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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL APPEAL FROM ORDER NO.2 OF 2026

WITH

INTERIM APPLICATION NO.372 OF 2026

Advanced Technology Products Inc. …Appellant / Applicant

Versus

Oriental Export Corporation …Respondent

Mr. Gaurav Mehta with Mr. Ravitej Chilumuri, Ms. Afreen Noor, Mr. Prince Todi and Ms. Sanya Gandhi i/b. Khaitan & Co. for the Appellant / Applicant.

Ms. Ankita Singhania, Burzin Somandy, Ariana Somandy, Rina Ram, and Nikita H. Joshi i/b. Somandy and Associates for the Respondents / Ori. Plaintiffs.

CORAM : R.I. CHAGLA
ADVAIT M. SETHNA, JJ.

Reserved on : 4TH FEBRUARY, 2026.

Pronounced on : 23RD FEBRUARY, 2026.

J U D G M E N T (PER – R.I. CHAGLA J.)

1. By this Commercial Appeal from Order, the Appellant / Original Defendant has challenged the exparte order dated 25th April, 2025 passed by the Presiding Judge, Court No.2, City Civil Court, Dindoshi (alternate Judge, Court No.3), in Review Application

No.2 of 2025 in Commercial Suit No.149 of 2025.

2. By the impugned Order, the alternate Judge has set aside the order dated 17th April, 2025 (Original Order) passed by the Presiding Judge, Court No.3, City Civil Court, Dindoshi exparte and in review by *inter alia* allowing registration of the Suit without the Respondent / Original Plaintiff complying with the mandatory requirement of pre-institution mediation under Section 12A of the Commercial Court's Act, 2015.

3. The relevant facts are as under:-

(i) The Appellant is a Corporation based in Ohio and is engaged in the manufacturing and distribution of pneumatic hose and tubing products.

(ii) The Appellant vide multiple purchase Orders between August, 2022 to September, 2024 purchased fitting and tubing products from the Respondent for use in air brake systems. The Appellant sold the products it purchased from the Respondent to its clients based in Ohio and in other parts of United States.

(iii) The Appellant's customers informed it by Email dated 4th September, 2024 that they discovered quality defects in the products. The Email was forwarded by the Appellant to the Respondent immediately.

(iv) Thereafter correspondences were exchanged between the Appellant and Respondent in September, 2024 whereby the Appellant requested the Respondent to furnish lab reports and other documents demonstrating that Respondent's tubing complied with the industry standards in North America. It is the Appellant's case that the Respondent failed to provide any such response and / or attend meetings held by the Appellant and its customers to resolve the quality issues in the tubing products.

(v) In view of the Appellant having no clarity and / or information from the Respondent regarding the quality issues encountered in the Respondent's tubing products, the Appellant had in public interest and in compliance with the laws applicable in the United States issued a press release dated 13th September, 2024 *inter alia* stating that it had received a report of potential deterioration of the tubing (supplied by the Respondent), when

exposed to prolonged sunlight and is evaluating the said issue. The Appellant recommended that until such evaluation, any sale or use of the tubing be suspended. Pertinently, the Respondent's name was not mentioned in the press release.

(vi) The Appellant's customer, viz. Stoughton Trailers LLC ("Stoughton") engaged a third party lab viz. Element Materials Technology to get the Respondent's tubing products tested for UV and Ozone resistance tests and to ascertain their compliance with the industry standards. From the test report dated 7th October, 2024, it was found that one sample of Respondent's tubing (from the production lot dated 6th January, 2024) failed the UV resistance test.

(vii) Based on the test report obtained by the Appellant, the Appellant submitted the part 573 Safety Recall Report ("Recall Report") in respect of tubing supplied by the Respondent with National Highway Transportation Safety Administration, in accordance with the requirements of National Traffic and Motor Vehicle Safety Act, applicable in the US where the Appellant is domiciled. It was mandatory for this Appellant to issue the said

Recall Report in 2024 under Section 6, part 573 title 49 of the Code of Federal Regulations.

