2025 INSC 696

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6846 OF 2025
(@SPECIAL LEAVE PETITION (C) NO. 4980 OF 2021)

M/S DHANBAD FUELS PRIVATE LIMITED …Appellant(s)

VERSUS

UNION OF INDIA & ANR. …Respondent(s)

J U D G M E N T

J. B. PARDIWALA, J.

For the convenience of exposition, this judgment is divided into the following parts:

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1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court at Calcutta on its appellate side dated 22.02.2021 in C.O. No. 1678 of 2020 by which the High Court disposed of the revision application filed by the appellant herein by directing that the suit instituted by the respondent herein, i.e., Union of India, on 09.08.2019, shall be kept in abeyance for seven months from the date of the order or until the receipt of the report of the mediator, whichever is earlier. In other words, the High Court proceeded to pass an order keeping in mind Section 12A of the Commercial Courts Act, 2015 (for short, "**the 2015 Act**"), as amended in 2018.

A. FACTUAL MATRIX

3. The facts giving rise to this appeal may be summarised as under:

   a. The respondent Union of India instituted Money Suit No. 28 of 2019 on 09.08.2019 in the Commercial Court, Alipore against the appellant herein for the recovery of a sum of Rs. 8,73,36,976/- (Rupees Eight Crore, Seventy-Three Lakh, Thirty-Six Thousand, Nine Hundred and Seventy-Six only) towards differential freight and penalty. Indisputably, no urgent interim relief was prayed for in the said suit.

b. No sooner the suit referred to above came to be instituted than the appellant herein, as defendant, raised a preliminary objection in its written statement dated 20.12.2019 as regards the maintainability of the suit without availing the remedy of pre-institution mediation under Section 12A of the 2015 Act read with Pre-Institution Mediation and Settlement Rules, 2018 (in short, "**the PIMS Rules**") which came into force with effect from 03.07.2018.

c. On 30.09.2020, the appellant herein preferred Interim Application No. 190 of 2020 under Order VII Rule 11(d) of the Civil Procedure Code, 1908 (for shot, the "**CPC**") read with Section 12A of the 2015 Act seeking rejection of the plaint, *inter alia,* on the ground that the Money Suit No. 28 of 2019 suffered from institutional defects and was violative of the mandatory provisions of pre-institution mediation.

d. The Order VII Rule 11(d) application, referred to above, came to be rejected by the Commercial Court *vide* order dated 21.12.2020. While rejecting the I.A. No. 190 of 2020 the Commercial Court observed thus:

> *"13. Since the case has been filed on 09.08.2019 and the present application has been filed at a belated stage, I find there is no requirement to reject the suit even for noncompliance of the mandatory provision of Section 12A*

of the Commercial Courts Act, 2015, otherwise, instead of aid in justice, the justice will be more delayed.

14. Once the plaint has been accepted by this Court, it would be presumed that the Court has no reason whatsoever to reject the plaint and obviously, the Defendant can raise this issue even at the time of filing W/S but admittedly, the Defendant no. 1 filed W/S even without taking the plea as now he has taken and in that case, it would be presumed that they are not also interested in the mediation proceedings.

15. This Court has been established on 05.07.2019 and within a month or more, the instant suit has been filed and at this stage, there is no proper infrastructure for conducting pre-litigation mediation and standard operating procedure has also not been framed by the Hon'ble High Court at Calcutta.

16. In the above circumstances, the plea as taken by the Defendant no. 1/Petitioner is liable to be rejected as filed at a belated stage.

17. It appears from the instant application that the Defendant no. 1 is interested to proceed with the mediation proceedings and accordingly, let the dispute be referred to mediation and in such case also, the interest of the Defendant no.1/Petitioner will not be prejudiced.

18. Let the dispute be referred for mediation and Mr. Jayanta Mukherjee, Ld. Member of the Bar is appointed as the Mediator.

19. Both sides are directed to attend the mediation proceedings on 04.01.2021 at 2 p.m., and thereafter, the Ld. Mediator will fix further dates of proceedings and for doing so, the Ld. Mediator can obtain proposals for settlement from both sides.

20. The Ld. Mediator is further directed to complete his proceedings within 11.01.2021 and to submit the report alongwith the proposal if any, as submitted by both parties

in a separate sealed envelope for consideration of this Court while awarding cost under Section 35A of the CPC.

21. Accordingly, the instant I.A. is disposed of as being rejected on contest."

e. Thus, the Commercial Court while declining to reject the plaint directed post-institution mediation by asking the parties to name and appoint an advocate as a mediator.

f. The appellant herein, being dissatisfied with the order passed by the Commercial Court rejecting the application filed under Order VII Rule 11(d) of the CPC, challenged the same before the High Court by filing a civil revision application.

g. The High Court disposed of the revision application, *inter alia,* holding as under:

"15. In this case, the defendant filed the application under Order VII Rule 11(d) of the Code of Civil Procedure for rejection of the plaint as being barred by law, the plaintiff having failed to initiate the process of mediation under Section 12A of the said Act. However, assuming that the plaint is rejected on this ground, Order VII rule 13 would allow the plaintiff to file another suit on the self same cause of action. Thus, in my opinion, rejecting the plaint at this stage, would not be in consonance with the objectives of the said Act and Rules. The plaintiffs may face a non-starter or a non-settlement and would have to come back and file a suit once again. This will cause unnecessary delay and shall not be cost effective even for the defendant. Thus, considering the ultimate object of the provision of law, this Court is of the opinion that the suit which is at its early stage, be kept in abeyance and the plaintiff be directed to comply with the provisions of

Section 12A. This order is further passed keeping in mind the time and the situation when the plaint was filed, that is, within a month after the commercial division at Alipore had been made operative. It is also true that until December, 2020, the SOP and the meditation rules to be followed by the Legal Services Authority Act, 1987 in West Bengal, for conducting commercial mediations had not been notified. The panel of trained mediators for commercial suit was also prepared and published thereafter. Thus the plaintiffs had sufficient reasons not to go for an effective mediation as envisaged under the said Rules in the absence of proper infrastructure. The situation would have been otherwise, had there been proper infrastructure in place.

16. The decision of the Calcutta High Court will not apply as the decision was on the point of leave to file the suit without exhausting the mediation process. This Court is not dispensing with the requirement of Section 12A but directing the plaintiff to comply with the provision of law by keeping the suit in abeyance.

17. Mediation in India is still in its nascent stage and requires more awareness. Prior to the publication of the panel of trained mediators for settlement of commercial disputes, there was no complete machinery which could be availed. Settlement of commercial disputes require special technical and commercial knowledge.

