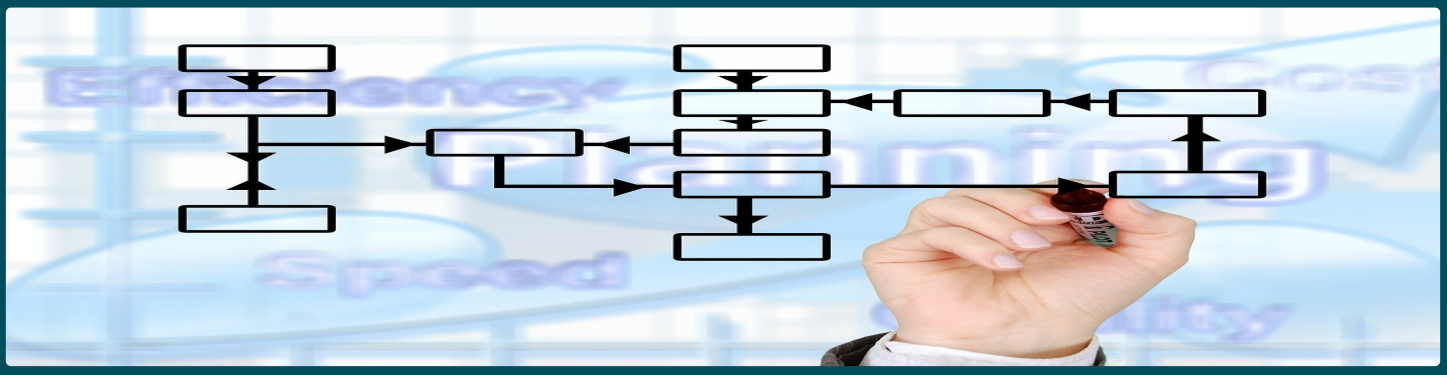
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# Delhi High Court Clarifies: Pre-Institution Mediation Mandatory Even for Commercial Counter-Claims

AUTHOR Brian Noronha, Aletea Fernandes, Tanya Bhushan

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## Introduction

In a judgment dated 2nd September 2024 in Aditya Birla Fashion and Retail Ltd. v. Mrs. Saroj Tandon[1], the Hon'ble Delhi High Court ("High Court") dealt with an important procedural question under the Commercial Courts Act, 2015 ("Act"): whether the mandatory requirement of pre-institution mediation under Section 12-A of the Act applies to counter-claims not contemplating any urgent reliefs, as well. The present case arose from a commercial suit and counter claim pertaining to the lease of a premises and the refund of the security deposit to the lessee, and moneys allegedly liable to be paid by the lessee. The High Court examined whether a defendant, when filing a counter-claim in a commercial dispute, must also undergo pre-institution mediation if the counter-claim does not contemplate urgent interim relief.

## Brief Facts of the Case

Aditya Birla Fashion and Retail Ltd. ("Plaintiff / Petitioner") was the lessee of a shop owned by Mrs. Saroj Tandon ("Defendant – Counter Claimant / Respondent") under a Lease Agreement dated 15th March 2013. In light of the Covid-19 Pandemic, the Plaintiff / Petitioner was constrained to close its business operations at the leased premises and subsequently issued a termination notice to the Defendant – Counter Claimant / Respondent, seeking refund of the security deposit. Since the security deposit was not refunded, the Plaintiff sought to file a commercial suit against the Defendant – Counter Claimant for recovery of the same.

However, prior to filing the said suit, the Petitioner initiated pre-institution mediation in compliance of Section 12-A of the Act before the South District Legal Services Authority ("SDLSA"). Despite due service of the notices / summons by SDLSA, the Respondent failed to enter their appearance resulting in the mediation being declared as a non-starter.

