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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.949 OF 2024

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Forbes Technosys Limited ... Petitioner
V/s.
 Vinod Devilal Panchal Proprietor of Star
 Enterprises ... Respondent

Mr. Ketan Dhavle with Ms. Radhika Kulkarni i/by Dave & Co. for the petitioner.

Mr. Prasad P. Pathare i/by Mr. Rajesh Bindra for the respondent.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 31, 2024

PC.:

1. The petitioner-original defendant is challenging order passed by the Trial Court rejecting Notice of Motion filed by the petitioner under Order 7 Rule 11(b) of the Civil Procedure Code, 1908 for rejection of the plaint on the ground of bar created under section 12A of the Commercial Courts Act, 2015.
2. The respondent-original plaintiff filed Commercial Suit No.101327 of 2021 on 30th October 2021.
3. On 29th October 2021 when the plaint was presented before the Trial Court, the plaintiff submitted before the Trial Court that the plaintiff is intending to file interim application for attachment

before judgment and prayed for exemption of pre-institution mediation under section 12 of the Commercial Courts Act, 2015. Therefore, the suit came to be registered without pre-institution mediation under section 12 of the Commercial Courts Act, 2015.

4. The petitioner appeared in the suit on 17th January 2022.
5. The respondent filed Notice of Motion for attachment of judgment on 27th January 2022.
6. On 24th February 2022 defendant No.2 filed a Notice of Motion for deletion of his name along with defendant Nos.3 and 4. On 5th March 2023 the Trial Court rejected the Notice of Motion.
7. On 13th July 2022 plaintiff filed application for summary judgment.
8. On 15th September 2022 the petitioner filed Notice of Motion under Order 7 Rule 11 of the Civil Procedure Code, 1908 contending that suit is barred for non-compliance of section 12A of the Commercial Courts Act, 2015. The Trial Court rejected the application holding that the predecessor Judge had exempted plaintiff from compliance of section 12A of the Commercial Courts Act, 2015 and, therefore, the suit cannot be held to be barred by provisions of section 12A of the said act.
9. Learned advocate for the petitioner relying on judgment in the case of **Rakheja Engineers Private Limited and Ors. vs. Rakheja Engineers Private Limited** reported in (2022) 10 SCC 1 and **Yamini Mahohar vs. TKD Keerthi** reported in 2023 SCC OnLine SC 1382 submitted that the plaint had been filed after 1st October 2021,

which is the date of declaration of section 12A of the Commercial Courts Act, 2015 be mandatory by this Court the present suit having been instituted after said date, is barred by section 12A of the said act. He further submitted that the prayer for exemption from procedure under section 12A of the Commercial Courts Act, 2015 was an attempt to wriggle out of section 12A of the said act, as the application for urgent relief was presented on 27th January 2022, that is almost three months after the date of institution of the suit and, therefore, the petitioner cannot be permitted to bypass statutory mandate of pre-litigation mediation.

10. Per contra, learned advocate for the respondent submitted that the Notice of Motion under Order 7 Rule 11 of the Civil Procedure Code, 1908 was filed after the application for summons for judgment was filed by the respondent. The Trial Court has exempted the petitioner from complying with section 12A of the Commercial Courts Act, 2015 and, therefore, the Trial Court rightly rejected the notice of motion for rejection of plaint.

11. Having heard learned advocates for the parties, in my opinion, following facts indicate that it was necessary for the plaintiff to comply with mandatory procedure of section 12A of the Commercial Courts Act, 2015.

(i) 1st October 2021 the date on which this Court declared section 12A of the Commercial Courts Act, 2015 is mandatory.

(ii) On 29th October 2021 the Trial Court exempted respondent from complying with procedure under section

12A of the Commercial Courts Act, 2015.

(iii) On 30th October 2021 the respondent filed the suit.

12. In the light of the events referred above, it is necessary to consider paragraph 113 of the judgment of the Apex Court in the case **Patil Automation Private Limited and Others vs. Rakheja Engineers Private Limited** reported in (2022) 10 SCC 1 which reads as under:

“113. Having regard to all these circumstances, we would dispose of the matters in the following manner:

113.1. We declare that Section 12-A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order 7 Rule 11. This power can be exercised even suo motu by the court as explained earlier in the judgment. We, however, make this declaration effective from 20-8-2022 so that stakeholders concerned become sufficiently informed.

113.2. Still further, we however direct that in case plaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff.

113.3. Finally, if the plaint is filed violating Section 12-A after the jurisdictional High Court has declared Section 12-A mandatory also, the plaintiff will not be entitled to the relief.”

13. Clause 113(3) of the judgment is relevant in the facts of the case. The plaint is filed after this Court declared section 12A of the Commercial Courts Act, 2015 as mandatory and, therefore,

plaintiff was not entitled to relief in the said suit.

14. In so far as the reason mentioned by the Trial Court of exemption of plaintiff from following the procedure is concerned, the observations made by the Apex Court in the case of **Yamini Mahohar** (supra) come to the rescue of the petitioner. The Apex Court in the context of exemption from following procedure under section 12A of the Commercial Courts Act, 2015 had observed that while granting permission to file a plaint, the Commercial Court should examine the nature and subject matter of the suit, the cause of action and prayer for interim relief. It is held that the prayer for interim relief should not be a disguise or mask to wriggle out of and get over section 12A of the Commercial Courts Act, 2015. Camouflage and disguise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established.

15. In the light of observations made by the Apex Court, it is apparent that the plaintiff sought exemption from complying with section 12A of the Commercial Courts Act, 2015 on the ground that he intents to file application for attachment before judgment. Such exemption was granted on 29th October 2021. However, the plaintiff filed application for attachment before judgment only on 27th January 2022. Therefore, in my opinion, the prayer for interim relief, in the facts of the case was to get over section 12A of the Commercial Courts Act, 2015. The observations made in paragraphs 9 and 10 in the **Yamini Mahohar** (supra) squarely apply in the facts of the case. Therefore, in my opinion, the Trial Court has wrongly rejected the notice of motion of the petitioner.

Hence, following order:

a) The impugned order dated 10th October 2023 for Notice of Motion No.103445 of 2022 is quashed and set aside.

b) Notice of Motion No.103445 of 2023 is allowed.

16. It is made clear that in case the procedure under section 12A of the Commercial Courts Act, 2015 fails, it will be open for the respondent to claim benefit of section 14 of the Limitation Act, 1963, if ingredients of section 14 of the said act are complied with.

17. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)