, was executed by the Plaintiff and Defendant Nos. 1 to 3 ("said Deed of Guarantee"). The Plaintiff sought to recover an outstanding total of Rs. 35,03,62,620/- (Rupees Thirty Five Crores Three Lakh Sixty Two Thousand Six Hundred and Twenty Only) as per the particulars of the claim annexed to the plaint. The recovery was in regards to the, said Deed of Guarantee, development manager's fees, refund of security deposit, along with applicable taxes. Alongside the suit, the Plaintiff has filed an Interim Application (L) No. 21357 of 2023, seeking an attachment of assets before judgment.

The Plaintiff, vide email dated 23rd July 2020 and 15th August 2020 called upon the Defendant No.1 to make the requisite payment in respect of the development management fee, and took no action against the Defendant No.1 since then till instituting a suit in 2023. The HC noted that it is evidently clear that the Plaintiff, did not take any action against the Defendant No.1 for three years.

Contentions of the Parties:

The Defendant No.1 relied upon the landmark judgment of the Hon'ble Supreme Court in **Patil Automation Private Limited v. Rakheja Engineers Private Limited**[iv] wherein, the Hon'ble Supreme Court while considering the provision of section 12A of the said Act read with CPC, held that in the event, mandatory procedure as prescribed under section 12A of the said Act is not complied with, such non-compliance forms a ground for rejection of the plaint under Order VII Rule 11 of the CPC and the same can be implemented by the concerned courts suo moto. Further, the Defendant No.1 relied upon **Yamini Manohar v. T.K.D. Keerthi**[v] contending that the Hon'ble Supreme Court, in the aforesaid judgment elaborated the phrase "contemplate urgent relief" as stated in section 12A of the said Act. The Hon'ble Supreme Court held that, the subject matter and the prayers sought in the interim reliefs ought to be scrutinized by the concerned commercial courts. The prayers sought for urgent relief should not orchestrate to override the mandatory provisions of pre institution mediation as prescribed under section 12A of the said Act.

Furthermore, the Defendant No.1 also relied a judgment passed by the Hon'ble Bombay High Court, **Future Corporate Resources Pvt. Ltd v. Edelweiss Special Opportunities Fund and Anr**[vi] wherein, it was held that the mandatory procedure as prescribed under section 12A of the said Act cannot be bypassed by merely filling an interim application seeking urgent reliefs. Additionally, the Defendant No.1 also relied upon the judgment of the Hon'ble Bombay High Court[vii], where the Hon'ble Court held that, it is for the concerned commercial court to examine whether the commercial suit filed contemplates urgent reliefs and in such an event, the leave to conduct the mandatory pre-institution mediation be bypassed and not merely because the Plaintiff has sought urgent reliefs.

The Defendant No.1 contended that a prima facie case for urgent reliefs ought to be craved out in the plaint. The Defendant No.1 referred to a judgment passed by the Hon'ble Calcutta High Court[viii], wherein the Hon'ble High Court relying upon the aforesaid judgments passed by the Hon'ble Supreme Court, held that, the requisite for seeking urgent reliefs by the Plaintiff must be pleaded in the plaint.

The Plaintiff contended the aforesaid submission made by the Defendants stating that the present commercial summary suit instituted has been filed for recovery of Rs.35,00,00,000/- with respect to the development of the project. The Plaintiffs contended that, the interim application and the commercial summary suit has been filed on the same date and additionally, the urgent reliefs sought are in the nature of an attachment before judgment. Thereby, due to the aforesaid reasons, the same contemplates for urgent reliefs. Further, the Plaintiff emphasised that in the aforesaid case, the urgent reliefs sought, ought to be contemplated from the Plaintiffs case. In addition to this, the Plaintiff relied upon **Chemco Plast – In the matter between – Chemco Plastic Industries Pvt. Ltd. vs. Chemco Plast.**[ix]

The HC, by referring to the aforesaid judgments concluded that, the language of the section is explicit and mandatory and it admits no implication or exceptions. In the event there is a genuine urgency carved out by the Plaintiff, in its pleadings, the mandatory procedure under section 12A of the said Act can be bypassed. The case for urgent reliefs has to be ascertained on a holistic reading of the plaint based upon the nature of the subject matter and the prayers sought for interim reliefs. Additionally, the HC, based on the averments made in the plaint as well as the interim application filed by the Plaintiff, held that, in no circumstances bypassing of the mandatory procedure would be permitted.

Therefore, without considering the merits of the present case, the HC rejected the plaint under Order VII Rule 11(d) of the CPC, as being barred by law, in respect of non-compliance with the mandatory provisions of section 12A of the said Act.

In the author's opinion, the present judgment, highlights the significance of compliance with the mandatory procedure as prescribed under section 12A of the Commercial Courts Act, 2015 before instituting a commercial suit. The objective of the provision is to mitigate unnecessary litigation and to provide an opportunity to the parties to come to an amicable settlement before approaching the courts. However, often times, the Plaintiff tries to bypass the mandatory mediation by carving out baseless and unsubstantiated averments to seek urgent reliefs. Thus, the present judgment by relying upon the landmark judgments passed by Hon'ble Supreme Court and Hon'ble High Courts reiterates the strict compliance with the provision of section 12A of the Commercial Courts Act, 2015 and, in the event no exception for urgency has been made out in the pleadings, the plaints ought to be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908.

[i] *Shraddha Shelters Pvt. Ltd. v. Ekta Housing Private Limited*, Interim Application No.920 of 2024 in Commercial Suit No.47 of 2023, decided on 11th November, 2024. The coram comprised of Abhay Ahuja, J.

[ii] The provisions of section 151 of the Code of Civil Procedure, 1908, are as follow:

"151. Saving of inherent powers of Court.—Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

The provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908, are as follow:

"ORDER VII

11. Rejection of plaint., *The plaint shall be rejected in the following cases;*

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate];

[(f) where the plaintiff fails to comply with the provisions of Rule 9];

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

[iii] The relevant provisions of section 12A of the Commercial Courts Act, 2015 are as follow:

"12-A. Pre-litigation 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."

[iv] (2022) 10 SCC 1.

[v] 2023 SCC OnLine SC 1382.

[vi] 2022 SCC OnLine Bom 3744.

[\[vii\]](#) Kulchand Jogani v. Shree Vardhan Investments, 2022 SCC OnLine Bom 4752.

[\[viii\]](#) Skipper Limited v. Prabha Infra Private Limited, 2023 SCC OnLine Cal 5482.

[\[ix\]](#) Interim Application (L) No.10014 of 2024 with Interim Application (L) No.23077 of 2023 in Commercial IP Suit No.80 of 2024 decided on 10th June 2024.