IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

COMMERCIAL FIRST APPEAL NO. 23 OF 2025

Jivaraj Ravaji Gandhi
Through its partner
Hiralal Maniklal Gandhi ...Appellant

Versus

Solapur Jilha Dudh Utpadak va
Prakriya Sangh Maryadit Solapur & Ors. ...Respondents

Dr. Santosh Shah a/w. Ms. Darshana Kalamkar, Mr. Paras Shah, Mr. Swapnil Chile and Mr. Prithviraj Patil, for the Appellant.

Mr. Sarang Aradhye a/w. Ms. Dnyaneshwari Utpat and Mr. Shantanu Gurav, for the Respondents.

Coram: **Madhav J. Jamdar &**
Pravin S. Patil, JJ.
Reserved on: **May 8, 2026**
Pronounced on: **August 7, 2026**

JUDGMENT (Per Madhav J. Jamdar, J.):

1. Heard Dr. Santosh Shah, learned Counsel for the Appellant and Mr. Sarang Aradhye, learned Counsel for the Respondents.

2. The challenge in this Commercial First Appeal is to the legality and validity of common order dated 21st August 2025 passed by the learned District Judge–1, Malshiras (Commercial Court) below Exhibit-1 and Exhibit-13 in Commercial Suit No.1 of 2024.

3. By the impugned Order, the Exhibit-13 application seeking rejection of Plaint filed under Order VII Rule 11 of the *Code of Civil Procedure, 1908* ("**CPC**") filed by the original Defendants i.e. the Respondents in the present Commercial First Appeal came to be allowed and the Plaint was rejected. Learned Trial Court while rejecting the Plaint passed the following Operative Order:

> "***O R D E R***
>
> *1) Application at Exh.13 is allowed.*
>
> *2)* ***The plaint is rejected as per Order VII Rule 11 of the Civil Procedure Code due to failure to comply Rule 3 (3) of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 on the part of plaintiff before filing of suit.***
>
> *03) In view of nature of proceeding both parties to bear their respective costs.*
>
> *04) The rejection of plaint under Order VII Rule 11 of the Civil Procedure Code is in the form of appealable decree and so decree be drawn accordingly.*"
>
> (Emphasis added)

Thus, the Plaint came to be rejected primarily on the ground that the Plaintiff failed to comply with Rule 3(3) of the *Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018* ("**the said Rules**").

SUBMISSIONS ON BEHALF OF THE APPELLANT:

4. Dr. Shah, learned Counsel for the Appellant raised the following contentions:

i. The facts on record would indicate that the Appellant had approached the District Legal Services Authority, Malshiras ("**DLSA**") as per the rules for pre-institution mediation and settlement proceeding and the DLSA issued two notices dated 29th April 2023 and 21st October 2023 to the Respondents and thereafter gave a non starter report due to non appearance of the Respondents. Therefore, it is submitted that the responsibility of the Appellant i.e. the Plaintiff was duly fulfilled.

ii. The Respondents are trying to take advantage of their own wrong of not appearing before the DLSA and not showing willingness to go for mediation but later on alleging non compliance of Rule 3(3) of the said Rules in the Order VII Rule 11 Application as well as the Written Statement.

iii. The learned Trial Court ought to have sent the matter back to mediation keeping the Suit in abeyance.

iv. Learned Counsel relies on the decision of the Supreme Court in the case of ***Patil Automation Private Limited v. Rakheja Engineers Private Limited***[1] and submits that the Supreme Court in the said decision has upheld the decision of this Court in the case of ***Deepak Raheja v. Ganga Taro Vazirani***[2], where a Division Bench of this Court had stayed the Suit and the impugned order for a period of three

1 (2022) 10 SCC 1
2 2021 SCC OnLine Bom 3124

months and referred the parties to mediation. It is further submitted that in the case of ***Patil Automation Private Limited*** (supra) there was a complete non compliance of Rule 3 of the said Rules by the Appellant. Learned Counsel relied on Paragraph No.53 of ***Patil Automation Private Limited*** (supra).

v. Learned Counsel also relies on the decision of the Delhi High Court in the case of ***Kapil Goel v. Ram Dulare Yadav***[3] and more particularly on Paragraph No.16 of the same and submits that the said decision is squarely applicable to the facts of this case.

vi. It is clear from reading of the entire Rule 3 of the said Rules that, the only duty cast on the Appellant is to make an application to the Authority along with a prescribed fee of Rs.1000/-. This duty is fulfilled by the Appellant as can be seen from Page Nos.27 to 31 of the First Appeal, which contains the Application in Form 1 specified in Schedule I as contemplated in Rule 3(1) of the said Rules filed before the DLSA and the receipt of payment of the prescribed fee of Rs.1000/- by the Appellant. The rest of the sub rules of Rule 3 specifically mention that all further steps are to be taken by the Authority and not by the party who has filed the application.

vii. It will be seen from the record of the case that the first notice was issued by the DLSA and made returnable on 8th June 2023 (Page

3 2022 SCC OnLine Del 3873

No.27). Postal receipt of the same is filed on record (Page No.32). However, as there was no response to the first notice the Appellant gave another application and the notice was reissued and made returnable on 30th October 2023. The postal receipt and track report shows that the second notice was delivered to the Respondents on 25th October (Page Nos.34 to 39). The DLSA thereafter, recording about the non appearance of the opposite party, gave a non starter report on 11th December 2023 (Page 40).

viii. After remaining absent in the pre institution mediation process the Respondents filed an Application under Order VII Rule 11 of CPC, after institution of the Suit by the Appellant. The Respondents in the said Application contended that there is non compliance of Rule 3(3) of the said Rules of issuance of final notice. The Trial Court in the impugned Judgment accepted the contention of the Respondents and rejected the Plaint.

ix. In view of above factual position, it is submitted that there is substantial compliance of Rule 3 of the said Rules in as much as two notices were issued to the Respondents. Secondly, even if the argument that the final notice was not issued, is to be considered the said irregularity has occurred from the Authority i.e. the DLSA and not from the Appellant. It is submitted that no act of Court shall harm a litigant. Reliance is placed on the decision of the Supreme Court in the case of ***Jang Singh v. Brij Lal***[4], and more particularly on Paragraph No.6 of the same and on the decision of the Supreme Court in ***Prem Aggarwal v. Mohan Singh***[5] and more particularly on Paragraph Nos.13 to 17 of the same.

x. Learned Counsel submitted that the Respondent have not shown willingness to adopt mediation either at the stage of the Suit or at the stage of the Appeal. Thus, the suit be restored without any further orders relating to mediation. Learned Counsel has reiterated his reliance on the decisions of ***Deepak Raheja*** (supra) and ***Kapil Goel*** (supra) to substantiate the said contention.

xi. Learned Counsel submitted that prejudice will be caused to the Appellant if at this stage the matter is sent back for mediation as unnecessary time will be consumed in the same, which is contrary to the Objects and Reasons of the *Commercial Courts Act, 2015* ("**Commercial Courts Act**").

xii. It is further submitted that great prejudice will be caused to the Appellant if the Appellant i.e. the Original Plaintiff is required to file a fresh Suit for recovery of the claim amount as, there will be a loss of Court Fees already paid in the first Plaint. Moreover, if the Appellant are directed to file a fresh Suit, the clock would be reset, taking the Plaintiff back to the very first day of initiating mediation process again

4 1963 SCC OnLine SC 219
5 2025 SCC OnLine SC 2189

and only thereafter the Suit can be instituted. It is submitted that in fact, the Suit will be barred by law of limitation.

xiii. As the Written Statement has already been filed in the said Commercial Suit No.1 of 2024, the matter has already proceeded. Therefore, the correct course of action would be to restore the said Commercial Suit No.1 of 2024 and also to order full refund of the Court Fees paid in this First Appeal.

