



2026:AHC:44560-DB

Reserved on : 26.11.2025
Delivered on : 26.02.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD
COMMERCIAL APPEAL No. - 30 of 2025

M/s Ishant Mines, through its Proprietor and another

.....Appellant(s)

Versus

M/s Suyash Jaiswal through its Proprietor Shri Suyash Jaiswal

.....Respondent(s)

Counsel for Appellant(s)	: Anurag Khanna (Sr. Adv.) with Gaurav Tripathi
Counsel for Respondent(s)	: Anoop Trivedi (Sr. Adv.) with Abhishek Tiwari, Saumitra Dwivedi

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

(Per : Arun Bhansali, CJ)

1. This appeal, under Section 13 of the Commercial Courts Act, 2015 ('the Act'), is directed against the judgment dated 05.06.2025 and decree dated 06.06.2025 passed by the Commercial Court, Gorakhpur in Commercial Case No. 5 of 2025 whereby the suit, filed by the respondent-plaintiff for a sum of Rs. 1,44,75,510/- was decreed along with interest @ 6 % per annum from the date of institution of the suit, i.e., 18.12.2023 till the date of payment.

2. The suit was filed by the plaintiff for recovery of amount on account of supply of sand. In the suit, it was *inter alia* claimed that the plaintiff initiated the process for recovery of his billed amounts against the defendants by proceeding before the Legal Services Authority, Gorakhpur, U.P. for Pre-institution Mediation, which was initiated vide Reference No. 31 of 2022 but

despite the repeated notices, defendants failed to participate in the said proceeding, accordingly the proceeding came to an end on 20.02.2023. The said averment essentially was made for complying with the requirements of Section 12-A of the Act.

3. The Commercial Court, on the first date, noticed the said aspect and after the requisite court fees was paid by the plaintiff, summons were issued to the appellants-defendants.

4. Subsequent thereto, when the notices on the appellants through ordinary process could not be served, permission was granted for substituted service under Order V Rule 20 C.P.C., whereby on publication, the newspaper was produced on 07.08.2024. The defendants appeared on 23.08.2024 and filed Vakalatnama, the opportunity to file written statement was closed on 10.12.2024 and matter was fixed for *ex-parte* proceedings. After affidavits in evidence were produced by the plaintiff and written arguments were submitted on 07.03.2025, an application was filed on behalf of the defendants, which came to be decided on 11.03.2025 denying opportunity to file written statement, however, permitting filing of written arguments/making oral arguments based on which written arguments were filed by the appellants-defendants.

5. In the written submissions, the principal plea raised on behalf of the appellants-defendants was non-compliance of provisions of Section 12-A of the Act. Reliance was placed on **Patil Automation Private Limited Vs. Rakheja Engineers Private Limited : 2022 SCC OnLine SC 1028** to contend that for non-compliance of provisions of Section 12-A of the Act, the plaint can be rejected under Order VII Rule 11 C.P.C. It was pointed out that the plaintiff had earlier filed a suit for a sum of Rs. 20 Lakh on which on 03.11.2022, the matter was referred for Pre-institution Mediation where it was registered as Case No. 31 of 2022 and on account of non-appearance of the appellants, mediation failed. It was submitted that before filing the present suit for a sum of Rs. 1,44,75,510/-, compliance of provisions of Section 12-A of the Act was not made and wrongly reliance was placed on a failed mediation which

pertains only to a claim of Rs. 20 Lakh and therefore, the suit was liable to be dismissed.

6. Submissions were contested by the plaintiff with the claim that though the dispute raised in the Pre-litigation Mediation was for the entire sum of Rs. 1,44,75,510/-, for lack of funds for payment of court fees, only a submission was made restricting the claim for the time being and once mediation failed, the suit was filed for the entire amount and court fees was paid, there was no necessity to initiate fresh mediation and therefore, the plea raised had no substance.

7. The Commercial Court, after hearing the parties, rejected the plea regarding non-compliance of provisions of Section 12-A of the Act as well as other pleas sought to be raised by the appellants and decreed the suit as noticed hereinbefore. Feeling aggrieved, the present appeal has been filed.

