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C.S.(Comm.Div.) No. 216 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

CORAM

**THE HON'BLE MR. JUSTICE M. SUNDAR**

**C.S. (Comm.Div.) No. 216 of 2022**

**&**

**O.A.No.666 of 2022**

**in**

**C.S. (Comm.Div.) No. 216 of 2022**

Arvind Gupta

..Plaintiff

Vs.

1. Punjab National Bank

Represented by its Chief Manager

No.150, Luz Church Road

Mylapore, Chennai

Tamil Nadu – 600 004

2. Bhadreshwar Vidyut Pvt. Ltd.,

formerly known as M/s.OPGS Power Gujarat Pvt. Ltd.,

represented by its Director

Old No.41, New No.16

Thomas Nagar, Little Mount

Saidapet

Chennai – 600 015

..Defendants

Prayer: This Civil Suit is preferred under Order IV Rule 1 of OS rules read with Order VII Rule 1 of the Code of Civil Procedure for a declaration to declare that Deed of Personal Guarantee/Agreement dated 21.06.2014 is



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null and void and not binding upon the plaintiff, for a permanent injunction restraining the 1<sup>st</sup> defendant their men, agents, person or persons acting through or under them or for and on their behalf, successors in interest, assigns from in any manner relying on the alleged Deed of Personal Guarantee Agreement dated 21.06.2014 for any of the transactions the 2<sup>st</sup> defendant had with the 2<sup>nd</sup> defendant and for cost of the suit.

For Plaintiff : Mr.S.R.Rajagopal  
for Ms.Tushitha B  
For Defendants : Ms.Vinithra Srinivasan  
of M/s.NVS & Associates (Law Firm)  
for D1

### **J U D G M E N T**

This judgment/order will now dispose of captioned main suit and captioned application thereat.

2. The date of presentation of the plaint is 30.09.2022 and date of institution of suit is 17.10.2022. In the light of Section 12A of 'The Commercial Courts Act, 2015 (Act 4 of 2016)' (hereinafter 'CCA' for the sake of convenience and clarity) Mr.S.R.Rajagopal, learned counsel representing the counsel on record for plaintiff (Ms.Tushitha B) addressed this Court on whether the captioned suit will qualify as one where there is 'contemplation of urgent interim relief'.

3. To be noted, suit summons has been duly served on the first



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defendant 'Punjab National Bank, No.150, Luz Church Road, Mylapore, Chennai - 600 004' [hereinafter 'PNB' for the sake of brevity, convenience and clarity] on 26.10.2022.

4. M/s.NVS & Associates (Law Firm) has filed vakalatnama for PNB and Ms.Vinithra Srinivasan is before this Commercial Division. To be noted, suit summons has been duly served on the second defendant on 31.10.2022 but this Commercial Division is informed that no counsel has entered appearance. However, this is not of any significance as legal drill of testing compliance qua Section 12A of CCA is a test qua *suo motu* rejection of plaint drill in the light of ***Patil Automation Private Limited and Others vs. Rakheja Engineers Private Limited*** reported in ***2022 SCC OnLine SC 1028***] more particularly paragraphs 75 and 76 thereat which has made it clear that there can be *suo motu* rejection of plaint in cases where Commercial Division finds that there is no adherence qua Section 12A of CCA which has been held to be mandatory.

5. In the light of the legal drill on hand, short facts shorn of elaboration will suffice. Short facts are that the plaintiff is a nominee shareholder in second defendant Company Bhadreshwar Vidyut Pvt. Ltd.,



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(previously known as OPGS Power Gujarat Pvt. Ltd.) [hereinafter 'BVPL'

