



2026:DHC:5196-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 04.05.2026

Judgment pronounced on: 01.07.2026

Judgment uploaded on: 01.07.2026

+ FAO(COMM) 46/2025

VIJAY

.....Appellant

Through: Mr. Abhijit Mishra, Ms. Payal Bahl, Mr. Himanshu Tomar, Mr. Vikhyat Gupta, Mr. Prashant Jaiswal and Mr. Ram Parvesh Kumar, Advs.

versus

HAVELLS INDIA LIMITED & ORS.Respondents

Through: Mr. Divyansh Jain and Mr. Vidhan Jain, Advs.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal, the Appellant assails the correctness of the Order dated 25.01.2025 (hereinafter referred to as the 'Impugned Order'), whereby the learned District Judge allowed the Respondents' application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') and consequently rejected the Counter-claim instituted by the Appellant.

2. The present Appeal turns upon a pure question of law requiring determination by this Court. The controversy pertains to the scope and applicability of Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as the 'CC Act'), in the context of Counter-



claims instituted in pending commercial suits. The issue assumes significance in light of the differing approaches adopted in various decisions of this Court, *inter alia*:

- i. *Anil Kumar Pitti v. Comsol Energy Private Limited*¹;
- ii. *Sanjana Agarwal v. Namoshivai Apparels Private Limited*²; and
- iii. *Aditya Birla Fashion and Retail Limited v. Mrs Saroj Tandon*³.

ISSUE FOR CONSIDERATION:

3. The question which falls for consideration before this Court is the following: Whether a Defendant instituting a Counter-claim in a pending commercial suit is mandatorily required to independently comply with the pre-institution mediation condition under Section 12A of the CC Act and, if not, in what circumstances such requirement may be regarded as having been satisfied?

FACTUAL MATRIX:

4. Though the present Appeal raises a narrow question of law, a brief recital of the relevant facts is necessary for proper appreciation of the controversy.

5. The Respondents instituted a commercial suit against the Appellant. Pursuant thereto, and in terms of the order dated

¹RFA(COMM.) No.479/2025

²RFA(COMM.) No.212/2023

³CM(M) No.459/2023



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27.05.2024, inspections were conducted on 01.06.2024 and 17.06.2024 with the assistance of the learned Local Commissioner appointed by the Court. Thereafter, the Appellant instituted a Counter-claim founded upon the aforesaid inspections and the commercial relationship subsisting between the parties, contending that the actions undertaken by the Respondents were contrary to, and beyond the scope of, the order dated 27.05.2024.

6. It is not in dispute that, prior to the institution of the Counter-claim, the Appellant did not independently initiate proceedings under Section 12A of the CC Act. It is further undisputed that the original commercial suit itself had been instituted without recourse to pre-institution mediation on account of the urgent interim reliefs sought therein.

7. Subsequently, the Respondents preferred an application under Order VII Rule 11 CPC seeking rejection of the Counter-claim on the ground of non-compliance with Section 12A of the CC Act. By way of the Impugned Order, the learned Commercial Court accepted the said objection and rejected the Counter-claim at the threshold, holding that independent compliance with Section 12A constituted a precondition for the institution of the Counter-claim.

8. While arriving at the aforesaid conclusion, the learned Commercial Court principally relied upon the decision of the learned Single Judge of this Court in *Aditya Birla Fashion (supra)*.