18. Mandatory training for mediation of commercial disputes is the minimum requirement for any mediator to be appointed in terms of the said Rules. Commercial disputes are very often technical in nature and may involve knowledge in commercial law and business. If such was not the case, a separate panel of such mediators would not have been prepared. The Act and the Rules have been framed with an object of improving the "ease of doing business".

19. Section 12A of the Pre-Institution Mediation, is a mere tool for reduction of pendency of commercial litigation in India. However, the purpose of the said Section 12A and the Rules cannot not be to nonsuit a party but only to

encourage the party seeking to file a suit to first explore the possibility of settlement of the dispute through mediation. Section 12A provides the parties with an alternative mechanism to resolve their disputes by negotiation in the presence of a mediator. Such mediation has been made time bound and the parties also have the liberty to move the commercial court for adjudication of the dispute, if a mediation results in a non-starter or the talks of settlement fail.

20. Thus the plaint should not be rejected at this stage on the ground of non-compliance with Section 12A of the said Act when the plaintiff can still be directed to comply with the provisions of law by keeping the suit in abeyance.

21. The instant case is a suit for recovery of money filed by the Union of India for an amount over Rs.8 Crores. The alleged claim is for recovery of public money. The allegation is illegal claim of concessional rate of freight under Rate Circular No.24/2008, 30/2008 and 36/2009. The suit was filed, summons were issued, the written statement was filed, case management hearing was held. The defendant did not show any inclination towards settlement of the dispute by way of mediation. An application under Order VII Rule 11 (a) of the Code of Civil Procedure was filed by the defendant for rejection of the plaint against the defendant No. 2 to 4. Noncompliance with Section 12A was not raised by the defendant in the said application. Thereafter, once the earlier application was rejected, a subsequent application under Order VII Rule 11(d) for rejection of the plaint on the ground of noncompliance with Section 12A of the said Act was again filed. The application was filed on September 30, 2020, that is, more than a year since the institution of the suit. Thus, the learned court held that the suit should not fail for non-compliance of Section 12A of the said Act. Rejection of the plaint would result in delay in dispensation of justice, instead of the court acting in aid of justice. In my opinion, this was a correct approach, keeping in mind the objects and reasons for establishing Commercial Courts, that is, quick and easy resolution of disputes either by settlement or in court. Yet, the obligation under the law must be complied with. The learned court

below rightly directed the suit to be kept in abeyance. In my opinion, the defendants will not suffer any prejudice. The suit has not progressed beyond filing of the written statement. Thereafter two consecutive applications were filed by the defendant for rejection of the plaint. It is also not the case of the defendant that they are interested in settlement through mediation.

22. The decisions cited by Mr. Mitra are not applicable in the facts of this case. The court can make an order adjusting equities for satisfying the ends of justice as it may deem fit while interpreting a procedural law even if the same is couched with a negative covenant.

23. However, the learned court below erred in naming the mediator himself, instead of directing the plaintiffs to approach the State Legal Services Authority, West Bengal, in terms of the 2018 Rules and the SOP notified by the State of West Bengal in this regard.

24. The order impugned is set aside to the extent of appointment of Mr. Jayanta Mukharjee learned member of the bar as a mediator, and the direction upon the parties to attend the mediation on the date fixed by the learned court below and also further directing the learned mediator to complete the proceeding within January 11, 2021 and submit a report before the learned court.

25. Hence, it is ordered that the suit be kept in abeyance for seven months from date or until receipt of the report of the learned mediator, whichever is earlier. The plaintiffs are directed to approach the District Legal Services Authority, West Bengal in accordance with the Standard Operating Procedure (SOP) dated December 11, 2020, mandatorily, within two weeks from date. In case of default, the learned court below shall be at liberty to pass such orders in the suit for non-compliance of the order of court. The Authority shall act in accordance with the said Rules of 2018 and the SOP. The process is to be completed within the period as prescribed by the Rule 3(8) of the Rules of 2018. The Mediator shall file the report in such Form and manner as prescribed by the Rules, before the learned court below within the aforesaid period. The

remuneration/fees etc. of the learned Mediator will be fixed as per the SOP.

26. Upon receipt of the report from the Mediator, the learned Commercial court will proceed according to law. This revisional application is disposed of and there shall be no order as to costs."

4. In such circumstances referred to above, the appellant-original defendant has come up before us with the present appeal.

B. SUBMISSIONS ON BEHALF OF THE APPELLANT

5. Mr. Vikas Singh, the learned Senior Counsel appearing for the appellant, vehemently submitted that the High Court committed an egregious error in declining to reject the plaint having regard to the mandatory provision of Section 12A of the 2015 Act. According to the learned counsel, the issue is squarely covered by the decision of this Court in ***Patil Automation Private Limited and Others v. Rakheja Engineers Private Limited*** reported in **(2022) 10 SCC 1**, wherein this Court has said in so many words that Section 12A of the 2015 Act is mandatory and any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11.

6. The learned counsel laid much emphasis on the observations made by this Court in ***Patil Automation*** *(supra)* as contained in paragraphs 103 and 114 of the judgment respectively. He would argue that in ***Patil Automation*** *(supra)* this Court while holding on one hand that it is crystal clear that the procedure provided under Section 12A of the 2015 Act is mandatory, said on the other hand that in view of the facts of ***Patil Automation*** *(supra)*, where the trial had progressed substantially, directed the parties to appear before the Secretary District Legal Services Authority, Faridabad for mediation keeping the suit alive and in abeyance. Taking a clue from the observations made by this Court in paragraphs 103 and 114 of ***Patil Automation*** *(supra)* respectively, the learned counsel submitted that the suit in question is still at the initial stage and the same has been kept in abeyance and has not progressed beyond filing of the written statement. This, according to the learned counsel, would take the suit in question out of the purview of the category where there has been substantial progress in the suit. In other words, according to the learned counsel, since there has been no progress worth the name in the suit in question, the mandate of Section 12A will apply with all force and the plaint ought to meet with the fate of rejection.

7. The learned counsel submitted that this Court in ***Patil Automation*** *(supra)* applied the principle of prospective overruling more particularly for the purpose of issuing directions as contained in paragraph 113 and sub-paragraphs respectively thereof. Relying on the decision of the Constitution Bench in ***I.C. Golaknath and others v. State of Panjab and others*** reported in **AIR 1967 SC 1643**, more particularly the observations made in paragraph 45 therein, the learned counsel would submit that even while applying the doctrine of prospective overruling the law laid down could be said to have been always the same. If a subsequent decision changes the earlier one, the later decision would not change the law but would only discover and lay down the correct principle of law. According to the learned counsel, if the suit is allowed to proceed further the same would amount to a fresh litigation as it has not progressed beyond the initial stage and has been under subsisting orders of stay since 2021.

8. In such circumstances referred to above, according to the learned counsel there remains no material distinction between a fresh suit if filed today and the present suit sought to be revived from the state of inception.