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for the sake of convenience and clarity]; that BVPL in its earlier name i.e., OPGS Power Gujarat Pvt. Ltd., was incorporated during the financial year 2007-2008; that the purpose of incorporation was to act as a 'SPV' ('Special Purpose Vehicle) qua Electricity Rules, 2005 under Electricity Act, 2003, the objective being to own, manage and operate captive Power Generating Plants; that SPV shall not carry on any other act; that the plaintiff was appointed as Director on the Board of BVPL on 04.05.2007; that BVPL envisioned setting up a power plant in the State of Gujarat; that the plaintiff resigned from the Board of BVPL on 04.02.2012; that plaintiff initially held 9800 equity shares; that plaintiff divested his share holding in 2008 and ultimately resigned on 04.02.2012; that BVPL intended to set up a coal based group captive thermal Power Station in the State of Gujarat; that such project was undertaken with term loans provided by a consortium of lenders; that PNB had sanctioned a loan which is vide Conditions of Sanction dated 20.01.2008; that initial sanction of consortium of lenders was Rs.950 Crores and PNB had approved/sanctioned Rs.150 Crores; that initially consortium of 10 Banks sanctioned a term loan to the tune of Rs.950 Crores and



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additional term loan to the tune of Rs.218 crores; that it will suffice to say

that loan extended by the consortium of banks to BVPL aggregated to

Rs.1168 Crores; that in 2013, a new Consortium of Lenders was formed and

the dues of 10 banks were subsumed by the loans advanced by the new

consortium; that under terms of consortium, PNB issued a letter dated

19.04.2013 whereby it sanctioned a further term loan; that on 22.10.2013

PNB issued some amendments to the terms of the sanction whereby PNB is

said to have modified the security for the term loans provided to the

Company (to be noted, these are plaint averments); that it will suffice to say

that the epicentre of this *lis* is a Personal Guarantee Agreement captioned

'GUARANTEE AGREEMENT' dated 21.06.2014 wherein according to

PNB, the plaintiff is guarantor and the exposure now is Rs.440.49 Crores;

that this Personal Guarantee Agreement of the plaintiff has been filed as

Plaint Document No.13; that signature of the plaintiff in this plaint

Document No.13 is not disputed; that it is contended that there can be no

guarantee qua the consortium; that the guarantee cannot be enforced owing

to amendments of the terms of the sanction; that the transaction does not

provide for a personal guarantee; that the captioned suit has been filed with



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a prayer to declare this Deed of Guarantee dated 21.06.2014 signed by the

plaintiff as null and void, not binding on the plaintiff and that there is a

further prayer for permanent injunction restraining PNB from in any manner

relying on this guarantee for the transactions between PNB and BVPL; that

there is a usual limb of prayer relating to costs besides the usual residuary

limb of prayer; that along with the suit the captioned application has been

filed on 14.10.2022 with a prayer for interim injunction restraining PNB and

BVPL from in any manner relying on the Personal Guarantee Agreement

dated 21.06.2014.

6. The submissions on Section 12A of CCA

were heard out in this back drop. This Commercial Division carefully

considered the submissions in the light of elucidation of Section 12A in

***Patil Automation*** case law (supra) wherein Hon'ble Supreme Court put to

rest the debate as to whether Section 12A is mandatory or directory owing to

different views taken by different Commercial Divisions of different High

Courts. ***Patil Automation*** case law is both elucidative and instructive.



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7. Be that as it may, following **Patil Automation** case law, this

Commercial Division has written judgments / orders. Two of such judgments / orders are judgment dated 27.09.2022 in C.S (Comm.Div.) No.208 of 2022 [**Mohamed Aboobacker Chank Lungi Pvt. Ltd., Vs. Revathy Textiles and Others**] / applications therein and judgment / order dated 13.10.2022 in C.S. (Comm.Div.) No. 202 of 2022 [**K. Varathan Vs. Mr.Prakash Babu Nakundhi Reddy**] along with applications therein.

8. This Commercial Division having carefully considered the submissions, now proceeds to set out the submissions one after the other, discuss each submission and also give its dispositive reasoning infra. This is a product of the legal drill that was undertaken in this Commercial Division today in the entire forenoon session and this Commercial Division now proceeds to set out the outcome infra.

a) Learned counsel for plaintiff in his endeavour to demonstrate 'urgent interim relief' phenomenon predicated his plea *inter alia* to two plaint documents i.e., Plaint Document Nos.42 and 43 dated 09.12.2021 and 22.12.2021, a scanned reproduction of which are as follows:





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09.12.2021

Mr. Arvind Gupta  
Guarantor  
M/s Bhadreshwar Vidyut Private Limited  
No. 17, Bishop Garden Road,  
RA Puram, Chennai - 600028

Dear Sir,

Reg: Invocation of Personal Guarantee of Mr. Arvind Gupta- M/s Bhadreshwar Vidyut Private Ltd

In connection with credit facilities sanctioned in favour of M/s Bhadreshwar Vidyut Private Limited guaranteed by you, we point out that the account had become NPA on 18.10.2019 as per RBI guidelines due to nonpayment of interest/installments /devolvement of LCs.

