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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 3rd May, 2024
+ **CS(COMM) 358/2024**
MAXWELL PARTNERSHIP FIRM REGD Plaintiff
Through: Mr. Prem Kishore Seth, Adv.
(M:9811055345)
versus

NATIONAL INSURANCE CO LTD AND ANR. Defendants
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

I.A.9893/2024 (for exemption)

2. This is an application seeking exemption from filing dim copies of documents. Allowed, subject to all just exceptions. Application is disposed of.

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3. Let the plaint be registered as a suit.

4. The present suit has been filed seeking recovery of Rs.24,40,04,516/- including interest @ 15% p.a. on the principal amount of claim from 1st September, 2018 till date. The amount relates to an insurance claim against the Defendants wherein the case of the Plaintiff is that it had availed the Standard Fire and Special Peril Policy for the period 8th May, 2018 till 7th May, 2019. The coverage has been extended thereafter.

5. According to the Plaintiff, on 29th May, 2018 a fire broke out in the truck, which was loaded with synthetic rubber, which led to enormous loss



to the substantial damage to the stock of rubber products of the Plaintiff. The Defendants are stated to have deputed a surveyor to carry out the survey of the fire and the loss caused thereto. According to the Plaintiff, the surveyor's report was submitted. However, the copy of the same was not given to the Plaintiff. The Plaintiff subsequently claims to have obtained the same through RTI.

6. The case of the Plaintiff is that despite timely notification, the Defendant insurance company delayed processing of the claim for over a year. The Plaintiff provided all necessary documentation and cooperated with surveys, but the insurance company ultimately denied liability on 31st March, 2021, alleging policy breaches. The Plaintiff asserts that they were not provided with policy terms and that the denial was unjustified. A legal notice was served upon the Defendants on 30th August, 2022, demanding payment, but the insurance company did not comply. It is stated that denial of the claim was arbitrary and without legal basis, highlighting the insurance company's unreasonable conduct throughout the claim settlement process. The Plaintiff claims a sum of Rs.24,40,04,516/- in respect of the said fire.

7. The Plaintiff had earlier also filed a suit earlier being ***CS(COMM) 149/2023*** titled ***Maxwell Partnership Firm Regd v. National Insurance Co Ltd And Anr.***, which was dismissed as withdrawn due to non-availing of the mandatory procedure under Section 12A of the Commercial Courts Act, 2015. Vide order dated 30th October, 2023, 75% of the court fee was refunded to the Plaintiff. The said order is extracted below:

1. This is an application filed by the plaintiff seeking leave of this Court to withdraw the suit so as to enable the plaintiff to invoke pre-institution mediation in terms of Section 12A of the Commercial Courts Act, 2015



(‘the Act’) and then file a fresh suit on the same cause of action, if necessary.

2. Taking into account that the suit as presently filed is likely to fail on account of the plaintiff not having invoked pre-suit mediation, permission to withdraw the suit, as prayed for, is granted to the plaintiff with liberty to file a fresh suit on the same cause of action, if the need so arises after availing of the pre-suit mediation in terms of Section 12A of the Act.

3. The application, accordingly, stands disposed of.

4. Since the suit is being permitted to be withdrawn at the initial stage and that too with liberty to file a fresh suit on the same cause of action if the need so arises, it is directed that 75% of the Court fees be refunded to the plaintiff forthwith.

5. The next dates fixed before the Court and before the learned Joint Registrar (Judicial) stand cancelled.

8. Thereafter, Section 12A of the Commercial Courts Act, 2015 was availed of by the Plaintiff. However, the Delhi High Court Legal Services Committee gave a report of the mediation being a non-starter. The relevant portion of the report is set out below:

“Despite several opportunities, the opposite party has failed to submit their willingness for the participation in the pre-institution mediation proceedings. It is thus prima facie appears that opposite party is not willing to participate in the pre-institution mediation proceedings. In view thereof and in view of 3(6) of the notification dated 03.07.2018 issued by the Department of Legal Affairs, Govt. of India, this pre-institution mediation file be treated as non-starter.”



9. A perusal of the report would show that the insurance company has failed to appear in the pre-litigation mediation as well. Such conduct on behalf of the Insurance Company is contrary to the spirit of Section 12A of the Commercial Courts Act, to say the least. The Plaintiff has already borne 25% of the court fees in the first round as the same could not be returned in terms of decision in *Patil Automation Private Limited & Ors. v. Rakheja Engineers Private Limited ((2022) 10 SCC OnLine SC 1028)*. Due to the mediation being a non-starter, it has been compelled to again file the present suit. The entire purpose of pre-litigation mediation has been defeated by the Insurance company.