8. Learned Senior Counsel appearing for the appellants fairly submitted that for lack of any written statement, the appellants are not in a position to question the validity of judgment on the factual aspects. However, it was vehemently submitted that the Commercial Court was not justified in coming to the conclusion that the plaintiff had complied with the requirements of Section 12-A of the Act. It was emphasized that there has been gross non-compliance of provisions of Section 12-A of the Act and as laid down by Hon'ble Supreme Court in the case of **Patil Automation (supra)**, the plaint was liable to be rejected, which the Commercial Court, on a wrong interpretation of the requirement, has failed to do and therefore, the judgment and decree deserve to be quashed and set aside.

9. It was emphasized that the failure of Pre-litigation Mediation relied on by the respondents pertains to a claim for Rs. 20 Lakh only and in the present suit, which was filed for a sum of Rs. 1,44,75,510/-, same could not enure and as such, for non-compliance of provisions of Section 12-A of the Act, the suit was liable to be dismissed.

10. Learned counsel referred to the suit filed before the Commercial Court on 03.11.2022 and the order passed by the Commercial Court on the same day referring the same for Pre-litigation Mediation.

11. The mediation application form where the quantum of claim was indicated as 20 Lakh was referred to re-emphasize that the said Pre-institution Mediation was in relation to a claim for Rs. 20 Lakh only and as for the present suit, no proceedings were initiated under Section 12-A of the Act, which is the per-requisite for maintaining the suit, the Commercial Court fell in error in rejecting the plea raised in this regard. Reliance was again placed on the judgment in the case of **Patil Automation (supra) and Aditya Birla Fashion and Retail Limited Vs. Mrs. Saroj Tandon : CM (M) 459/2023 & CM APPL. 13679/2023**, decided on 02.09.2024 by the Delhi High Court wherein, in a suit filed after complying with the provisions of Section 12-A of the Act for filing the counter claim in the same suit, compliance of Section 12-A of the Act was held to be mandatory.

12. It was prayed that the appeal be allowed and while rejecting the plaint, judgment and decree be set aside.

13. Learned counsel for the respondent supported the judgment impugned. Submissions were made that the plea sought to be raised is distortion of facts inasmuch as the Pre-institution Mediation which was initiated before the District Legal Services Authority, Gorakhpur, the dispute clearly indicated a total outstanding of Rs. 1,44,75,510/- and a specific assertion was made that the plaintiff is having right to claim the said amount and was presently claiming only Rs. 20 Lakh. In fact, the office of the District Legal Services Authority, Gorakhpur indicated the dispute for a sum of Rs. 1,44,75,510/-.

14. It was submitted that the fact that the plaint was filed before the Commercial Court, which was returned/referred for the Pre-institution Mediation, cannot be termed as a previous suit at all inasmuch as the same was not even registered by the Commercial Court and once the

Pre-institution Mediation was over, the plaintiff had filed suit for the entire disputed amount, which it was entitled under the law.

15. It was sought to be emphasized that Pre-institution Mediation is held in respect of the dispute between the parties and same cannot be confined to what has been indicated as quantum of claim before the Legal Services Authority and therefore, the plea raised has no legs to stand.

16. Submissions were made that the appellants have been acting in a surreptitious manner since beginning. On the one hand they did not appear in the Pre-institution Mediation despite repeated notices, in the suit they have avoided service of summons sent by ordinary process/registered post and when the notice was published in the newspaper, the appellants put in appearance and thereafter, did not file the written statement and has sought to raise non-existent issue, which was rightly rejected by the Commercial Court. The appeal, therefore, deserves to be dismissed with costs.

17. We have considered the submissions made by counsel for the parties and have perused the material available on record.

18. As the entire dispute centers round the Pre-institution Mediation, it would be appropriate to quote the provisions to the extent the same are relevant:

“12A. Pre-Institution Mediation and Settlement.—(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.”

19. A perusal of the above provisions reveals 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 in accordance with such manner and procedure as may be prescribed by the rules made by the Central Government.