9. The learned counsel laid much stress on his submission that the suit in question would be governed by the declaration made by this Court in ***Patil Automation*** *(supra)*.

10. The learned counsel further submitted that while applying the doctrine of prospective overruling, the House of Lords in the case of ***Spectrum Plus Ltd.,*** **In re:** reported in **(2005) 3 WLR 58**, has held that prospective overruling takes several different forms. In its simplest form prospective overruling involves a court giving a ruling of the character sought by the bank in that case. Overruling of this simple or "pure" type has the effect that the court's ruling has an exclusively prospective effect. The ruling applies only to transactions or happenings occurring after the date of court's decision. All transactions entered into, or events occurring, before that date continue to be governed by the law as it was conceived to be before the court gave its ruling.

11. It was also argued that even otherwise since the suit has not progressed beyond the initial stage the declaration made by this Court in paragraph 104 of ***Patil Automation*** (supra) would apply with all force. In paragraph 104 the Court observed, *"They would have to bring a fresh suit, no doubt after complying with Section 12A, as*

permitted under Order VII Rule 13. Moreover, the declaration of law by this Court would relate back to the date of the Amending Act of 2018". The same would be applicable in the present facts and circumstances of the case.

12. In the last, the learned counsel submitted that if the suit is withdrawn today and filed afresh after exploring the avenue of pre-institution mediation, it would not, in any manner, give rise to the question of limitation having been exhausted, since the plaintiff is the Central Government, and the limitation to file the suit by Central Government is 30 years under Article 112 of the schedule of the Limitation Act, 1963 (for short, "**the Limitation Act**").

13. In such circumstances referred to above, the learned counsel prayed that there being merit in his appeal the same may be allowed and the plaint be ordered to be rejected.

C. SUBMISSIONS ON BEHALF OF THE UNION OF INDIA

14. Ms. Archana Pathak Dave, the learned Additional Solicitor General, submitted that no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned order.

15. The learned ASG laid much emphasis on the fact that the suit instituted by the Union of India for recovery of money from the appellant herein should not fail in view of the purported non-compliance with Section 12A of the 2015 Act, more particularly, when the infrastructural requirement for the mediation process was not completed and the Standard Operating Procedure (SOP) came to be framed only on 11.02.2020.

16. The learned ASG submitted that there need not be any debate on the point that Section 12A of the 2015 Act is mandatory. In other words, Section 12A stipulates compulsory pre-suit mediation. She would submit that the issue is no longer *res integra* in view of the decision of this Court in ***Patil Automation*** *(supra)*. However, according to the learned ASG the law laid down by this Court in ***Patil Automation*** *(supra)* should be applied prospectively with effect from 20.08.2022 as made clear in the decision itself.

17. The learned ASG provided us with a table to give a bird's eye view of the timelines for insertion of Section 12A of the 2015 Act followed by creation of the necessary infrastructure for implementation of the provisions and the filing of the money suit by Union of India.

18. According to the learned ASG, the table would reveal that after the establishment of the first Commercial Court in Alipore, the statutory framework and corresponding rules were progressively implemented till December 2020. According to her, the money suit instituted in 2019 could not have been referred to pre-suit mediation under Section 12A due to persisting infrastructural vacuum created by lack of appointment of necessary authorities/mediators and delineation of the procedural framework for the same. The table provided by the learned ASG reads thus:

Date	***Insertion and subsequent implementation of S.12A***	***Money Suit***
03.05.2018	*S. 12A was introduced by way of amendment to the 2015 Act mandating pre-suit mediation.*	
03.07.2018	*Central Government notified the PIMS Rules. Rule 3 requires a party to make an application to the Authority for initiation of mediation process. The Central Govt. further authorised the State Authority and District Authority constituted under the Legal Services Authorities Act, 1987 for the purposes of pre-*	

	institution mediation and settlement.	
12.09.2018	*The Central Govt. further authorised the authorities constituted under the Legal Services Authorities Act, 1987 such as the National and District Legal Services Authorities for the purposes of pre-institution mediation and settlement.*	
09.08.2019		*Money Suit No. 28 of 2019 filed before the Commercial Court by the respondents seeking recovery of a sum of INR 8,73,36,976 against the appellant.*
20.12.2019		*The appellant filed its written statement in the suit.*
27.01.2020	*A panel of trained mediators for conducting pre-litigation mediation in commercial disputes was sent to the State Legal Services Authority, West Bengal.*	
30.09.2020		*Appellant filed an application under Order 7 Rule 11 of the CPC seeking rejection of the plaint after more than one year of filing of the suit, evincing that the*

		same was merely an afterthought with the purpose of negating the suit.
14.10.2020	*The SOP was prepared by the State Legal Services Authority.*	
11.12.2020	*The SOP was approved*	

19. The learned ASG submitted that although the first commercial court was established at Alipore on 05.07.2019, yet the institutional infrastructure for pre-suit mediation was not in place until much later. This is because the panel of trained mediators was prepared only on 27.01.2020 followed by approval of the SOP on 21.12.2020. As such, when the Union of India instituted the Money Suit on 09.08.2019, the requisite infrastructure for conducting pre-suit mediation was not yet established thereby making compliance with Section 12A impossible.

20. The learned ASG tried to fortify her submission by relying on the equitable maxim *lex non cogit ad impossibilia*, i.e., law does not compel an impossible performance. In this regard, the learned ASG placed reliance on the decision of this Court in the case of ***Raj Kumar Dey v. Tarapada Dey*** reported in **(1987) 4 SCC 398**, more particularly, the observations made in paragraph 6 therein.

21. The learned ASG submitted that taking advantage of this administrative vacuum, the appellant should not be allowed to defeat the money suit under the garb of non-compliance. Section 12A, at its nascent stage was not a feasible course. If settlement through mediation is truly the real objective and intention of the petitioner, the same may be fully achieved by the impugned order.

22. It was further submitted that had Union of India awaited the establishment of the requisite infrastructure, the same would have unduly impeded the recovery process in a money suit involving public funds, thereby defeating the very purpose and legislative intent of the 2015 Act, which aims to ensure expeditious resolution of commercial disputes.

23. In the last the learned ASG submitted that if the money suit instituted by the Union of India is dismissed on the ground of Section 12A of the 2015 Act, the Union of India would still have the opportunity to file another suit on the same cause of action under Order VII Rule 13 of the CPC and the process would have to start afresh. The court fees would also have to be deposited for the fresh suit. Such delay and protraction of the suit proceedings would be contrary to the very

objective of the 2015 Act and the same may lead the public exchequer to suffer.

24. In such circumstances referred to above, the learned ASG prayed that there being no merit in this appeal, the same may be dismissed.

