Case Citation: (2026) ibclaw.in 6126 HC

IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

ON THE 1st OF OCTOBER, 2026

CIVIL REVISION No. 1046 of 2026

CNR No.: MPHC030249592026

ATC 9 STEELS LIMITED THROUGH ITS MANAGING DIRCETOR SHRI ANIL KUMAR KISHORILAL AGRAWAL

Versus

M/S BALAJI ENTERPRISES THROUGH ITS PROPRIETOR SHRI SANTOSH AGRAWAL AND OTHERS

Appearance:

Mr. Rohit Sharma and Mr. Hemant Singh Rana - Advocates for the respondents appeared through VC.

ORDER

The applicant, who is defendant no.1 in the civil suit, is aggrieved by the order dated 29.07.2026 passed by the 20th District Judge and Special Judge (Commercial Act), Gwalior, in Commercial Suit No.12 of 2025, whereby its application under Order 7 Rule 11 of CPC has been rejected by the trial Court.

2. The respondent no.1/plaintiff has filed a suit for recovery of Rs.1,50,64,193/-, together with interest, against the defendants. It has been averred in the plaint that he supplied sponge iron to defendant no.1, and the same was delivered to defendant no.2 on the instructions of defendant no.1. However, the payment thereof is not made.

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3. After receiving summons, defendant no.1 entered appearance and filed an application under Order 7 Rule 11 of CPC seeking rejection of the plaint on the ground that the plaint does not disclose any cause of action or any enforceable right against defendant no.1. An objection regarding non-compliance with Section 12-A of the Commercial Courts Act was also raised. The defendant also sought rejection of the plaint on the ground that the court lacks territorial jurisdiction, inasmuch as both the defendants are situated beyond the territorial jurisdiction of the Court and the goods were delivered outside the jurisdiction of the Court. An objection of misjoinder of parties was also raised, stating that the plaintiff has no privity of contract with defendant no.1 and no delivery of goods was made to defendant no.1.

4. Respondent No.1/plaintiff opposed the application by filing reply. The learned trial Court, vide impugned order dated 29.07.2026, has rejected the application, challenging which the present revision has been filed.

5. The learned counsel for applicant challenged the order of trial Court and reiterated the submissions already noted above. He also relied upon Apex Court judgment in the case of ***Patil Automation (P) Ltd. Vs. Rakheja Engineers (P) Ltd.,*** reported in ***(2022) 10 SCC 1*** in support of his submission regarding non-compliance of Section 12A of Commercial Courts Act.

6. Considered the submissions.

7. It is settled in law that while deciding an application under Order 7 Rule 11 CPC, only the averments made in the plaint are required to be seen. The Apex Court, in the case of ***Om Aggarwal vs. Haryana Financial Corpn.*** reported in ***(2015)4 SCC 371***, dealt with the issue as under:

> *"16. An application for rejection of the plaint can be filed, if the allegations made in the plaint taken to be correct as a whole on its face value show the suit to be barred by any law. The question as to whether a suit is barred by any law or not would always depend upon the facts and circumstances of each case. However, for deciding this question, only the averments made in the plaint are relevant. Since the question of jurisdiction of the civil court to entertain and try the civil suit goes to the very root of the case and hence it can be raised at any time by the defendant by taking recourse to the provisions of Order 7 Rule 11 of the Code. Indeed, this principle of law is well settled."*

8. The plaintiff has averred that, on instructions of defendant no.1, it supplied goods to defendant no.2. From the plaint, it is gathered that both the defendants are situated at Bhopal. The plaintiff's registered office is at Gwalior. The plaint is filed alleging that, on the demand and instructions of defendant no.1, the goods were delivered to defendant no.2 at Mandideep by the plaintiff from Gwalior. In paragraph 10, the plaintiff has averred about the cause of action regarding non-payment of the amount for the goods supplied. Thus, the submission of the applicant that the plaint does not disclose any cause of action cannot be accepted at this stage.