<u>SUBMISSIONS ON BEHALF OF THE RESPONDENTS</u>:

5. Mr. Aradhye, learned Counsel for the Respondents raised the following contentions:

i. It ought to have been appreciated that even assuming that the Respondents i.e. the Original Defendants have remained absent despite service of summons/notice, the Authority conducting the Pre-Institution Mediation was required to issue a Final Notice to the opposite party/Defendants as contemplated under Rule 3(3) of the said Rules.

ii. The said Rule 3(3) specifically mandates that where the opposite party/Defendants fail to appear on the first notice, the Authority shall issue a final notice before treating the mediation proceedings as a "non starter". Only upon failure of the opposite party/Defendants to respond to such final notice, the proceedings can be closed and a Non Starter Report be issued.

iii. In the present case, the mandatory requirement of issuing a Final Notice under Rule 3(3) was not complied with and the same is categorically observed by the learned Trial Court in the impugned order by which the Application filed by the Respondents i.e. the Original Defendants under Order VII Rule 11 of CPC was allowed and the Plaint was rejected. Consequently, the pre-institution mediation process cannot be said to have been conducted in accordance with law.

iv. The impugned Order is passed in accordance with law and in view of the law laid down by the Supreme Court in the case of ***Patil Automation Private Limited*** (supra), in which the Supreme Court has held that Section 12A of the Act is mandatory and held that any Suit instituted violating the mandate of Section 12A must be visited with the rejection of the Plaint under Order VII Rule 11 of CPC. This power can also be exercised suo-motu by the Court. The reliance is placed on Paragraphs 62 to 65 of the said decision.

v. By the amending Act, Section 12A came to be inserted. The Rules which came to be published in the Gazette thereby came into force on 3rd July 2018. It is submitted that Rule 3(3) of the said Rules providing for issuing Final Notice has not been complied with.

vi. Learned Counsel also placed reliance on the decision of the Supreme Court in the case of ***Dhanbad Fuels (P) Ltd. v. Union of India***[6]

6 (2025) 9 SCC 424

and submitted that in the said decision the Supreme Court has upheld the view taken in the case of ***Patil Automation Private Limited*** (supra).

vii. Learned Counsel submitted that it is now settled position of law that Section 12A of the Commercial Courts Act read with the provisions of the Rule 3 of the said rules are mandatory in nature in the light of law laid down by the Supreme Court in the matter of ***Patil Automation Private Limited*** (supra), followed by ***Dhanbad Fuels (P) Ltd.*** (supra) and the Division Bench of this Court in the case of ***Deepak Raheja*** (supra).

viii. To counter the submission of the Appellant that failure to issue a final notice as contemplated under Rule 3(3) of the said Rules was a fault of the Authority i.e. the DLSA and not of the Appellant, learned Counsel for the Respondent submitted that the provisions of the statute are to be read "as it is". Learned Counsel relied on ***Taylor v. Taylor***[7] and submitted that where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other way.

ix. Where law requires a thing to be done in a certain manner, it has to be done in that manner and in no other manner. A power must be exercised in the manner provided by law. To substantiate the said

7 [L.R.] 1 Ch.D. 426

contention learned Counsel placed reliance on the following decisions of the Supreme Court:

(a) ***Chandra Kishore Jha v. Mahavir Prasad***[8]

(b) ***Dhanajaya Reddy v. State of Karnataka***[9]

(c) ***J. Jayalalithaa v. State of Karnataka***[10]

x. The procedural defects or lapses would vitiate the proceedings where the statute prescribing the procedure, also prescribed specifically the consequences of non-compliance. Non-compliance with any procedural requirement relating to a pleading, memorandum of Appeal or Application or other relief should entail automatic dismissal or rejection in view of the statute or Rule so mandates.

xi. There are similar provisions under the CPC and the *Maharashtra Co-operative Societies Act, 1960* ("**MCS Act**"). It is submitted that Section 80 of CPC provides that a Notice is mandatory before instituting a Suit against the Government or against the Public Officer in respect of any Act purporting to be done by such Public Officer in his official capacity. The said provision is express, explicit and mandatory in nature and admits no implications or exceptions. To substantiate the said contention reliance is place on the decision of the Supreme Court

8 (1999) 8 SCC 266
9 (2001) 4 SCC 9
10 (2014) 2 SCC 401

in the case of ***Bihari Chowdhary v. State of Bihar***[11] and submitted that in the said decision the Supreme Court has observed that Suit against the Government or a Public Officer, to which the requirement of a prior Notice under Section 80 of CPC is attracted, cannot be validly instituted until the expiration of the period of 2 months. If it is filed before the expiry of the said period, the suit has to be dismissed as not maintainable.

xii. According to Section 107 of the MCS Act, no suit or other legal proceedings shall lie or be proceeded with against the society or the liquidator, except by leave of the Registrar. The said provision, as observed by this Court is mandatory in nature and Suit is not maintainable in the absence of service of valid Notice.

xiii. Learned Counsel points out yet another provision under Section 69 (1) of the *Partnership Act, 1932* ("**Partnership Act**") which says that "*No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.*". To substantiate the said contention, reliance is placed on the decision of the Supreme Court in the case of ***Seth Loonkaran Sethia v.***

11 (1984) 2 SCC 627

Ivan E. John[12], and more particularly on Paragraph No.21 of the same. Thus, it is submitted that the aforesaid provision was held to be mandatory in nature.

xiv. Reliance is also placed on the decision of the Supreme Court in the case of ***Sharif-ud-Din v. Abdul Gani Lone***[13] and more particularly on Paragraph No.9 of the same to substantiate the contention that Rule 3(3) is mandatory.

xv. Learned Counsel submits that under Order VIII Rule 1 of CPC, which contemplates the presentation of Written Statement by the Defendant, there is a provision of "Service of Summons". Order V Rule 9 and Rule 9A contemplates the service of Writ of Summons to be effected by delivery of Summons through the Court. These provisions are required to be given a literal meaning. The statutory procedure of service of Writ of summons cannot be dispensed with. Reliance is placed on the decision of the Supreme Court in the case ***Uma Nath Pandey v. State of U.P.***[14], and submitted that in the said decision it has been held that service of Summons was mandatory. Reliance is also placed on the decision of the Supreme Court in the case ***Auto Cars v. Trimurti Cargo Movers (P) Ltd.***[15], and submitted that in the said decision it has been held that not only service of summons is

12 (1977) 1 SCC 379
13 (1980) 1 SCC 403
14 (2009) 12 SCC 40
15 (2018) 15 SCC 166

mandatory but also the date of hearing must be communicated. It is further submitted that a same view was taken in the case of ***Sushil Kumar Sabharwal v. Gurpreet Singh***[16]. An appearance of Advocate and filling of a Vakalatnama by him can not and does not dispense with the requirement to serve the Writ of Summons, to substantiate the said contention reliance is placed on the decision of a learned Single Judge of this Court in the case of ***Metro Ortem Ltd. v. Maharashtra SRTC***[17]. Thus, it is submitted that the sum and substance is that it is mandatory requirement stipulated under Order VIII Rule 1 and not a mere procedural irregularity.

xvi. If the Authority fails to take cognizance and/or Notice any statutory provision which is mandatory in nature, a duty casts upon the party and/or the Advocate to point out the correct provision of law to the Authority. In the present case, the Plaintiff had submitted an Application as per the provision of Rule 3(1) of the said Rules thereby applying for mediation, as per the provisions of Rule 3(2), the Notice was issued to the Defendant. Then comes into play the provisions of Rule 3(3). Here, the specific wording is used as "*the authority shall issue final notice*". However, the party and/or the Advocate were/are also aware about the aforesaid mandatory provisions of Rule 3(3) and were also aware about the consequences of non-compliance of the said