D. ANALYSIS

25. Having heard the learned counsel appearing for the parties and having gone through the materials on record, two questions fall for our consideration:

    a. Whether the High Court committed any error in passing the impugned order; and

    b. Whether, due to non-compliance with Section 12A of the Commercial Courts Act, 2015, a suit should be dismissed under Order VII Rule 11 of the Code of Civil Procedure, 1908, or whether it should be kept in abeyance, directing the parties to first explore the possibility of settlement by instituting mediation?

i. Legislative intent behind the enactment of Section 12A of the 2015 Act

26. Before adverting to the rival submissions canvassed on either side, we must look into few relevant provisions of law.

27. Section 12A of the 2015 Act reads as follows:

> *"**12-A. 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 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).”*

28. At the time of enactment of the 2015 Act, the monetary limit for a suit liable to be tried by the Commercial Court was fixed at Rs 1 crore.

29. In the course of three years, noticing certain features, the legislature decided to amend the 2015 Act. Therefore, in the year 2018, the 2015 Act came to be amended by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 (Act 28 of 2018) (hereinafter referred to as “**the Amending Act**”).

30. It is apposite that we notice the Statement of Objects and Reasons of the Amending Act:

> *“**Statement of Objects and Reasons**.—The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 was enacted for the constitution of Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts for adjudicating*

commercial disputes of specified value and for matters connected therewith or incidental thereto.

2. *The global economic environment has since become increasingly competitive and to attract business at international level, India needs to further improve its ranking in the World Bank "Doing Business Report" which, inter alia, considers the dispute resolution environment in the country as one of the parameters for doing business. Further, the tremendous economic development has ushered in enormous commercial activities in the country including foreign direct investments, public private partnership, etc. which has prompted initiating legislative measures for speedy settlement of commercial disputes, widen the scope of the courts to deal with commercial disputes and facilitate ease of doing business. Needless to say that early resolution of commercial disputes of even lesser value creates a positive image amongst the investors about the strong and responsive Indian legal system. It is, therefore, proposed to amend the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.*

3. *As Parliament was not in session and immediate action was required to be taken to make necessary amendments in the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, to further improve India's ranking in the "Doing Business Report", the President promulgated the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018 on 3-5-2018.*

4. *It is proposed to introduce the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Bill, 2018 to replace the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018, which inter alia, provides for the following namely— (i) to reduce the specified value of commercial disputes from the existing one crore rupees to three lakh rupees, and to enable the*

parties to approach the lowest level of subordinate courts for speedy resolution of commercial disputes;

(ii) to enable the State Governments, with respect to the High Courts having ordinary original civil jurisdiction, to constitute commercial courts at District Judge level and to specify such pecuniary value of commercial disputes which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction of the district courts;

(iii) to enable the State Governments, except the territories over which the High Courts have ordinary original civil jurisdiction, to designate such number of Commercial Appellate Courts at district judge level to exercise the appellate jurisdiction over the commercial courts below the district judge level;

(iv) to enable the State Governments to specify such pecuniary value of a commercial dispute which shall not be less than three lakh rupees or such higher value, for the whole or part of the State; and

(v) to provide for compulsory mediation before institution of a suit, where no urgent interim relief is contemplated and for this purpose, to introduce the pre-institution mediation and settlement mechanism and to enable the Central Government to authorise the authorities constituted under the Legal Services Authorities Act, 1987 for this purpose.

***5.** The Bill seeks to achieve the above objectives."*

31. It is, accordingly, by the Amending Act that Section 12A came to be inserted. We should also look into the PIMS Rules that came to be published in the Gazette and thereby came into force on 03.7.2018. Rule 3 reads as follows:

*"**3. Initiation of mediation process**.—(1) A party to a commercial dispute may make an application to the Authority as per Form 1 specified in Schedule I, either online or by post or by hand, for initiation of mediation process under the Act along with a fee of one thousand rupees payable to the Authority either by way of demand draft or through online;*

(2) The Authority shall, having regard to the territorial and pecuniary jurisdiction and the nature of commercial dispute, issue a notice, as per Form 2 specified in Schedule I through a registered or speed post and electronic means including e-mail and the like to the opposite party to appear and give consent to participate in the mediation process on such date not beyond a period of ten days from the date of issue of the said notice.

(3) Where no response is received from the opposite party either by post or by e-mail, the Authority shall issue a final notice to it in the manner as specified in sub-rule (2).

(4) Where the notice issued under sub-rule (3) remains unacknowledged or where the opposite party refuses to participate in the mediation process, the Authority shall treat the mediation process to be a non-starter and make a report as per Form 3 specified in the Schedule I and endorse the same to the applicant and the opposite party.

(5) Where the opposite party, after receiving the notice under sub-rule (2) or (3) seeks further time for his appearance, the Authority may, if it thinks fit, fix an alternate date not later than ten days from the date of receipt of such request from the opposite party.

(6) Where the opposite party fails to appear on the date fixed under sub-rule (5), the Authority shall treat the mediation process to be a non-starter and make a report in this behalf as per Form 3 specified in Schedule I and endorse the same to the applicant and the opposite party.

(7) Where both the parties to the commercial dispute appear before the Authority and give consent to participate in the mediation process, the Authority shall assign the commercial dispute to a mediator and fix a date for their appearance before the said mediator.

(8) The Authority shall ensure that the mediation process is completed within a period of three months from the date of receipt of application for pre-institution mediation unless the period is extended for further two months with the consent of the applicant and the opposite party."

32. A perusal of Section 12A indicates that the period during which the parties remain occupied with the pre-institution mediation shall not be computed for the purpose of limitation under the Limitation Act. Further, 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. The settlement arrived shall have the same status and effect as if it is an arbitral award on agreed terms under Section 30(4) of the Arbitration and Conciliation Act, 1996. This is another remarkable feature of the mediation regime ushered in by the Amending Act which, by deeming the mediated settlement at par with an arbitral award, provides strong legal backing to the mediation process and ensures that the enforceability of the same is met with fewer hurdles, thereby increasing the attractiveness of mediation as an alternative to litigation.

