[2026:RJ-JP:31004-DB]

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

D.B. Civil Miscellaneous Appeal No. 752/2025
CNR: RJHC010188752025
URN: CMA / 1846U / 2025

M/s Laxminath Infrastructure Private Limited, Churu Through Director Mahendra Kumar Sharma S/o Bhagwanaram, Aged About 65, R/o C-91, Bhagwan Vatika, Agresen Nagar, Churu

----Appellant

Versus

1. The State Of Rajasthan, Through Pricipal Secretary, Public Works Department Secretariat Jaipur
2. District Collector, Churu Rajasthan
3. The Chief Engineer, Pradhamantri Gram Sedak Yojna, Public Works Deparment, Add. 06, Nirman Bhawan Second Floor Block -A In Front Of Jaipur Club, Jaccob Road, Post Jaipur
4. The Additional Chief Engineer, Gram Sedak Yojana, Public Works Department, Add. -06 Near Museum Chohraha Bikaner
5. The Superintending Engineer, Public Works Department Division Churu Post Churu
6. The Executive Engineer, Public Works Department, Division Ratangarh District Churu
7. Assistant Engineer, Public Works Department Post Bidasar District Churu

----Respondents

For Appellant(s)	:	Mr. Nitin Trivedi
For Respondent(s)	:	Mr. Ayush Ghelot for Mr. Rajesh Panwar, AAG

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE PRAVEER BHATNAGAR

Order

Reportable

13/07/2026

1. The present Civil Miscellaneous Appeal has been preferred by the appellant-plaintiff claiming the following relief :-

> *"That the present civil misc. appeal may kindly be allowed and the judgment and decree dated 04.12.2024 passed by learned Commercial Court, Bikaner in Civil Original no.36/2023, (M/s. Laxminath Infrastructure Private Limited, Churu Vs. State of Rajasthan & Ors.) whereby the recovery suit filed by the plaintiff has been dismissed, may kindly be quashed and set aside and accordingly, the relief claimed by the plaintiff in the relief clause of the plaint may kindly be granted in his favour by way of passing decree for amount of Rs.8,46,938/- along with interest @ 12% per annum from the date of filing of suit i.e. 02.07.2022 to the date of realization of the aforesaid amount. The respondents department may kindly be directed to make the aforesaid payment to the plaintiff."*

2. The appellant-plaintiff instituted a suit for recovery of Rs.8,46,938/- before the learned Commercial Court No.1, Jodhpur (hereinafter referred to as the 'learned Commercial Court, Jodhpur') on 02.07.2022. During the pendency of the suit, the Commercial Court at Bikaner came to be established and the subject dispute fell within its territorial jurisdiction. Consequently, vide order dated 15.09.2022, the learned Commercial Court, Jodhpur returned the plaint for presentation before the Court of competent territorial jurisdiction. The plaint was thereafter presented before the learned Commercial Court, Bikaner and registered as Civil Original No.36/2023.

2.1. The dispute arises out of a works contract awarded by the respondent-department in favour of the appellant-plaintiff for upgradation of the road from Village Jili to Sadu Choti, Tehsil Ratangarh, District Churu, under the Pradhan Mantri Gram Sadak Yojana. Pursuant thereto, Work Order No.508-17 dated

07.05.2010 was issued in favour of the appellant-plaintiff, and the contractual work was stipulated to be completed by 15.03.2011. The contract further contemplated a defect liability period of five years, which expired on 14.03.2016. Thereafter, the respondent-department issued the work completion certificate on 01.06.2016. The dispute between the parties pertains to the appellant-plaintiff's claim for payment of the outstanding amount under the said contract, which, according to the appellant-plaintiff, remained unpaid.

2.2. As the claim remained unresolved, the appellant-plaintiff sought recourse to the dispute resolution mechanism contemplated under Clause 24 of the Standard Bidding Document forming part of the contract. The appellant-plaintiff submitted its claim before the Standing Empowered Committee on 07.11.2017 and deposited the prescribed fee of Rs.15,400/-. According to the appellant-plaintiff, the Committee did not take any decision on the claim. The appellant-plaintiff thereafter caused a legal notice dated 14.08.2018 to be sent to the respondents through registered post, asserting its claim for the outstanding contractual dues. According to the appellant-plaintiff, the said notice was duly served upon the respondents; however, the dispute remained unresolved.

