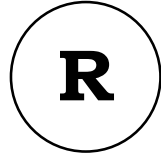


Reserved on : 11.06.2025
Pronounced on : 25.06.2025



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.9697 OF 2025 (GM - CPC)

BETWEEN:

- 1 . MR.P.VASUDEVA KAMATH
S/O LATE P.SUBRAYA KAMATH,
AGED ABOUT 52 YEARS,
R/AT 'VITTAL KRIPA', T.T. ROAD,
MANGALURU – 575 001.
- 2 . MR.P.MADAV KAMATH
S/O LATE P.SUBRAYA KAMATH,
AGED ABOUT 54 YEARS,
R/AT 'VITTAL KRIPA', T.T.ROAD,
MANGALURU – 575 001.

... PETITIONERS

(BY SRI VIGNESHWAR S.SHASTRI, SR.ADVOCATE A/W
SRI DINESH KUMAR RAO K., ADVOCATE)

AND:

MRS. JAYASHRI R. KAMATH
W/O LATE RAMDAS KAMATH,

AGED ABOUT 69 YEARS,
R/AT 401, 4TH FLOOR,
KRSNA APARTMENTS,
CAT STREET,
MANGALURU – 575 001.

... RESPONDENT

(BY SRI DHANANJAYA V.JOSHI, SR.ADVOCATE A/W
SRI AJAY PRABHU M., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 28.02.2025 PASSED BY THE COURT OF IV ADDL. DISTRICT AND COMMERCIAL COURT, D.K., MANGALURU IN COM.O.S NO. 302/2024, THE ORDER SHEET OF WHICH IS PRODUCED AS ANNEXURE-E, WHEREBY THE APPLICATION FILED UNDER ORDER VII RULE 11 OF THE CODE OF CIVIL PROCEDURE, 1908 WAS DISMISSED; CONSEQUENTLY ALLOW THE APPLICATION FILED UNDER ORDER VII RULE 11 OF THE CODE OF CIVIL PROCEDURE, 1908 AS PRAYED FOR THEREIN, VIDE ANNEXURE-D.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11.06.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners are before this Court calling in question an order dated 28-02-2025 passed by the IV Additional District and Sessions Judge, Mangalore in Commercial O.S.No.302 of 2024

whereby application filed by the petitioners/defendants under Order VII Rule 11 of the CPC comes to be dismissed.

2. Facts, in brief, germane are as follows: -

The petitioners are the defendants/tenants and respondent is the plaintiff/owner. The plaintiff institutes a suit in O.S.No.245 of 2023 seeking delivery of vacant possession of the suit schedule property and clearance of arrears of rent. In the suit, for about 6 months, the matter was adjourned for settlement between the parties. An application comes to be filed for return of the plaint on the ground that the issue in the *lis* has to be adjudicated before the Commercial Court under the Commercial Courts Act, 2015. The application is answered and the plaint is returned to be presented before the Commercial Court. It then becomes a commercial original suit in Commercial O.S.No.302 of 2024. Once the plaint is returned and presented before the Commercial Court, an application comes to be filed by the defendants under Order VII Rule 11 of the CPC seeking rejection of the plaint on the score it is barred by law, as the mandate of the Commercial Courts Act insofar

as it concerns Section 12A is not followed. The concerned Court, by the impugned order, rejects the said application and holds that there was no infirmity in the entertainment of the suit, notwithstanding the fact of non-compliance with Section 12A of the Commercial Courts Act. The rejection of the application filed by the defendants is what has driven them to this Court in the subject petition.

3. Heard Sri Vigneshwar S. Shastri, learned senior counsel appearing for the petitioners and Sri Dhananjay V. Joshi, learned senior counsel appearing for the respondent.

4. The learned senior counsel Sri Vigneshwar S. Shastri appearing for petitioners would vehemently contend that the mandate of law is that pre-institution mediation and settlement as per Section 12A is mandatory. It is immaterial if settlement talks were on before the plaint was presented before the Commercial Court. He would contend that unless Section 12A is preceded before entertainment of the suit, the commercial O.S. is not maintainable.

He would seek to place reliance upon plethora of judgments on the issue.

5. Per contra, the learned senior counsel Sri Dhananjay V. Joshi would refute the submissions in contending that Section 12A though depicts that no commercial O.S. shall be initiated prior to compliance with Section 12A, he would submit that all nuances of pre-institution mediation and settlement has already taken place before the concerned Court when it was at the stage of original suit. Today to send it back again for nothing would become a travesty. He would, therefore, submit that there is nothing wrong in the order passed by the concerned Court. He would seek dismissal of the petition. To buttress his submission, he would also place reliance upon several judgments of the Apex Court and constitutional Courts. The judgments so relied on by each of the parties would be considered *qua* their relevance in the course of the order.

6. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record.

7. The issue in the *lis* lies in a narrow compass. The relationship between the plaintiff and the defendants being land lady and tenants is not disputed. A plaint in O.S.No.245 of 2023 is filed for delivery of vacant possession of the suit schedule property along with arrears of rent. In the suit, the respondents/defendants file their written statement. The matter on several occasions is adjourned on account of talks of settlement between the parties. The order sheet maintained before the Court from 09-01-2024 to 06-07-2024 reads as follows:

"9-01-2024

P - KPUR
D1 & 2 - MR
For objections to I.A.No.II
(U/O 39 R 1 & 2 of CPC)

**Defendant prays time
for objection/settlement.
Call on 20.2.2024.**

Sd/-
Prl.Sr.CJ& CJM, Mangaluru.

20-02-2024

P - KPUR
D1 & 2 - MR
For objection/settlement

Both counsel are present and pray time for settlement. Call on 27.2.2024.

Sd/-
Prl.Sr.CJ& CJM, Mangaluru.

27-02-2024

P - KPUR
D1 & 2 - MR
For settlement

Both counsel are present. For settlement. Call on 06.03.2024.

Sd/-
Prl.Sr.CJ& CJM, Mangaluru.

06-03-2024

P - KPUR
D1 & 2 - MR
For settlement

Both parties pray time for settlement. Call on 25.03.2024.

Sd/-
Prl.Sr.CJ& CJM, Mangaluru.

25-03-2024

P - KPUR
D1 & 2 - MR
For settlement

P.O. is on O.O.D. Hence Call on 22.04.2024.

Sd/-
Prl.Sr.CJ& CJM, Mangaluru.

22-4-2024

P - KPUR
D1 & 2 - MR
For settlement

**Settlement not arrived.
For plaintiff evidence. Call on
18.06.2024.**

Sd/-
Prl.Sr.CJ& CJM, Mangaluru.

18-6-2024

P - KPUR
D1 & 2 - MR
P/E

P.O. is on EL.
Call on 6.7.2024.

Sd/-
Prl.Sr.CJ& CJM, Mangaluru
D.K.(I/C)

Sd/-
Plaintiff

6-7-2024

P - KPUR
D1 & 2 - MR
P/E

P/c prays time to lead
evidence. Call on 27.7.2024.

Sd/-
Prl.Sr.CJ& CJM, Mangaluru."

(Emphasis added)

For four months, the matter is adjourned on the ground of
settlement. On 22-04-2024 it is indicated that settlement is not

arrived at and the plaintiff sought time to lead evidence. The matter was posted to 27-07-2024. I.A.Nos. III and V come to be filed in O.S.No.245 of 2023 on the ground that the plaint has to be returned, as the issue should be tried before the Commercial Court constituted under the Commercial Courts Act in view of the issue being commercial transaction as obtaining under Section 2(1)(c)(vii) of the Commercial Courts Act. The concerned Court passes the following order on 17-09-2024:

"Today the case was posted for orders on I.A.'s III & V. However in all fairness, the learned counsel appearing for the plaintiff himself submitted that as the suit on hand is a commercial suit within the meaning of Section 2(1)(c)(vii) of the Commercial Courts Act 2015, this Court has no jurisdiction to try the above suit. Such grace is unusual to see now-a-days. Be that as it may, in the instant case, there is no dispute about the fact that the suit property is being used exclusively in trade and commerce i.e., for commercial purpose. In this backdrop it is relevant to note that all disputes arising out of agreements relating to immovable property, when the said immovable Property is used exclusively for trade and commerce, shall be commercial dispute within the scope and ambit of Section 2 (1) (c) (vii) of the Commercial Courts Act of 2015 (notwithstanding the fact that whether the said dispute is with regard to recovery of immovable property or realization of money given in the form of security or any other relief pertaining to immovable property). In other words, as long as the suit is qua immovable property, which is used exclusively for trade and commerce, it shall be a commercial suit under the Commercial Courts Act, in terms of Section 2 (c) (vii) of Commercial Courts Act. Now as the suit is indeed a commercial suit within the meaning of Section 2(1) (c) (vii) of the Commercial Courts Act 2015, **Office is hereby directed to return the plaint along with the**

entire enclosures to the plaintiff in order to enable her to present the same before the proper jurisdictional court.”

