

2023 LiveLaw (SC) 906

IN THE SUPREME COURT OF INDIA
SANJIV KHANNA; J., S.V.N. BHATTI; J.
SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 32275/2023; 13-10-2023
YAMINI MANOHAR versus T K D KEERTHI

Commercial Courts Act, 2015; Section 12A - Pre-litigation Mediation and Settlement - Plaintiff has no absolute choice to avoid pre-litigation mediation by merely making a prayer for urgent interim relief. The Commercial Court should examine that the prayer for urgent interim relief is not a disguise or mask to wriggle out of and get over Section 12A of the CC Act. (Para 7)

Commercial Courts Act, 2015; Section 12A - Pre-litigation Mediation and Settlement - No specific application needs to be filed to waive the process of pre-litigation mediation and that the Court can decide on the basis of pleadings and oral submissions. (Para 3)

(Arising out of impugned final judgment and order dated 08-05-2023 in CRP-IPD No. 4/2023 passed by the High Court of Delhi at New Delhi)

For Petitioner(s) Mr. J. Sai Deepak, Adv. Mr. Kartikey Bhatt, Adv. Mr. R. Abhishek, Adv. Ms. Shraddha Chirania, Adv. Mr. Kunal Mimani, AOR

For Respondent(s) Mr. Kunal Khanna, Adv. Mr. Rishi Raj Sharma, AOR Ms. Vidhi Pasricha, Adv. Mr. Swastik Bisarya, Adv. Mr. Pranav Prasoon, Adv.

ORDER

Delay condoned.

The application under Order VII, Rule 11 of the Code of Civil Procedure, 1908¹, filed by the petitioner – Yamini Manohar, defendant in C.S. (Comm.) No. 205/2022, has been rightly dismissed.

2. Section 12A of the Commercial Courts Act, 2015,² reads:

“12A. Pre-litigation 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-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) For the purposes of pre-litigation mediation, the Central Government may, by notification, authorise—

(i) the Authority, constituted under the Legal Services Authorities Act, 1987 (39 of 1987); or

(ii) a mediation service provider as defined under clause (m) of Section 3 of the Mediation Act, 2023.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority or mediation service provider authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of one hundred and twenty days from the date of application made by the plaintiff under subsection (1):

Provided that the period of mediation may be extended for a further period of sixty days with the consent of the parties:

¹ For short, “the Code”.

² For short, “the CC Act”.

Provided further that, the period during which the parties spent for pre-litigation mediation shall not be computed for the purposes of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties and the mediator.

(5) The mediated settlement agreement arrived at under this section shall be dealt with in accordance with the provisions of Sections 27 and 28 of the Mediation Act, 2023.”

3. This Court in “**Patil Automation Private Limited and Ors. v. Rakheja Engineers Private Limited.**”³ has held that Section 12A of the CC Act is mandatory. Pre-litigation mediation is necessary, unless the suit contemplates urgent interim relief. At the same time, the judgment observes:

“100. In the cases before us, the suits do not contemplate urgent interim relief. As to what should happen in suits which do contemplate urgent interim relief or rather the meaning of the word ‘contemplate’ or urgent interim relief, we need not dwell upon it. The other aspect raised about the word ‘contemplate’ is that there can be attempts to bypass the statutory mediation under Section 12-A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis. Section 80(2)CPC permits the suit to be filed where urgent interim relief is sought by seeking the leave of the court. The proviso to Section 80(2) contemplates that the court shall, if, after hearing the parties, is satisfied that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to the court after compliance. Our attention is drawn to the fact that Section 12-A does not contemplate such a procedure. This is a matter which may engage attention of the lawmaker. Again, we reiterate that these are not issues which arise for our consideration. In the fact of the cases admittedly there is no urgent interim relief contemplated in the plaints in question.”

The aforesaid paragraph refers to Section 80(2) of the Code, which permits the suit, praying urgent interim relief, to be filed by seeking the leave of the court. The *proviso* to Section 80(2) of the Code states that, if, after hearing the parties, the court is satisfied that no urgent or immediate relief is required to be granted in the suit, the court may return the plaint for presentation to it after compliance with requirements of Section 80(1) of the Code. Section 12A of the CC Act does not contemplate leave of the court, as is clear from the language and words used therein. Nor does the provision necessarily require an application seeking exemption. An application seeking waiver on account of urgent interim relief setting out grounds and reasons may allay a challenge and assist the court, but in the absence of any statutory mandate or rules made by the Central Government, an application *per se* is not a condition under Section 12A of the CC Act; pleadings on record and oral submissions would be sufficient. The words used in Section 12A of the CC Act are - “*A suit which does not contemplate any urgent interim relief*”, wherein the word “contemplate” connotes to deliberate and consider. Further, the legal position that the plaint can be rejected and not entertained reflects application of mind by the court *viz.* the requirement of ‘urgent interim relief’.

