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

% Judgment reserved on: 17.02.2025
Judgment delivered on: 19.02.2025

\+ W.P.(C) 2039/2025 & CM APPL. 9604/2025

RENEWFLEX RECYCLING ...Petitioner

versus

FACILITATION CENTRE ROHINI COURTS & ORS ...Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Mukul Sharma, Advocate.

For the Respondents : Mr. Sameer Vashisht, SC (Civil), GNCTD with Ms. Harshita Nathrani, Advocate for R-1 and R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present writ petition has been filed under Article 226 of the Constitution of India, 1950 seeking, *inter alia,* the following prayers:-

> *"a) Issue a writ of mandamus or any other appropriate writ, direction, setting aside the impugned remarks/decision dated 14-01-2025, made by Respondent No. 1 (Annexure- P3) under the provisions of the Commercial Courts Act, 2015;*
>
> *b) Declare that the bona-fide mediation request dated 24/12/24, sent by the Petitioner to Respondent No. 2, be considered under the procedural requirements under Section 12A of the Commercial Courts Act, 2015, ("Pre-Institution Mediation and Settlement.-- (1)*

A suit, which does not contemplate any urgent interim relief... ... ...), particularly in view of the non-response by the Respondent No. 2;

c) Direct Respondents No. 3 and No. 4 to take appropriate measures to ensure that bona fide pre-institution mediation efforts by litigants must be recognised U/S .12A of the commercial court Act.

d) Grant such further or alternative relief as this Hon'ble Court May deem fit and proper in the interest of justice, equity, and good conscience, including, without limitation, an order for the payment of costs incurred in this petition.

e) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the interests of justice and equity."

2. It is the case of the petitioner that it is a proprietorship and has been supplying goods to respondent no.2 - DP Polymers, pursuant to a commercial arrangement. The petitioner claims to have supplied goods to respondent no.2 under two invoices, and the total outstanding amount of Rs. 5,57,550/-, including GST, remained unpaid despite the delivery of goods and repeated reminders by the petitioner, constraining it to send a legal notice dated 21.12.2024 to the respondent no.2, demanding the outstanding dues. However, no response was received on such legal notice. It is stated that thereafter, in an attempt to resolve the matter amicably, the petitioner dispatched a mediation request dated 24.12.2024 to respondent no.2 through its advocate however, the respondent no.2 failed to respond to the said request.

3. Subsequently, the petitioner filed a commercial suit against the respondent no.2 in the Commercial Court. It is the case of the petitioner that notwithstanding the petitioner's sincere efforts to mediate in line with the

legislative intent of Section 12A of the Commercial Courts Act, 2015 (hereafter the '*Act*'), the respondent no.1/Registry rejected the plaint. The impugned remarks/decision dated 14.01.2025 noted that in the absence of a Non-Starter Report or Certificate of non-settlement from the mediation authority, the procedural requirements under Section 12A of the Act were not satisfied.

4. Aggrieved by this, the petitioner had filed a writ petition bearing W.P.(C) 1473/2025 before this Court. *Vide* order dated 06.02.2025, the same was withdrawn by the petitioner with liberty to file a fresh petition with appropriately framed prayers. Thereafter, the present writ petition came to be filed by the petitioner.

5. Mr. Mukul Sharma, learned counsel for the petitioner at the outset admitted that he does not seek to challenge the constitutional validity of Section 12A of the Commercial Courts Act *per se,* as the said issue stands covered by the judgement of the Supreme Court in ***Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1.*** Rather, he contended that the petitioner had made *bona fide* attempts to resolve the matter with respondent no.2 by sending a legal notice as well as a mediation request, which are in consonance with the underlying purpose of expediting commercial dispute resolution. However, despite the clear non-response by the respondent no.2, the rigid insistence on obtaining a Non-Starter Report results in an undue procedural burden and contravenes the constitutional principles of access to justice as enshrined in Articles 14 and 21 of the Constitution of India.

6. Learned counsel for the petitioner emphasized that the non-response

of respondent no.2 to the mediation request sent by the petitioner renders the mediation process effectively a '*non-starter*' and ought to be treated as compliance of the procedural requirements under the provisions of Section 12A of the Commercial Courts Act as the same is consistent with the legislative intent of the said Act. He stated that the impugned remarks/decision dated 14.01.2025 enforcing a rigid requirement of a Non-Starter Report essentially imposes an undue procedural burden causing delay and harassment to the litigants. It is stated that mandating repetitive formalities even after a *bona fide* mediation effort has been undertaken, subverts the objective of swift dispute resolution under the Act.