16 (2002) 5 SCC 377
17 2022 SCC OnLine Bom 7238

mandatory provision. Therefore, being an Officer of the Court, it was the bounden duty of the party/Advocate to point out to the Authority the provisions of Rule 3(3) and ought to have asked the authority to issue final Notice to the Defendant. The failure of the Authority in issuing final Notice to the Defendant, is admittedly a non-compliance of the statutory mandate, therefore, the Plaint was rightly rejected by the impugned order dated 21st August 2025 passed by the learned District Judge-1, Malshiras.

xvii. The provisions of Rule 12A of the Commercial Courts Act read with Rule 3 of the said Rules are mandatory in nature and any non-compliance of the said statutory provisions at the hands of any one, either by the Plaintiff or by the Authority must result into the rejection of the Plaint in view of the law laid down by the Supreme Court in the case of ***Patil Automation Private Limited*** (supra) and ***Dhanbad Fuels (P) Ltd.*** (supra).

xviii. Learned Counsel submitted that Commercial First Appeal be dismissed and alternatively submitted that this Court may set aside the impugned Judgment and Decree by which the Plaint came to be rejected under Order VII Rule 11 of CPC and remand the Suit back to the Trial Court for fresh consideration of the application under Order VII Rule 11 of CPC. It is also submitted that such remand is covered by the provisions of Order XLI Rule 23 of CPC and creates entitlement to refund of full Court Fees paid on Appeal. To substantiate the said contention regarding Order XLI Rule 23 of CPC, reliance is placed on the decision of the Delhi High Court in the case of ***Nilesh Girkar v. Zee Entertainment Enterprises Ltd.***[18].

FACTUAL ASPECTS:

6. Before considering the rival submissions it is necessary to set out the factual aspects:

i. The Appellant i.e. the Original Plaintiff is a General Supplier and Commission Agent for grains, oiled cakes, cattle feed, raw material, etc. The Respondents are Co-operative Societies registered under the provisions of the MCS Act and are engaged in the business of milk processing and manufacturing of cattle feed ingredients, commodities, etc.

ii. According to the Appellant, the Appellant was a successful bidder in five of the tenders raised by the Respondents in the years 2020 and 2021 and accordingly, five purchase orders were raised in favor of the Appellant bearing PO No.135/2020, PO No.07/2021, PO No.08/2021, PO No.27/2020 and PO No.1779/2021.

iii. According to the Appellant, the Appellant had supplied the goods in accordance with the purchase orders and issued in total 48 invoices, totalling to an amount of Rs.2,04,24,712/-. However, the said

18 2025 SCC OnLine Del 9618

amount was not paid by the Respondents to the Appellant.

iv. The Appellant on 29th April 2023 filed an Application with the DLSA in Form 1 specified in Schedule I as contemplated in Rule 3(1) of the said Rules alongwith with the requisite fees of Rs.1000/- (Page No.27).

v. The DLSA issued notice to the Respondents on 29th April 2023, to appear before the DLSA for mediation on 8th June 2023 (Page No.27).

vi. The mediation, as specified in the notice dated 29th April 2023 did not take place, therefore, the Appellant filed an Application dated 18th October 2023 (Page No.33) before the DLSA to re-issue notice to the Respondents and accordingly, a fresh notice was issued to the Respondents. The said notice was served upon the Respondents on 25th October 2023 (Page No.39) and the date of mediation as specified in the notice was fixed for 30th October 2023 (Page No.34).

vii. However, the Respondents did not remain present for the said mediation.

viii. The Authority thereafter on 11th December 2023 issued a "Non-Starter Report" in Form-3 of Schedule I as contemplated in Rule 3(4) of the said Rules (Page No.40).

ix. The Appellant thereafter instituted a Commercial Suit bearing Commercial Suit No.1 of 2024 in the form of Commercial dispute as contemplated under Section 2(1)(c) of the Commercial Courts Act before the Commercial Court at Malshiras on 6th January 2024 (Page Nos.41-49).

x. Thereafter on 26th April 2024 the Defendant Nos.1 to 3 i.e. Respondent Nos.1 to 3 in the present case, filed an Application at Exhibit 13 under Order VII Rule 11 of CPC, primarily on the ground that the Suit was filed without complying with the procedure as contemplated under Rule 3(3) of the said Rules (Page No.50).

xi. On 15th June 2024 the Defendant Nos.1 to 3 i.e. Respondent Nos.1 to 3 in the present case, filed their Written Statement at Exhibit 16. In their Written Statement the Respondent Nos.1 to 3 refuted the claim of the Appellant for recovery of amounts and reiterated the grounds taken in the above-mentioned Order VII Rule 11 Application filed by the Respondent Nos.1 to 3 (Page Nos.51-54).

xii. The learned Trial Court by order dated 21st August 2025, allowed the said Order VII Rule 11 Application at Exhibit 13 and rejected the Plaint (Page Nos.15-25).

xiii. The said order is impugned before this Court in this Commercial First Appeal.

ANALYSIS AND REASONING:

7. In view of the above submissions, the question to be decided in this First Appeal is whether the order regarding rejection of the plaint passed by the learned Trial Court is legal and sustainable.

8. Before consideration of the submissions and the issues involved in this case, it is necessary to set out the relevant legal provisions:

i. Section 12A of the Commercial Courts Act provides for Pre-Institution Mediation and Settlement. The said Section 12A is reproduced herein below for ready reference:

> *"**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 sixty days 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 purposes 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 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)."

(Emphasis added)

ii. Rule 3 of the said Rules provides for the initiation of the mediation process as contemplated under Section 12A. The said Rule 3 is reproduced herein below for ready reference:

"***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****."*

(Emphasis added)

iii. **The Form No.1, Form No.2 and Form No.3**, which are prescribed in Schedule I of the said Rules and referred in Rule 3 of the said Rules are also relevant and the said Forms are as under:

" SCHEDULE I

FORM 1: MEDIATION APPLICATION FORM

[See rule3(1)]

Name of the Authority and address

DETAILS OF PARTIES*:*
1. ***Name of applicant****:*
2. Address and contact details of applicant:
Address:—
Telephone No…………..Mobile……….Email ID…………
3. ***Name of opposite party****:*
4. Address and contact details of opposite party:

Address:—
Telephone No…………..Mobile……..E-mail ID…………..
***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:
***DETAILS OF FEE PAID**:*
Fee paid by DD No…………...dated ……….Name of Bank and branch…………Online transaction No……………..dated …………
*Date: **Name and Signature of Applicant***
*Note.—**Form shall be submitted to the Authority with a fee of one thousand rupees**.*

For Office Use:
Form received on:
File No. allotted:
Mode of sending notice to the opposite party:
Notice to opposite party sent on:
Whether Notice acknowledged by opposite party or not:
Date of Non-starter report/Assignment of commercial dispute to Mediator.

FORM 2: NOTICE/FINAL NOTICE TO THE OPPOSITE PARTY FOR PRE-INSTITUTION MEDIATION
[See rule 3(2) and rule 3(3)]
Name of the Authority and address

1. Whereas a commercial dispute has been submitted to (name of Authority) by (name of applicant) against (name of opposite party) requesting for pre-institution mediation in terms of section 12-A of Chapter III-A of Commercial Courts Act, 2015. A copy of the mediation application Form is attached herewith.
2. The opposite party is hereby directed to** appear in person or through his duly authorised representative or Counsel on …………….(Date) …………(Time) at the (Authority address) and **convey his consent to participate in mediation process.
3. Failure to appear before the Authority by opposite party would be deemed as his refusal to participate in mediation process initiated by

the applicant.
4. In case, the date and time mentioned in para 2 is sought to be rescheduled the same can be done by the opposite party either on its own or through its authorised representative or counsel by making a request in writing at least two days prior to the scheduled date of appearance.

Date: ***Signature of the Authority***

FORM 3: NON-STARTER REPORT
[See rule 3(4) and (6)]
Name of the Authority and address
1. Name of the applicant:
2. Date of application for Pre-Institution mediation:
3. Name of the opposite party:
4. Date scheduled for appearance of opposite party:
5. Report made under rule 3(4) or 3(6):
6. ***Non-Starter Report reasons***……………………………………………………
…………………………………………………………………………………………
……………………………………………………………………………………….