2.3. The dispute thereafter travelled to arbitration. The learned Arbitrator, vide order dated 24.07.2019, recorded that no amicable settlement could be arrived at between the parties and disposed of the proceedings. The appellant-plaintiff thereafter continued to pursue its claim for recovery of the outstanding contractual amount and, prior to institution of the commercial suit, underwent the process of pre-institution mediation contemplated under Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as the 'Act of 2015'). Upon the mediation proceedings not resulting in a settlement, the appellant-plaintiff instituted the aforesaid recovery suit before the learned Commercial Court, Jodhpur on 02.07.2022.

2.4. The learned Commercial Court, Bikaner, vide judgment and decree dated 04.12.2024, dismissed the suit. The dismissal principally rests upon three findings, namely:

(i) The pre-institution mediation undertaken prior to institution of the suit before the learned Commercial Court, Jodhpur did not satisfy the mandate of Section 12A of the Act of 2015 upon presentation of the returned plaint before the learned Commercial Court, Bikaner;

(ii) The suit was barred by limitation, the expiry of the defect liability period on 14.03.2016 having been treated as the starting point for computation thereof; and

(iii) The appellant-plaintiff had not validly availed the contractual remedy contemplated under Clause 24 of the Standard Bidding Document.

3. Learned counsel appearing for the appellant-plaintiff submits that the object underlying Section 12A of the Commercial Courts Act, 2015 is to afford the parties an opportunity to explore an amicable settlement before institution of commercial proceedings and thereby facilitate early resolution of commercial disputes. It is submitted that the statutory requirement is mandatory; however,

once the process contemplated thereunder has admittedly been undertaken in respect of the same commercial dispute, the provision does not contemplate repetition of the identical exercise merely on account of return of the plaint for presentation before the Court having competent territorial jurisdiction.

3.1. Learned counsel further submits that the appellant-plaintiff had admittedly undergone the process of pre-institution mediation prior to institution of the suit before the learned Commercial Court, Jodhpur and, therefore, the requirement under Section 12A of the Act of 2015 stood duly complied with. According to learned counsel, the subsequent return of the plaint and its presentation before the learned Commercial Court, Bikaner did not alter the parties, the underlying commercial dispute or the relief claimed. Thus, mere change of the Court before which the plaint came to be presented could not render the pre-institution mediation already undertaken ineffective or necessitate a fresh process under Section 12A of the Act of 2015.

3.2. Assailing the finding on limitation, learned counsel for the appellant-plaintiff submits that the learned Commercial Court proceeded from the expiry of the defect liability period on 14.03.2016 directly to the date of institution of the suit, without determining the point at which the amount claimed became due and the right to sue for its recovery accrued under the contractual framework. It is further submitted that the appellant-plaintiff had invoked the dispute resolution mechanism contemplated under Clause 24 of the Standard Bidding Document by approaching the Standard Empowered Committee and depositing the prescribed fee of Rs.15,400/-. The claim, however, was not decided by the Committee and the appellant-plaintiff thereafter issued the legal notice dated 14.08.2018 and pursued the dispute further. According to learned counsel, the aforesaid chronology and the legal effect, if any, of the proceedings undertaken under the contractual mechanism were required to be examined before returning a finding that the suit was barred by limitation.

3.3. Learned counsel for the appellant-plaintiff further submits that the learned Commercial Court erred in concluding that the contractual dispute resolution mechanism under Clause 24 had not been validly invoked merely on account of the alleged deviation from the procedure prescribed thereunder. It is contended that the appellant-plaintiff had approached the Standard Empowered Committee and deposited the requisite fee; therefore, the steps actually undertaken by the appellant-plaintiff, the nature of the procedural requirement alleged to have been breached and the legal consequence of such breach were required to be examined with reference to Clause 24 itself. According to learned counsel, the issue could not have been concluded solely by recording procedural non-compliance without determining its effect under the contractual framework.

4. *Per contra*, learned counsel appearing for the respondents submits that upon return of the plaint by the learned Commercial Court, Jodhpur and its subsequent presentation before the learned Commercial Court, Bikaner, the proceedings before the latter Court constituted a fresh institution of the suit in the eye of law. It is, therefore, contended that the appellant-plaintiff was required

to satisfy the mandatory statutory requirements applicable on the date of such institution, including compliance with Section 12A of the Commercial Courts Act, 2015. According to learned counsel, the pre-institution mediation undertaken prior to institution of the suit before the learned Commercial Court, Jodhpur could not dispense with the requirement of compliance upon fresh presentation of the plaint before the Court of competent territorial jurisdiction.