7. Having heard learned counsel for the petitioner and examined the provisions of Section 12A of the Act, we are not persuaded to toe the line of submissions addressed and find them unmerited.

8. The constitutional validity of the provisions of Section 12A of the Act is no more *res integra* with the pronouncement of the Supreme Court in ***Patil Automation (P) Ltd.*** *(supra*). Learned counsel for the petitioner too has no quarrel with that. The submissions are predicated solely upon the misconceived premise that a lawyer's legal notice calling upon the other party to participate in self styled '*mediation*' and the failure thereof by the '*noticee*' should be '*deemed*' to satisfy the provisions of Section 12A of the Act. Consequently, such failure ought to or deemed to entail a "*Non-Starter Report*". The failure of the '*noticee*' to respond to such legal notice calling for mediation itself ought to be deemed to be '*non-starter'*, resultantly, the requirement of a '*plaintiff*' to once again undergo the process of a Court directed mediation under the provisions of Section 12A of the Act ought to

be dispensed with. According to learned counsel for the petitioner, this would save a lot of valuable time and obviate the need to repeat the process twice over.

9. The submissions of learned counsel for the petitioner are completely misconceived and absolute misunderstanding of the provisions of Section 12A of the Act. The act of issuing legal notice by a litigant may be exercised even to call the other party to mediate, if advised, but that can hardly be termed as having any statutory foundation. The said act would be purely in the realm of non statutory regime. There is nothing in Section 12A of the Act to even remotely suggest any such method or manner of calling the other party for mediation. It is settled that what is not mentioned cannot be deemed and the Courts can supply *"casus omissus"* only in very rare and exceptional circumstances. Surely, the present case is not such and thus, the said submission does not commend itself to us.

10. Moreover, it is trite that if a statute prescribes a particular mode or manner of implementing the provisions, the same has to be done in the same manner or not at all. Catena of judgements commencing from ***Taylor vs. Taylor, (1875) 1 Ch D 426***; ***Nazir Ahmed vs. The King Emperor, (1936) 38 Bom LR 987; State of Uttar Pradesh vs. Singhara Singh , (1964) 4 SCR 485*** till date, have consistently upheld the aforesaid principle, thus forming "*stare decisis*". Relevant paragraph of ***Singhara Singh*** *(supra)* is extracted hereunder:

> *"7. In Nazir Ahmed case the Judicial Committee observed that the principle applied in Taylor v. Taylor to a court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are*

necessarily forbidden, applied to judicial officers making a record under Section 164 and, therefore, held that the Magistrate could not give oral evidence of the confession made to him which he had purported to record under Section 164 of the Code. It was said that otherwise all the precautions and safeguards laid down in Sections 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that "it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves".

8. The rule adopted in Taylor v. Taylor is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on Magistrates the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him."

11. Just so to dispel any unnecessary conjuring up of similar submissions, it would be apposite to extract Section 12A of the Commercial Courts Act which reads thus:

"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 preinstitution 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, 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).]"

Applying the golden principle of interpretation, the provisions may be read in its most simple and unambiguous manner. So read, it is apparent that the legislative intent is not to empower a litigant to supplant the process envisaged in Section 12A of the Act, by issuance of a legal notice calling for mediation or even supplement it. The plain reading does not suggest any such mode or method of initiating mediation proceedings. Infact, the intent appears to be to initiate the mediation process within the *"statutory framework"* so as to ensure that the commercial litigation is not protracted or prolonged unnecessarily. The legal framework also envisages the mediation to commence and culminate within a stipulated period, thus indicating the overarching control over the mediation process by the institution. In this context, it is of great significance to note sub-section (5) of Section 12A of the Act. It envisages and bestows a legal sanctity to the *"settlement"* arrived at by the parties contemplated under sub-section (4) of Section 12A of the Act by deeming the same to be an *"award"* under sub-

section (4) of Section 30 of the Arbitration and Conciliation Act, 1996, consequently empowering the *"settlement"* to be legally enforceable. This legal statutory framework can neither be supplanted nor even supplemented in the manner suggested by the learned counsel for the petitioner.

12. Ergo, from the above analysis of the provisions, it is apparent that the submissions of the petitioner are extraneous to the legislative framework and the intent of the Commercial Courts Act.

13. In view of the above, the petition in unmerited and is dismissed *in limine*, though without any order as to costs. Pending applications, if any, are also disposed of accordingly.

TUSHAR RAO GEDELA, J

DEVENDER KUMAR UPADHYAY, CJ

FEBRUARY 19, 2025/*rl*