4. In the present case, it is an accepted fact that an urgent interim relief has been prayed for and the condition that the plaint “contemplates” an urgent interim relief is satisfied. Therefore, the impugned judgment/order of the Delhi High Court dated 08.05.2023, which upholds the order of the District Judge (Commercial Court)-01, South District at Saket, New Delhi dated 06.02.2023, rejecting the application under Order VII, Rule 11 of the Code, is correct and in accordance with law.

³ 2022 SCC OnLine SC 1028.

5. Our attention is drawn to the judgment of the High Court of Judicature at Bombay in “*Kaulchand H. Jogani v. M/s Shree Vardhan Investment & Ors.*”⁴, wherein the following observations have been made:

“31. In my considered view, the proper course would be to assess whether there are elements which prima face indicate that the suit may contemplate an urgent interim relief irrespective of the fact as to whether the plaintiff eventually succeeds in getting the interim relief. In a worst case scenario, where an application for interim relief is presented without there being any justification whatsoever for the same, to simply overcome the bar under Section 12A, the Court may be justified in recording a finding that the suit in effect does not contemplate any urgent interim relief and then the institution of the suit would be in teeth of Section 12A notwithstanding a formal application.”

6. The High Court of Delhi in “*Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Limited*”⁵ observes:

“30. The contention that it would be necessary for the plaintiff to file an application seeking exemption from the provisions of Section 12A of the Commercial Courts Act, 2015, is unmerited. This Court cannot accept the said contention for several reasons.

31. First of all, there is no provision under Section 12A of the Commercial Courts Act, 2015 that requires the plaintiff to make any such application in a suit which involves urgent interim reliefs. As stated above, if the suit involves urgent interim relief, Section 12A of the Commercial Courts Act, 2015 is inapplicable and it is not necessary for the plaintiff to enter into a pre-institution mediation.

32. Second, a suit, which does not contemplate urgent interim relief, cannot be instituted without exhaustion of pre-institution mediation, as required under Section 12A(1) of the Commercial Courts Act, 2015. As noted above, the Supreme Court has held that the said provision is mandatory and it is compulsory for a plaintiff to exhaust the remedy of pre-institution mediation, in accordance with the rules before instituting a suit. The Court has no discretion to exempt a plaintiff from the applicability of Section 12A(1) of the Commercial Courts Act, 2015. It is not permissible for the court to pass an order contrary to law; therefore, an application seeking exemption from engaging in pre-institution mediation, in a suit that does not involve urgent interim reliefs, would not lie.

33. This Court also finds it difficult to accept that a commercial court is required to determine whether the urgent interim reliefs ought to have been claimed in a suit for determining whether the same is hit by the bar of Section 12A(1) of the Commercial Courts Act, 2015. The question whether a plaintiff desires any urgent relief is to be decided solely by the plaintiff while instituting a suit. The court may or may not accede to such a request for an urgent interim relief. But that it not relevant to determine whether the plaintiff was required to exhaust the remedy of pre-institution mediation. The question whether a suit involves any urgent interim relief is not contingent on whether the court accedes to the plaintiff’s request for interim relief.

34. The use of the words “*contemplate any urgent interim relief*” as used in Section 12(1) of the Commercial Courts Act, 2015 are used to qualify the category of a suit. This is determined solely on the frame of the plaint and the relief sought. The plaintiff is the sole determinant of the pleadings in the suit and the relief sought.

35. This Court is of the view that the question whether a suit involves any urgent interim relief is to be determined solely on the basis of the pleadings and the relief(s) sought by the plaintiff. If a plaintiff seeks any urgent interim relief, the suit cannot be dismissed on the ground that the plaintiff has not exhausted the pre institution remedy of mediation as contemplated under Section 12A(1) of the Commercial Courts Act, 2015.

⁴ 2022 SCC OnLine Bom 4752.

⁵ 2022 SCC OnLine Del 3529.

7. We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine the nature and the subject matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad-interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order VII, Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order VII, Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely, (i) *prima facie* case, (ii) irreparable harm and injury, and (iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.

8. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyze Section 12A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The proposition that the commercial courts do have a role, *albeit* a limited one, should be accepted, otherwise it would be up to the plaintiff alone to decide whether to resort to the procedure under Section 12A of the CC Act. An '*absolute and unfettered right*' approach is not justified if the pre-institution mediation under Section 12A of the CC Act is mandatory, as held by this Court in *Patil Automation Private Limited* (supra). The words '*contemplate any urgent interim relief*' in Section 12A(1) of the CC Act, with reference to the suit, should be read as conferring power on the court to be satisfied. They suggest that the suit must "contemplate", which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and ensure that the legislative object/intent behind the enactment of section 12A of the CC Act is not defeated.

9. Recording the aforesaid, the present special leave petition is dismissed.

10. Pending application(s), if any, shall stand disposed of.

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