20. For making the said provisions workable, the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 ('the Rules') have been framed wherein the procedure has been prescribed. Admittedly, in the present suit, no urgent interim relief was sought as the suit was a simple money suit seeking recovery of a sum of Rs.1,44,75,510/- along with interest and therefore, it was incumbent on the plaintiff to undertake the process of Pre-institution Mediation.

21. It would be seen that initially the plaintiff had presented a plaint before the Commercial Court, Gorakhpur on 03.11.2022 and on the same day, the Presiding Officer passed the order regarding deficient court fee and noticing the application for referring the matter for Pre-institution Mediation ordered that it would be appropriate that the suit be referred for Pre-institution Mediation and ordered accordingly.

22. The said order, which was passed by the Commercial Court on 03.11.2022 on presentation of the plaint along with an application for referring the matter to Pre-institution Mediation, was essentially in the nature of return of plaint for presentation in accordance with law as the same did not comply with the requirement of Section 12-A of the Act and a prayer for applying the said provision was made.

23. The respondent-plaintiff filed application before the District Legal Services Authority, Gorakhpur as per Form 1 specified in Schedule-I to the Rules for initiation of mediation process under the Act along with requisite fees of Rs.1000/-. The Form 1 as prescribed in the Schedule-I *inter alia* requires details of parties, details of dispute and details of fee paid. The relevant part of the Form pertaining to details of dispute *inter alia* reads as under:

“DETAILS OF DISPUTE:

1. Nature of dispute as per section 2(1)(c) of the Commercial Courts Act, 2015 (4 of 2016):
2. Quantum of claim:
3. Territorial jurisdiction of the competent court:
4. Brief synopsis of commercial dispute (not to exceed 5000 words):
5. Additional points of relevance:”

24. The respondent-plaintiff qua nature of dispute as per Section 2(1) (c) of the Act indicated ‘carriage of goods’, qua quantum of claim indicated ‘Rs.20 Lacs’, in the brief synopsis of commercial dispute. After giving out the facts of the dispute, it was indicated as under:

“14. That, since the plaintiff is facing is facing financial distress / inability and therefore is not in position to bear the full court fee for the recovery suit before Hon’ble Commercial Court, so despite having right to claim Rs. 1,44,75,510/- (One Crore Forty Four Lacs Seventy Five Thousand Five Hundred and Ten Only), Plaintiff is presently claiming only Rs.20,00,000/- (Rupees Twenty Lakhs) from the Respondent.”

(emphasis supplied)

25. It would be seen that that the plaintiff indicated that despite having right to claim Rs.1,44,75,510/-, it was presently claiming only Rs.20 Lakh from the respondent.

26. Notices were issued and ultimately when the appellants did not appear for mediation, a Non-Starter Report in Form 3 of the Rules was made, wherein it was indicated that the dates scheduled for appearance of opposite party were ‘12.12.2022, 22.12.2022, 04.01.2023, 16.01.2023, 27.01.2023, 06.02.2023 and 16.02.2023’ and the reason for Non-Starter Report was ‘continuous absence of the opposite party’.

27. So far as the indication made regarding the quantum of claim in Form 1, which is sought to be made a focal point on behalf of the appellants for claiming that the Pre-institution Mediation conducted by the respondent-plaintiff cannot enure for the suit in question which was for Rs.1,44,75,510/-, is concerned, the only significance of the said indication is for the purpose of mediation fee under Rule 11 of the Rules, wherein before the commencement of the mediation, the parties to the commercial dispute are required to pay to the authorities a one time mediation fee to be shared equally, as per the quantum of claim as specified in Schedule II.