9. Aggrieved by the Impugned Order and the findings returned therein, the Appellant has preferred the present Appeal.



CONTENTIONS ON BEHALF OF THE PARTIES:

10. This Court has heard learned counsel representing the parties, and perused the material placed on record.

11. Learned counsel representing the Appellant advanced the following submissions:

i. The expression “suit” occurring in Section 12A of the CC Act does not encompass a set-off or Counter-claim. Consequently, a Counter-claim instituted in a pending commercial suit is not subject to an independent requirement of pre-institution mediation. It was further contended that, despite introducing extensive amendments to the CPC through the CC Act, the Legislature consciously refrained from amending Order VIII Rules 6A, 6B and 6C CPC, thereby indicating that the Legislature did not intend to subject Counter-claims to an independent requirement of pre-institution mediation.

ii. Since the Appellant had not invoked Order VIII Rule 6C CPC seeking exclusion of the Counter-claim from the suit, the Counter-claim continued to remain part of the same proceedings and could not be treated as an independent action for the purposes of Section 12A. Reliance was placed upon *Satyender v. Saroj*⁴, to contend that Counter-claims are intended to avoid multiplicity of proceedings and secure comprehensive adjudication of disputes.

⁴(2022) 17 SCC 154



iii. In commercial suits, Counter-claims are ordinarily instituted within the timeline available for filing the written statement under Order VIII Rule 6A CPC read with Order VIII Rule 1 CPC. It was contended that insistence on prior compliance with Section 12A would, in several cases, render it impracticable for a Defendant to institute a Counter-claim within the prescribed timelines.

iv. While the provisions of the CC Act would prevail in the event of inconsistency, no special amendment having been introduced in respect of Order VIII Rules 6A to 6C CPC, the existing statutory framework governing Counter-claims continues to operate unaffected.

v. The decisions in *Anil Kumar Pitti* (*supra*) and *Sanjana Agarwal* (*supra*) were distinguishable on facts and did not govern the controversy in the present case. It was pointed out that, unlike the present matter, the requirement of pre-institution mediation stood complied with in *Sanjana Agarwal*.

vi. The decision in *Aditya Birla Fashion* (*supra*) does not correctly appreciate the statutory scheme governing Counter-claims under Order VIII Rules 6 and 6A CPC, inasmuch as it treats a Counter-claim as a proceeding wholly distinct from the principal suit for the purposes of Section 12A of the CC Act.

vii. In conclusion, a Counter-claim, though in the nature of a cross-suit, is intended to be adjudicated alongside the principal suit so as to avoid multiplicity of proceedings. Reliance in this



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regard was placed upon *Jag Mohan Chawla v. Dera Radha Swami Satsang*⁵.

12. *Per contra*, learned counsel representing the Respondents supported the Impugned Order and advanced the following submissions:

i. The present Appeal had substantially been rendered academic, as the issue forming the subject matter of the Counter-claim already stood framed and was pending adjudication before the learned Commercial Court in CS (COMM) 294/2024.

ii. The learned Commercial Court rightly rejected the Counter-claim on account of the admitted non-compliance with Section 12A of the CC Act. Reliance was placed upon *Aditya Birla Fashion (supra)* to contend that a Counter-claim constitutes a cross-action by the Defendant and is therefore equally subject to the mandate of Section 12A.

iii. A second round of mediation may not be necessary where pre-institution mediation has already been undertaken between the parties. However, the present case stands on a different footing, since the original suit itself had been instituted without recourse to pre-institution mediation owing to the urgent interim reliefs sought therein. Consequently, the Counter-claim represented the first occasion on which the parties' rival claims could be subjected to mediation under Section 12A.

⁵(1996) 4 SCC 699



iv. A Counter-claim, though instituted in a pending suit, possesses the essential characteristics of an independent suit and is therefore equally amenable to the requirement of pre-institution mediation under Section 12A.

v. Since the controversy before this Court raises a pure question of law, learned counsel did not address the merits of the underlying disputes between the parties.

13. No other submissions have been made by learned counsel representing the parties.

ANALYSIS AND FINDINGS:

14. At the outset, it must be clarified that the present Appeal does not raise any issue concerning the mandatory nature of Section 12A of the CC Act. The said question stands conclusively settled by the Supreme Court in *Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*⁶, wherein it was held that compliance with Section 12A is mandatory in all commercial disputes not contemplating urgent interim relief. The issue before this Court is of a different nature. The question is whether, and in what circumstances, a Defendant seeking to institute a Counter-claim in a pending commercial suit must independently comply with Section 12A.