Subsequently, the Plaintiff filed a commercial suit and the Defendant – Counter Claimant filed the Written Statement. Thereafter, the Defendant – Counter Claimant also filed a counter claim seeking recovery of rents and other dues which was appropriately registered as a commercial suit in accordance with the relevant rules. The Plaintiff filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC") seeking rejection of the plaint in the counter-claim on the ground that no pre-institution mediation had been initiated, as mandatorily required under Section 12-A of the Act. The Trial Court, however, dismissed the application, holding that such mediation is not mandatory for counter-claims. According to the Ld. Trial Judge, counter-claims, being part of an already pending suit, did not need to go through the same mediation procedure.

Aggrieved by this decision of the Ld. Trial Court, the Plaintiff / Petitioner approached the High Court under Article 227 of the Constitution of India.

## High Court's Analysis

The High Court rejected the view taken by the Trial Court and held that a counter-claim involving a commercial dispute is subject to the same rules as a fresh commercial suit. It was noted that under Order VIII Rule 6A of CPC, a counter-claim is to be treated as a distinct and independent suit for all procedural purposes. Thus, a counter-claim in a commercial dispute must also comply with the requirements under Section 12-A of the Act.

The High Court also placed reliance on the landmark decision of the Hon'ble Supreme Court in Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.[2] ("Patil Automation"), where it was declared that Section 12-A is mandatory in nature and that non-compliance of the same would lead to rejection of the plaint under Order VII Rule 11 of the CPC, in absence of any urgent interim relief being sought. This declaration was made effective prospectively from 20th August 2022. The High Court also relied on a decision of the Division Bench of the Delhi High Court in Harey Krishna Corporation v. Servotech Power Systems Ltd.[3], which held that rejection of the plaint in commercial suits filed without undergoing the mandatory Pre-Institution Mediation would be effective prospectively from 20th August, 2022, after considering other decisions of the Delhi High Court holding the same[4].

The High Court also referred to the legislative intent behind Section 12-A of the Act, quoting the Statement of Objects and Reasons from the 2018 Amendment. It was emphasised that pre-institution mediation is meant to ease the burden on courts and promote early settlement, an objective that remains relevant even for counter-claims.

Rejecting the argument of the Defendant – Counter Claimant / Respondent that a second round of mediation would be futile, the High Court observed that counter-claims can involve different subject matters and different reliefs. Hence, it cannot be presumed

that the outcome of mediation would be the same as that held before filing the original suit.

The High Court, accordingly, held that the requirement under Section 12-A of the Act applies equally to counter-claims, provided they do not seek urgent interim relief. However, since the Respondent's counter-claim was filed on 21st February 2022 which was before the cut-off date of 20th August 2022 laid down in Patil Automation the High Court held that the counter-claim ought not to be rejected on the ground of non-compliance with the mandatory Pre-Institution Mediation. Accordingly, the petition was disposed of, and the counter-claim was directed to proceed in accordance with law.

## Conclusion

This judgment lays down the principle that counter-claims in commercial suits are procedurally the same as suits and must adhere to the same requirements, including pre-institution mediation. The ruling adds clarity to procedural compliance under the Commercial Courts Act, 2015 and is a reminder for litigants to rigorously follow the process of pre-institution mediation prior to instituting suits or counter-claims in commercial disputes.

1. 2024 SCC OnLine Del 6099, the decision was delivered by Manoj Jain, J. ??
2. (2022 SCC OnLine SC 1028), the coram consisted of K.M. Joseph and Hrishikesh Roy, JJ. The decision was authored by K.M. Joseph, J. ??
3. (2024 SCC OnLine Del 3526), the coram consisted of Vibhu Bakhru and Tara Vitasta Ganju, JJ. The decision was authored by Vibhu Bakhru, J. ??
4. Santosh Kumar Aggarwal v. Aluco Panel Limited [Neutral Citation: 2023 : DHC : 4554-DB]; CEPCO Industries (P) Ltd. v. Tewari Restaurant (P) Ltd., 2023 SCC OnLine Del 87; Jai Pal Singh Sharma Trust v. SRM Education & Financial Consultant (P) Ltd., 2023 SCC OnLine Del 4992; and, Odeon Builders (P) Ltd. v. NBCC (India) Ltd., 2023 SCC OnLine Del 3798. ??

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