28. Schedule II provides for the mediation fee under Rule 11 as under:

Sl. NO.	QUANTUM OF CLAIM	MEDIATION FEE PAYABLE TO AUTHORITY (in Indian rupees).
1.	From Rs. 3,00,000/- upto Rs.	Rs. 15,000/-

	10,00,000/-	
2.	Above Rs. 10,00,000 and upto Rs. 50,00,000/-	Rs. 30,000/-
3.	Above Rs. 50,00,000 and upto Rs. 1,00,00,000/-	Rs. 40,000/-
4.	Above Rs. 1,00,00,000 and upto Rs. 3,00,00,000/-	Rs. 50,000/-
5.	Above Rs. 3,00,00,000/-	Rs. 75,000/-]

29. From the above, it is apparent that the Pre-institution Mediation initiated by the respondent-plaintiff, pertains to the dispute for a sum of Rs.1,44,75,510/-, however an indication was made that he would be confining his claim 'for the present' only to Rs.20 Lakh.

30. It would be relevant to notice that Form 1 also contains space 'For Office Use' wherein the office has indicated the quantum of claim at Rs.1,44,75,510/-.

31. From the above, it is apparent that though the plaintiff approached the Commercial Court with the plaint along with the application seeking reference to Pre-institution Mediation, the plaint was not entertained and the plaintiff was referred to Pre-institution Mediation, which process was adopted by him and thereafter, the plaint of the present suit was filed wherein the plaintiff valued the suit at Rs.1,44,75,510/- and in para-26 of the plaint contended having initiated Pre-institution Mediation. The said para reads as under:

“26. That, thereafter, the Plaintiff initiated the process for recovery of the his bill amounts against the defendant, the proceedings before the Legal Services Authority, Gorakhpur, U.P. was initiated vide Reference No. 31(Thirty) of 2022 (Twenty Two Thousands), but despite of the repeated notices, the defendant failed to participate in the said proceedings, accordingly, the proceeding has come to its end on 20.02.2023 (Twenty February Two Thousands Twenty Three)”

32. The situation would have been different if the plaintiff after the Pre-institution Mediation was over on 20.02.2023 had presented the initial plaint with the limited claim after seeking leave under Order II Rule 2 CPC and thereafter would have filed a fresh plaint and had relied on the same Pre-institution Mediation, which plaint would be in

violation of provisions of Section 12-A of the Act as the Pre-institution Mediation conducted would have exhausted with the filing of the previous plaint, however as the plaintiff filed the present suit only post Pre-institution Mediation with the claim as per the dispute which was clearly disclosed in the Pre-institution Mediation, the plaintiff was entitled to claim compliance of provisions of Section 12-A of the Act qua the suit in question.

33. So far as the judgement in the case of **Patil Automation (supra)** relied on by the counsel for the appellants is concerned, the said judgement deals with the necessity to initiate Pre-institution Mediation and has laid down that non compliance would lead to rejection of the plaint, which determination, apparently would not apply in the present case as qua the dispute/suit in question Pre-institution Mediation was initiated by the plaintiff but the same remained a non-starter due to non participation by the appellants.

34. The judgement in the case of **Aditya Birla Fashion and Retail Limited (supra)** also has no application to the facts of present case as the same pertains to the applicability of Section 12-A of the Act to a counter claim, as in terms of Order VIII Rule 6A, CPC a counter claim has the same effect as a cross suit.

35. In view of above discussion, it is apparent that the provisions of Section 12-A of the Act require a Pre-institution Mediation for a suit, which does not contemplate any urgent interim relief. However, the suit to be filed post Pre-institution Mediation, cannot be confined based on the quantum of claim, as indicated in the Pre-institution Mediation, as the over all scheme requires the mediation qua 'the dispute'. The indication made in the application for Pre-institution Mediation with regard to the quantum of claim is essentially meant for quantification of the mediation fee, in case the mediation commences as in case of a non-starter, the initial fee is Rs.1000/- only.

36. In view of the above, the plea raised by the appellants solely on account of the quantum of claim indicated in the Pre-institution

Mediation for the purpose of alleging non compliance of the provisions of Section 12-A of the Act cannot be countenanced. The only ground argued before this Court has no substance.

37. No other aspect was argued before the Court.

38. In view of the above discussion, we do not find any substance in the present appeal. The same is, therefore, **dismissed**.

(Kshitij Shailendra, J.) (Arun Bhansali, CJ.)

February 26, 2026

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