4.1. Learned counsel further supports the finding recorded by the learned Commercial Court on the issue of limitation. Placing reliance upon the judgment of the Hon'ble Supreme Court in ***Geo Miller and Company Private Limited Vs. Chairman, Rajasthan Vidyut Utpadan Nigam Limited*, (2020) 14 SCC 643**, particular emphasis has been laid upon paragraph 21 thereof, which reads as follows:-

> *"Applying the aforementioned principles to the present case, we find ourselves in agreement with the finding of the High Court that the appellant's cause of action in respect of Arbitration Applications Nos.25/2003 and 27/2003, relating to the work orders dated 7-10-1979 and 4-4-1980 arose on 8-2-1983, which is when the final bill handed over to the respondent became due. Mere correspondence of the appellant or by way of writing letters/reminders to the respondent subsequent to this date would not extend the time of limitation. Hence the maximum period during which this Court could have allowed the appellant's application for appointment of an arbitrator is 3 years from the date on which cause of action arose i.e. 8-2-1986. Similarly, with respect to Arbitration Application No.28/2003 relating to the work order dated 3-5-*

1985, the respondent has stated that final bill was handed over and became due on 10-8-1989. this has not been disputed by the appellant. Hence the limitation period ended on 10-81992. Since the appellant served notice for appointment of arbitrator in 2002, and requested the appointment of an arbitrator before a court only by the end of 2003, his claim is clearly barred by limitation."

4.2. On the strength of the aforesaid judgment, learned counsel submits that limitation commences when the cause of action first accrues and cannot be extended or revived merely by subsequent correspondence, representations, reminders or issuance of a legal notice. It is contended that continued pursuit of a claim does not constitute a continuing cause of action and, therefore, the steps subsequently taken by the appellant-plaintiff could not, by themselves, save an otherwise time-barred claim. According to learned counsel, the learned Commercial Court has rightly held the suit to be barred by limitation.

4.3. Learned counsel further submits that the appellant-plaintiff, having sought to invoke the dispute resolution mechanism contemplated under Clause 24 of the Standard Bidding Document, was bound to adhere to the procedure prescribed thereunder. It is contended that mere submission of a claim before the Standard Empowered Committee or deposit of the prescribed fee would not constitute a valid invocation of the contractual mechanism if the procedure stipulated under Clause 24 was not duly followed. According to learned counsel, the appellant-plaintiff cannot derive any legal advantage from steps taken contrary to the agreed contractual procedure, nor can such steps have the effect of extending the period of limitation.

4.4. Learned counsel relied on the following judgments:

(i.) M/S Dhanbad Fuels Private Limited vs Union of India & Anr. (SLP (C) No. 4980 of 2021, decided on 15.05.2025)

(ii.) Oil and Natural Gas Corporation Limited vs Modern Construction and Co., (2014) 1 SCC 617;

(iii.) Geo Miller and Company Private Limited vs Chairman, Rajasthan Vidyut Utpadan Nigam Limited, (2020) 14 SCC 643;

(iv.) Patil Automation Private Limited and Ors. Vs Rakheja Engineers Private Limited, (2022) 10 SCC 1;

5. Heard learned counsel for the parties and perused the material available on record as well as perused the judgments cited at the Bar.

6. Upon consideration of the rival submissions and the impugned judgment, this Court finds that the dismissal of the suit essentially rests upon three distinct grounds, namely, (i) non-compliance with Section 12A of the Act of 2015; (ii) limitation; and (iii) non-compliance with the procedure contemplated under Clause 24 of the Standard Bidding Document. The aforesaid issues are, therefore, required to be examined in the same sequence.

7. At the outset, this Court deems it appropriate to deal with the objection regarding Section 12A of the Act of 2015. There can be no dispute that the requirement of pre-institution mediation under Section 12A is mandatory where the suit does not contemplate any urgent interim relief. The said position stands settled by the Hon'ble Supreme Court in ***Patil Automation***

***Private Limited & Ors. Vs. Rakheja Engineers Private Limited* (supra)** and has been reiterated in ***M/s Dhanbad Fuels Private Limited Vs. Union of India & Anr.* (supra)**.

7.1. The present case, however, does not involve a situation where the appellant-plaintiff instituted the suit without undergoing the process of pre-institution mediation. Admittedly, prior to institution of the suit before the learned Commercial Court, Jodhpur on 02.07.2022, the appellant-plaintiff had undergone the process contemplated under Section 12A of the Act of 2015, which did not result in settlement. Subsequently, upon establishment of the learned Commercial Court at Bikaner having territorial jurisdiction over the dispute, the plaint was returned by the learned Commercial Court, Jodhpur under Order VII Rule 10 CPC and was thereafter presented before the learned Commercial Court, Bikaner.

