IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Arijit Banerjee
And
The Hon'ble Justice Rai Chattopadhyay

FMAT 176 of 2023
with
IA No. CAN 2 of 2025

IPJ Industrial Corporation
Vs.
M/s. Esskay Machinery Pvt. Ltd.

For the Appellant	: Mr. Amitava Mukherjee
	: Mr. Sandipan Banerjee
	: Mr. U. Dutta
	: Ms. A. Sureka
For the respondent	: Mr. Suvadeep Sen
	: Ms. Sucheta Das
Heard on	**: 08/05/2026**
Judgment on	**: 24/06/2026**

Rai Chattopadhyay, J. :-

1. Instant is an application No. CAN 2 of 2025 arising out of the appeal No. FMAT 176 of 2023 connected with M.S. 1 of 2022 (cc) and with regard to the judgment and order dated July 15, 2025, passed therein.

2. The applicant/appellant/plaintiff has sought for grant of permission to withdraw the plaint, stamp duty and all other interlocutory applications filed by it before the Trial Court and to allow it to file the same afresh, with same stamp duty.

3. To proceed further in this matter, it is necessary that crux of this Court's order dated July 15, 2025, in FMAT No. 176 of 2023, clarification /modification of which has been sought for in the instant application, be stated, as herein below:-

4. In the said appeal, the appellant/plaintiff/present applicant challenged an order dated February 28, 2023, passed by the Commercial Court at Rajarhat, in M.S.-1/2022 (cc). The same was a money suit instituted by the present applicant, for recovery of price of goods sold and delivered to the defendant therein.

5. The following facts have further been noted by the Division Bench: -

> ***"2. The respondent took out an application for rejection of the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure contending that the suit is barred by law inasmuch as the requirement of pre-suit mediation under Section 12A of the Commercial Courts Act, 2015 had not been complied with by the plaintiff.***
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> ***3. Learned Judge noted that although there was an application which was filed by the plaintiff seeking dispensation of the requirements under Section 12A of the Commercial Courts Act, in the plaint there was no averment showing any degree of urgency. Learned Judge held that for the purpose of deciding a demurrer application, only the statements in the plaint are relevant. Nothing else can be looked into. The statements in the plaint do not justify institution of the suit by dispensing with the requirement of pre-suit mediation under Section 12A of the 2015 Act. Accordingly, learned Judge, rejected the plaint."***

6. In Paragraph (7) of the said order dated July 15, 2025, the Court's finding has been recorded that on a conjoint reading of ***Patil Automation Private Limited [Patil Automation (P) Ltd. Vs. Rakheja Engineers (P) Ltd. (2022 SCC Online SC 1028)]*** and ***Laxmi Polytab***

Pvt. Limited [Laxmi Polytab Pvt. Limited Vs. Eden Realty Ventures Pvt. Ltd. (2021 SCC OnLine Cal 1457)], the applicant's plaint was liable to be rejected for non-compliance with the provisions of Section-12A of the Commercial Courts Act, 2015. The Court's further finding is that the plaint did not demonstrate any urgency to justify permission being granted to a party to file a suit without satisfying the requirement of pre-litigation mediation under Section-12A of the 2015 Act. Also that, no amount of pre-suit correspondence between the parties but only institutional mediation as contemplated under Section 12A of the Act of 2015, would be sufficient and satisfactory compliance of the provisions of the statute.

7. On these findings the Division Bench dismissed the appeal and upheld the order of the Commercial Court, Rajarhat, which was impugned in the appeal.

8. It is also necessary in this case to look into the order of the Trial Court dated February 28, 2023, to find as to what was the final determination of the Court, vide the same

9. There the Trial Court was adjudicating upon an application filed by the defendant in the suit, under Order VII Rule 11 of the Civil Procedure Code dated September 12, 2022. The defendant said that before filing of the suit the plaintiff ought to have exhausted the precondition of filing that suit, as enumerated under Section 12A of the Commercial Courts Act, 2015. However, the plaintiff has failed to exhaust the remedy of pre-institution mediation as mandatorily required under Section 12A of the Act of 2015 prior to institution of the said suit. The defendant said that in absence of such remedy being exhausted by the plaintiff the said suit was barred by law and the plaint was to be rejected under provision of Order VII Rule 11 (d) of the Civil Procedure Code.