The plaint is returned to be presented before the designated commercial Court. It then becomes Commercial O.S.No.302 of 2024. In the Commercial O.S. comes an application by the defendants under Order VII Rule 11 seeking rejection of the plaint.

The rejection of the plaint is on the score that the mandate of Section 12A of the Commercial Courts Act 2015 is not followed. The concerned Court rejects the application rendering the following order:

“....

Heard both sides. Written arguments was filed by Defendants.

As noted, this suit was returned by the Prl. Senior Civil Judge and CJM on the point of jurisdiction while deciding IA No.11 filed for return of plaint.

It is settled law, Return of plaint and Transfer of suit are two different concepts.

In the authority relied by the defendant in 2020 (4) Supreme 178 in case of M/s. Exl Careers and another -Vs- Frankfinn Aviation Services Private Limited (FB) Observed, if a plaint is returned under O 7R 10 and 10A of CPC for presentation in Court, in which it should have been instituted, suit shall proceed Denovo.

In cases dealing with transfer of proceedings from a court having jurisdiction to another court, the discretion vested in court by Sec.24(2) and 25(3) either to retry the proceedings or proceed from the point at which such proceeding was transferred or withdrawn is in marked contrast scheme to scheme under O 7 R 10 R/W R 10 A, where no such discretion is given and the proceeding has to commence denovo.

Further also observed, in peculiar facts and circumstances of the case, because the Appellant did not raise the objection under clause 16 B of the agreement at the very first opportunity the first order of rejection attained finality. The objection under clause 16B was raised more as an after thought. The second application under Order 7 Rule 10 had been preferred by the respondent, when pleadings of the parties have been completed, evidence led and that the matter was fixed for final Argument. **We are of considered opinion that despite having concluded that the impugned order is not sustainable in view of the law, in exercise of discretionary jurisdiction under Art. 136 of the Constitution and to do complete and substantial justice** between the parties under Art.142 of the Constitution nonetheless, we decline to set aside the impugned order of the High court.

In this case, the order of the High court dated 13.03.2018 was challenged, wherein High court has held that suit at Delhi shall proceed from stage at which it was pending at Gurgaon, before the return of plaint and not denovo.

As the law is clear, contention of the plaintiff, this is a transferred suit U/sec. 15 of the Commercial Courts Act and U/sec 23 of CPC and compliance of Sec. 12A of CCA is not mandatory, holds no substance.

On the other hand, in the authorities relied by the learned counsel for the Plaintiff :

AIR Online 2021 Cal 320 in M/s. Dhandbad Fuels Limited -Vs- Union of India and others-observed plea of defendants that plaintiff's having not complied with Sec. 12A could not be allowed to maintain money suit. Plaintiff had sufficient reason not to go for effective mediation in absence of proper

infrastructure. In absence of response from defendant for request for mediation, it was treated as Non-starter. Suit shall not fail for non compliance of Sec. 12. Plaint not liable to be rejected.

2023 Live Law (SC) 906 in Yamini Manohar -Vs- T.K.D. Keerthi (DB)-observed, plaintiff has no absolute choice to avoid pre-litigation mediation by merely making prayer for urgent interim relief. The Commercial Court should examine that the prayer for urgent interim relief is not a disguise or mask to wriggle out of and get over Sec. 12A of Commercial Court Act.

No specific application need to be filed to waive the process of Pre-Litigation mediation and that court can decide on basis of pleadings and oral submissions.

Further that, Court in all cases will not grant ad-interim exparte relief in order to decide it on merits. If plaintiff seeks any urgent interim relief the suit cannot be dismissed on ground that he has not exhausted pre-institution remedy under Sec.12A and **that decision in 2022 live law (SC) 678 of Hon'ble Apex court dated 17.08.2022 in M/s Patil Automation Pvt. Ltd. Vs Rakheja Engineers Pvt. Ltd. (DB) holding that any suit instituted violating the mandate of S.12A must be visited with rejection of plaint is not justified.**

The said authority was also relied by the defendant along with the authority of M/S Patil Automation Pvt Ltd and Others Vs Rakheja Engineers Pvt. Ltd, reported in 2022 Live Law (SC) 678 (DB)- wherein observed, that S.12A of the Act is mandatory and has held that any suit instituted violating the mandate of S.12A must be visited with rejection of plaint u/0.7 R.11 and that would come into effect from 22.08.2022.