15. In the considered view of this Court, the issue cannot be answered by adopting either of the two extreme positions canvassed before this Court. To hold that every Counter-claim must invariably

⁶(2022) 10 SCC 1



be preceded by a separate mediation process, irrespective of the surrounding circumstances, would amount to reading Section 12A of the CC Act in an unduly rigid and formalistic manner. Equally, to hold that once mediation proceedings have been initiated between the parties, all future Counter-claims automatically stand exempted from Section 12A would substantially dilute the statutory object underlying the provision.

16. The answer, in the considered view of this Court, lies in the purpose sought to be achieved by Section 12A of the CC Act. The provision does not merely require parties to participate in mediation as a matter of procedural formality. Rather, it seeks to afford the parties a meaningful opportunity to amicably resolve their disputes before being subjected to adversarial litigation. Such opportunity necessarily requires that the disputes sought to be agitated are capable of being meaningfully addressed during the mediation process.

17. Consequently, a material consideration is whether the disputes subsequently sought to be raised by way of Counter-claim had formed part of, or were capable of being meaningfully addressed during, the mediation proceedings undertaken under Section 12A of the CC Act. Where the parties had already been afforded an opportunity to engage with and attempt settlement of such disputes, the legislative object underlying Section 12A may reasonably be said to stand fulfilled. Conversely, where the proposed Counter-claim was never disclosed during mediation proceedings, the statutory requirement cannot be treated as satisfied.



18. The above principle may operate differently depending upon the outcome of the mediation proceedings. Where mediation culminates in a settlement, the question of a subsequent Counter-claim ordinarily would not arise, save where claims have been expressly reserved. Where mediation culminates in a non-settlement report and the Defendant had disclosed its own claims during such proceedings, a further round of mediation prior to institution of the Counter-claim may not be necessary. However, where the Defendant had not disclosed its proposed claims during mediation, or where no mediation proceedings were undertaken at all, compliance with Section 12A would continue to be required before such claims are instituted.

19. The aforesaid understanding is consistent with the observations of the Supreme Court in *Patil Automation (supra)* that pre-institution mediation is intended to produce meaningful results and facilitate settlement of disputes before litigation commences. The legislative emphasis is not merely upon participation in a process, but upon providing parties a genuine opportunity to resolve identified disputes before approaching the Court.

20. It is in this context that the decision of the Co-Ordinate Bench of this Court in *Sanjana Agarwal (supra)* assumes significance. The Co-Ordinate Bench observed that requiring parties to undergo a second round of mediation in respect of disputes that had already formed part of the earlier mediation process would be contrary to the objective of expeditious commercial adjudication. The relevant portion of the said judgment is extracted hereinafter for ready reference:



“25. There is no cavil that under the provisions of the Code of Civil Procedure, 1908, a counter-claim is to be treated as a plaint and governed by the rules applicable to plaint. However, in the case of commercial disputes to say that each counter-claim will be subject to pre-institution mediation process separately when the Plaintiff has already exhausted the remedy of pre-institution mediation, may not be apposite. The object of the CC Act is to ensure speedy resolution of commercial disputes to accelerate economic growth and improve the international image of the Indian Justice System and to restore the faith of the investors. Once a party has taken steps to exhaust the remedy of pre-institution mediation to then ask the opposite party in a case where the subject matter of dispute is entirely the same, to once again undertake pre-institution mediation, prior to filing its counter-claim would defeat the very purpose of the CC Act and delay adjudication of the commercial dispute between the parties.

25.1 The Supreme Court in **Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP**⁹ case has held that the statement of object and reasons for the enactment of the CC Act was the early and speed resolution of the commercial disputes and thus, there was an amendment made and fast track procedure set in place by the CC Act. The relevant extract is set out below:

“31...

The object and purpose of the Commercial Courts Act is to ensure that the Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division of the High Courts and also to ensure that the commercial cases are disposed of expeditiously, fairly and at reasonable cost to the litigant.