(viii) The Appellant's Advocates issued a Demand Notice dated 17th December, 2024 to the Respondent *inter alia* calling upon the Respondent to indemnify and hold the Appellant harmless from all damages, attorney's costs and fees it had incurred due to the non-compliant products supplied by the Respondent.

(ix) Notice dated 17th December, 2024 was addressed by the Respondent *inter alia* seeking outstanding dues payable towards goods supplied and calling upon the Appellant to cease and desist from making alleged disparaging statements which they claimed caused loss and damage to them, including damage to their reputation.

(x) The Respondent's Advocates issued their response to the demand notice on 20th January, 2025 *inter alia* requesting for test reports received by the Appellant from Stoughton.

(xi) The Appellant's Advocates addressed an email dated

6th February, 2025 to the Respondent's Advocates whereby it expressly stated that the Appellant was compelled to remit an amount of USD 44,464.50 to Stoughton as reimbursement of the expenses incurred by Stoughton for third party lab testing of the Respondent's products. The Appellant agreed to share test report provided the Respondent remitted the amount of USD 44,464.50 to it.

(xii) The Respondent filed Commercial Suit No.149 of 2025 against the Appellant before City Civil Court, Dindoshi in April, 2025.

(xiii) The Presiding Judge, Court Room No.3, City Civil Court, Dindoshi rejected the plea of the Respondent to register the Suit without exhausting the remedy of pre-institution mediation vide Order dated 17th April, 2025.

(xiv) The Presiding Officer, Court Room No.2, City Civil Court, Dindoshi (alternate Judge, Court No.3) passed an exparte Order dated 25th April, 2025 ("impugned order") in Review Application No.2 of 2025 filed by the Respondent and set aside the Order dated 17th April, 2025. It is an admitted position that

no prior notice of the Review Application was given to the Appellant.

(xv) The Presiding Judge, Court Room No.3, City Civil Court, Dindoshi passed an Order dated 9th May, 2025 in the Suit *inter alia* directing the Respondent to serve the Writ of Summons upon the Appellant and submit a service report on or before the next date of hearing i.e. 18th June, 2025.

(xvi) The Respondent filed Notice of Motion NO.1735 of 2025 on 25th April, 2025 seeking interim relief in the form of an injunction against the Appellant to stop making alleged defamatory and disparaging statements which the Respondent claims affected their business reputation and causing loss.

(xvii) The Appellant received Writ of Summons on 27th May, 2025.

(xviii) The Appellant's Advocate served an unregistered copy of its Notice of Motion under Order VII Rule 11 of the CPC on the Respondent's Advocate on 20th September, 2025.

(xix) The Respondent's Advocate served a copy of their Reply to the Notice of Motion on the Appellant's Advocates on 17th October, 2025. In this Reply, the Respondent for the first time, referred to and reproduced a copy of the impugned Order.

(xx) The Appellant's Advocate applied for the certified copy of the impugned Order and the Review Application. The certified copies were received on 15th December, 2025.

(xxi) Notice of Motion No.4349 of 2025 filed by the Respondent *inter alia* seeking ad-interim relief restraining the Appellant from selling, alienating, transferring, creating third party rights in or otherwise dealing with the goods supplied by the Respondent.

(xxii) The present Commercial Appeal from Order was thereafter filed.

(xxiii) The Respondent claimed that the Appellant has thereafter continued to advertise and sell the goods being subject matter of the Commercial Suit No.149 of 2025 including on the website and on third party platforms.

(xxiv) The Reply to the present Commercial Appeal from Order was filed by the Respondent on 28th January, 2026.

4. Mr. Gaurav Mehta, the learned Counsel appearing for the Appellant / Original Defendant has submitted that under Order XLVII Rule 4(2) of the CPC, it is provided that no application for review should be granted without previous notice to the "Opposite Party" to enable him to appear and be heard in support of the order of which review is sought. He has submitted that the Review Application was filed on 23rd April, 2025 and disposed of by the impugned Order on 25th April, 2025 without notice being given to the Appellant. He has submitted that notice to the "Opposite Party" under Order XLVII Rule 4 of the CPC is mandatory and non-compliance invalidates the Order.