10. After exhaustive discussion, the Trial Court has come to the finding that "the plaintiff has not met the condition as mandated under Section 12A of the Commercial Courts Act, 2015 and the only consequence for not meeting the mandate entails in rejection of plaint." Hence, the defendant's application for rejection of plaint under Order VII Rule 11 of Civil Procedure Code was allowed.

11. As an effect of that order of the Trial Court dated February 28, 2023, the applicant/plaintiff's plaint, filed before it stood rejected by the Court. The Division Bench found no infirmity in the said order of the Trial Court and therefore, dismissed the appeal. In effect, the status of the plaint stood as, to have been rejected being in violation of the statutory provision.

12. The cause of action of the present application arose since thereafter. It is the contention of the applicant/appellant/plaintiff, that in the event of rejection of its plaint, it has to be returned with the Court fees earlier submitted at the time of filing of the suit.

13. For the applicant/appellant/plaintiff Mr. Amitava Mukherjee, learned advocate has appeared whereas the opposite party/respondent/defendant has been represented by Mr. Suvadeep Sen, learned advocate; both of them have made submissions relying upon the judgments of ***Patil Automation Pvt. Ltd. (supra)*** and ***Dr. (Col.) Subhash Chandra Talwar Vs. T. Choithram And Sons*** dated ***October 25, 2019*** in ***Special Leave Appeal No. 18102/2013***. ***Patil Automation Pvt. Ltd. (supra)*** is the decisive verdict of the Supreme Court regarding the commercial suit being liable for rejection under order 7 Rule 11(d), Civil Procedure Code due to breach of mandate under Section 12A of the Commercial Courts Act, 2015; whereas the other judgment of ***Dr. (Col.) Subhash Chandra Talwar (supra)*** has dealt with the issue that upon return of plaint, the plaintiff's prayer for refund of Court fees should not be disallowed as the Court's order of rejection was under order 7, Rule 10 of the Civil Procedure Code, which in consideration of the Court was not an order on merits of the suit. There, the Court has further held that effect of an order of return of plaint is that the same is to be filed in an appropriate Court. On these reasons, the Supreme Court in ***Dr. (Col.) Subhash Chandra Talwar's case (supra)*** has held that the petitioner was entitled to refund of Court fees so that he can fix the Court fee in the Court where he would like to file the suit.

14. It is noted that the subsequent decision of the Supreme Court in ***Patil Automation (supra)*** did not advert to or consider the earlier decision rendered in ***Dr. (Col.) Subhash Chandra Talwar (supra)***, wherein the Supreme Court had specifically held that where a plaint is returned or the proceeding fails on a technical ground without adjudication on merits, the litigant should not be deprived of the benefit of refund or return of Court fees for the purpose of reinstitution before the competent forum.

15. The doctrine of *per incuriam* is a legal principal in common law systems stating that a Court's decision is not a binding precedent if it was rendered in ignorance of a relevant and binding precedent. Under the doctrine of stare decisis (the principle of determining points in litigation according to precedent), Courts are generally bound to follow prior decisions. However, a judgment is considered *per incuriam* if the deciding Court overlooked an authoritative, binding judgment that would have directly impacted or changed the outcome of the case. The doctrine is treated as a crucial exception to the rule of judicial precedent.

16. The principle is well elaborated by a Constitution Bench of Supreme Court in ***Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*** reported in ***(1990) 3 SCC 682***, in the following words: -

> ***"40. We now deal with the question of per incuriam by reason of allegedly not following the Constitution Bench decisions. The Latin expression per incuriam means through inadvertence. A decision can be said generally to be given per incuriam when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this Court. It cannot be doubted that Article 141 embodies, as a rule of law, the doctrine of precedents on which our judicial system is based. In Bengal Immunity Company Ltd. v. State of Bihar, it was held that the words of Article 141, "binding on all courts within the territory of India", though wide enough to include the Supreme Court, do not include the Supreme Court itself, and it is not bound by its own judgments but is free to reconsider them***

in appropriate cases. This is necessary for proper development of law and justice. May be for the same reasons before judgments were given in the House of Lords and Re Dawson's Settlement Lloyds Bank Ltd. v. Dawson, on July 26, 1966 Lord Gardiner, L.C. made the following statement on behalf of himself and the Lords of Appeal in Ordinary:

> *"Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.*
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> *In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law."*

41. Though the above announcement was not made in the course of judicial proceeding it shows that it is open to House of Lords to depart from the doctrine of precedent when considered justified. Section 212 of the Government of India Act, 1935 and Article 141 of the Constitution of India were enacted to make the law declared by the Supreme Court binding on all courts in the country excluding, as is now being interpreted, the Supreme Court itself. The doctrine of ratio decidendi has also to be interpreted in the same line. In England a decision is said to be given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords. It has been said that the decision of the House of Lords mentioned above, refers to a decision subsequent to that of the Court of Appeal. However, "a prior decision of the House of Lords inconsistent with the decision of the Court of Appeal, but which was not cited to the Court of Appeal will make the later decision of the Court of Appeal of no value as given per incuriam." But if the prior decision had been cited to the Court of Appeal and that court had misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the

> ***House to rectify the mistake. In Halsbury's Laws of England (4th edn., Vol. 10, para 745), it has been said:***
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> > ***"While former decisions of the House are normally binding upon it, the House will depart from one of its own previous decisions when it appears right in the interests of justice and of the proper development of the law to do so. Cases where the House may reconsider its own previous decisions are those involving broad issues of justice or public policy and questions of legal principle. Only in rare cases will the House reconsider questions of construction of statutes or other documents. The House is not bound to follow a previous case merely because it is indistinguishable on the facts."***
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> ***42. The position and experience in this Court could not be much different, keeping in view the need for proper development of law and justice.***
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> ***43. As regards the judgments of the Supreme Court allegedly rendered in ignorance of a relevant constitutional provision or other statutory provisions on the subjects covered by them, it is true that the Supreme Court may not be said to "declare the law" on those subjects if the relevant provisions were not really present to its mind. But in this case Sections 25-G and 25-H were not directly attracted and even if they could be said to have been attracted in laying down the major premise, they were to be interpreted consistently with the subject or context. The problem of judgment per incuriam when actually arises, should present no difficulty as this Court can lay down the law afresh, if two or more of its earlier judgments cannot stand together. The question however is whether in this case there is in fact a judgment per incuriam. This raises the question of ratio decidendi in Hariprasad and Anakapalle cases on the one hand and the subsequent decisions taking the contrary view on the other."***

17. The ratio in ***Dr. (Col.) Subhash Chandra Talwar (supra)*** proceeds on the equitable and procedural principle that a litigant ought not to suffer irreversible financial prejudice where the lis itself has not been adjudicated on merits and the proceeding is capable of being re-presented in accordance with law. Since the later judgment in ***Patil Automation (supra)*** did not examine, distinguish or overrule the said earlier binding precedent on the ancillary consequence relating to Court fees and reinstitution, the said aspect remained outside the scope of consideration before the Court in ***Patil Automation (supra)***.

18. In that view of the matter, the doctrine of *per incuriam* would have substantial relevance while considering the ancillary issue of forfeiture or retention of Court fees after rejection of plaint for non-compliance with Section 12A(1) of the Commercial Courts Act, 2015. A judgment rendered in ignorance of an earlier coordinate or binding precedent on the same point may not possess precedential force to that extent. ***Patil Automation (supra)*** undoubtedly authoritatively settled the mandatory nature of pre-institution mediation under Section 12A(1) of the Act of 2015; however, insofar as the consequential issue as to whether Court fees deposited are to be returned or refunded or not and the right of reinstitution are concerned, the earlier principle recognised in ***Dr. (Col.) Subhash Chandra Talwar (supra)*** was neither noticed nor reconciled. Therefore, the observations in ***Patil Automation (supra)***, if construed to imply automatic forfeiture of Court fees upon rejection of plaint, would run contrary to the decision in ***Talwar's case (supra)*** on that limited aspect, particularly when the earlier binding authority had already recognised a contrary equitable principle in cases where the proceeding failed for technical or procedural reasons without adjudication on merits.