AIR Online 2021 P and H 1065 in case of M/s. Patil Automation Private Limited Office and others -Vs- Rakheja Engineers Private Limited and another- while dismissing an application of defendants for rejection of plaint, trial court had directed that civil suit be kept in abeyance and both parties were directed to appear for purpose of mediation as per provisions of Sec. 12 A. Defendant's cannot insist that suit of plaintiff's be dismissed for violation of Sec. 12A. Dismissal of application for rejection of plaint proper.

As seen, in the Full bench decision reported in 2020 (4) Supreme 178 in case of M/s. Exl Careers and another -Vs- Frankfinn Aviation Services Private Limited (FB) - it was observed, if a plaint is returned under O 7 R 10 and 10A of CPC for presentation in court, in which it should have been instituted, suit shall proceed Denovo.

To be noted, nowhere it was observed, for non compliance U/sec. 12A of Commercial Court Act, suit has to be rejected at threshold.

Further, the Coordinate Bench in Yamini Manohar -Vs- T.K.D. Keerthi had observed that, **in M/s Patil Automation Pvt. Ltd. Vs Rakheja Engineers Pvt. Ltd. (DB), holding that any suit instituted violating the mandate of S.12A must be visited with rejection of plaint is not justified.**

It is also seen from the other sheet, that IA No.5 for rejection of plaint was filed by advancing the case, when settlement was not arrived and case was posted for plaintiff Evidence, till then there was no whisper by the defendant as to point of jurisdiction. As defence cannot be taken at one's whims and fancies and court's are having duty to sub-serve justice. No prejudice will be caused to the defendant, in referring the parties to mediation by keeping the suit in abeyance for the purpose of mediation as per provisions of Sec. 12 A of Commercial Courts Act.

For the above discussion, I proceed to pass the following:
the following:

Order

IA-6 filed by Defendant u/0.7 R.11 of CPC is hereby dismissed.

For appearance of parties by 25-03-2025."

(Emphasis added)

The dismissal of the application has driven the petitioners to this Court in the subject petition.

8. The learned senior counsel V.Vigneshwar S.Shastri, representing the petitioners/defendants has contended, that the mandate of Section 12A cannot be given a go-bye. Therefore, the plaint ought to have been rejected, reserving liberty to approach Commercial Court in the event of failure of pre-institution mediation/settlement. Therefore, it becomes necessary to notice the purport of Section 12A of the Commercial Courts Act. Section 12A reads as follows:

"12-A. Pre-litigation 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-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) For the purposes of pre-litigation mediation, the Central Government may, by notification, authorise—

- (i) the Authority, constituted under the Legal Services Authorities Act, 1987 (39 of 1987); or**
- (ii) a mediation service provider as defined under clause (m) of Section 3 of the Mediation Act, 2023.**

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority or mediation service provider authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of one hundred and twenty days 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 sixty days with the consent of the parties:

Provided further that, the period during which the parties spent for pre-litigation mediation shall not be computed for the purposes 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 and the mediator.

(5) The mediated settlement agreement arrived at under this section shall be dealt with in accordance with the provisions of Sections 27 and 28 of the Mediation Act, 2023.”

(Emphasis supplied)

Section 12A mandates pre-institution mediation and settlement. It reads that a suit which does not contemplate, any urgent interim relief, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation and settlement. The soul of the provision is to avoid multiplicity of litigation. If parties could not settle prior to institution of the suit, an opportunity to arrive at such settlement must be afforded.

9. Heavy reliance is placed by the learned senior counsel for the petitioners on the judgment of the Apex Court in the case of **PATIL AUTOMATION PRIVATE LIMITED v. RAKHEJA ENGINEERS PRIVATE LIMITED** reported in **(2022)10 SCC 1**. The Apex Court holds that it would be without jurisdiction, if the suit is entertained prior to mandatory compliance of Section 12A.

10. The High of Delhi interprets **PATIL AUTOMATION** in the case of **AAONE DEVELOPERS PRIVATE LIMITED v. SABITA JHA**¹. The Delhi High Court holds as follows:

“ ”

25. Thereafter, the defendants filed their written statement, in which a preliminary objection was taken that since the suit arises from a commercial dispute and is beyond the specified value, therefore, the suit ought to have been instituted in terms of the Commercial Courts Act, 2015. Considering the said objection, this Court vide order dated 22-3-2024 converted the suit to a commercial suit, to which the defendants did not raise any objection. Even later on, no challenge was laid to the said order.