We regret that no steps have so far been taken to set right the irregularity. Under the circumstance, we are unable to permit continuation of the aforesaid account.

The Balance outstanding of the accounts as on 30.11.2021 is as follows :


Nature	Limit	Balance Outstanding as on 30.11.2021
CC - 87-371907	35.00	81,51,87,136.16
Term Loan - IC-139874	18.04	25,52,80,111.76
Term Loan - IC-139786	29.56	41,36,32,697.98
Term Loan - IC-139777	205.14	292,08,47,903.14
Total	287.74	440,49,47,849.04


Total Outstanding as on 30.11.2021 : Rs. 440,49,47,849.04 (Rupees Four Hundred and Forty Crores Forty Nine Lakhs Forty Seven Thousand Eight Hundred and Forty Nine and Four Paise only) with further interest to be calculated from 01.12.2021.

We hereby invoke the guarantee and call upon you to pay the aforesaid amount with further interest at the rate agreed upon the date of actual payment within 7 days from the receipt of this letter, failing which the bank will be constrained to take such legal steps as may be necessary at your risk and responsibility to recover the amount with interest, costs and other charges and also enforce the securities without any further notice.

We have full confidence that you will be good enough to settle the account within the aforesaid time and will thereby preclude the contingency of a legal action.

Yours Faithfully,

  
ZONAL SASTRA HEAD



CC : M/s Bhadreshwar Vidyut Private Limited, New No. 16, Old No. 41, Ground Floor, Thomas Nagar, Little Mount, Saidapet, Chennai - 600015

अंचल सास्त्र केंद्र, चेन्नई, पीएनबी टावर्स, 46-49, रायपेट्टा हाई रोड, रायपेट्टा, चेन्नई - 600 014. ई-मेल: zs8341@pnb.co.in  
Zonal Sastra Centre, Chennai, PNB Towers, No.46-49, Royapettah High Road, Royapettah, Chennai - 600 014. e-mail : zs8341@pnb.co.in