Date: ***Signature of the Authority***
Copy to:
Applicant.
Opposite Party."

(Emphasis added)

iv. Relevant Sections 6, 9 and 11-A of the Legal Services Authorities Act, 1987 ("**Legal Services Authorities Act**") are as under:

> "***6. Constitution of State Legal Services Authority***.—*(1)* ***Every State Government shall constitute a body to be called the Legal Services Authority for the State to exercise the powers and perform the functions conferred on, or assigned to, a State Authority under this Act.***
>
> ***2) A State Authority shall consist of—***
>
> ***(a) the Chief Justice of the High Court who shall be the Patron-in-Chief;***
>
> ***(b) a serving or retired Judge of the High Court,***

to be nominated by the Governor, in consultation with the Chief Justice of the High Court, who shall be the Executive Chairman; and

(c) such number of other members, possessing such experience and qualifications as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

(3) The State Government shall, in consultation with the Chief Justice of the High Court, appoint a person belonging to the State Higher Judicial Service, not lower in rank than that of a District Judge, as the Member-Secretary of the State Authority, to exercise such powers and perform such duties under the Executive Chairman of the State Authority *as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority. Provided that a person functioning as Secretary of a State Legal Aid and Advice Board immediately before the date of constitution of the State Authority may be appointed as Member-Secretary of that Authority, even if he is not qualified to be appointed as such under this sub-section, for a period not exceeding five years.*

(4) The terms of office and other conditions relating thereto, of members and the Member-Secretary of the State Authority shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) The State Authority may appoint such number of officers and other employees as may be prescribed by the State Government, in consultation with the Chief Justice of the High Court, for the efficient discharge of its functions under this Act.

(6) The officers and other employees of the State Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(7) The administrative expenses of the State Authority, including the salaries, allowances and pensions payable to the Member-Secretary, officers and other employees of the State Authority shall be defrayed out of the Consolidated Fund of the State.

(8) All orders and decisions of the State Authority shall be authenticated by the Member-Secretary or any other officer of the State Authority duly authorised by the Executive Chairman of the State Authority.

(9) No act or proceeding of a State Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the State Authority."

"***9. District Legal Services Authority.****—(1)* ***The State Government shall, in consultation with the Chief Justice of the High Court, constitute a body to be called the District Legal Services Authority for every District in the State to*** *exercise the powers and perform the functions conferred on, or assigned to, the District Authority under this Act.*

(2) ***A District Authority shall consist of—***

(a) the District Judge who shall be its Chairman; and

(b) such number of other members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

(3) The State Authority shall, in consultation with the Chairman of the District Authority, appoint a person belonging to the State Judicial Service not lower in rank than that of a Subordinate Judge or Civil Judge posted at the seat of the District Judiciary as Secretary of the District Authority to exercise such powers and perform such duties under the Chairman of that Committee as may be assigned to him by such Chairman.

(4) The terms of office and other conditions relating thereto, of members and Secretary of the District Authority shall be such as may be determined by regulations made by the State Authority in consultation with the Chief Justice of the High Court.

(5) ***The District Authority may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions.***

(6) ***The officers and other employees of the District Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.***

(7) ***The administrative expenses of every District Authority****, including the salaries, allowances and pensions payable to the Secretary, officers and other employees of the District Authority,* ***shall be defrayed out of the Consolidated Fund of the State****.*

(8) All orders and decisions of the District Authority shall be authenticated by the Secretary or by any other officer of the District Authority duly authorised by the Chairman of that Authority.

(9) No act or proceeding of the District Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the District Authority."

"***11-A. Taluk Legal Services Committee****.—(1)* ***The State Authority may constitute a Committee, to be called the Taluk Legal Services Committee****, for each taluk or mandal or for group of taluks or mandals.*

(2) ***The Committee shall consist of****—*

(a) ***The [senior-most Judicial Officer] operating***

> ***within the jurisdiction of the Committee who shall be the ex officio Chairman****; and*
>
> *(b)* ***such number of other members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.***
>
> *(3) The Committee may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions.*
>
> *(4) The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court. (5) The administrative expenses of the Committee shall be defrayed out of the District Legal Aid Fund by the District Authority.*
>
> *(5) The administrative expenses of the Committee shall be defrayed out of the District Legal Aid Fund by the District Authority."*
>
> (Emphasis added)

9. The scheme of Pre-Institution Mediation as reflected in Section 12A of the Commercial Courts Act along with the relevant provisions of the Legal Services Authorities Act as also read with Rule 3 of the said Rules, is as under:

i. A suit, which does not contemplate any urgent interim relief under Commercial Courts 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.

ii. The Central Government may, by notification, authorise the

Authorities constituted under the Legal Services Authorities Act, for the purposes of pre-institution mediation.

iii. Section 6 of the Legal Services Authorities Act is regarding Constitution of State Legal Services Authority. It provides that *State Government shall constitute a body to be called the Legal Services Authority for the State to exercise the powers and perform the functions conferred on, or assigned to, a State Authority under* Legal Services Authorities Act. The State Authority shall consist of—(a) the Chief Justice of the High Court who shall be the Patron-in-Chief; (b) a serving or retired Judge of the High Court, to be nominated by the Governor, in consultation with the Chief Justice of the High Court, who shall be the Executive Chairman; and (c) such number of other members, possessing such experience and qualifications as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court. The State Government shall, in consultation with the Chief Justice of the High Court, appoint a person belonging to the State Higher Judicial Service, not lower in rank than that of a District Judge, as the Member-Secretary of the State Authority, to exercise such powers and perform such duties under the Executive Chairman of the State Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority.

iv. Section 9 of the Legal Services Authorities Act is regarding constitution of District Legal Services Authority (DLSA). The DLSA is to be constituted for every district by the State Government in consultation with the Chief Justice of the

High Court. The DLSA consists of District Judge who shall be its Chairman and other members to be nominated by the State Government in consultation with the Chief Justice of the High Court. The Secretary of the DLSA is a Judicial Officer.

v. Section 11-A of the Legal Services Authorities Act is regarding constitution of Taluka Legal Services Committee ("**TLSC**"). It is provided that the State Authority may constitute a Committee, to be called the Taluka Legal Services Committee, for each taluka and the Committee shall consist of senior-most Judicial Officer operating within the jurisdiction of the Committee who shall be the ex officio Chairman and such number of other members nominated by the State Government in consultation with the Chief Justice of the High Court.

vi. Thus, it is clear that all the authorities constituted under the provisions of the Legal Services Authorities Act are *inter alia* consisting of Chief Justice of High Court/serving or retired Judge of the High Court, District Judges/Senior-most Judicial Officers/Judicial Officers and are formed in consultation with the Chief Justice.

vii. 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.

viii. 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.

ix. 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 (3).

x. 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. [Rule 3(4)]

xi. 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. [Rule 3(5)]

xii. 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. [Rule 3(6)]

xiii. 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. 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. [Rule 3(7), 3(8)]

xiv. Notwithstanding anything contained in the Legal Services Authorities Act, the Authority authorised by the Central Government shall complete the process of mediation within a period of three months from the date of application made by the plaintiff and the period of mediation may be extended for a further period of two months with the consent of the parties.

xv. 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*.

xvi. 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.

xvii. 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*.

10. Dr. Shah and Mr. Aradhye, both the learned Counsel have relied on certain decisions of the Supreme Court interpreting Section 12-A of the Commercial Courts Act and Rule 3 of the said Rules. Before applying the above scheme of Pre-Institution Mediation to the facts of this case, it is necessary to set out the said decisions.

