



2025:AHC:179556-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

COMMERCIAL APPEAL No. - 27 of 2025

M/s Jay Chemical Works

.....Appellant(s)

Versus

M/s Sai Chemicals

.....Respondent(s)

Counsel for Appellant(s)	: Imran Syed, Anil Kumar Sahu
Counsel for Respondent(s)	: Devansh Misra, Arun Kumar Misra

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

1. This appeal is directed against order dated 19.09.2024 passed by Commercial Court, Kanpur Nagar in Commercial Suit No. 3 of 2020, whereby the plaint filed by the appellant has been ordered to be returned under provisions of Order VII Rule 10 CPC for non-compliance of provisions of Section 12-A of the Commercial Court Act, 2015 (for short 'the Act of 2015').

2. The suit was filed on 12.08.2020 along with an application under Order XXXIX Rules 1 and 2 CPC seeking a decree for permanent injunction against the defendants restraining the defendants, their proprietors, heirs, representatives, employees, servants, dealers, sub-dealers, stockiest and all other persons on their behalf from infringing the registered trade mark of the plaintiff and further restraining them from selling, manufacturing, trading etc of the allegedly deceptively/identical trade mark along with its label.

3. It appears that the suit remained pending for considerably long period before the Commercial Court. An application was filed on 25.07.2024, *inter alia*, indicating that the provisions of Section 12-A of the Act of 2015 have not been followed and, therefore, an appropriate order be passed. The application was contested by the appellant. The Tribunal, after hearing the parties, by the order impugned, referred to the judgement in **Patil Automation Private Limited and others Vs. Rakheja Engineers Private Limited**: (2022) 10 SCC 1 and came to the

conclusion that as the provisions of Section 12-A have not been complied with, instead of dismissing the suit under Order VII Rule 11 CPC, returned the plaint under Order VII Rule 10 CPC.

4. Learned counsel for the appellant made submissions that the Commercial Court was not justified in returning the plaint under Order VII Rule 10 CPC, inasmuch as the judgment in the case of **Patil Automation Private Limited** (supra) itself provided that the determination made therein, would be prospective and the said judgment was delivered on 17.08.2022, whereas the plaint was instituted on 12.08.2020 and, therefore, the said judgment has no application and, therefore, the order impugned deserves to be quashed and set aside and the matter be remanded back to the Commercial Court to proceed with the matter from the stage the plaint was ordered to be returned.

5. Learned counsel for the respondent raised preliminary objection that the order impugned is not appealable under Section 13 (1A) of the Act of 2015. Submissions were made that the application was filed under Section 12-A of the Act of 2015 against which order, the appeal in terms of the proviso to Section 13 (1A) is not maintainable, which is confined to orders which are appealable under Order XLIII CPC or Section 37 of the Arbitration and Conciliation Act. Therefore, it was prayed that the appeal be dismissed as not maintainable.

6. We have considered the submissions made by learned counsel for the parties and have perusal the material available on record.

7. So far as the preliminary objection raised by counsel for the respondent is concerned, the said objection apparently has no substance as the Commercial Court by its order impugned has specifically exercised powers under Order VII Rule 10 CPC, which order is appealable under Order XLIII Rule 1(a) CPC and, therefore, in terms of proviso to Section 13 (1A) of the Act, the appeal would be maintainable.

8. It is not in dispute that the suit was instituted prior to judgment in the case of **Patil Automation Private Limited** (supra). The Hon'ble Supreme Court in said case has, in paragraph 92, observed as under:-

"92. Having regard to all these circumstances, we would dispose of the matters in the following manner. We declare that Section 12A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11. This power can be exercised even *suo moto* by the court as explained earlier in the judgment. We, however, make this declaration effective from 20.08.2022 so that concerned stakeholders become sufficiently informed. 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. Finally, if the plaint is filed violating Section 12A after the jurisdictional High Court has declared Section 12A mandatory also, the plaintiff will not be entitled to the relief."

9. The Court specifically provided that the declaration made by the Court under Section 12-A of the Act of 2015 was mandatory and that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order VII Rule 11 CPC, would be effective from 20.08.2022 so that the concerned stakeholders become sufficiently informed.

10. As the present suit was filed prior to the date as indicated by Hon'ble Supreme Court, the said judgment apparently has no application to the facts of the present case and/or the plaint could not have been returned by relying on judgment in the case of **Patil Automation Private Limited** (supra).

11. Consequently, the order passed by the Commercial Court dated 19.09.2024 cannot be sustained.

12. The appeal filed by the appellant is allowed. The order dated 19.09.2024 is quashed and set aside.

13. The matter is remanded back to the Commercial Court, Kanpur Nagar to proceed with the suit from before the stage the order dated 19.09.2024 was passed.

14. Looking to the fact that the suit was filed in the year 2020, it is expected of the Commercial Court to proceed with the matter with adequate expedition.

(Kshitij Shailendra,J.) (Arun Bhansali,CJ.)

October 9, 2025

RK/AKShukla