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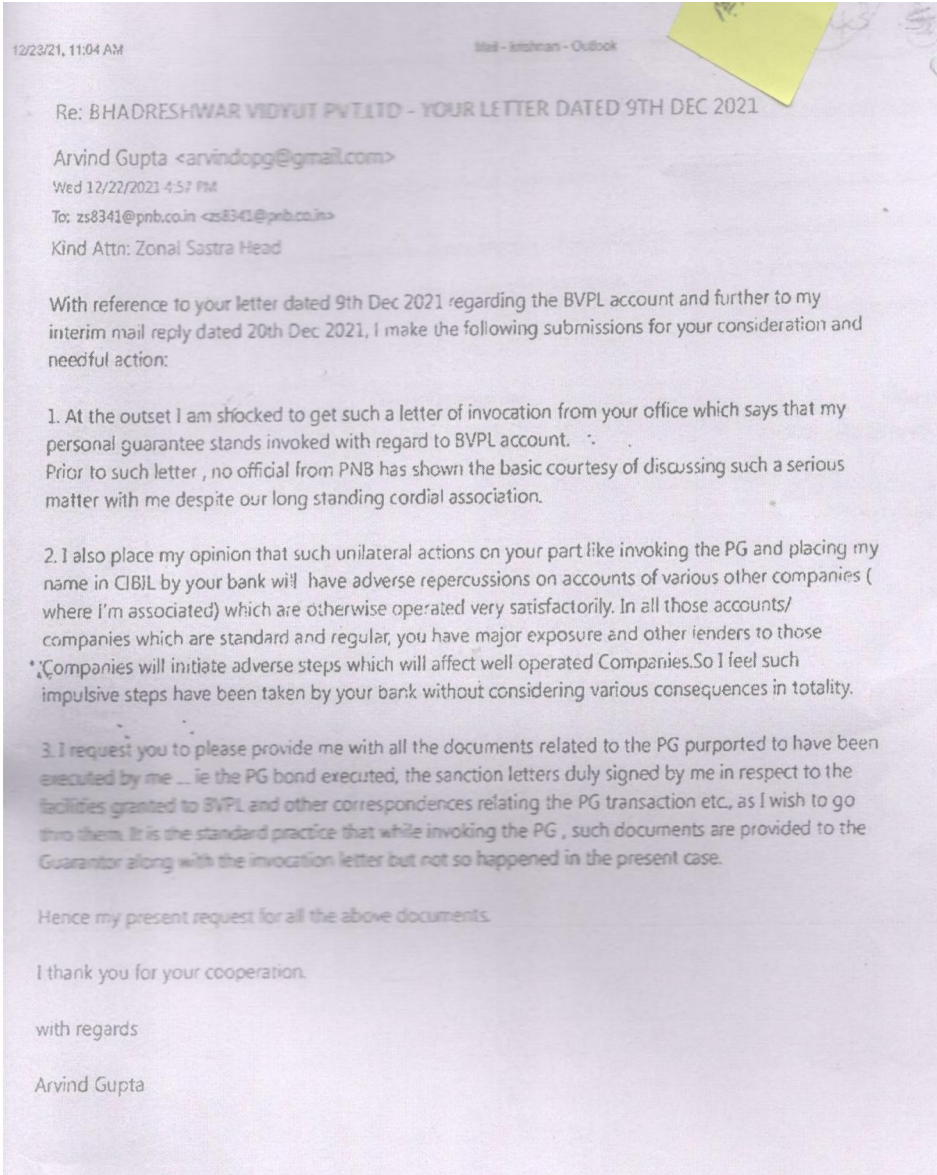




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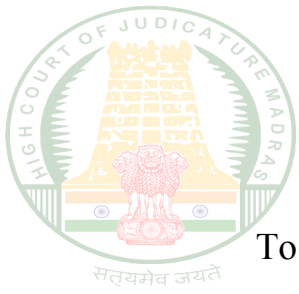
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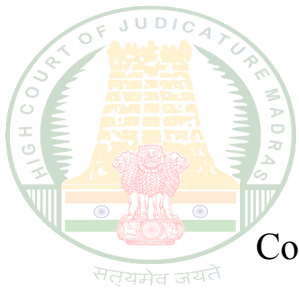
Aforementioned documents are communications from PNB to plaintiff and plaintiff's response to the same respectively. The documents speak for themselves. It will suffice to say that in Plaintiff Document No.42 dated 09.12.2021, PNB had made it clear that it is invoking the personal guarantee dated 21.06.2014 qua an outstanding of little over Rs.440.49 crores as already alluded to supra (Rs.440,49,47,849.04 to state with specificity) and plaintiff has responded by e-mail dated 22.12.2021 saying that PNB had not discussed the matter with the plaintiff and that it is a impulsive unilateral step. The plaintiff has requested PNB to provide all the documents relating to personal guarantee agreement (purported to have been executed by plaintiff). In Plaintiff Document No.43 in the considered view of this Commercial Division, one articulation which is of utmost relevance is, plaintiff by his own volition has stated that PNB should have shown the courtesy of 'discussing' with the plaintiff considering the long standing cordial association. In the considered view of this Commercial Division, this itself demonstrates that mediation is a certain possibility even according to the plaintiff.



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To be noted, thereafter, proceedings were initiated in 'Debts Recovery Tribunal-I, Chennai' ['DRT'], by State Bank of India and Syndicate Bank. This Commercial Division is informed that there were proceedings before 'National Company Law Tribunal' ['NCLT'] at the instance of SBI but the documents are not before this Commercial Division. To be noted, the proceedings before NCLT and NCLAT ['National Company Law Appellate Tribunal'] at the instance of Canara Bank (erstwhile Syndicate Bank) and order of Hon'ble Supreme Court have been placed before this Commercial Division as Plaint Document Nos.35, 36 and 37 respectively.