11. Both Dr. Santosh Shah, learned Counsel for the Appellant and Mr. Sarang Aradhye, learned Counsel for the Respondents relied on the decision of the Supreme Court in the case of ***Patil Automation Private Limited*** (supra). Paragraph No.113 of the said decision of the Supreme Court records conclusions in the following manner:

> "**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."
>
> (Emphasis added)

Thus, it is very clear that the Supreme Court has held that Section 12A of the Commercial Courts 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 of CPC.

12. Mr. Aradhye, learned Counsel of the Respondents has also relied on Paragraphs 62 to 65 of the decision of ***Patil Automation Private Limited*** (supra), wherein Section 12A and scheme of Rule 3 of said Rules is discussed. Said Paragraphs are reproduced herein below for ready reference:

> "*62. Since,* ***Section 12-A also contemplated the making of Rules to give effect to the scheme of pre-litigation mediation. The Rules were promptly made and published on 3-7-2018. Rule 3 elaborately provides for the manner in which the mediation process is initiated. It contemplates that a party, to a commercial dispute, may make an application to the Authority. This Rule speaks about a party. Section 12-A declares that the plaintiff must exhaust the remedy of pre-litigation mediation. What, apparently is required is that the suit cannot be filed except after the remedy of pre-litigation mediation, contemplated under the Act and the Rules, is attempted and exhausted. What Rule 3(1) provides is the form in which the application is to be made viz. Form I, as specified in Schedule I. The making of the Form can be by online transmission or by post or by hand****.*
>
> *63. The view expressed by the High Court of Madras that the use of the word "may", detracts from the mandatory flavour of Section 12-A is clearly untenable.* ***Section 12-A is part of the parent enactment. Rule 3, being a subordinate legislation, must be interpreted harmoniously, in the first place, with the parent enactment. That apart, on a proper understanding of Rule 3, there is really no conflict between Section 12-A and Rule 3. Rule 3 only gives a discretion to the applicant, in regard to the mode of making the application. So understood, we are of the clear***

view that, if Section 12-A is otherwise mandatory, Rule 3(1) can only be understood as providing three different modes for making the application, contemplated in Section 12-A(1).

*64. **As to whether the application must be made, must depend upon, among other things, upon the peremptory nature of the language employed in Section 12-A(1). Rule 3 further contemplates that the Authority, which again, has been clearly defined as the Authority notified by the Central Government under Section 12-A(2), has to issue a notice to the opposite party to appear and to give his consent to participate within the time as provided in Rule 3(2). Should there be no response, a final notice is to be given again in the manner articulated in Rule 3(2). Should there be again no response by the notice remaining unacknowledged or upon there being refusal to participate, the mediation process becomes what is described, a non-starter. The Authority then makes a report in Form III, which is called a non-starter report**. The copy of the report is served on the applicant and the respondent. There is a provision for accommodating the request of the opposite party appearing and seeking time, subject to the date being not later than ten days from the date of request of the parties. **If, in such a case, there is failure to appear by the opposite party, again a non-starter report in Form III has to be made**. If, on the other hand, where both the parties appear, gives consent, the Authority is to assign the matter to a mediator and also to assign a date.*

65. The period of mediation being three months and the possibility of an extension by two months, with the consent of both sides, is the subject-matter of Rule 3. The role of the mediator is carved out in Rule 5 to be one to facilitate the voluntary resolution of the dispute and assist the parties in reaching a settlement. Rule 6 provides for authority with the party to either appear personally or through his duly authorised representative or counsel. The significance of being represented by counsel in pre-litigation mediation, cannot but be underlined. Apart from the fact that the legislature must be treated as aware, that, both, public interest, as also the interest of the parties, lies in an expeditious disposal of, what *is described as, commercial litigation, with a sublime goal of fostering the highest economic interests of the nation, allowing the counsel to appear before the mediator is intended to facilitate in arriving at a settlement, which is legally valid and otherwise just.*"

(Emphasis added)

13. Mr. Aradhye, learned Counsel of the Respondent has relied on decision of the Supreme Court in ***Dhanbad Fuels (P) Ltd.*** (supra). In ***Dhanbad Fuels (P) Ltd.*** (supra) following conclusions are recorded:

"***E. CONCLUSION***

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

71.1. The decision of this Court in Patil Automation [Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1 : (2023) 1 SCC (Civ) 545] lays down the correct position of law as regards Section 12-A of the 2015 Act by holding it to be mandatory in nature.

71.2. *As held in para 104 of the decision in Patil Automation [Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1 : (2023) 1 SCC (Civ) 545] , the declaration of the mandatory nature of Section 12-A of the 2015 Act relates back to the date of the amending Act.*

71.3. As held in para 113.1 of the decision in Patil Automation [Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1 : (2023) 1 SCC (Civ) 545] , any suit which is instituted under the 2015 Act without complying with Section 12-A is liable to be rejected under Order 7 Rule 11. However, this declaration applies prospectively to suits instituted on or after 20-8-2022.

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

2015 Act.

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

71.6. *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.*

71.7. *The 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 12-A of the 2015 Act.*

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

71.9. Suits instituted without complying with Section 12-A of the 2015 Act prior to 20-8-2022 cannot be rejected under Order 7 Rule 11 on the ground of non-compliance with Section 12-A unless they fall within the exceptions stipulated in paras 113.2 and 113.3 of the decision in Patil Automation [Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1 : (2023) 1 SCC (Civ) 545].

71.10. *In suits instituted without complying with Section 12-A of the 2015 Act prior to 20-8-2022 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 12-A of the 2015 Act if an objection is raised by the defendant by filing an application under Order 7 Rule 11, or in cases where any of the parties expresses an intent to resolve the dispute by mediation.*

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

72.1. *If the suit is instituted on or after the date of the decision in Patil Automation [Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1 : (2023) 1 SCC (Civ) 545] i.e. 20-8-2022, without complying with Section 12-A of the 2015 Act, then it must meet with rejection under Order 7 Rule 11, either on an application by the defendant or suo motu by the court.*

72.2. *If the suit was instituted prior to 20-8-2022 without complying with Section 12-A of the 2015 Act, and the same does not fall within one of the exceptional categories as explained in para 55 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.*"

14. Thus, Mr. Aradhye, learned Counsel is right in submitting that it is settled position that Section 12A of the Commercial Courts Act read with Rule 3 of the said Rules are mandatory in nature. Learned Counsel is right in submitting that in view of the law laid down by the Supreme Court in ***Patil Automation Private Limited*** (supra) and ***Dhanbad Fuels (P) Ltd.*** (supra), if the suit is instituted on or after the date of the decision in ***Patil Automation Private Limited*** (supra) i.e. 20th August 2022 without complying with Section 12A of the Commercial Courts Act, then it must meet with rejection of the plaint under Order VII Rule 11 either on an application by the Defendant or suo moto by the Court.

15. The above discussion in ***Patil Automation Private Limited***

(supra) and ***Dhanbad Fuels (P) Ltd.*** (supra) clearly shows that Section 12A is mandatory and the pre-institution mediation is to be conducted in accordance with the said Rules and more particularly in accordance with the procedure prescribed as per Rule 3 of the said Rules. There cannot be any contrary opinion about the said aspect and in fact it is not even the contention of Dr. Shah, learned Counsel appearing for the Appellant that Section 12A read with Rule 3 is not mandatory.