33. The aim and object of Section 12A is to ensure that before a commercial dispute is filed before the court, the alternative means of dissolution are adopted so that only genuine cases come before the courts. The said procedure has been introduced to decongest the regular courts.

ii. <u>Section 12A of the 2015 Act is mandatory in nature</u>

34. We shall now look into the decision of this Court in ***Patil Automation*** *(supra)*. In ***Patil Automation*** *(supra)*, this Court declared Section 12A of the 2015 Act to be mandatory in nature. It further held that pre-litigation mediation is necessary, unless the suit contemplates an urgent interim relief. The decision obviated the prevailing confusion as regards the mandatory nature of Section 12A of the 2015 Act as well as the legal consequences of non-compliance, which was necessary in light of the divergent views adopted by a number of High Courts. A few relevant observations from the said decision are reproduced hereinbelow:

> ***"<u>The regime under Order VII Rule 11CPC</u>***
>
> *92. Order VII Rule 11 declares that the plaint can be rejected on 6 grounds. They include failure to disclose the cause of action, and where the suit appears from the statement in the plaint to be barred. We are concerned in these cases with the latter. Order VII Rule 12 provides that when a plaint is rejected, an order to that effect with reasons must be recorded. Order VII Rule 13 provides that rejection of the plaint mentioned*

in Order VII Rule 11 does not by itself preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Order VII deals with various aspects about what is to be pleaded in a plaint, the documents that should accompany and other details. Order IV Rule 1 provides that a suit is instituted by presentation of the plaint to the court or such officer as the court appoints. By virtue of Order IV Rule 1(3), a plaint is to be deemed as duly instituted only when it complies with the requirements under Order VI and Order VII. Order V Rule 1 declares that when a suit has been duly instituted, a summon may be issued to the defendant to answer the claim on a date specified therein. There are other details in the order with which we are not to be detained. We have referred to these rules to prepare the stage for considering the question as to whether the power under Order VII Rule 11 is to be exercised only on an application by the defendant and the stage at which it can be exercised.

93. In ***Patasibai v. Ratanlal*** *reported in (1990) 2 SCC 42, one of the specific contentions was that there was no specific objection for rejecting of the plaint taken earlier. In the facts of the case, the Court observed as under :*

> *"13. On the admitted facts appearing from the record itself, the learned counsel for the respondent, was unable to show that all or any of these averments in the plaint disclose a cause of action giving rise to a triable issue. In fact, Shri Salve was unable to dispute the inevitable consequence that the plaint was liable to be rejected under Order 7 Rule 11 CPC on these averments. All that Shri Salve contended was that the court did not in fact reject the plaint under Order 7 Rule 11CPC and summons having been issued, the trial must proceed. In our opinion, it makes no difference that the trial court failed to perform its duty and proceeded to issue summons without carefully reading the plaint and the High Court also overlooked this fatal defect. Since the plaint suffers from this fatal defect, the mere*

issuance of summons by the trial court does not require that the trial should proceed even when no triable issue is shown to arise. Permitting the continuance of such a suit is tantamount to licensing frivolous and vexatious litigation. This cannot be done."

94. On a consideration of the scheme of Orders IV, V and VII of the CPC, we arrive at the following conclusions:

94.1. A suit is commenced by presentation of a plaint. The date of the presentation in terms of Section 3(2) of the Limitation Act, 1963 is the date of presentation for the purpose of the said Act. By virtue of Order 4 Rule 1(3), institution of the plaint, however, is complete only when the plaint is in conformity with the requirement of Order 6 and Order 7.

94.2. When the court decides the question as to issue of summons under Order V Rule 1, what the court must consider is whether a suit has been duly instituted.

94.3. Order VII Rule 11 does not provide that the court is to discharge its duty of rejecting the plaint only on an application. Order VII Rule 11 is, in fact, silent about any such requirement. Since summon is to be issued in a duly instituted suit, in a case where the plaint is barred under Order VII Rule 11(d), the stage begins at that time when the court can reject the plaint under Order VII Rule 11. No doubt it would take a clear case where the court is satisfied. The Court has to hear the plaintiff before it invokes its power besides giving reasons under Order VII Rule 12. In a clear case, where on allegations in the suit, it is found that the suit is barred by any law, as would be the case, where the plaintiff in a suit under the Act does not plead circumstances to take his case out of the requirement of Section 12A, the plaint should be rejected without issuing summons. Undoubtedly, on issuing summons it will be always open to the defendant to make an application as well under Order VII Rule 11. In other

words, the power under Order VII Rule 11 is available to the court to be exercised suo motu. (See in this regard, the judgment of this Court in ***Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy****, (2018) 14 SCC 1)"*

(Emphasis supplied)

35. The Court summed up its reasoning from paragraph 99 onwards as follows:

> ***"99.1.*** *The Act did not originally contain Section 12-A. It is by amendment in the year 2018 that Section 12-A was inserted. The Statement of Objects and Reasons are explicit that Section 12-A was contemplated as compulsory. The object of the Act and the Amending Act of 2018, unerringly point to at least partly foisting compulsory mediation on a plaintiff who does not contemplate urgent interim relief. The provision has been contemplated only with reference to plaintiffs who do not contemplate urgent interim relief. The legislature has taken care to expressly exclude the period undergone during mediation for reckoning limitation under the Limitation Act, 1963. The object is clear.*
>
> ***99.2.*** *It is an undeniable reality that courts in India are reeling under an extraordinary docket explosion. Mediation, as an alternative dispute mechanism, has been identified as a workable solution in commercial matters. In other words, the cases under the Act lend themselves to be resolved through mediation. Nobody has an absolute right to file a civil suit. A civil suit can be barred absolutely or the bar may operate unless certain conditions are fulfilled. Cases in point, which amply illustrate this principle, are Section 80 CPC and Section 69 of the Partnership Act.*
>
> ***99.3.*** *The language used in Section 12-A, which includes the word "shall", certainly, goes a long way to assist the Court to hold that the provision is mandatory. The entire procedure for carrying out the mediation, has been spelt out in the Rules. The parties are free to engage counsel*

during mediation. The expenses, as far as the fee payable to the mediator, is concerned, is limited to a one-time fee, which appears to be reasonable, particularly, having regard to the fact that it is to be shared equally. A trained mediator can work wonders.

99.4. *Mediation must be perceived as a new mechanism of access to justice. We have already highlighted its benefits. Any reluctance on the part of the Court to give Section 12-A, a mandatory interpretation, would result in defeating the object and intention of Parliament. The fact that the mediation can become a non-starter, cannot be a reason to hold the provision not mandatory. Apparently, the value judgment of the lawgiver is to give the provision, a modicum of voluntariness for the defendant, whereas, the plaintiff, who approaches the court, must, necessarily, resort to it. Section 12-A elevates the settlement under the Act and the Rules to an award within the meaning of Section 30(4) of the Arbitration Act, giving it meaningful enforceability. The period spent in mediation is excluded for the purpose of limitation. The Act confers power to order costs based on conduct of the parties."*

(Emphasis supplied)

36. Touching upon the aspect of what the expression "does not contemplate urgent interim relief" appearing in Section 12A of the 2015 Act entails, the judgment observed that unlike Section 80(2) of the CPC which allows the filing of a suit after seeking leave of the court, Section 12A contains no such stipulation. The Court also observed that whether the absence of such stipulation under Section 12A could be misused by litigants to bypass the mandate of pre-litigation mediation was an aspect which may be looked into by the legislature. The relevant observations read as follows:

"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."