...

34. The Schedule to the Commercial Courts Act amends various provisions of the Code of Civil Procedure and thereby makes significant departure from the Code. After Order 13 of the Code, Order 13-A — “Summary Judgment” has been inserted. Order 13A contains the scope and classes of suits to which Order 13-A applies, grounds for summary judgment, procedure to be followed, evidence for hearing of summary judgment, orders that may be made by Court in such proceedings for summary judgment, etc. After Order 15 of the Code, Order 15-A—“Case Management Hearing” has been inserted. Order 15-A provides for first case management hearing (Rule 1); recording of oral evidence on a day-to-day basis (Rule 4); powers of the court in a case management



hearing (Rule 6); adjournment of case management hearing (Rule 7); consequences of non-compliance with orders (Rule 8). By way of amendment, several rules have been incorporated to make the matters of commercial disputes on fast track. In Order 20 of the Code — “Judgment”, Rule 1 has been substituted that within ninety days of the conclusion of arguments, the Commercial Court/Commercial Division/Commercial Appellate Division to pronounce the judgment and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise.

35. Various provisions of the Act, namely, case management hearing and other provisions makes the court to adopt a proactive approach in resolving the commercial dispute. A new approach for carrying out case management and strict guidelines for completion of the process has been introduced so that the adjudicatory process is not delayed. I have referred to the various provisions of the Act and the Schedule bringing in amendments brought to the Civil Procedure Code to deal with the commercial disputes, only to highlight that the trial of the commercial dispute suits is put on fast track for disposal of the suits expeditiously. **Various provisions of the Act referred to above and the amendments inserted to the Civil Procedure Code by the Schedule is to ensure speedy resolution of the commercial disputes in a time bound manner. The intent of the legislature seems to be to have a procedure which expedites the disposal of commercial disputes and thus creates a positive environment for investment and development and make India an attractive place to do business.**”

[Emphasis is ours]

25.2 The Supreme Court analysed the provisions of the CC Act and based on such analysis held that statutory provisions of the CC Act and the language therein should be interpreted purposefully to facilitate the swift resolution of commercial disputes, thereby benefiting litigants involved in trade and commerce and contributing to the country's economic growth. The relevant extract reads as follows:

“42. The object and purpose of the establishment of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of the High Court is to ensure that the cases involved in commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigants. **Keeping in view the object and purpose of the establishment of the Commercial Courts and fast tracking procedure provided under the Act, the**



statutory provisions of the Act and the words incorporated thereon are to be meaningfully interpreted for quick disposal of commercial litigations so as to benefit the litigants especially those who are engaged in trade and commerce which in turn will further economic growth of the country. On the above reasonings, I agree with the conclusion arrived at by my esteemed Brother A.S. Bopanna, J.”

[Emphasis is ours]

26. In the present case, non-starter report which is available shows that the service of the pre-institution mediation was done through email to NAPL and that there was no appearance of NAPL leading to the closure of the pre-institution mediation.

26.1 There is another reason as well. In the present case as both the plaint and the counter-claim emanate from the same series of transactions between the parties. The dispute revolved around the 5 disputed invoices and to that extent the counter-claim is an integral part of NAPL’s defence to Molmek’s claim as articulated in the plaint. In such a scenario, to relegate the parties a period to a second round of preinstitution mediation would be contrary to the object of the CC Act for a speedy resolution of commercial disputes.”

21. In the aforesaid judgment, the Bench noted that, since the Appellant had conceded before the learned Commercial Court that the filing of the Counter-claim did not require compliance with the pre-institution mediation requirement, he was precluded from assailing the maintainability of the Counter-claim on that ground before the Appellate Court. The relevant observations are reproduced below:

“26.2 In any event, as stated above, although initially an objection on this aspect was taken by Molmek before the learned Commercial Court, Molmek conceded that the remedy of pre-institution mediation prior to filing the counter-claim was not requisite. Thus, Molmek is now precluded from raising such a challenge.”