10. The non-appearance of parties in mediation proceedings carries significant legal ramifications, as provided by various legal provisions. Under the Punjab and Haryana High Court Mediation Rules (Rule 12), parties are mandated to attend mediation sessions, whether in person, through legal representatives, or by means of power of attorney holders. Failure to comply with this requirement may lead to the Mediator or other parties to seek court intervention. Upon finding unjustified absence, the Court can impose costs or initiate contempt proceedings against the parties. Similarly, Rule 13 of the Delhi High Court Mediation Conciliation Rules stipulates that deliberate or wilful non-attendance warrants Court intervention, with the Court empowered to issue appropriate directions. The said Rule is extracted hereinbelow:

“12. Consequences of Non-Attendance: If a party deliberately or willfully fails to attend a session, the other party or mediator/conciliator may apply to the Court. The Court may issue directions based on the case's facts and circumstances”



11. This principle is also prevalent in Rule 14 of the Telangana High Court Mediation Rules 2015 and Rule 13 of the Karnataka Civil Procedure (Mediation) Rules, 2005 wherein it is elucidated that failure to attend mediation due to deliberate acts may result in judicial intervention and the issuance of necessary directives. The same has been emphasized in the case of *Smt Amalapooh Mary & Ors. v. Sri V Ravindra & Ors. (WP51491/2016)* wherein it was held that if the party is absent in the mediation proceedings, the Court could impose costs. The relevant paragraphs of the said case are as under:

“20. Merely because a party is not willing to participate in the proceedings before the Mediation Centre or Lok-Adalath the same will not be a ground for refusal of reference of the matter to the Mediation Centre or Lok-Adalath, which appears to be a popular misconception or which misconception was suffered by this Court also until Sri. B. C. Thiruvengadam brought to notice of this Court the provision of Rule 13 of the Karnataka Civil Procedure (Mediation) Rules, 2005. The said Rule 13 reads as under:

“13. Non-attendance of parties at sessions or meetings on due dates.-

(1) The parties shall be present personally or may be represented by their counsel or power of attorney holders at the meetings or sessions notified by the mediator.

(2) If a party fails to attend a session or a meeting notified by the mediator; other parties or the mediator can apply to the court in which the suit is filed, to issue appropriate directions to that party to attend before the mediator and if the court finds that a party is absenting himself before the



mediator without sufficient reason, the court may take action against the said party by imposition of cost.

(3) The parties not resident in India, may be represented by their counsel or power of attorney holders at the sessions or meetings."

21. In terms of Rule 13 of Mediation Rules, 2005, the Court has the power to direct a party to appear before the mediator, in the event of a Court finding that a party is absenting himself before the mediator without sufficient reason, costs could be imposed on such a party. The quantum of costs that could be imposed by the Court is at the discretion of the Court, which the Court could decide upon and impose depending on the nature of the matter.

22. In view of Rule 13 of the Mediation Rules, 2005, it is no longer permissible for either counsel or the party in a proceeding to refuse participation in mediation proceedings, if at all a party were to absent himself, the Court could impose costs as also repeated costs until the party were to appear and participate in the mediation proceedings. The Court is not powerless to issue appropriate directions to the parties to attend the Mediation infact it is the bounden duty of the Court to issue necessary directions so that all the parties participate in the mediation process in terms of the Mediation Rules, 2005.

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43.3. In terms of Paragraph 36 of the Afcon's Judgment, there is no requirement to obtain consent of either lawyers appearing for the parties or of the parties themselves.

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43.4. In the event of any of the parties not presenting themselves before the Mediation Centre or the Lok-adalat, the Court could exercise powers under Rule 13 of the Karnataka Civil Procedure (Mediation) Rules



2005 and impose such costs as it may deem fit to compel the attendance of the parties before the Mediator so appointed. ”

12. In the United Kingdom, judicial decisions, such as *Dunnett v Railtrack plc [2002] EWCA Civ 303* and *P4 Ltd v Unite Integrated Solutions Pic [2006] EWHC 2924 (TCC)*, underscore the judiciary’s insistence on seriously considering Alternative Dispute Resolution (ADR), like mediation. In the said decisions it was held that refusal to engage in ADR without reasonable cause can lead to adverse cost consequences for the non-attending party, emphasizing the importance of actively participating in mediation.

13. In the United Kingdom, failure to adequately consider ADR, including mediation, can lead to severe repercussions. The Courts are known to possess the authority to impose cost sanctions on parties unreasonably refusing mediation attempts. The same mechanism can be followed in the Indians Courts such that effective mediations can result in improved resolution.

14. In essence, the obligation to attend mediation is of paramount importance as the entire purpose of the enactment of the provision, as a mandatory step to be taken before commencing litigation, would otherwise be defeated. Especially in the case of organisations which have a public character, effective participation in pre-litigation mediation is essential. If mediation has to be taken seriously and with a result oriented approach, institutions with a public character including government departments etc., ought to participate through proper appearance of officials or duly authorised persons. Any non-participation ought to invite consequences in



law.

15. Issue summons in the suit to the Defendants through all modes upon filing of Process Fee.

16. Let the written statement to the plaint be filed within 30 days. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiffs, without which the written statement shall not be taken on record. In view of the conduct of the Defendant through the previous litigation and non-attendance in the mediation proceedings, non-appearance despite service of advance copy, the Defendants are shall deposit costs of Rs. 5 lakhs with the worthy Registrar General of this Court, as a pre-condition to file the written statement. If the costs are not deposited, the Written statement would not be liable to be taken on record.

17. Liberty is given to the Plaintiff to file replication within 15 days of the receipt of the written statement(s). Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

18. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

19. List before the Joint Registrar on 10th July, 2024.

20. List before the Court on 19th September, 2024.

**PRAITHIBA M. SINGH
JUDGE**

MAY 3, 2024/dk/bh