



2025:DHC:458



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

Date of decision: 9th JANUARY, 2025

IN THE MATTER OF:

+ **CS(COMM) 1176/2024 & I.As. 49450-52/2024**

M/S BRANDAVAN FOOD PRODUCTS

.....Plaintiff

Through: Mr. Rajat Aneja, Mr. Jasmeet Singh,
Mr. Mahinder Singh Hura, Mr. Saif
Ali, Mr. Pushpendra S. Bhadoriya,
Mr. Vijay Sharma, Mr. Pranav Menon
Mr. Aditya Sharma, Mr. Saurav,
Advocates

versus

CAPITAL EQUIPMENT INDIA

.....Defendant

Through: Mr Vishwendra Verma, Ms Shivali,
Mr Abhishek Nagar, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Plaintiff has approached this Court for a decree for Rs.2,68,87,384/- along with interest @ 18% per annum from 16.09.2024 till the payment on account of defaults and breaches by the Defendant.
2. The present suit is one for recovery of opportunity costs incurred by the Plaintiff due to the supply of defective, inferior quality and sub-standard kitchen equipment by the Defendant.
3. It is stated that the Plaintiff is engaged in the business of catering food and drinks on trains being run by the Indian Railway Catering & Tourism Corporation (IRCTC) and the Indian Railways.
4. It is stated that the Defendant and the Plaintiff entered into



2025:DHC:458



negotiations regarding supply of kitchen equipment. It is stated that in March 2024, it was agreed that the Defendant shall deliver kitchen equipment at the Delhi office of the Plaintiff who would thereafter deliver the same to the requisite base kitchens situated across the country.

5. Stating that inferior and subpar quality kitchen equipment has been supplied by the Defendant at exorbitantly high prices, the Plaintiff has incurred an opportunity cost of Rs. 2,68,87,384/-. Therefore, the Plaintiff has filed the present suit for recovery. The present suit is therefore commercial suit and since the dispute between the parties is commercial in nature, it would therefore be covered under the Commercial Courts Act.

6. Section 12A of the Commercial Courts Act mandates pre-institution mediation and settlement. Section 12A of the Commercial Courts Act reads as under:-

“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 pre institution 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 (39 of 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



2025:DHC:458



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).]”

7. The Plaintiff has not invoked the pre institution mediation which is mandatory under Section 12A of the Commercial Courts Act before filing of any suit.

8. The Plaintiff has filed an application, being IA No.49451/2024 seeking exemption from complying with the provisions of Section 12A of the Commercial Courts Act stating that the institution of pre-mediation would be counter-intuitive and any delay would cause irreparable harm and loss to the Plaintiff. It is further stated that the Plaintiff is in urgent need of money. The Plaintiff has also filed an application under Order XXXIX Rule 10 CPC for directing the Defendant to deposit a sum of Rs. 2,68,87,384/- as claimed in the plaint.



2025:DHC:458



9. It is well settled that exemption from invoking pre-litigation mediation can be granted only when very urgent reliefs are sought by the Plaintiff and it is demonstrated that unless urgent reliefs are not granted the suit itself would become infructuous. The Plaintiff has to demonstrate that if the parties are sent to pre-litigation mediation then the Defendant will take steps which will make the Suit infructuous.

10. The Apex Court in Yamini Manohar v. T.K.D. Keerthi, **2024 (5) SCC 815**, has observed as under:-

“11. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyse Section 12-A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The proposition that the commercial courts do have a role, albeit a limited one, should be accepted, otherwise it would be up to the plaintiff alone to decide whether to resort to the procedure under Section 12-A of the CC Act. An “absolute and unfettered right” approach is not justified if the pre-institution mediation under Section 12-A of the CC Act is mandatory, as held by this Court in Patil Automation [Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1 : (2023) 1 SCC (Civ) 545].

12. The words “contemplate any urgent interim relief” in Section 12-A(1) of the CC Act, with reference to the suit, should be read as conferring power on the court to be satisfied. They suggest that the suit must “contemplate”, which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier



2025:DHC:458



paragraph(s). This will be sufficient to keep in check and ensure that the legislative object/intent behind the enactment of Section 12-A of the CC Act is not defeated.”

11. The Apex Court in Patil Automation Private Limited & Ors. v. Rakheja Engineers Private Limited, **2022 (10) SCC 1**, has observed as under:-

“100. In the cases before us, the suits do not contemplate urgent interim relief. As to what should happen in suits which do contemplate urgent interim relief or rather the meaning of the word “contemplate” or urgent interim relief, we need not dwell upon it. The other aspect raised about the word “contemplate” is that there can be attempts to bypass the statutory mediation under Section 12-A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis. Section 80(2)CPC permits the suit to be filed where urgent interim relief is sought by seeking the leave of the court. The proviso to Section 80(2) contemplates that the court shall, if, after hearing the parties, is satisfied that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to the court after compliance. Our attention is drawn to the fact that Section 12-A does not contemplate such a procedure. This is a matter which may engage attention of the lawmaker. Again, we reiterate that these are not issues which arise for our consideration. In the fact of the cases admittedly there is no urgent interim relief contemplated in the plaints in question.”

12. A Division Bench of this Court in Chandra Kishore Chaurasia v. R A Perfumery Works Private Limited, **2022 SCC OnLine Del 3529**, has observed as under:-



2025:DHC:458



“31. First of all, there is no provision under Section 12A of the Commercial Courts Act, 2015 that requires the plaintiff to make any such application in a suit which involves urgent interim reliefs. As stated above, if the suit involves urgent interim relief, Section 12A of the Commercial Courts Act, 2015 is inapplicable and it is not necessary for the plaintiff to enter into a pre-institution mediation.

32. Second, a suit, which does not contemplate urgent interim relief, cannot be instituted without exhaustion of pre-institution mediation, as required under Section 12A(1) of the Commercial Courts Act, 2015. As noted above, the Supreme Court has held that the said provision is mandatory and it is compulsory for a plaintiff to exhaust the remedy of pre-institution mediation, in accordance with the rules before instituting a suit. The Court has no discretion to exempt a plaintiff from the applicability of Section 12A(1) of the Commercial Courts Act, 2015. It is not permissible for the court to pass an order contrary to law; therefore, an application seeking exemption from engaging in pre-institution mediation, in a suit that does not involve urgent interim reliefs, would not lie.”

13. In the opinion of this Court, no irreparable loss would be caused to the Plaintiff as no urgent relief is required in the present case. Since no urgent relief is sought for by the Plaintiff, the Plaintiff is directed to approach the authorities for invoking pre-institution mediation and settlement. Accordingly, the plaint is returned.

14. The suit is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 09, 2025

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