19. The law is well-settled as regards the principles of the doctrine of binding precedent, to promote certainly and consistency in judicial decisions. Also, in Indian judicial hierarchy, the numerical strength of a bench dictates its binding authority. Under Article 141 of the Constitution of India, the Supreme Court's rulings bind all Courts. But at the same time, when smaller benches interact with larger benches, specific rules of precedent and *per incuriam* apply. In other words, if a smaller bench delivers a judgment in direct contradiction or ignorance of a larger bench ruling, that smaller bench decision is automatically deemed per incuriam. It loses its value as a precedent and cannot be cited as valid law.

20. Also, it is well-settled that pronouncement of law by a Division Bench is to stand as binding on a future Division Bench of the same or smaller number of Judges. Best reference is the Constitution Bench decision of Supreme Court in ***Chandra Prakash and Others versus State of U.P.***

and Another reported in ***(2002) 4 SCC 234***. The Constitution Bench has held that a pronouncement of law by a Division Bench of Supreme Court is binding on a Division Bench of same or smaller number of judges – in the following words: -

> ***"22. A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. As stated in the above judgments, it is of common knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in the case of Raghubir Singh held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges. It is in furtherance of this enunciation of law, this Court in the latter judgment of Parija held that: (SCC p. 4, para 6)***
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>> ***"But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified."***
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> ***(emphasis supplied)"***

21. In due observance of the settled principle of law as discussed above, this Court is duty-bound to look into and follow the law settled pursuant to the judgment of Supreme Court in ***Dr. (Col.) Subhash Chandra Talwar case (supra)***.

22. Furthermore, Section 12A under Chapter III A of the Commercial Courts Act, 2015 has provided for mandatory pre-institutional mediation in a suit in the following words: -

> ***"12A. 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 preinstitution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government."*
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> **** *** *** ****

23. Under Order VII, Rule 11(d) of the Civil Procedure Code, a plaint is liable to be rejected where, from the statements contained in the plaint itself, the suit appears to be barred by any law. In this case it was found that the suit was barred by operation of provision under Section 12A(1) of the Commercial Courts Act, 2015. Such rejection of suit is deemed to be a 'decree', by virtue of Section 2(2) of the Civil Procedure Code. However, neither Order VII, Rule 2 nor any other provision of Civil Procedure Code provides for automatic refund or return of Court fees upon rejection of the plaint. On the contrary, Order VII, Rule 12 of the Code merely preserves the plaintiff's right to present a fresh plaint where permissible by law, but still it does not authorize reuse or refund of the Court fees already paid.

24. The Supreme Court has repeatedly emphasized the strict and limited scope of Order VII, Rule 11 (d) of the Code, holding that only the averments in the plaint are relevant to ascertain whether the suit is barred by law, as seen in ***Dahiben versus Arvindbhai Kalyanji Bhanushali [(2020) 7 SCC 366]*** and ***Srihari Hammandas Totala versus Hemant Vithal Kamat [AIR 2021 SC 3802].*** The Supreme Court has also classified that rejection under Rule 11 (d) stands on a different footing from that under Rules 11(b) and 11 (c) of Order VII of the Code, where defects relating to valuation or deficit Court fee are curable; hence, while rejecting a plaint under Order VII, Rule 11(d) the Court cannot simultaneously grant liberty to amend the plaint, as it has been held in ***Ram Prakash Gupta versus Rajiv Kumar Gupta [(2007) 10 SCC 59]***. Order VII, Rule 1 requires making of "a statement of the value of the subject matter of the suit for Court fees and jurisdiction". The Courts must examine compliance upon filing, potentially giving opportunity to rectify formal defects. However, substantive defects lead to in limine rejection, without such grace. Order VII, Rule 11(d) therefore, ordinarily amounts to termination of the suit on a legal bar and not a mere procedural defect. The Court is required to examine how far the said principle applies in the instant case.

25. As per the statutory provision, a Commercial suit not contemplating any urgency, should not be instituted, unless the plaintiff exhausts the remedy of pre-institutional mediation. In ***Patil Automation Private Limited (supra)*** the Supreme Court has authoritatively held that compliance with Section 12A(1) of the Commercial Courts Act, 2015, is mandatory and that a Commercial suit instituted without exhausting the pre-institution mediation process, where no urgent interim relief is sought for, is liable to rejection under Order VII, Rule 11 of the Civil Procedure Code.

