

**GOVERNMENT OF JAMMU AND KASHMIR
DEPARTMENT OF LAW, JUSTICE AND PARLIAMENTARY AFFAIRS
Civil Secretariat, Jammu/Srinagar**

Subject: Filing of written statement/petition-instructions thereof.

**Circular No: 07-JK(LD) of 2023.
Dated. 09 -05-2023.**

A number of civil suits are pending/filed in which injunctions are sought for staying of infrastructural projects and these projects get stalled due to Court Orders. It is necessary to bring the provisions of the Specific Relief Act into knowledge of all concerned so that an effective defense is projected before the Hon'ble Courts wherever such suits are pending/filled.

In terms of the Specific Relief (Amendment) Act, 2018 various provisions of the Specific Relief Act, 1963 were amended including insertion of section 20-A and section 20-B which provides as under:-

"20A. Special provisions for contract relating to infrastructure project.—

(1) No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.

Explanation. For the purposes of this section, section 20B and clause (ha) of section 41, the expression "infrastructure project" means the category of projects and infrastructure Sub-Sectors specified in the Schedule...

20B. Special Courts.-The State Government, in consultation with the Chief Justice of the High Court, shall designate, by notification published in the Official Gazette, one or more Civil Courts as Special Courts, within the local limits of the area to exercise jurisdiction and to try a suit under this Act in respect of contracts relating to infrastructure projects.

Uhalid

Neeraj

Vide notification S.O 124 of 2020, Special Courts have already been constituted in terms of section 20-B of the Specific Relief Act, 1963 by the Government of Jammu and Kashmir.

Similarly, in terms of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018, various provisions of the Commercial Courts Act, 2015 have been amended including insertion of Chapter IIIA, Pre Institution Mediation and Settlement, wherein, section 12-A provides as under:-

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 pre- institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

The essentiality of the section 12-A has been deliberated by the Hon'ble Supreme Court in M/s Patil Automation Private Limited v Rakheja Engineers Private Limited (SLP(c) No.14697 of 2021). The relevant para is excerpted as under:-

"...84. 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..."

1/14/22

Reysole

Vide notification S.O 47 of 2020 read with notification S.O 247 of 2023, Commercial Courts have been constituted by the Government of Jammu and Kashmir and also vide notification S.O 3232(E) of 2018 the Central Government has already authorized the State Authority /District Authority for purposes of proceedings under section 12-A.

Accordingly, the above provisions of law are circulated for information of all the concerned to invoke the same wherever required in defending the Government cases.

Sd/-
(Achal Sethi)
Secretary to Government

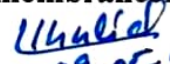
No: Law-Jud/99/2021-10.

Dated.09-05-2023.

Copy to the:

1. All Law officers posted in Government Departments.
2. All officers/Official of Department of Law, Justice and P.A.
3. All the Standing Counsels
4. Director Litigation Jammu/Kashmir.
5. Private Secretary to Ld. Advocate General, J&K.
6. Private Secretary to Secretary Law.
7. Concerned File.


(Reyaz Ali Bhat)
Assistant Legal Remembrancer


09-05-2023.