16. In view of the above decisions of the Supreme Court and in view of scheme of Pre-Institution Mediation as contemplated under Section 12-A of the Commercial Courts Act and Rule 3 of the said Rules, it is relevant to note the necessary factual aspects concerning Pre-Institution Mediation in this case.

i. The Appellant filed an Application in prescribed format as prescribed in Form 1 of Schedule 1 of the said Rules on 29th April 2023. All the details as prescribed in Form 1 are set out in the said Application. The Appellant has also deposited an amount of Rs.1000/- as required under Rule 3(1) of the said Rules (Pages 27-30).

ii. The Chairman of Malshiras Taluka Legal Services Committee passed the following order on the said Form (Page 27):

> "*Issue notice to respondent for mediation R/o. 8.6.2024.*"

iii. Thereafter, again the notice was reissued to the Respondents by

Chairman of Malshiras Taluka Legal Services Committee on 18th October 2023 (Page 33) and the same has been served on the Respondents on 25th October 2023 (Page 39). The date for mediation was fixed on 30th October 2023 (Page 34). On the said date i.e. 30th October 2023, the Respondents failed to appear and therefore, a non starter report as per Form 3 is prepared on 11th December 2023, by Chairman, Malshiras Taluka Legal Services Committee (Page 40).

iv. Thereafter, Commercial Suit No.1 of 2024 has been filed on 6th January 2024 (Pages 41-49).

v. In the above background as noted earlier, the Respondents filed an Application under Order VII Rule 11 for the rejection of the plaint bearing Exhibit-13 in Commercial Suit No.1 of 2024 on the ground that Rule 3(3) of the said Rules has not been complied with (Pages 50-50A).

vi. The said Application bearing Exhibit-13 has been granted by Judgment and Order dated 21st August 2025 and consequently the plaint is rejected (Pages 15-25).

17. The above factual aspects are required to be examined in view of the scheme as contemplated under Section 12A of the Commercial Courts Act, Rule 3 of the said Rules and the relevant provisions of the Legal Services Authorities Act and in the context of the duty which is cast on the party to commercial dispute. As per the settled legal position, Pre-institution Mediation and Settlement, as contemplated under Section 12A of the Commercial Courts Act is mandatory provision. The manner in which Pre-institution Mediation and Settlement is to be carried out is as provided in Section 12-A of the Commercial Courts Act and Rule 3 of the said Rules. As per the Rule 3(1) it is clearly provided that obligation on a party to commercial dispute is to file an Application to the authority constituted under the Legal Services Authorities Act for the pre-institution mediation in prescribed format i.e. Form 1 and to pay the requisite fee of Rs.1000/-. The sub- Rule(2) to (4) of the said Rule 3 clearly show that it is the responsibility of the authority constituted under the Legal Services Authorities Act to issue notice as per Form 2 specified in Schedule I through registered or speed post and electronic means including email to the opposite party to appear and give consent to participate in the mediation process on such date not beyond a period of 10 days from the date of issuance of the said notice. Sub Rule 3(3) provides that 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). Sub-Rule (4) of Rule 3 of the said Rules provides that 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.

18. Thus, it is required to be noted that the only responsibility on the Appellant i.e. Plaintiff/Applicant in the said commercial suit is to file an Application to the Malshiras Taluka Legal Services Committee as per Form 1 in Schedule I and alongwith to pay Rs.1000/-. Admittedly, the Plaintiff has complied with the said requirement. Thereafter, it is for the Malshiras Taluka Legal Services Committee to take further action in accordance with the said Rules. In this particular case, the Appellant has complied with the requirement which are required to be complied with by the Appellant as per Rule 3(1). Thereafter, the entire responsibility up to the stage of giving Non-Starter Report is of the Malshiras Taluka Legal Services Committee, whose Chairman is the senior-most Judicial Officer of the said Taluka.

19. It is relevant to note that the TLSC has issued notice to the Respondents as contemplated under Sub-Rule (2) of Rule 3 of the said Rules and thereafter as the Respondents failed to appear in spite of service, has given non starter report as per Sub-Rule (4) of Rule 3 in the prescribed format i.e. Form 3. However, admittedly the TLSC has failed to issue final notice as per the requirement of Rule 3(3) of said Rules. In any case, it is very clear that it is not the responsibility of the Appellant/Plaintiff to comply with the provisions of Sub-Rule 3(2), 3(3), or 3(4) and it is the complete responsibility of the TLSC to comply with the same.

20. As noted earlier, the Taluka Legal Service Committee is constituted by State Legal Services Authority ("**SLSA**"). The Chief Justice of the High Court is the Patron-in-Chief of State Legal Service Authority, a serving or retired Judge of the High Court is the Executive Chairman of SLSA and other members of SLSA are appointed by the State Government in consultation with the Chief Justice. The SLSA constitutes TLSC of which senior most Judicial Officer operating within the jurisdiction of Committee i.e. in the present case Malshiras Taluka is the ex-officio Chairman. Other members of TLSC are nominated by the Government in consultation with the Chief Justice of the High Court. Thus, the Senior Judicial Officer is part of the TLSC and is in fact the Chairman of TLSC. The entire responsibility to facilitate mediation is on the TLSC in accordance with Rule 3 of the said Rules.

21. There is substance in the contention raised by the Respondents that for a non starter report to be given under Sub-Rule (4) of Rule 3 of the said Rules, where the final 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, however, the non starter report could be given only after issuance of final notice under Sub-Rule (3) of Rule 3 and no such notice has been issued, which is mandatory notice. However, it is required to be noted that the said responsibility in this case is of Malshiras Taluka Legal Services Committee and not the responsibility of the Appellant. The only responsibility of the Appellant/Plaintiff is to submit an Application to TLSC as per Form 1 specified in Schedule I and to pay the fee of Rs.1000/- which the Appellant has complied with.

22. In view of the above factual position and the scheme of Pre-Institution and Mediation and particularly duty which has been cast on the Appellant/Plaintiff, it is relevant to note the judgment of the Supreme Court on which the Appellant has relied in the case of ***Jang Singh*** (supra) and more particularly, the following portion of the Paragraph No.6, which reads as under:

> "*6. …It is, therefore, quite clear that* ***if there was an error the Court and its officers largely contributed to it. It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake the responsibility of the litigant, though it does not altogether cease, is atleast shared by the Court****. If the litigant acts on the faith of that information the Courts cannot hold him responsible for a*

> *mistake which it itself caused.* ***There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim:***
>
> ***"Actus curiae neminem gravabit"***."
>
> (Emphasis added)

Thus, what the Supreme Court has said that, if there was an error the Court and its officers largely contributed to it, the Court must take the responsibility. It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake, the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information the Courts cannot hold him responsible for a mistake which it itself caused. It has been held that there is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake.

23. The Supreme Court has observed that this is aptly summed up in the maxim: "*Actus curiae neminem gravabit*" meaning "an act of the court shall prejudice no man". This maxim is founded upon justice and good sense, and affords a safe and certain guide for the administration of the law.

24. The Supreme Court in the case of ***Prem Aggarwal*** (supra) has, *inter alia*, held as follows:

> "*15.* ***The maxim 'actus curiae neminem gravabit', which means that the act of the Court shall prejudice no one, is a principle firmly embedded in our jurisprudence. It is founded on the equitable notion that no party should suffer owing to an error, delay, or inadvertence attributable to the Court itself. The Court, acting as in appendage of justice, cannot permit its own procedure or inadvertent lapse to occasion injustice. Accordingly, where a party has been disadvantaged by reason of an act of the Court, it is incumbent upon the Court to undo such prejudice and restore the party to the position he would have occupied but for such act.*** *This Court long back in the decision of three- Judges in Jang Singh v. Brij Lal3, quoted the maxim with approval and held that:—*
>
> *"6. . . . It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information the Courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of Courts should*

> *harm a litigant, and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: "Actus curiae neminem gravabit"."*
> *(emphasis supplied)*
>
> ***The maxim thus operates as a constant reminder that the Court's authority must be exercised not to the disadvantage of litigants, but in furtherance of justice.*** *After all, to err is human, and when an inadvertent omission is brought to the Court's attention, it becomes the Court's solemn duty to ensure that no party suffers on account of such mistake. In such circumstances, the Court is obliged to restore the party to the very position he would have occupied had the error not occurred."*
>
> (Emphasis added)

25. Thus, what the Supreme Court has held that the Court, acting as in appendage of justice, cannot permit its own procedure or inadvertent lapse to occasion injustice. Accordingly, where a party has been disadvantaged by reason of an act of the Court, it is incumbent upon the Court to undo such prejudice and restore the party to the position he would have occupied but for such act. The maxim 'actus curiae neminem gravabit' thus operates as a constant reminder that the Court's authority must be exercised not to the disadvantage of litigants, but in furtherance of justice. After all, to err is human, and when an inadvertent omission is brought to the Court's attention, it becomes the Court's solemn duty to ensure that no party suffers on account of such mistake. In such circumstances, the Court is obliged to restore the party to the very position he would have occupied had the error not occurred.