(b) Learned counsel drew the attention of this Commercial Division to an order made by a Division Bench of the Delhi High Court in *R.A.Perfumery* case [*Chandra Kishore Chaurasia Vs.R.A.Perfumery Works Private Limited*] being order dated 27.10.2022 reported in *2022/DHC/004454* (to be noted, this is the neutral citation of Delhi High Court which has been put in place recently). A careful perusal of this order brings to light that *R.A.Perfumery* case is a case where the plaintiff was non-suited by a



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Commercial Court at the instance of the defendant for non-compliance with Section 12A of CCA. Non-suited plaintiff carried the matter to the Division Bench i.e., Commercial Appellate Division and Commercial Appellate Division rendered 27.10.2022 order. A careful perusal of this order brings to light that there is nothing to show what was the urgent interim relief that was sought by the plaintiff in the Commercial Court. It appears to be a suit claiming certain reliefs for alleged infringement of trademarks. Therefore, ***R.A.Perfumery*** case does not carry the matter further for the plaintiff. Suffice to say that this Commercial Division reminded itself of the declaration of law by a Constitution Bench of Hon'ble Supreme Court in celebrated ***Padma Sundara Rao*** case law [***Padma Sundara Rao Vs. State of Tamil Nadu*** reported in (2002) 3 SCC 533]. Most relevant paragraph is paragraph 9 and the same reads as follows:

*“9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in*



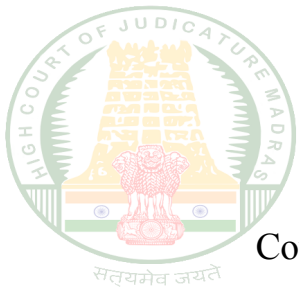
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*a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'*

Available facts make it clear that a comparison of factual matrix qua urgent interim relief facet of ***R.A.Perfumery*** case and the case on hand is a non-starter. Therefore, if ***Padma Sundara Rao*** principle is applied, ***R.A.Perfumery*** case law cannot be applied to the case on hand. Suffice to say that it does not help the plaintiff in any manner qua Section 12A of CCA. This Commercial Division also notices that the term '*contemplate*' or expression '*urgent interim relief*' occurring in Section 12A have not been elucidated. In this view of the matter a faint attempt on the part of counsel for plaintiff to rely on ***M/s.Kusum Ingots & Another Vs. Union of India and Another*** reported in (2004) 6 SCC 254 line of authorities and say that CCA being a central legislation requires application of ratio of all High



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Courts equally as precedents need not be gone into as

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**R.A.Perfumery** does not help the plaintiff in the light of **Padma Sundara Rao**.

(c) Be that as it may, the term '*contemplate*' and expression '*urgent interim relief*' have been explained by this Commercial Division in aforementioned **Chank Lungi** order and **K. Varathan** order. Most relevant paragraph in **Chank Lungi** case is sub-paragraph No.(xxv) of paragraph No.6 which reads as follows:

*(xxv) A careful perusal of the meaning of the term 'contemplate' makes it clear that a thoughtful look and a profound thought at length would essentially be the determinants qua 'contemplate'. Therefore it is not for the asking qua plaintiff to say that urgent interim orders are required. When the plaintiff makes such a plea, it is open to this Commercial Division to examine the contemplation determinant i.e., the term 'contemplate' occurring in Section 12A of CCA. In the case on hand, inter alia owing to there being no cease and desist notice, no notice at all and more particularly plaintiff going into slumber for nearly two months, this Commercial Division has no hesitation in coming to the conclusion that it cannot be gainsaid by the plaintiff that there is contemplation of*



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*urgent interim orders in the case on hand. Though obvious, it is made clear that this Commercial Division has referred to judgments rendered by Hon'ble single Judges of Hon'ble Delhi High Court in **Bolt Technology** and **Retail Royalty** only for the purpose of completion of not only the narrative but the discussion and dispositive reasoning also. Those being orders of other single benches of another High Court have only persuasive value and this Commercial Division as of now does not express any opinion on the persuasive value as far as **Bolt Technology** and **Retail Royalty** are concerned. Suffice to say that they do not come to the aid of the plaintiff in the case on hand. To put it differently, **Bolt Technology** and **Retail Royalty** are factually distinguishable, not applicable to case on hand. Therefore, this order is not to be understood as following the same.'*