26. Notably, when the suit was originally filed as an ordinary suit, there was no occasion for the plaintiff to resort to pre-institution mediation, as Section 12-A of the Act is not applicable to the ordinary suits. However, before the conversion of suit to commercial suit on 22-3-

¹ 2025 SCC OnLine Del.42

2024, the matter was referred to the mediation, therefore, the mandatory requirement of pre-institution mediation stood complied with, since the object of compulsory pre-institution mediation is only to relieve the courts from avoidable litigation in commercial matters and the mediation, as an alternative dispute mechanism, has been identified as a workable solution for the said purpose⁴.

27. Thus, the mediation having been resorted to prior to the conversion of ordinary suit to a commercial suit and that too on a joint request of the parties, which ended in as “not settled”, it does not lie in the mouth of the defendants to seek rejection of plaint and to burden the plaintiff to avail pre-institution mediation all over again and file a fresh suit thereafter.”

(Emphasis supplied)

The Delhi High Court answers an identical circumstance. A suit was instituted. It was referred to mediation on several occasions. Mediation fails and the suit is then transferred to the Commercial Court. The Commercial Court does not send it for pre-institution mediation and settlement under Section 12A, but considers it by itself holding that Section 12A mandates mediation and mediation has already taken place and failed. The period of 3 months of mediation was over. Merely because the suit is transferred it cannot be that all over again mediation under Section 12A should be permitted to be initiated. This is tossed before the Apex Court. The Apex Court in its order dated 24-03-2025 in the case of **SABITA**

JHA v. AAONE DEVELOPERS PRIVATE LIMITED² holds as follows:

"1. Heard Mr. S.S. Ray, learned senior counsel appearing for the petitioners.

2. The commercial suit came to be registered on 22.03.2024. Before the registration of the aforesaid commercial suit, the parties were referred to mediation by the Civil Court on 05.10.2023 but the mediation was unsuccessful.

3. The contention of learned senior counsel for the petitioners is that on account of non-compliance of Section 12 A of the Commercial Courts Act, 2015 (for short 'the Act'), the commercial suit is not maintainable.

4. The facts as stated above, clearly reveal that there was substantial compliance of Section 12A as the matter was referred to mediation before the registration of the commercial suit.

5. In the peculiar facts and circumstances of this case, we are not inclined to accept the contention of learned senior counsel appearing for the petitioners.

6. The Special Leave Petition is dismissed. Pending application(s), if any, shall stand disposed of."

(Emphasis supplied)

The Apex Court holds that commercial suit comes to be registered on 22-03-2024. Before the registration of commercial suit, the parties were referred for mediation by the civil court and the mediation was unsuccessful. The very same contention was

² **S.L.P.(C) No.7470 of 2025**

advanced before the Apex Court. The Apex Court holds that the facts would clearly reveal there was substantial compliance of Section 12A, as the matter was referred to mediation before registration of commercial suit at the civil Court and holds that it was not necessary to refer it for mediation all over again.

11. The order sheet is quoted hereinabove. From January to April 2024 the matter was adjourned on several occasions for the purpose of talks of settlement and recording of settlement. In June 2024 the parties submit failure of talks of settlement. Then the Court posted the matter for plaintiff's evidence. At that point in time, an application is preferred for return of plaint to be presented before the Commercial Court. The parties are the same, but the Court is different. Talks of settlement had gone on for four months and it had failed. The defendants who are sought to be evicted from the premises are now wanting to buy time by resorting to these methods, notwithstanding failure of settlement.

12. On a coalesce of the provision and the law laid down by the High Court of Delhi and the Apex Court interpreting the said

provision, **what would unmistakably emerge is, when commercial O.S. is for the first time instituted before the Court, Section 12A becomes mandatory. Without the pre-institution mediation and settlement, the suit in commercial O.S. cannot be entertained. The concerned Court should *suo-motu* reject the plaint and send the parties to mediation or keep the plaint in abeyance and send the parties to mediation. In the event suit is presented before the competent civil Court and the competent civil Court has initiated efforts for mediation and those have failed, after such failure, realising the fact that the plaint ought to be presented before the commercial Court, the rigour of Section 12A need not all over again be followed by the commercial Court before entertaining the plaint, as there would have been substantial compliance of Section 12A, which mandates efforts to be made to resolve the dispute by way of settlement.** That having happened in the case at hand, no fault can be found with the order that is passed by the concerned Court rejecting the application filed by the defendants/petitioners under Order VII Rule 11 of the CPC. There is no travesty found in the

order, for this Court to entertain the petition under Article 227 of the Constitution of India.

13. The petition lacking in merit stands rejected.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

Bkp
CT:MJ