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

% ***Date of Decision: 14.09.2026***

\# **CNR No.DLHC010021152024**

\+ CS(COMM) 66/2024

MR RAKESH MEDIRATTA .....Plaintiff

Through: Mr. Sandeep P. Agarwal, Sr. Adv. along with Ms. Niyati Kohli, Mr. Pratham Vir Agarwal, Ms. Tanya Chandra, Mr. P. Mehra and Ms. Isha Kakkar, Advs.

versus

ASIAN HOTELS (NORTH) LIMITED & ANR. .....Defendants

Through: Mr. Sidhant Kumar and Ms. M. Joshi, Advs. for D-1.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

IA No.19627/2026 (on behalf of the plaintiff seeking set off/refund of Court Fee paid in the present suit)

1. This application has been filed by the plaintiff seeking set off / refund of the Court fee in the present suit.

2. The instant suit was filed seeking specific performance of two Space Buyer Agreements dated 18.07.2017 and 16.08.2017 executed between the plaintiff and defendant no.1. The suit came to be dismissed *vide* judgment dated 13.08.2025 solely on the ground of non-compliance with the mandatory requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015. There was no adjudication on merits of

the plaintiff's underlying claim in the judgment dated 13.08.2025.

3. While dismissing the suit, this Court expressly reserved to the plaintiff the benefit of set off of the Court fee so paid. Relevant extract of the judgment dated 13.08.2025 reads as under:-

> *"31. Liberty is granted to the plaintiff to file a fresh civil suit after adhering to the provisions of Section 12A of the Act, and to request for set off of Court fees, in case a fresh suit is instituted."*

4. Pursuant to the aforesaid liberty, the plaintiff filed a pre-institution mediation application on 04.09.2025, which came to be registered as Pre-Institution Mediation No. 163/25 (also referred to as Case No. 1562/Pre-Inst/DHCLSC/2025), and was taken up before the Delhi High Court Mediation and Conciliation Centre. The said mediation culminated in a complete and final settlement of all disputes between the parties, as recorded in the signed Settlement Report dated 30.04.2026.

5. In the circumstances, there is no longer any occasion for the plaintiff to institute a fresh suit. The set off of Court fee contemplated by the liberty granted *vide* judgment dated 13.08.2025 could only have been claimed in such a fresh suit, and that course is no longer available to the plaintiff, the entire dispute having been settled at the pre-institution mediation stage itself.

6. In support of his contention that the Court fee is liable to be refunded, learned senior counsel for the plaintiff relies upon the following judgments:-

i. ***Dr. (Col.) Subhash Chandra Talwar v. T. Choithram and Sons & Ors.***, 2019 SCC OnLine SC 2469;

ii. ***IPJ Industrial Corporation v. M/s. Esskay Machinery Pvt. Ltd.***, 2026 SCC OnLine Cal 7297;

iii. ***Amit Jain v. Mahavir International Pvt. Ltd. & Ors.***, 2023 SCC

OnLine Del 2657;

iv. ***Ri Networks Private Limited v. World Phone Internet Services Private Limited & Ors.***, 2026:DHC:629-DB; and

v. ***Nutan Batra v. M/s Buniyaad Associates***, 2018 SCC OnLine Del 12916.

7. Particular attention is drawn to the observations of the Supreme Court in ***Dr. (Col.) Subhash Chandra Talwar v. T. Choithram and Sons & Ors.*** (supra), wherein the suit had been directed to be returned for presentation before the court of competent jurisdiction. The Supreme Court took the view that an order returning the plaint under Order VII Rule 10 of the Code of Civil Procedure was not an order on the merits of the suit, and that the effect thereof was that the petitioner therein was entitled to refund of the Court fee. The relevant observations are as under:-

> *"3. The appeal filed by the petitioner was dismissed. However, the plaint was ordered to be returned with liberty to file it before the court of competent jurisdiction.*
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> *4. Thereafter, the petitioner filed an application for refund of the court fees. This application has been rejected only on the ground that the appeal has been disposed of on merits. We are unable to agree with the High Court. What has been disposed of is only the rejection order under Order VII Rule 10 of the Code of Civil Procedure. This is no order on the merits of the suit. The effect is that the plaint has been ordered to be returned to be filed in the appropriate Court. Therefore, the petitioner was entitled to refund of the court fees so that he can fix the court fee in the State where he would like to file the suit. We therefore set aside the order of the High Court and direct that the entire court fees be refunded to the petitioner.*
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> *The special leave petition is disposed of accordingly."*

8. Reliance is also placed on the judgment of a Division Bench of the High Court at Calcutta in ***IPJ Industrial Corporation*** (supra), rendered in an analogous situation, namely where a plaint had been rejected under Order

VII Rule 11(d) CPC for non-compliance with Section 12A of the Commercial Courts Act, 2015. Specific attention is drawn to the following observations:-

"28. The Court's conclusion and operative reasoning as enumerated therein struck balance between two competing considerations - first, that Section 12A(1) of the Commercial Courts Act, 2015 is mandatory in nature, and second, that a litigant who has instituted suit earlier should not be unfairly prejudiced retrospectively. The Court was consciously adopting a pragmatic and equitable approach rather than imposing an inflexible procedural penalty in every case. It reflects that the Court did not treat Section 12A violation as involving adjudication on merits, but as a threshold procedural defect capable of attracting equitable considerations. The finding of the Court, as quoted above also strengthens that ancillary consequence, such as forfeiture of Court fees need not automatically follow upon rejection of the plaint. The Supreme Court in Patil Automation (supra), though might have laid down the principle, for concerning suits lodged prior to coming into force of Section 12A(1) of the Commercial Courts Act, 2015, still, so far as forfeiture of Court fees is concerned due to rejection of plaint on account of breach of provision under Section 12A(1) of the Act, the said principles may be applied, which are in consonance with the broader scheme as provided under the Commercial Courts Act, 2015.