26. It is significant that in ***Patil Automation Private Limited (supra)*** while the Supreme Court unequivocally declared compliance with Section 12A(1) of the Commercial Courts Act, 2015 to be mandatory and held that a plaint instituted in breach thereof would be liable to rejection, the Court did not conclusively specify whether such rejection must necessarily be traced under Order VII, Rule 11(d) of the Civil Procedure Code alone or to any other Clause under Rule 11 thereof. The absence of such categorical classification assumes importance in the context of consequences like return of Court fees, because of the reason that rejection under different Clauses of Rule 11 may attract differing procedural and equitable considerations.

27. The following portion of the judgment is important to note in this regard:-

> ***"112. The statute which has generated the controversy is the Amending Act of year 2018. We have noticed that there is undoubtedly a certain amount of cleavage of opinion among the High Courts. The other feature which is to be noticed is that, this is a case where the law in question, the Amending Act containing certain Section 12-A is a toddler. The law necessarily would have teething problems at the nascent stage. The specified value has been lowered drastically from Rs 1 crore to Rs 3 lakhs. The imperative need to comply with the mandate of Section 12-A which we have unravelled if it has not been shared by the parties on the advice they received or on the view***

> ***prevailing in the High Courts would necessarily mean that unless we hold that the law, we declare is prospective such suits must perish. The court fee paid would have to be written off. In a fresh suit which would be otherwise barred by limitation, shelter can be taken only under Section 14 of the Limitation Act. The availability of the power under Section 14 itself may have to be decided by the court."***

28. The Court's conclusion and operative reasoning as enumerated therein struck balance between two competing considerations - first, that Section 12A(1) of the Commercial Courts Act, 2015 is mandatory in nature, and second, that a litigant who has instituted suit earlier should not be unfairly prejudiced retrospectively. The Court was consciously adopting a pragmatic and equitable approach rather than imposing an inflexible procedural penalty in every case. It reflects that the Court did not treat Section 12A violation as involving adjudication on merits, but as a threshold procedural defect capable of attracting equitable considerations. The finding of the Court, as quoted above also strengthens that ancillary consequence, such as forfeiture of Court fees need not automatically follow upon rejection of the plaint. The Supreme Court in ***Patil Automation (supra),*** though might have laid down the principle, for concerning suits lodged prior to coming into force of Section 12A(1) of the Commercial Courts Act, 2015, still, so far as forfeiture of Court fees is concerned due to rejection of plaint on account of breach of provision under Section 12A(1) of the Act, the said principles may be applied, which are in consonance with the broader scheme as provided under the Commercial Courts Act, 2015.

29. The judgment of Supreme Court in ***Patil Automation (supra)***, therefore, leaves sufficient doctrinal space for a liberal interpretation in an appropriate case, that where the plaint is rejected solely on account of non-compliance with the pre-institution mediation requirement, without any adjudication on merits and without the suit being effectively entertained by the Court, the litigant ought not to suffer automatic forfeiture of Court fee. This approach only would be consistent with the broader object underlying Section 12A of the Commercial Courts Act, 2015, namely facilitation of dispute resolution and procedural discipline, rather than imposition of a punitive financial consequence for a defect in procedure, which can be cured. The litigant has not effectively invoked the adjudicatory jurisdiction of the Commercial Court on merits, and therefore, the Court fees paid for such abrogated proceeding should be returnable, particularly because the defect is inherently procedural and curable in nature rather than that being adjudicatory in nature.

30. This would also accord with the equitable principle that Court fee is essentially a fee for consideration of a cause by the Court and where the law deems that no valid suit had come into existence at all, retention of the fee may operate harshly and contrary to the object of facilitating commercial dispute resolution.

31. A suit can generally be reinstituted after rejection of the plaint under Order VII, Rule 11(d), Civil Procedure Code or non-compliance with the mandatory requirement of pre-institution mediation under Section 12A(1) of the Commercial Courts Act, 2015. Such rejection is ordinarily not final on merits of the dispute, nor does it operate as res judicata; it merely terminates that particular defective proceeding because the plaint is barred by law at the time of institution. The Court's reasoning in ***Patil Automation case (supra)*** indicates that the defect is procedural and curable and not a substantive one. While directing that non-compliant suits be rejected, the Court also protected litigants by invoking Section 14 of the Limitation Act, 1963, so that time spent in prosecuting the defective suit may be excluded when a fresh suit is filed after complying with Section 12A(1) of the Commercial Courts Act, 2015. That protection would make little sense unless the Court contemplated reinstitution of the suit after curing the defect. Thus, rejection under Order VII, Rule 11 (d) in this context should be understood as rejection of the plaint as presently framed and instituted, not as an adjudication extinguishing the cause of action.