26. As already noted herein above, the scheme of the Section 12-A of the Commercial Courts Act read with Rule 3 of the said Rules prescribes that it is the responsibility of the authority constituted under the Legal Services Authorities Act to be the authority for the purpose of pre-institution mediation. The State Authority is empowered to constitute a Committee to be called the Taluka Legal Services Committee. The TLSC shall consist of senior most Judicial Officer of said Taluka who shall be the ex-officio Chairman and other members appointed by the State Government in consultation with the Chief Justice of the State. Thus, these Authorities are functioning under the Chairmanship of District Judge/Senior most Judicial Officer. Thus, if any act done by them results into injustice. It is the Court's duty to ensure that no party suffers on account of such mistake.

27. As far as the contention raised by Dr. Shah, learned Counsel of the Appellant that the act of the Court shall prejudice no one, Mr. Aradhye, learned Counsel submitted that it is settled legal position that where a power is given to do a certain thing in a certain way, that thing must be done in that way or not at all and other methods of performance are necessarily forbidden. It is submitted that where law requires a thing to be done in a certain manner it has to be done in that manner or not at all. To substantiate said contention, Mr. Aradhye, learned Counsel has relied on ***Taylor*** (supra), ***Chandra Kishore Jha*** (supra) and **Dhananjay Reddy** (supra). Mr. Aradhye, learned Counsel submitted that if a statute provides for a thing to be done in a particular way then it has to be done in that manner and in no other manner. He submitted that this is what the maxim "ex pressio unius est exclusion alterius" provides as observed by the Hon'ble Apex Court in the matter of ***J. Jayalalithaa*** (supra). Mr. Aradhye, learned Counsel also submitted that the procedural defects or lapses would vitiate the proceedings where the statute prescribing the procedure, also prescribed specifically the consequences of non-compliance. Non-compliance with any procedural requirement relating to a pleading, memorandum of Appeal or Application or other relief should entail automatic dismissal or rejection in view of the statute or Rule so mandates.

28. It is required to be noted that there cannot be any two opinions about the above propositions of law on which Mr. Aradhye, learned Counsel relied. However, this is a case where as discussed herein above in detail the only responsibility of the Appellant/plaintiff is to file application with Malshiras Taluka Legal Service Committee by giving details as contained in Form 1 as prescribed under Rule 3(1) of said Rules and to deposit Rs.1000/- which has already been done by the

Plaintiff. The other duties are to be performed by TLSC and for their mistake the Appellant/Plaintiff cannot be penalised. It is settled legal position that the Court, acting as in appendage of justice, cannot permit its own procedure or inadvertent lapse to occasion injustice. Accordingly, where a party has been disadvantaged by reason of an act of the Court or its machinery particularly when the action of Chairman of Malshiras Taluka Legal Services Committee, who is the senior-most Judicial Officer of said Taluka has resulted into a disadvantage to the Appellant/Plaintiff, it is incumbent upon the Court to undo such prejudice and restore the party to the position he would have occupied but for such act. The maxim 'actus curiae neminem gravabit' thus operates as a constant reminder that the Court's authority must be exercised not to the disadvantage of litigants, but in furtherance of justice. After all, to err is human, and when an inadvertent omission is brought to the Court's attention, it becomes the Court's solemn duty to ensure that no party suffers on account of such mistake. In such circumstances, the Court is obliged to restore the party to the very position he would have occupied had the error not occurred. The principle that act of the court or of the authority which has been prescribed by law for facilitating pre-institution mediation, if commits mistake then by no stretch of imagination Plaintiff can be held responsible for the same. The TLSC is not Court, however, through

TLSC pre-institution mediation is to be requested to be facilitated.

29. In view of above position, it is required to be noted that even at this stage i.e. the appellate stage also Mr. Sarang Aradhye, learned Counsel of the Respondents on instructions submitted that Respondents are not interested in settling the dispute. The Respondents i.e. Defendants have not given consent for mediation even after receipt of the notice issued under Rule 3(2) of the said Rules.

30. Dr. Shah, learned Counsel of the Appellant has relied on Judgment of Delhi High Court in the case of ***Kapil Goel*** (supra) and submitted that in identical facts the Delhi High Court has held that the Plaintiff has complied with his responsibility. In that case before instituting the suit the Appellant approached the Secretary, Delhi Legal Services Authority for initiation of pre-institution mediation proceedings. After DLSA gave a non starter report for the mediation the suit was filed. In the non starter report it is mentioned that both the parties do not want to participate in the process of pre-institution mediation. The learned District Judge after perusing the material on record came to the conclusion that the Plaintiff/Appellant had filed an application to DLSA for initiation of pre-institution mediation proceedings only as a formality and in order to file a civil suit and had no real intention to proceed with the mediation process. The learned

District Judge dismissed the suit by observing that Section 12A of the Act is mandatory in nature and since the Plaintiff-Appellant herein has not acted in good faith and refused to participate in the pre-institution mediation process and therefore, the plaint filed is barred by law. The Delhi High Court set aside the order of the learned District Judge. The relevant observations of the Division Bench of the Delhi High Court are to be found in Paragraphs 14 to 16 and 18. The said paragraphs read as under:

> "**14. The short question which arises before this Court is whether the factum of the defendant not willing to participate in the pre-institution mediation would suffice for Section 12-A of the Commercial Courts Act, 2015, to be satisfied**.
>
> **15. A plain reading of Rule 3 of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 demonstrates that when mediation process is initiated, the authority is required to issue notice to the opposite party in order for them to appear and give consent to participate in the mediation process on such days not beyond the period of 10 days from the date of issue of the said notice. If no response is received from the opposite party, then the authority is required to issue a final notice to it. However, if the final notice issued remain unacknowledged or the opposite party refuses to participate in the mediation process, then the authority is required to treat the mediation process to be a non-starter and make a report on the same. Sub-section (6) of Rule 3 also places the burden on the opposite party to appear on the date fixed in case it does not want the mediation process to be a non-starter.**
>
> **16. A holistic reading of the facts of the case as well as the law demonstrates that the consent of the plaintiff**

for the institution of the mediation proceedings is irrelevant if the defendant refuses to move forward with it. All that is required on the part of the plaintiff is to initiate pre-institution mediation prior to filing of a commercial suit. Once this is satisfied, if it is the plaintiff who refuses to move forward with the mediation, then the suit that is instituted thereafter would be barred by law. However, if both the defendant and the plaintiff do not wish to pursue the mediation and a non-starter report is generated subsequent to the same, then if the plaintiff files a suit, the same would not be barred by law."

"**18. In the present case, both the plaintiff and the defendant have refused to participate in the mediation. It is not the case as if the defendant was interested in proceeding ahead with the mediation and the plaintiff was not interested. This Court is of the opinion that the defendant having refused to participate in the pre-institution mediation will suffice for the suit of the plaintiff to be allowed to proceed without any encumbrance. The learned District Judge Commercial Courts II has erred in observing that the plaintiff had not followed the mandate of Section 12-A of the Act, and, therefore, this legal infirmity warrants the interference of this Court.**"

31. Thus, what the Delhi High Court has held that all that is required on the part of the plaintiff is to initiate pre-institution mediation prior to filing of a commercial suit. Once this is satisfied, if it is the plaintiff who refuses to move forward with the mediation, then the suit that is instituted thereafter would be barred by law. However, if both the defendant and the plaintiff do not wish to pursue the mediation and a non-starter report is generated subsequent to the same, then if the plaintiff files a suit, the same would not be barred by law. These observations of the Delhi High Court are applicable to the present case. In fact in this case also Mr. Sarang Aradhye, learned Counsel of the Respondents, on instructions of the Respondents, fairly stated that Respondents are not willing to settle the dispute.