7.2. The respondents have relied upon ***Oil and Natural Gas Corporation Limited Vs. Modern Construction and Co.* (supra)** to contend that presentation of a returned plaint before the competent Court amounts to fresh institution of the suit. The said principle, however, does not answer the issue arising in the present case. The question before this Court is whether the process of pre-institution mediation, already undertaken between the same parties in respect of the same commercial dispute, was required to be repeated merely because the plaint was returned and presented before the Court having territorial jurisdiction.

7.3. This Court notes that Section 12A is intended to ensure that, before a commercial dispute is brought before the Court, the parties are afforded an opportunity to explore its resolution through mediation. In the present case, such an opportunity had already been afforded to the parties and the process contemplated under Section 12A had concluded without settlement before the suit was initially instituted at Jodhpur. The subsequent return and presentation of the plaint did not bring into existence a new commercial dispute, nor did it alter the identity of the parties, the underlying contract or the relief claimed.

7.4. Neither Section 12A nor the judgments cited before this Court have been shown to require repetition of an already concluded pre-institution mediation process in such circumstances. The mandatory character of Section 12A undoubtedly requires strict compliance with the statutory requirement before institution of a commercial suit to which the provision applies; however, where the prescribed process has already been undertaken in respect of the same dispute between the same parties, such compliance cannot be rendered ineffective merely because the plaint is subsequently returned for presentation before the Court of competent territorial jurisdiction.

7.5 Thus, requiring the appellant-plaintiff to undergo the identical mediation process once again before presentation of the returned plaint at Bikaner would amount to repetition of an exercise already undertaken in respect of the very same commercial dispute.

8. This brings the Court to the second issue, namely, limitation. The learned Commercial Court has treated 14.03.2016, being the date of expiry of the defect liability period, as the starting point of

limitation and, proceeding on that basis, held the suit instituted on 02.07.2022 to be barred by limitation.

8.1. In ***Geo Miller* (supra),** the Hon'ble Supreme Court has held that mere correspondence, letters or reminders issued after accrual of the cause of action do not extend the period of limitation. Therefore, the legal notice dated 14.08.2018 or the continued pursuit of the claim by the appellant-plaintiff could not, by themselves, extend or revive the period of limitation once the right to sue had accrued.

8.2. The principle laid down in ***Geo Miller* (supra)**, however, necessarily requires the Court to first identify the point of time at which the cause of action or the right to sue actually accrued. In Geo Miller (supra), the date on which the final bill became due was identified as the relevant date for such purpose. In the present case, however, the learned Commercial Court has proceeded on the premise that limitation commenced upon expiry of the defect liability period on 14.03.2016.

8.3. The defect liability period under the contract related to the obligation of the contractor to carry out repair and maintenance for the stipulated period. The impugned judgment, however, does not record as to how the expiry of the said period, by itself, rendered the maintenance bills or the amount claimed by the appellant-plaintiff due and payable. The date of expiry of the defect liability period and the date on which the right to recover the claimed amount accrued could not have been treated as necessarily identical without examining the relevant contractual terms and the nature of the claim raised by the appellant-plaintiff.

8.4. The appellant-plaintiff has specifically pleaded that after expiry of the defect liability period, it approached the departmental mechanism contemplated under Clause 24 on 07.11.2017 and deposited the prescribed fee of Rs.15,400/-. It thereafter issued the legal notice dated 14.08.2018 and pursued arbitral proceedings, which came to be closed on 24.07.2019 without adjudication of the claim on merits. The suit was thereafter instituted on 02.07.2022.

8.5. At this stage, it is necessary to clarify that this Court is not recording any finding that the aforesaid correspondence or proceedings, by themselves, extended the period of limitation or generated a fresh cause of action. Equally, the closure of the arbitral proceedings on 24.07.2019 cannot, merely on that account, be treated as the starting point of limitation. The legal effect, if any, of the proceedings undertaken by the appellant-plaintiff has to be independently examined with reference to the terms of the contract and the applicable law.

8.6. The primary question requiring determination was, therefore, the point of time at which the amount claimed by the appellant-plaintiff became due and payable and, consequently, when the right to sue for recovery thereof first accrued. It is only upon determination of the said date that the subsequent events and their legal effect, if any, could be examined for the purpose of determining whether the suit was within limitation.

8.7. The learned Commercial Court, however, proceeded directly from the expiry of the defect liability period on 14.03.2016 to the date of institution of the suit, without undertaking the aforesaid exercise. Therefore, while the principle laid down in ***Geo Miller (supra)*** remains fully applicable, the finding on limitation, in the manner recorded in the impugned judgment, cannot be sustained without a proper determination of the date on which the right to sue first accrued. The issue of limitation, therefore, requires fresh consideration by the learned Commercial Court.