32. This position also accords with the general doctrine under the Civil Procedure Code. Unlike dismissal of a suit on merits rejection of plaint does not decide the substantive rights of the parties. Order VII, Rule 13 of the Code expressly provides that rejection of a plaint "shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action." Therefore, where the sole defect is absence of prior compliance with Section 12A(1) of the Act of 2015, the plaintiff may ordinarily undergo pre-institution mediation and thereafter file a fresh suit on the same cause of action, subject to limitation, with possible benefit of Section 14 of the Limitation Act, 1963. The only practical caveat is that the subsequent suit must be a fresh institution, not a mere revival or amendment of the rejected plaint. The earlier rejection remains final as to that plaint, but not as to the underlying claim. Accordingly, non-compliance with Section 12A(1) of 2015 Act, leads to temporary procedural foreclosure, not substantive extinction of remedy.

33. The entire discussion as above can be summed up in a manner that where a plaint is rejected under order 7, Rule 11 (d) Civil Procedure Code solely on the ground of non-compliance with the mandatory requirement of pre-institution mediation under Section 12A(1) of the Commercial Courts Act, 2015, the Court fee ought ordinarily be returned to the plaintiff, since such rejection does not amount to an adjudication on merits but merely recognizes a procedural bar existing at the time of institution. The principle underlying ***Patil Automation Private Limited (supra)*** strongly supports this approach, because the Supreme Court contemplated that after due compliance with Section 12A of the Commercial Courts Act, a fresh suit may be instituted and even extended the equitable protection of Section 14 of the Limitation Act, 1963 for exclusion of time spent in prosecuting the defective proceeding. Once the law recognizes the right of reinstitution after curing the defect, retention of substantial Court fees paid in the earlier defective proceeding would operate oppressively and contrary to the remedial object of the procedural law. Further, order 7, Rule 13, Civil Procedure Code preserves the plaintiff's right to present a fresh plaint on the same cause of action, thereby indicating that, rejection under Rule 11(d) does not finally terminate the substantive claim.

34. In such circumstances, principles analogous to Sections 18, 19 and 20(1) of the West Bengal Court Fees Act, 1970, which provide for refund of Court fees on specific events and circumstances and judicial precedence concerning return or refund of Court fees where proceedings fail for technical or jurisdictional reasons, justify return of the Court fee so that the litigant is not compelled to pay Court fees twice for adjudication of the same lis, which has never been examined earlier on merits.

35. Hence, to sum up the decision, it can be said that ratio in the judgment of ***Dr. (Col.) Subhash Chandra Talwar's case (supra)*** and not that in ***Patil Automation (supra),*** regarding the consequences of rejection of a plaint for non-compliance with Section 12A of the Commercial Courts Act could govern the issue of refund of court fees, since the earlier binding decision in ***Dr. (Col.) Subhash Chandra Talwar (supra)*** — which recognised the litigant's entitlement to refund of court fees where proceedings fail on technical grounds without adjudication on merits— had not been considered in the later judgment; to that limited extent, the later decision is to be treated as *per incuriam.* Rejection of a plaint under Order VII Rule 11(d) for failure to undergo pre-institution mediation is merely a procedural and curable defect, it does not determine the rights of the parties on merits, does not extinguish the cause of action, and permits institution of a fresh suit after compliance with Section 12A of the 2015 Act. Hence, this Court finds that since the earlier proceeding had never been adjudicated on merits, retention of the court fees would compel the litigant to pay court fees twice for the same lis and hence, would be inequitable.

36. On the basis of discussion as above, this application No. CAN 2 of 2025 filed by the applicant/appellant/plaintiff is allowed, holding that the applicant is entitled to refund of Court fees paid at the time of institution of the earlier suit before the Commercial Court. Hence, appropriate necessary steps be taken immediately, maximum within a period of three

(03) weeks from the date of communication of copy of this judgment for compliance thereof by the competent authority.

37. Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Rai Chattopadhyay, J.)