9. It is also gathered that the plaintiff is situated at Gwalior and, as per the plaint averments, all the orders were placed by the defendants at Gwalior. Further, the goods were also supplied from Gwalior to the defendants. Thus, it cannot be said that no part of the cause of action arose within the territorial jurisdiction of the learned trial Court. It is settled that even where a small part of the cause of action arises, the suit can be filed before the Court having jurisdiction in respect thereof.

10. Regarding the objection of misjoinder of parties, Order 1 Rule 9 of the CPC is relevant, which reads as under:

> *"9. Mis-joinder and non-joinder.*
> *No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:*
> *Provided that nothing in this rule shall apply to non-joinder of a necessary party."*

11. Thus, no suit can be dismissed on the ground of misjoinder of parties. There is no objection raised by the applicant regarding non-joinder of necessary party.

12. The applicant also raised an objection regarding non-compliance with Section 12-A of the Commercial Courts Act, which mandates pre-litigation mediation before filing of the suit. Sub-section (1) of Section 12-A provides that a suit which does not contemplate any urgent interim relief, shall not be instituted unless the plaintiff exhausts the remedy of pre-litigation mediation in accordance with the manner and procedure prescribed under the rules. It is the contention of the applicant that no notice of pre-litigation mediation was received by him.

13. Respondent No.1/plaintiff, in its reply, has stated that the suit has been filed after due compliance with Section 12-A of the Act, inasmuch as, on the plaintiff's application, the District Legal Services Authority issued notices to defendant no.1 on two occasions at its registered office. It is also averred that the notice was dispatched to defendant no.1 at its official email

address. It is alleged that, despite service of notice, defendant no.1 did not appear to participate in the mediation proceedings.

14. The Apex Court has considered the provisions of Section 12-A of the Act vis-à-vis Order 7 Rule 11 of CPC in the case of ***Patil Automation (P) Ltd. (supra)***. The provision has been held to be mandatory, and a suit filed in violation of the mandate of Section 12-A was held liable to be rejected under Order 7 Rule 11 of the CPC. The Apex Court has observed in paragraph 113 as under:

> *113. Having regard to all these circumstances, we would dispose of the matters in the following manner:*
> *113.1. We declare that Section 12-A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order 7 Rule 11. This power can be exercised even suo motu by the court as explained earlier in the judgment. We, however, make this declaration effective from 20-8-2022 so that stakeholders concerned become sufficiently informed.*
> *113.2. Still further, we however direct that in case plaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff.*
> *113.3. Finally, if the plaint is filed violating Section 12-A after the jurisdictional High Court has declared Section 12-A mandatory also, the plaintiff will not be entitled to the relief.*

15. Even though the applicant raised a specific objection regarding non-compliance with Section 12-A and respondent no.1 responded to the

Case Citation: (2026) ibclaw.in 6126 HC

same, the learned trial Court has not given any specific finding on this aspect. As held by the Apex Court, if the provisions of Section 12-A of the Act are not complied with, the suit is liable to be rejected. Therefore, the learned trial Court should have given a specific finding regarding compliance with Section 12-A. Since no finding in this regard has been recorded by the trial Court, the issue needs to be reconsidered by the trial Court.

16. Accordingly, the impugned order, so far as it relates to all other objections raised by applicant, is upheld. The learned trial court is, however, directed to reconsider the application only with regard to the objection regarding non-compliance with Section 12-A of the Commercial Courts Act. Needless to mention that the trial court shall take into account the provisions of Section 12-A as also the rules framed under the Act in this regard., while reconsidering the application.

17. Since, the mistake in the order is apparent, the matter is being remitted to the trial court without notice to respondent no.1 in order to save time. However, if respondent no.1 feels aggrieved, he is granted liberty to approach this Court by filing a review petition.

18. The petition is **disposed of** with the aforesaid direction.

(ASHISH SHROTI)
JUDGE

bj/-

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