32. Dr. Shah, learned Counsel has also relied on Division Bench Judgment of this Court in the case of ***Deepak Raheja*** (supra), which has been approved by the Supreme Court in the case of ***Patil Automation Private Limited*** (supra). In that case after holding that Section 12A of the Commercial Courts Act is mandatory, at appellate stage as the Respondent i.e. the Defendant has agreed to explore the possibility of the settlement and agreed to mediation and, therefore, the Division Bench passed several directions as contained in Paragraph No.48, which is reproduced herein below for ready reference:

> "**48.** Hence, the appeal is disposed of in the following terms:
>
> (i) The appellant and the respondent will attend the Office of the Member Secretary, Maharashtra State Legal Services Authority on 8-10-2021 for initiating the mediation process.
>
> (ii) No separate notice to the appellant is required of the said mediation.
>
> (iii) The suit and the impugned order shall remain in abeyance for three months from 8-10-2021.
>
> (iv) If the learned mediator is of the opinion that if an extension is required and grants extension, the direction to keep the suit and the impugned order in abeyance

shall stand suitably extended for the period of such extension granted by the mediator.

(v) Upon completion of the mediation, the Member Secretary shall forward the report of the same to the Prothonotary and Senior Master of this Court with copies to the parties.

(vi) On the submission of the report of the mediator as per clause (v), the direction for keeping the suit and the impugned order in abeyance shall stand lifted.

(vii) If the outcome of the mediation is positive, then no further orders from the court would be required as the scheme of Section 12-A will take place.

(viii) In the event of the mediation being unsuccessful, the time to deposit the amount shall stand extended by four weeks from the date the report is received in the office of the Prothonotary and Senior Master.

(ix) In that event, it will be open to the appellant, if so advised, to challenge the impugned order of the learned Single Judge on the grounds as may be available in law. All contentions of the parties will be open except the ones concluded in this judgment and order."

However, the above course of action cannot be directed in the present case as Mr. Aradhye, learned Counsel of the Respondent, on instructions, has stated that Respondents are not interested in settling the dispute. It is doubtful whether the above course of action as directed in ***Deepak Raheja*** (supra) is available in view of the decision of the Supreme Court in the case of ***Dhanbad Fuels (P) Ltd.*** (supra). However, this Court need not go into that issue as Respondents are not interested in settling the dispute.

33. Mr. Aradhye, learned Counsel also pointed out Section 80 of CPC, Section 107 of the MCS Act and Section 69 of the Partnership Act and also consequences if Writ of Summons is not served within time and submitted that if the requirements of said provisions are not complied with then the suit is not maintainable/liable to be dismissed. However, the said contentions are not relevant. As per Section 80 of CPC a notice is mandatory before instituting suit against the government or against the public officer in respect of any act purporting to be done by such public officer in his official capacity. Such notice is required to be given by the Plaintiff and there is no other authority is contemplated for giving such notice. Section 107 of the MCS Act provides that no suit or other legal proceedings shall lie or be proceeded with against the society or the liquidator except by leave of the register. However, such leave also has to be taken by the person proposing to file suit or other proceedings and no third person/authority is involved. Section 69 (1) of the Partnership Act provides that "No suit to enforce a right arising from a contract or conferred by this Act shall be institutes in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm". What is contemplated is that a person who is a partner or claiming to be a partner in the partnership firm can sue in such capacity unless the firm is registered and the persons suing is or has been shown in the register of firms as partner in the firm. In such a case also the person who is a partner of a firm cannot sue a partnership firm unless the same is registered as it is the duty of all the partners to get the firm registered. In this case also no third person or authority is involved to perform some task as what is contemplated is unregistered firm cannot be sued as the object is to regulate the firms. Mr. Aradhye, learned Counsel has also referred to Order VIII Rule 1 of the CPC, which contemplates the presentation of Written Statement by the Defendant, there is a provision of "Service of Summons". Order V Rule 9 and Rule 9A contemplates the service of Writ of Summons to be effected by delivery of Summons through the Court. Learned Counsel submitted that these provisions are required to be given a literal meaning. The statutory procedure of service of Writ of summons cannot be dispensed with. In this background of the matter it is required to refer to the decision of the Supreme Court in ***Auto Cars*** (supra), which is relied by the learned Counsel for the Respondents. In the said case as the service of Writ of Summons could not be effected on the Defendant, the Plaintiff sought permission of the Court for substituted service by way of publication as contemplated under Order V Rule 20 of the CPC. However, several material infirmities were found in the summons published in the newspaper, as it did not mention any specific day, date, year and time for defendants' appearance in the Court. In the said situation the Supreme Court held that it was mandatory for the court to mention the specific working day, date, year and time. The Supreme Court therefore allowed the Appeal filed by the Defendant's and restored the Suit, which had earlier decreed ex parte. Paragraph No. 29 of the said decision is relevant and the same is reproduced herein below:

> "***29. The material infirmity in the summons was that it did not mention any specific day, date, year and time for the defendants' appearance in the court. This being the requirement of Section 27 read with Order 5 Rule 20(3) and Process No. 1A of Appendix B, it was mandatory for the court to mention the specific working day, date, year and time in the columns meant for such filling. It would have enabled the defendants to appear before the court on the date so fixed therein.*** *It is a settled rule of interpretation that when the legislature provides a particular thing to be done in a particular manner then such thing has to be done in the same prescribed manner and in no other manner."*

(Emphasis added)

34. In view of above discussion and in view of the settled legal position, the Court, acting as in appendage of justice, cannot permit its own procedure or inadvertent lapse to occasion injustice. Accordingly, where a party has been disadvantaged by reason of an act of the Court, or machinery of the Court, as the authorities constituted under the provisions of Legal Services Authorities Act are *inter alia* consisting the Chief Justice/Retired or Serving High Court Judge/District Judge/Senior Judicial Officer, as the case may be, it is incumbent upon the Court to undo such prejudice and restore the party to the position he would have occupied but for such act. The maxim "*actus curiae neminem gravabit*" thus operates as a constant reminder that the Court's authority must be exercised not to the disadvantage of litigants, but in furtherance of justice. When an omission committed by Court or machinery of the Court is brought to the Court's attention, it becomes the Court's solemn duty to ensure that no party suffers on account of such mistake. In such circumstances, the Court is obliged to restore the party to the very position he would have occupied had the error not occurred. In view of this settled position, the order of the learned Trial Court is required to be quashed and set aside. It is required to be noted that as Mr. Aradhye, learned Counsel on instructions of the Respondents has stated that Respondents do not wish to mediate the dispute and explore possibility of settlement, it is not necessary to resort to the modalities as directed in the case of ***Deepak Raheja*** (supra), assuming that the said course of action is available after the decision of the Supreme Court in the case of ***Dhanbad Fuels (P) Ltd.*** (supra).

35. Accordingly, the Commercial First Appeal is allowed by passing following Order:

i. Judgment and Decree dated 21st August 2025 passed by the learned District Judge-1 Malshiras below Exhibit-1 and Exhibit-13 in Commercial Suit No.1 of 2014 is quashed and set aside and the said application bearing Exhibit-13 is rejected. Resultantly, the said Commercial Suit is restored to the file of learned District Judge, Malshiras and the said Suit be proceeded in accordance with law.

ii. In the facts and circumstances, there shall be no order as to costs.

36. This Court places on record appreciation of the assistance rendered by Dr. Santosh Shah, learned Counsel for the Appellant and Mr. Sarang Aradhye , learned Counsel for the Respondents.

[Pravin S. Patil, J.] **[Madhav J. Jamdar, J.]**