5. Mr. Mehta has submitted that the Appellant is the "Opposite Party" and the fact that the Suit was yet to be instituted as contended by the Respondent does not do away with the requirement of Notice. He has placed reliance upon the judgment of the Kerala High Court in ***Thirumangalath Nelliotan Ammu v. Thirumangalath Nelliotan Govindar Nair***[1]**,** paras 3, 4, 5 and 10 and the judgment of the Andhra Pradesh High Court in ***B.F. Pushpaleela Devi v. State of***

1 AIR 1966 Ker 294.

A.P.*[2]*, paragraphs 13 – 15 in support of this contention.

6. Mr. Mehta has submitted that the Order dated 17th April, 2025 had been passed by Justice Takalikar (Court No.3). However, the impugned Order in review has been passed by Justice Mohiuddin (Court Room 2) in charge of Court Room No.3, while Justice Takalikar was on leave for two weeks. He has submitted that this is not a case where the learned Judge who passed the Order dated 17th April, 2025 sought to be reviewed was not available permanently. He has submitted that Justice Mohiuddin who passed the impugned Order had no jurisdiction to pass the impugned Order. The impugned Order is passed in contravention of Order XLVII Rule 5 of the CPC. He has referred to the Order XLVII Rule 5 which provides that where the Judge, or Judges, or any one of the Judges who passed the decree or made the Order, of which review is applied for continues or continue to be attached to the Court at the time when the application for a review is presented and is not or are not precluded by absence or other cause for a period of two months next after application from consideration of the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application and

2 (2002 SCC OnLine AP 716.

no other Judge or Judges of the Court shall hear the same.

7. Mr. Mehta has submitted that the learned Judge by passing the impugned Order has in effect sat in appeal over the Order dated 17th April, 2025 passed by the co-ordinate bench. The impugned Order (i) in terms sets aside order dated 17th April, 2025 and (ii) provides no reasoning / grounds for review and (iii) treats the review application like an appeal.

8. Mr. Mehta has submitted that it is well settled that the application for review can only be on (i) discovery of new facts / evidence which was not within the Applicant's knowledge despite due diligence or could not be produced when the Order was passed or (ii) on account of mistake or error apparent on the face of the record or (iii) for other sufficient reasons. He has submitted that none of these grounds have been made out or even referred to in the Review Application or impugned Order.

9. Mr. Mehta has submitted that the Review Application does not plead any grounds for review under Order XLVII of the CPC. He has submitted that apart from re-arguing merits, the Review Application proceeds on the basis that the Order dated 17th April,

2025 incorrectly records the Plaintiff's submissions. He has submitted that the Review Application is nothing but an Appeal.

10. Mr. Mehta has submitted that the impugned Order is really an Order passed in Appeal recording 'erroneous' findings and reappreciating / rehearing the request for waiver of pre-filing mediation. Review is not a rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior Court to correct errors. He has in this context placed reliance upon ***Kamlesh Verma v. Mayawati***[3]***,*** at paragraphs 14 -15.

11. Mr. Mehta has submitted that in paragraph 5 of the Review Application, it is contended that the Order dated 17th April, 2025 incorrectly records the Plaintiff's submissions. He has submitted that it is impermissible for the Plaintiff / Respondent herein to contend before an in-charge alternative co-ordinate Court that the Order dated 17th April, 2025 incorrectly records submissions. He has submitted that it is well settled by the Supreme Court in ***State of Maharashtra v. Ramdas Shrinivas Nayak & Anr***[4]***,*** Paragraph 4 that the statement of facts as to what transpired at the hearing, recorded

3 (2013) 8 SCC 320.

4 (1982) 2 Supreme Court Cases 463.

in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by Affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error.

12. Mr. Mehta has also placed reliance upon the judgment of Supreme Court in ***Ram Bali v. State of U.P***[5], at paragraph 9 which is to the same effect. He has also placed reliance upon the judgment of this Court in ***Priyanka Communications (India) Pvt. Ltd. & Ors. v. Tata Capital Financial Services Ltd***[6], at paragraphs10, 11, 19, 20-21 which is also to this effect.