(Emphasis supplied)

37. The Court ultimately disposed 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."*

(Emphasis supplied)

38. As discussed aforesaid, the observations in paragraph 100 of ***Patil Automation*** *(supra)* refer to Section 80(2) of the CPC, which permits a suit, praying urgent interim relief, to be filed by seeking the leave of the court. The proviso to Section 80(2) of the CPC states that, if, after hearing the parties, the court is satisfied that no urgent or immediate relief is required to be granted in the suit, the court may return the plaint for presentation to it after compliance with requirements of Section 80(1) of the CPC.

39. The position of law is well settled that a plaint may be rejected under Order VII Rule 11 of the CPC if any of the conditions specified therein are fulfilled. The decision in ***Patil Automation*** *(supra)* recognised this principle and stipulated that beginning 20.08.2022, any suit instituted under the 2015 Act without complying with Section 12A must meet with the fate of rejection of plaint under Order VII Rule 11. It is also pertinent to observe that under Order VII Rule 11,

no time period within which the plaint may be rejected has been stipulated. The power to reject a plaint, thus, can be exercised at any stage of the suit. This Court in ***Madanuri Sri Rama Chandra Murthy v. Syed Jalal*** reported in **(2017) 13 SCC 174** observed that the power to reject a plain is exercisable by the court at any stage of the suit. The relevant observations read as under:

> *"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the*

illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

(Emphasis supplied)

40. Similarly, in ***Popat and Kotecha Property v. State Bank of India Staff Assn.,*** reported in **(2005) 7 SCC 510**, this Court observed that the scheme of Order VII Rule 11 is silent about the stage at which the power to reject a plaint may be invoked by the court. However, the use of the word "shall" denotes that the courts are under an obligation to reject a plaint if the conditions specified therein are satisfied. Thus, it could be said that under the scheme of Order VII Rule 11, it is not the stage at which the objection is raised which is relevant, but it is the merit of the objection raised which has been conferred primacy. The relevant observations from the said decision read as under:

"23. Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13."

(Emphasis supplied)

41. At this juncture, we would like to point out that the Trial Court in the instant case, while refusing to allow the application of the appellant under Order VII Rule 11, observed that the application, having been filed at a belated stage of more than an year after the filing of the written statement, was liable to be rejected. However, the decision in ***Patil Automation*** *(supra)* does not leave any scope for a similar approach to be adopted by courts anymore in cases where Section 12A has not been duly complied with. The Court in the said decision has also observed that even if a plea of rejection of plaint is not taken by the defendant, the courts must *suo motu* take note of the non-compliance with Section 12A and reject the plaint, and the stage of the suit proceedings is not a valid consideration to be looked into while rejecting a plaint. However, as we shall discuss in more detail in the subsequent paragraphs, the decision in ***Patil Automation*** *(supra)* makes the consequence of rejection of plaint for non-compliance prospectively applicable for suits instituted post 20.08.2022.

iii. <u>How the expression *"urgent interim relief"* is to be construed</u>

42. Further, it is also pertinent to note that Section 12A of the 2015 Act does not contemplate leave of the court for filing a suit which

contemplates an urgent interim relief, as is clear from the language and words used in the provision. The provision also does not necessarily require an application seeking exemption if a suit is being filed without pre-institution mediation. An application seeking waiver on account of urgent interim relief setting out grounds and reasons may allay a challenge and assist the court, but in the absence of any statutory mandate or rules made by the Central Government, an application *per se* is not a condition under Section 12A of the 2015 Act. Pleadings on record and oral submissions would be sufficient in ordinary course.

43. This Court in ***Yamini Manohar v. T.K.D. Keerthi*** reported in **(2024) 5 SCC 815** while interpreting the import of the expression "a suit which does not contemplate any urgent interim relief" used in Section 12A of the 2015 Act observed that the word "contemplate" connotes to deliberate and consider. Further, the legal position that the plaint can be rejected and not entertained reflects application of mind by the court as regards the requirement of "urgent interim relief". The Court further observed that the prayer of urgent interim relief should not act as a disguise to get over the bar contemplated under Section 12A. However, at the same time, the Court observed that the mere non-grant of the interim relief at the *ad-interim* stage, when the plaint is

taken up for admission and examination would not justify the rejection of the plaint under Order VII Rule 11 of the CPC, as interim relief is at times also granted after issuance of notice. Further, even if after the conclusion of arguments on the aspect of interim relief, the same is denied on merits, that would not by itself justify the rejection of the plaint under Order VII Rule 11. The relevant observations from the said decision are reproduced hereinbelow:

> *"10. We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine the nature and the subject-matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12-A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order 7 Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order 7 Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely : (i) prima facie case, (ii) irreparable harm and injury, and (iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.*
>
> *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 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."

(Emphasis supplied)

44. Thus, it becomes clear from a perusal of the aforesaid decision that the test under Section 12A is not whether the prayer for the urgent interim relief actually comes to be allowed or not, but whether on an examination of the nature and the subject-matter of the suit and the cause of action, the prayer of urgent interim relief by the plaintiff could be said to be contemplable when the matter is seen from the standpoint of the plaintiff. Further, what is also to be kept in mind by

the courts is that the urgent interim relief must not be merely an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12A of the 2015 Act.

45. In the case at hand indisputably, no urgent interim relief was prayed for at the time of the institution of the suit by the Union.

iv. <u>The effect of according prospectivity to the declaration in *Patil Automation (supra)* on cases like the one at hand</u>

46. In ***Patil Automation*** *(supra)*, this Court held that the language of Section 12A is plainly imperative in nature, and any commercial suit instituted without adhering to this provision is liable to be rejected under Order VII Rule 11 of the CPC. However, recognising that the Amending Act containing Section 12A is a *'toddler'*, and that the *"law necessarily would have teething problems at the nascent stage"*, this Court declared the aforesaid declaration to operate prospectively, effective from 20.08.2022, so that the stakeholders may be sufficiently informed. In the instant case, as the money suit was filed by the respondents much prior to the decision in ***Patil Automation*** *(supra)*, it is squarely protected by the prospective ruling of this Court.

47. This Court had further held that the protective umbrella of prospective overruling in ***Patil Automation*** *(supra)* would not apply to plaints which were rejected, and no steps had been taken within the period of limitation; or such rejection had been acted upon by filing a new suit; or if the plaint violating Section 12A had been filed after the jurisdictional High Court has declared the provision to be mandatory. Indisputably, the Union of India does not fall under any of the other aforementioned exceptions. Thus, we find it difficult to agree with the submission canvassed by the appellant that the bar of Section 12A of the 2015 Act would continue to apply to the money suit filed by the respondents despite there being a prospective declaration in ***Patil Automation*** *(supra)*.