29. The judgment of Supreme Court in Patil Automation (supra), therefore, leaves sufficient doctrinal space for a liberal interpretation in an appropriate case, that where the plaint is rejected solely on account of non-compliance with the pre-institution mediation requirement, without any adjudication on merits and without the suit being effectively entertained by the Court, the litigant ought not to suffer automatic forfeiture of Court fee. This approach only would be consistent with the broader object underlying Section 12A of the Commercial Courts Act, 2015, namely facilitation of dispute resolution and procedural discipline, rather than imposition of a punitive financial consequence for a defect in procedure, which can be cured. The litigant has not effectively invoked the adjudicatory jurisdiction of the Commercial Court on merits, and therefore, the Court fees paid for such abrogated proceeding should be returnable, particularly because the defect is inherently procedural and curable in nature rather than that being adjudicatory in nature.

30. This would also accord with the equitable principle that Court fee is essentially a fee for consideration of a cause by the Court and where the law deems that no valid suit had come into existence at all, retention of *the fee may operate harshly and contrary to the object of facilitating commercial dispute resolution.*

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33. The entire discussion as above can be summed up in a manner that where a plaint is rejected under order 7, Rule 11(d) Civil Procedure Code solely on the ground of non-compliance with the mandatory requirement of pre-institution mediation under Section 12A(1) of the Commercial Courts Act, 2015, the Court fee ought ordinarily be returned to the plaintiff, since such rejection does not amount to an adjudication on merits but merely recognizes a procedural bar existing at the time of institution. The principle underlying Patil Automation (P) Ltd. (supra) strongly supports this approach, because the Supreme Court contemplated that after due compliance with Section 12A of the Commercial Courts Act, a fresh suit may be instituted and even extended the equitable protection of Section 14 of the Limitation Act, 1963 for exclusion of time spent in prosecuting the defective proceeding. Once the law recognizes the right of reinstitution after curing the defect, retention of substantial Court fees paid in the earlier defective proceeding would operate oppressively and contrary to the remedial object of the procedural law. Further, order 7, Rule 13, Civil Procedure Code preserves the plaintiff's right to present a fresh plaint on the same cause of action, thereby indicating that, rejection under Rule 11(d) does not finally terminate the substantive claim."

9. In ***Amit Jain*** (supra), a Division Bench of this Court was concerned with a money recovery suit which had been erroneously instituted as a commercial suit before the Commercial Court instead of as an ordinary civil suit, and which the plaintiff was permitted to withdraw with liberty to file afresh before the appropriate court, whilst declining refund of Court fee. Holding that the application ought to have been treated as one under Order VII Rule 10 CPC, and that the refusal of refund could not be sustained, the Division Bench observed as under:-

"10. It is trite that while interpreting a fiscal legislation like Court Fees Act, the court should adopt liberal attitude so as to lessen and not add to the burden of the litigant. Especially where the court dealing with the lis is of the view that it is not competent to decide the same, there is no logic in depriving the litigant refund of the court fees.

11. In the case of Nagpur District Central Cooperative Bank (supra) relied upon by learned counsel for appellant, in a similar situation, a Division Bench of the Bombay High Court, while referring to various judicial precedents including the decision of its Full Bench, took a view that where the court fees on the institution of a suit has been paid in a court which cannot possibly afford the relief sought, it does not seem consistent with sound principle that the plaintiff should be condemned to lose the fees thus paid, or that he should not be allowed to ask without paying a second fee for an adjudication from a court which can really give one.

12. Such refusal to refund court fees even in a lis which remained unadjudicated and expecting the litigant to pay up again would discourage the law-abiding litigant from approaching the justice dispensation system. Such a form of docket exclusion would be highly counterproductive for any civilized society."

10. The same approach has been reiterated by a Division Bench of this Court in ***Ri Networks Private Limited*** (supra), where the plaint had been rejected at the threshold on the ground that the dispute lay within the exclusive jurisdiction of the Telecom Disputes Settlement and Appellate Tribunal. The Division Bench held that irrespective of whether the rejection is traced to Order VII Rule 10 or Order VII Rule 11 CPC, the Court fee is liable to be refunded where there has been no adjudication on the merits, observing that Court fee is not meant to operate as a penalty upon a litigant for approaching the Court. The relevant observation reads as under:-

"20. Court fee is not meant as a penalty upon the litigant to approach the Court. The Court is to always take an empathetic view towards a litigant especially when a litigant has been relegated to approach the appropriate forum and there has admittedly been no adjudication on the merits of the dispute."

11. Learned counsel for defendant no.1, who appears on advance notice, does not oppose the present application.

12. Considering the circumstances and the *dicta* laid down in the aforesaid judgments, the present application is allowed.

13. The Court fee affixed by the plaintiff along with CS(COMM) 66/2024 *viz.* an amount of Rs.9,90,586/- (Rupees Nine Lakh Ninety Thousand Five Hundred and Eighty Six only) is directed to be refunded to the plaintiff.

14. The application is allowed in the above terms.

SACHIN DATTA, J

SEPTEMBER 14, 2026/r,sd