22. The aforesaid reasoning is consistent with a purposive understanding of Section 12A of the CC Act in cases where the rival claims had already formed part of the pre-institution mediation proceedings.



23. Reliance was also placed on behalf of the parties upon the decision in *Anil Kumar Pitti (supra)*. The said decision, however, arose in an entirely distinct factual matrix. In that case, although pre-institution mediation had been initiated, the suit was subsequently instituted by the opposite party and not by the party which had invoked Section 12A of the CC Act. While emphasising the object of the CC Act, namely, the expeditious resolution of commercial disputes, the Bench rejected the contention that the statutory requirement stood satisfied merely because pre-institution mediation had earlier been initiated by the opposite party. Significantly, the Bench also noted that the claim sought to be agitated by the Appellant had never formed part of the claims referred to mediation. The relevant observations are reproduced below:

“31. Besides, even on a reading of the reference to pre-litigation mediation, as invoked by the respondent, and the specific paragraphs thereof to which Mr. Kaushik has drawn our attention, we are not in a position to accept the submission that the dispute which forms subject matter of the present suit has already endured an exercise of prelitigation mediation. The specific dispute which was referred to the mediation at the instance of the respondent was the respondent’s claim against the appellant of ₹ 2.10 crores. No doubt, para 4(8) of the note referring the matter to mediation does advert to the claim of the appellant against the respondent and states that it is an unmerited claim. That, however, would not constitute exhaustion, by the appellant, of the mandate of Section 12A of the Commercial Courts Act.

32. We, therefore, do not accept Mr. Kaushik’s submission that the appellant had exhausted the remedy of pre-institution mediation, or that insisting on the appellant doing so would amount to an exercise in duplication. To our mind, this would be the first pre-institution mediation on the claim of the appellant against the respondent for ₹ 3.8 crores.”

24. Further, the decision in *Anil Kumar Pitti (supra)*, though rendered in a distinct factual context, lends support to the proposition



that where the claims sought to be agitated had never formed part of the process contemplated under Section 12A of the CC Act, independent compliance may still be required. The dismissal of the contention therein rested on the finding that the Appellant's monetary claim had never been referred to mediation. The relevant consideration, therefore, is whether the parties had previously been afforded an opportunity to engage with and attempt an amicable resolution of the disputes subsequently sought to be raised.

25. Reliance was also placed by learned counsel representing the Respondents upon the decision of the learned Single Judge of this Court in *Aditya Birla Fashion (supra)*, which has also formed the basis of the Impugned Order. The said decision proceeds on the premise that independent compliance with Section 12A of the CC Act is invariably required prior to the institution of a Counter-claim. However, for the reasons already indicated hereinabove, said observations arose in a distinct factual context and, in the considered opinion of this Court, do not govern the controversy arising in the present case.

26. The learned Single Judge in *Aditya Birla Fashion (supra)* observed that treating the requirement of pre-institution mediation under Section 12A of the CC Act as optional would amount to altering the rules of the game during the course of the proceedings. Reliance was also placed upon the decision of the Supreme Court in *Patil Automation (supra)* to hold that, in the absence of a claim for urgent interim relief, the mandate of Section 12A admits of no waiver. This Court is in agreement with the proposition that compliance with



Section 12A is mandatory in cases not involving urgent interim relief. However, as noticed hereinabove, the issue arising in the present Appeal is not the mandatory character of Section 12A, which stands conclusively settled by *Patil Automation*, but the circumstances in which such mandate can be regarded as having been fulfilled in the context of a Counter-claim arising between parties who have not undergone a process of pre-institution mediation.

27. This Court also finds no merit in the contention advanced on behalf of the Appellant that a Counter-claim does not fall within the ambit of the expression “suit” occurring in Section 12A of the CC Act. The scheme of the CPC recognizes a Counter-claim as being in the nature of a cross-suit and accords to it many of the incidents of an independent suit. The controversy, therefore, is not whether a Counter-claim is, in principle, amenable to the mandate of Section 12A, but whether, on the facts of a given case, insistence upon a fresh round of mediation would further the object sought to be achieved by Section 12A.