48. While it is correct that any declaration of the correct position of the law goes back to the day of the inception of the law itself, as the courts merely discover the correct position of law by applying settled legal principles and not legislate a new legal position, it is equally well recognised that the courts, while declaring an interpretation of the law, may declare it to be operative only prospectively so as to prevent chaos which may ensue as a result of the unsettling of the transactions which may have taken place before such declaration. Taking a clue from the decisions of this Court on the aspect of prospective

overruling, it could be said that this Court has been endowed with the power to mould the relief to do complete justice in a given situation, and to avoid the possibility of chaos and confusion that may be caused in the society at large.

v. <u>The equitable maxim lex non cogit ad impossibilia</u>

49. It is settled that law does not compel an impossible performance, and the same position has been followed by this Court in a catena of judgments. Espousing the aforesaid maxim in ***Raj Kumar Dey*** *(supra)* this Court has held as follows:

> *"6. .... The other maxim is lex non cogit ad impossibilia (Broom's Legal Maxims — page 162) — The law does not compel a man to do that which he cannot possibly perform. The law itself and the administration of it, said Sir W. Scott, with reference to an alleged infraction of the revenue laws, must yield to that to which everything must bend, to necessity; the law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of laws must adopt that general exception in the consideration of all particular cases."*

50. The aforesaid maxim was recognised and reiterated by this Court in ***U.P. SRTC v. Imtiaz Hussain*** reported in **(2006) 1 SCC 380**.

51. The materials on record would indicate that after the establishment of the first Commercial Court at Alipore, the statutory framework and

corresponding rules were progressively implemented until December 2020. Therefore, during this intervening period, referring the matter to pre-suit mediation under Section 12A was impossible due to a persisting vacuum created by lack of appointment of necessary authorities and delineation of the procedural framework.

52. The learned ASG is right to some extent in her submission that awaiting the establishment of the requisite infrastructure would unduly impede the recovery process in a money suit involving public funds, thereby defeating the very purpose and legislative intent of the 2015 Act, which aims to ensure the expeditious resolution of commercial disputes.

53. The declaration of the mandatory nature of Section 12A of the 2015 Act was given prospective effect in ***Patil Automation*** *(supra)* keeping in mind the fact that Section 12A, being in its stages of infancy, had given rise to conflicting views by different High Courts and consequently an overall lack of clarity on the nature of the provision. Thus, the Court was of the view that in the absence of prospective effect being given to the declaration, all such suits which had been filed without complying with the provision, owing to the lack of clarity on the mandatory nature of the provision, would be susceptible

to being rejected and the court fees submitted at the time of their institution being written off. The Court further expressed apprehensions as regards the applicability of Section 14 of the Limitation Act to fresh suits filed after the rejection of plaint for non-compliance with Section 12A and thus held that it would be in the best interest of justice that the declaration of mandatory compliance with Section 12A be given prospectivity to avoid the aforesaid complexities from cropping up.

54. While giving prospectivity to its finding on the mandatory nature of Section 12A and the consequence of rejection of plaint in cases of non-compliance, the Court also observed that the prospective declaration would not save the situation in certain categories of cases which we have discussed in paragraph 47 above. However, it is not the case of the appellant that the case at hand falls within the ambit of any of the exceptions laid down in ***Patil Automation*** *(supra)*.

55. It is interesting to note that the decision impugned before us was referred to by this Court in paragraph 54 of ***Patil Automation*** *(supra)* while it was discussing the divergent views of different High Courts on the nature of Section 12A of the 2015 Act. Therein, this Court had observed thus:

> *"54. A learned Single Judge of the High Court of Calcutta, in the decision reported in Dhanbad Fuels Ltd. v. Union of India and Others, 2021 SCC OnLine SC 429, took the view that mediation in India is still at a nascent stage and requires more awareness. There was a need for mandatory training of commercial disputes. It was further found that the party cannot be denied the right to participate in the justice dispensation system. It wasfurther noticed that there was no obligation on the part of the defendant to respond to the initiative of the plaintiff. Rejecting the plaint under Order VII Rule 11(d) in view of Order VII Rule 13, which enables a fresh Suit to be filed upon rejection under Order VII Rule 11, would show that the power under Order VII Rule 11 should not be invoked as it would not be in accordance with the objectives of the Act and the Rules."*

56. After taking into consideration the view taken by the Calcutta High Court in the impugned decision as well as the view of several other High Courts, this Court, in ***Patil Automation*** *(supra)*, arrived at the findings as we have discussed in detail in the preceding paragraphs. Thus, insofar as the interpretation of the nature of Section 12A of the 2015 Act in the impugned decision is concerned, the same must be seen in the context of the decision in ***Patil Automation*** *(supra)*.

57. However, the pertinent question that falls for us is whether the approach adopted by the Trial Court and approved by the High Court in the present case, in keeping the suit in abeyance, and sending the parties to mediation as per the PIMS Rules and the 2020 SOP, was the correct approach. In other words, while the decision in ***Patil***

Automation *(supra)* is clear that any suit instituted after 20.08.2022 without complying with Section 12A of the 2015 Act must be visited with the rejection of the plaint under Order VII Rule 11, whether in suits filed prior to the said date, the courts must keep the suit in abeyance and refer the parties to mediation, and proceed with it only after the report of the mediator is received.

58. The answer to the aforesaid question requires us to harmoniously construe the two observations made by this Court in ***Patil Automation*** *(supra)*. The Court observed in paragraph 104 of the said decision that the declaration of the law by the Court would relate back to the date of the Amending Act. However, keeping in mind practical considerations, the Court in paragraph 113.1 observed that the consequence of rejection of plaint under Order VII Rule 11 for not complying with Section 12A of the 2015 Act would only be operative prospectively with effect from 20.08.2022. Thus, what is clear from a joint reading of both these observations is that while Section 12A is held to be mandatory from the date of the inception of the provision itself, the consequence of rejection for non-compliance is only made applicable prospectively.

59. Thus, although suits which were instituted before the date of the decision in ***Patil Automation*** *(supra)* may not be rejected under Order

VII Rule 11 for not complying with Section 12A of the 2015 Act, unless they fall within the exceptional categories described in the said decision itself, yet this would not obviate the requirement of giving the parties a chance to attempt to resolve the disputes through mediation as envisaged under Section 12A of the 2015 Act. One of the ways by which this can be achieved is by keeping the suit in abeyance and referring the parties to a time-bound mediation and only proceeding with the suit once the report of the mediator is received. This approach would ensure that even if not pre-institution, the parties at the very least get an opportunity to resolve the disputes through mediation post the institution of the suit. This in no way means that Section 12A envisages post-institution mediation. Post-institution mediation, while keeping the suit in abeyance, is only envisaged for the limited category of cases which are not covered by the prospective declaration made in ***Patil Automation*** *(supra)* as the rejection of plaints under Order VII Rule 11 has been done away with in the interest of justice in such category of cases. This approach also received the tacit approval of this Court in ***Patil Automation*** *(supra)*, wherein while disapproving the reasoning adopted in the order impugned therein, the Court refused to interfere with the impugned order which had referred the parties to mediation while keeping the suit in abeyance.