13. Mr. Mehta has submitted that though the Respondent has contended that the Appellant's conduct subsequent to the filing of the Suit demonstrates urgency as the Appellant continues to advertise and sell goods that are the subject matter of the Suit, in this Appeal,

5 (2004) 10 Supreme Court Cases 598.

6 2021 SCC OnLine Bom 1595.

this Court is not deciding whether there was any urgency in filing the Suit or not. This question is within the domain of the learned Trial Court. This Court is to consider the legality of the impugned Order and not to adjudicate the merits of the Respondent's claims regarding the alleged urgency in filing of the Commercial Suit. He has submitted that the Commercial Appeal from Order accordingly requires to be allowed and the impugned Order set aside.

14. Ms. Ankita Singhania, the learned Counsel appearing for the Respondent / Original Plaintiff has supported the impugned Order. She has submitted that in an application to obtain exemption from the Court of the requirement of undertaking pre-institution mediation, there is no "Opposite Party" as admittedly, the Suit has not yet been registered or numbered till such time the Court grants exemption to pre-institution mediation. Thus, Clause (a) of Sub Section 2 of Rule 4 of Order XLVII of the CPC, which provides for giving notice to "Opposite Party" is not applicable at the stage of deciding the Review Application for dispensation of pre-institution mediation.

15. Ms. Singhania has submitted that the requirement to

obtain exemption from the Court of requirement of undertaking pre-institution mediation is clearly prior to the institution of a Commercial Suit. A bare reading of Section 12A of the Commercial Courts Act, 2015 makes it clear that a Suit which does not contemplate any urgent interim relief shall not be instituted unless the Plaintiff exhausts the remedy of pre-institution mediation. Thus, it is clear from the plain reading of Section 12 that unlike clause 14 of the Letters Patent, there is no requirement to give notice contemplated thereunder.

16. Ms. Singhania has submitted that at the stage of deciding whether pre-institution mediation requirement can be dispensed with or not, the *lis* is only between the Plaintiff and the Court. The reason being that it is settled law that the Court must decide the application for dispensation of pre-institution mediation requirement only on the basis of averments in Plaint taken on a demurer as if the same were true. Further, the defence of the Defendant is not considered at this stage at all. She has placed reliance upon the judgment of this Court in ***Ultra Media and Entertainment Private Ltd. v. Y Not Films LLP and Anr***[7]**.** She has submitted that the Court is only considering whether

7 2024 SCC OnLine Bom 3085 (CCC 15).

interim relief has been sought and not whether ultimately the Court accedes to the Plaintiff's request for interim relief. She has in this context placed reliance upon Supreme Court judgment in ***Yamini Manohar v. TKD Keerthi***[8].

17. Ms. Singhania has submitted that in an application for dispensation of pre-institution mediation, the Court is only considering the Plaint and the documents annexed thereto and examining if the Plaintiff has pleaded a case for interim relief, as if the same were true. In this scenario, there is no role of a proposed Defendant since it is not as if the Defendant is permitted to make out a case at this stage as to why the interim relief ought not to be granted. She has submitted that this is also clear from the language of Section 12A of the Commercial Courts Act, 2015 which states that the only enquiry that the Court is conducting is whether "a Suit which does not contemplate any urgent interim relief…"

18. Ms. Singhania has submitted that the Court at the stage of considering the application for dispensation of the requirement of pre-institution mediation is only considering whether the Suit contemplates urgent interim relief or not. She has referred to the

8 (2024) 5 Supreme Court Cases 815.

definition of the word "contemplate" as contained in Oxford Learners Dictionary which is "to think about whether you should do something or how you should do something".

19. Ms. Singhania has submitted that just as in the case of Clause 12 of the Letters Patent in Section 12 A of the Commercial Courts Act, there is no role that the Defendant plays. It cannot be termed as an "Opposite Party". She has relied upon the judgment in ***M/s. Harman Overseas & Ors. v. Dongguan TR Bearing Co. Ltd. & Anr[9].,*** wherein this Court has held that there is no requirement of giving notice under Clause 12 of the Letters Patent to a Defendant.

20. Ms. Singhania has submitted that in the present case, since at the time of passing of the Order dated 17th April, 2025 as well as the impugned Order dated 25th April, 2025, the Suit wasn't even registered, there is no question of giving the Defendant a notice.