28. Learned counsel representing the Appellant also advanced a further submission, noticed in Paragraph No.11(iii) hereinabove, that an unqualified application of Section 12A of the CC Act to every Counter-claim would, in many cases, operate to the prejudice of a Defendant. It was contended that a written statement in a commercial suit is required to be filed within thirty (30) days, extendable up to a maximum period of one hundred and twenty (120) days, and that Order VIII Rule 6A CPC contemplates the institution of a Counter-claim before the Defendant has delivered its defence or before the



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time prescribed for delivering such defence has expired. It was thus argued that, if a Defendant were invariably required to undertake pre-institution mediation prior to filing a Counter-claim, the period prescribed under Section 12A for completion of mediation, namely three months extendable by a further two months, could in certain cases exceed the outer limit prescribed for filing the written statement, thereby hindering the right to institute a Counter-claim.

29. The argument of learned counsel for the Appellant proceeds on an incorrect reading of Order VIII Rule 6A CPC. The said provision enables a Defendant to set up, by way of Counter-claim, any right or claim arising from a cause of action accruing against the Plaintiff either before or after the institution of the suit, provided such cause of action accrues before the Defendant has delivered its defence or before the time limited for delivering the defence has expired. The provision merely stipulates the stage up to which a Counter-claim may be founded on an accruing cause of action; it does not expressly mandate that every Counter-claim must invariably accompany the written statement.

30. This Court may also notice that Section 12A of the CC Act itself contains a safeguard inasmuch as the period during which the parties remain engaged in the pre-institution mediation process is liable to be excluded for the purposes of limitation. The apprehension that requiring recourse to pre-institution mediation would, in every case, defeat the Defendant's right to institute a Counter-claim is, therefore, misplaced.



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31. Further, in the present case, it is undisputed that no pre-institution mediation proceedings whatsoever were undertaken prior to the institution of the commercial suit, the same having been instituted on the basis of the exception carved out under Section 12A of the CC Act in respect of urgent interim reliefs. Consequently, the disputes now sought to be agitated by way of the Counter-claim were never subjected to the statutory process contemplated under Section 12A, nor were the parties afforded an opportunity to explore an amicable resolution thereof before the institution of the Counter-claim.

32. In the instant case, acceptance of the proposition canvassed by the Appellant would effectively amount to judicially creating an unqualified exemption in favour of all Counter-claims, irrespective of whether the underlying disputes had already formed part of, or were capable of being addressed during, the mediation process. Such an interpretation, in the view of this Court, would not only dilute the mandate of Section 12A of the CC Act but would also run contrary to the ratio laid down by the Supreme Court in *Patil Automation*(*supra*).

33. Hence, where the claims forming the subject matter of a Counter-claim had already been subjected to pre-institution mediation and the parties had been afforded an opportunity to explore an amicable settlement thereof, insistence upon a fresh round of mediation may, in an appropriate case, frustrate the objective of expeditious commercial adjudication. Conversely, where the proposed Counter-claim had never formed part of any mediation process, or where no mediation had been undertaken at all, independent compliance with Section 12A of the CC Act would ordinarily be



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required.

CONCLUSION:

34. Applying the aforesaid principles to the facts of the present case, since no pre-institution mediation whatsoever was undertaken, the claims forming the subject matter of the Counter-claim were never subjected to the statutory process contemplated under Section 12A.

35. In view thereof, this Court finds no infirmity in the conclusion reached by the learned Commercial Court in rejecting the Counter-claim on the ground of non-compliance with Section 12A of the CC Act.

36. The Appeal is accordingly dismissed, *albeit* for reasons partly differing from those assigned in the Impugned Order.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

JULY 01, 2026/sp/shah