9. The third issue concerns compliance with Clause 24 of the Standard Bidding Document. The learned Commercial Court has held that the appellant-plaintiff did not follow the procedure prescribed under the said Clause and, therefore, had not validly invoked the contractual dispute resolution mechanism.

9.1. As noticed in the impugned judgment, Clause 24 contemplated a sequence for resolution of disputes. The dispute was first required to be placed before the authority specified under the contractual mechanism and, upon the dispute remaining unresolved, the contractor could approach the Standing Empowered Committee in the prescribed manner. The learned Commercial Court found that the appellant-plaintiff approached the Standing Empowered Committee without first following the earlier stage contemplated under Clause 24.

9.2. The appellant-plaintiff, however, contends that it had approached the departmental authorities and thereafter submitted its claim before the Standing Empowered Committee along with the prescribed fee of Rs.15,400/-. Its specific case is that the objection raised by the respondents related to the authority approached at the earlier stage, namely, that the appellant-plaintiff approached the Chief Engineer instead of the Additional

Chief Engineer. According to the appellant-plaintiff, such deviation was merely procedural and could not, by itself, result in rejection of the recovery claim.

9.3. In the considered opinion of this Court, determination of the aforesaid issue required a closer examination of the terms of Clause 24 itself. The learned Commercial Court was required to examine the sequence prescribed under the said Clause, the authorities required to be approached at each stage, and the steps actually undertaken by the appellant-plaintiff. Upon such examination, it was further required to determine the legal consequence, if any, flowing from the appellant-plaintiff having approached an authority other than the one specified under the contractual mechanism.

9.4. Undoubtedly, the mere fact that the appellant-plaintiff deposited the prescribed fee and approached the Standing Empowered Committee would not, by itself, establish due compliance with the procedure contemplated under Clause 24. At the same time, before rejecting the appellant-plaintiff's case on the ground of non-compliance, the learned Commercial Court was required to determine the precise nature of the procedural deviation and the legal consequence attached thereto under the contractual framework.

9.5. The aforesaid aspects have not been examined in the impugned judgment in the manner required for a conclusive determination of the issue. This Court, therefore, refrains from recording any final finding regarding compliance or non-compliance with Clause 24. The issue requires fresh consideration by the learned Commercial Court with reference to the contractual terms, the authorities designated thereunder, the steps actually undertaken by the appellant-plaintiff and the material available on record.

10. The discussion aforesaid leads this Court to conclude that the finding of the learned Commercial Court regarding non-compliance with Section 12A of the Act of 2015 cannot be sustained and hence is *set-aside*, since the appellant-plaintiff had already undergone the process of pre-institution mediation in respect of the same commercial dispute before the initial institution of the suit. As regards limitation, the learned Commercial Court was required to first determine when the amount claimed became due and payable and when the right to sue first accrued, rather than treating the expiry of the defect liability period, without further examination, as the starting point of limitation. Similarly, the issue regarding compliance with Clause 24 required examination of the contractual procedure, the steps actually undertaken by the appellant-plaintiff and the legal consequence of the alleged deviation therefrom.

10.1. Since the findings on limitation and compliance with Clause 24 require fresh consideration on the basis of the contractual stipulations, pleadings and material available on record, this Court considers it appropriate not to express any opinion on the merits of those issues. The appellant-plaintiff's substantive claim for recovery is, consequently, also required to be adjudicated afresh in accordance with law.

11. Accordingly, the present appeal is ***allowed***. The judgment and decree dated 04.12.2024 passed by the learned Commercial Court, Bikaner in Civil Original No.36/2023 are hereby quashed and set aside.

12. The matter is remanded to the learned Commercial Court, Bikaner for fresh adjudication in accordance with law. The finding recorded by this Court regarding compliance with Section 12A of the Act of 2015 shall bind the learned Commercial Court. The issues pertaining to limitation, compliance with Clause 24 of the Standard Bidding Document, and the merits of the appellant-plaintiff's claim shall remain open for independent consideration.

13. The parties shall be at liberty to raise all factual and legal submissions available to them. The learned Commercial Court shall decide the matter on the basis of the pleadings, contractual stipulations and evidence available on record, uninfluenced by the findings recorded in the impugned judgment on the issues left open by this Court. The proceedings shall continue from the stage of final hearing.

14. The parties are directed to appear before the learned Commercial Court, Bikaner on 10.08.2026.

15. All pending application(s) stand disposed of.

(PRAVEER BHATNAGAR),J **(PUSHPENDRA SINGH BHATI),J**

11/Raksha Rakhecha/632