60. However, it is also important to clarify that in cases where a suit instituted prior to 20.08.2022 has been decided, it would not be of any avail to the parties to revisit the same on the ground of mandatory compliance with Section 12A of the 2015 Act. However, wherever such a suit is pending before the trial court and an objection is raised by the defendant for non-compliance with Section 12A of the 2015 Act, or any intent to settle the dispute by mediation is exhibited by the parties, then it would be permissible for the court to keep the suit in abeyance and refer the parties to time-bound mediation in accordance with the 2015 Act, the PIMS Rules and the 2020 SOP.

61. Before we part with the matter, we also deem it appropriate to address one of the main contentions of the appellant that having regard to the fact that the suit is still at the nascent stage of filing of written statement and no substantial progress has been made therein, this Court must reject the plaint and direct the respondents to institute a fresh suit after complying with the mandatory requirement of Section 12A. However, we do not find any force in the aforesaid submission. We do not see how directing the respondents to institute a fresh suit would be of any benefit to the appellant. We have discussed in detail that this Court in ***Patil Automation*** *(supra)* made its decision prospectively applicable keeping in mind the predicament of suits like

the one at hand wherein owing to a lack of clarity in law, Section 12A of the 2015 could not be complied with in certain cases. Directing the institution of a fresh suit would only result into the forfeiture of the court fees deposited by the respondents, which would only be an unnecessary burden on the public exchequer. The approach adopted by the Trial Court and the High Court in keeping the suit in abeyance and directing the parties to approach the competent authority for mediation commends more to us as it complies with a harmonious reading of the decision in ***Patil Automation*** *(supra)* and prevents unnecessary delays and burden on the public exchequer. Further, substantial progress in the suit was not the only reason why the Court in ***Patil Automation*** *(supra)* gave prospective effect to its decision. As we have discussed, factors like forfeiture of court fees, ambiguity over the applicability of Section 14 of the Limitation Act, unsettling of settled cases, etc. were a few other reasons which weighed with the Court in arriving at its decision of according prospectivity to the judgment. Thus, we find it difficult to accept the argument advanced by the appellant that the plaint must be rejected for the reason that the suit has not made substantial progress after its institution.

E. CONCLUSION

62. In light of the aforesaid discussion, we summarise our findings as under:

a. The decision of this Court in ***Patil Automation*** *(supra)* lays down the correct position of law as regards Section 12A of the 2015 Act by holding it to be mandatory in nature.

b. As held in paragraph 104 of the decision in ***Patil Automation*** *(supra)*, the declaration of the mandatory nature of Section 12A of the 2015 Act relates back to the date of the Amending Act.

c. As held in paragraph 113.1 of the decision in ***Patil Automation*** *(supra)*, any suit which is instituted under the 2015 Act without complying with Section 12A is liable to be rejected under Order VII Rule 11. However, this declaration applies prospectively to suits instituted on or after 20.08.2022.

d. A suit which contemplates an urgent interim relief may be filed under the 2015 Act without first resorting to mediation as prescribed under Section 12A of the 2015 Act.

e. Unlike Section 80(2) of the CPC, leave of the court is not required to be obtained before filing a suit without complying with Section 12A of the 2015 Act.

f. The test for "urgent interim relief" is if on an examination of the nature and the subject-matter of the suit and the cause of action,

the prayer of urgent interim relief by the plaintiff could be said to be contemplable when the matter is seen from the standpoint of the plaintiff.

g. Courts must also be wary of the fact that the urgent interim relief must not be merely an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12A of the 2015 Act.

h. Even if the urgent interim relief ultimately comes to be denied, the suit of the plaintiff may be proceeded with without compliance with Section 12A if the test for "urgent interim relief" is satisfied notwithstanding the actual outcome on merits.

i. Suits instituted without complying with Section 12A of the 2015 Act prior to 20.08.2022 cannot be rejected under Order VII Rule 11 on the ground of non-compliance with Section 12A unless they fall within the exceptions stipulated in paragraph 113.2 and 113.3 of the decision in ***Patil Automation*** *(supra)*.

j. In suits instituted without complying with Section 12A of the 2015 Act prior to 20.08.2022 which are pending adjudication before the trial court, the court shall keep the suit in abeyance and refer the parties to time-bound mediation in accordance with Section 12A of the 2015 Act if an objection is raised by the defendant by filing an application under Order VII Rule 11, or

in cases where any of the parties expresses an intent to resolve the dispute by mediation.

63. Thus, the answer to the question formulated by us whether a suit filed without complying with Section 12A of the 2015 Act must be dismissed or be kept in abeyance with a direction to the parties to explore mediation is as follows:

    a. If the suit is instituted on or after the date of the decision in ***Patil Automation*** *(supra)*, i.e., 20.08.2022, without complying with Section 12A of the 2015 Act, then it must meet with rejection under Order VII Rule 11, either on an application by the defendant or *suo motu* by the court.

    b. If the suit was instituted prior to 20.08.2022 without complying with Section 12A of the 2015 Act, and the same does not fall within one of the exceptional categories as explained in paragraph 47 of this judgment, then it would be open to the court to keep the suit in abeyance and direct the parties to explore the possibility of mediation in accordance with the 2015 Act, the PIMS Rules and the 2020 SOP.

64. Having answered the issues as aforesaid, we find it difficult to accept the contention of the appellant that the Trial Court as well as the High Court committed an error in refusing to reject the plaint under Order

VII Rule 11. On the contrary, the approach adopted by the High Court in the impugned order in keeping the suit in abeyance and referring the parties to mediation, strikes a perfect balance between the mandatory nature of Section 12A of the 2015 Act as well as the prospective applicability of the consequence of non-compliance with Section 12A as held in ***Patil Automation*** *(supra)*.

65. Needless to clarify that the mediation proceedings must be completed within the time frame stipulated by Section 12A of the 2015 Act and the PIMS Rules, that is, within a period of three months and extendable by two more months, if the need so arises.

66. In the result, the present appeal fails and is hereby dismissed.

67. Pending application(s), if any, shall also stand disposed of.

68. We direct the Registry to circulate a copy of this judgment to all High Courts.

……..J.

(J.B. Pardiwala)

New Delhi; **……..J.**

May 15th, 2025 **(R. Mahadevan)**