21. Ms. Singhania has submitted that the Defendant has not been prejudiced by lack of notice and / or not being present at the time of passing of the Order dated 17th April, 2025 as there was no role of the proposed Defendant at that stage. She has submitted that

9 Appeal No.340 of 2015 in Leave Petition No.286 of 2013 in Suit No.674 of 20134 with companion matters dated 4th August, 2017.

a proposed Defendant could in no way have contributed to the facts under review in the impugned Order dated 25th April, 2025, which were once again between the Court and the Plaintiff. She has placed reliance upon the judgment of the Calcutta High Court in ***Surendra Prosad Lahiri Choudhuri v. Aftabuddin Ahmed***[10] and ***Janki Nath Hore and Ors. v. Prabhasini Dasi***[11] in this context.

22. Ms. Singhania has submitted that in ***Patil Automation Private Ltd. & Ors. v. Rakheja Engineers Private Ltd***[12]**,** the Supreme Court has considered what constitutes institution of Suit and in that context has held that the act of numbering the Plaint and inclusion in the register of Suits alone would constitute the institution of Suit. She has submitted that in the present case the Suit had not been instituted as it had not been numbered and the application for exemption from pre-institution mediation was prior to the institution of the Suit.

23. Ms. Singhania has also dealt with the submission of the Appellant that the alternate Judge had no jurisdiction. She has submitted that under Order XLVII Rule 5 of the CPC, the time

10 AIR 2022 Calcutta 234.
11 1915 (22) CLJ 99.
12 (2022) 10 Supreme Court Cases 1.

stipulated viz. period of two months of non-availability of regular Court of the learned Judge who had passed the Order, is not sacrosanct. She has submitted that this period of time varies and the two months of absence cannot be held to be mandatory. She has submitted that in the event of urgency, the Plaintiff may move the alternate Judge to review the Order passed by the regular Court. She has referred to the impugned Order and in particular the finding therein that the Plaintiff had brought to the notice of the alternate Judge the relevant pleadings in the Plaint and prayer clause (c) in which the Plaintiff was seeking injunction and certain directions to the Defendant and upon considering these aspects the alternate Judge has considered urgency and heard the Review Petition.

24. Ms. Singhania has also referred to the paragraph 3 of the impugned Order wherein the alternate Judge has referred to the decision of the Karnataka High Court in ***Shivappa Mallappa Jigalur and Ors. v. The LAO and Asstt. Commissioner and Ors***[13], as well as the judgment of the Delhi High Court in ***Rajiv Lochan v. Shri Narender Nath***[14] which have been cited by the Counsel for the Plaintiff. The Delhi High Court has held that it is true that the general

13 MANU/KA/0163/2004.

14 AIR 2004 Delhi 48.

principle, for very good reason, is that a review must always be heard by the same Judge or by the same Court but there are situations in which this is not possible particularly where the same judicial officer is not available and in this situation it is very well settled law that any other Court of competent jurisdiction can hear the case. She has submitted that this is one such situation where the Plaintiff having pleaded urgency and sought prayer had made out a case for moving the alternate Judge.

25. Ms. Singhania has accordingly submitted that there is no merit in the present Commercial Appeal and that the same may be dismissed.

26. Having considered the submissions, there have been arguments addressed regarding the applicability of Order XLVII Rule 4(2)(a) to a review of an Order passed in an application for dispensation of pre-institution mediation. The said provision provides for giving notice to the "Opposite Party" and that no application for review should be granted without previous notice to the "Opposite Party" to enable him to appear and be heard in support of the order of which review is sought. However, these arguments are not

required to be considered in the present matter and are best reserved to a matter where the issue requires consideration. This is in view of the fundamental issue which arises herein namely whether in the present circumstances the alternate Judge could have entertained the application for review of the Order passed by a coordinate bench. In answering this issue it is pertinent to note that the alternate Judge in the present case has entertained the Review Application and passed the impugned Order when the coordinate bench who had passed the Order in review was on a leave for merely two weeks.

27. It is provided in Order XLVII Rule 5 of the CPC that where the learned Judge who has made the Order for which the review is applied for, continues to be attached to the Court at the time when the application for review is presented, and is not precluded by absence or other cause for a period of two months next after the application from consideration of the Order to which the application refers, such Judge shall hear the application, and no other Judge of the Court shall hear the same. Thus, in our considered view there is a clear violation of this provision in the present case by the alternate Judge having heard the Review Application of the Respondent and passing the impugned Order, when the coordinate

bench who had passed the Order under review was available after the two weeks leave.

28. The alternate Judge in the impugned Order has proceeded on the premise of urgency for hearing the Review Petition on the ground that the Plaintiff had pleaded urgency in the Plaint, particularly paragraphs 3 and 8 of the Plaint and sought prayer Clause (c) viz., injunction and direction to the Defendant. However, the alternate Judge lost sight of the cause of action pleaded in paragraph 11 of the Plaint viz. having arisen on 4th September, 2024.

29. Although, we are not called upon to determine urgency in the filing of the Suit, the alternate Judge was enjoined to consider the pleadings as a whole and from which it is apparent that the Respondent could very well have moved the learned Judge who had passed the Order under review upon his having resumed charge of Court Room No.3 after two weeks.

30. It has been contended by Ms. Singhania on behalf of the Respondent that the period of two months absence prescribed in Order XLVII Rule 5 of the CPC of non-availability of the Judge who passed the Order under review, is not mandatory. However, it is clear

from this provision that the Judge who has passed the order under review and no other Judge of the Court shall hear the application for review, if the judge is available within the prescribed period of two months. This period of absence may be shorter provided the Applicant cannot wait any longer for hearing of his review application which certainly is not the case here. Further, there is no pleading which would warrant the application of review to be moved before the alternate Judge by not waiting for an additional week when the coordinate Court who had passed the Order under review was available.

31. There is much merit in the submission on behalf of the Appellant that the alternate Judge who has passed the impugned Order has infact sat in appeal over the Order dated 17th April, 2025 passed by the coordinate bench. This is borne out from the impugned Order which sets aside the Order dated 17th April, 2025 by providing no reasons / grounds of review and treating the Review Application like an Appeal. It is well settled that the power of review cannot be confused with appellate power which enables a superior Court to correct errors. The judgment of the Supreme Court in ***Kamlesh Verma***

v. Mayawati*[15]*, is apposite.

32. From a perusal of the Review Application and in particular paragraph 5 thereof, it is apparent that the Respondent has contended that the Order dated 17th April, 2025 incorrectly records the Plaintiff's submissions. It is impermissible for the Respondent to contend before an in-charge alternate coordinate Court that the Order dated 17th April, 2025 incorrectly records submissions. The judgments of the Supreme Court in ***State of Maharashtra v. Ramdas Shrinivas Nayak & Anr (Supra)*** and ***Ram Bali (Supra)*** as well Judgment of this Court in ***Priyanka Communications (India) Pvt. Ltd. & Ors. (Supra)*** have held that, if a party thinks that the happenings in a Court have been wrongly recorded in a judgment, it is incumbent upon the party while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. From these judgments it is clear that the learned Judge who had passed the Order dated 17th April, 2025 should have been moved in the event the Plaintiff sought for correction of alleged errors in the statements of the Plaintiff

15 (2013) 8 SCC 320.

recorded in the said Order.

33. Accordingly, we find that the alternate Judge could not have heard the Review Application filed by the Respondent herein and passed the impugned Order.

34. We make the Commercial Appeal absolute by setting aside the impugned Order.

35. The Commercial Appeal from Order is accordingly disposed of. There shall be no order as to costs.

[ADVAIT M. SETHNA, J.] **[R.I. CHAGLA J.]**

36. The learned Counsel appearing for the Respondent has sought a stay of the said judgment and order. We do not consider it appropriate to grant a stay in favour of the Respondent in view of the findings that the alternate Judge could not have entertained the application for review or passed the impugned order thereon, having regard to the provisions of Order XLVII Rule 5 of the Code of Civil Procedure, 1908.

37. Accordingly, the request for stay stands rejected.

[ADVAIT M. SETHNA, J.] **[R.I. CHAGLA J.]**