(d) In *K.Varathan* case, this Commercial Division relied on Law Lexicons, dictionaries and went into the question of description (to be noted, not definition) of the term 'contemplate' and the expression 'urgent interim relief' and explained the same. The most relevant paragraphs are Paragraphs 14 to 16, which read as follows:

*'14. Before embarking upon the above exercise, it is made*





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clear that this Commercial Division is of the view that the four terms and the expression 'contemplation of urgent interim relief' constituted by these four terms can be described but not defined. It is also made clear that when a term or expression is defined, the meaning is confined (constricted) whereas a term or expression stands explained and / or elucidated when described. Let me now go to Lexicons and dictionaries. To be noted, from the Lexicons and dictionaries those of the meanings which are contextually most relevant to our exercise on hand have been culled out and the same are set out infra as a tabulation.

<b>Term / Expression</b>	<b>Name of Lexicon / Dictionary</b>	<b>Meaning</b>
<b>Contemplate</b>	<i>New 9<sup>th</sup> Edition of Oxford Dictionary</i>	<i>to think carefully about and accept the possibility of happening</i>
	<i>Concise Oxford English Dictionary</i>	<i>look at thoughtfully; think about, think profoundly and at length</i>
<b>Urgent</b>	<i>New 9<sup>th</sup> Edition of Oxford Dictionary</i>	<i>that needs to be dealt with or happen immediately</i>
	<i>Concise Oxford English Dictionary</i>	<i>requiring immediate action or attention</i>
	<i>P.Ramanatha Aiyar's Advanced Law Lexicon (5<sup>th</sup> Edition)</i>	<i>Demanding prompt action</i>



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	<i>Stroud's Judicial Dictionary of Words and Phrases (Ninth Edition)</i>	<i>A high standard is required to satisfy the court of the urgency</i>  <i>Urgency – The “urgency” exemption from the duty to consult contained in this section does not apply to any urgency arising as a result of the minister's own failure to reach a decision until the last moment.</i>
<b>Interim</b>	<i>New 9<sup>th</sup> Edition of Oxford Dictionary</i>	<i>intended to last for only a short time until more permanent is found; in the interim - during the period of time between two events; until a particular event happens</i>
	<i>Concise Oxford English Dictionary</i>	<i>the intervening time; provisional; meanwhile</i>
	<i>P.Ramanatha Aiyar – The Law Lexicon</i>	<i>Meanwhile; in the meantime</i>
	<i>P.Ramanatha Aiyar's Advanced Law Lexicon (5<sup>th</sup> Edition)</i>	<i>Meanwhile; in the meantime; The word “interim” when used as a noun means “intervening” and when used as an adjective, it means</i>



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		“temporary” or “provisional”
	<i>Black's Law Dictionary (Tenth Edition)</i>	<i>Done, made, or occurring for an intervening time; temporary or provisional.</i>
	<i>Stroud's Judicial Dictionary of Words and Phrases (Ninth Edition)</i>	<i>For the time being</i>
<b>Relief</b>	<i>Concise Oxford English Dictionary</i>	<i>The alleviation or removal of pain, anxiety or distress</i>
	<i>P.Ramanatha Aiyar's Advanced Law Lexicon (5<sup>th</sup> Edition)</i>	<i>Relief arising out of a cause of action which had accrued at the date of suit and on which the suit was brought and did not include relief accruing after the date of suit.</i>
	<i>P.Ramanatha Aiyar – The Law Lexicon</i>	<i>The remedy which a Court of Justice may afford in relation to some actual or apprehended wrong or injury; It is a maxim in our law that a plaintiff must show that he stands on a fair ground when he calls on a Court of justice to administer relief to him.</i>



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<p><i>Stroud's Judicial Dictionary of Words and Phrases (Ninth Edition)</i></p>	<p><i>'Relief' and 'relieve' are appropriate terms to describe the remedial action of the court in cases where a penalty or forfeiture has been incurred, and which the court thinks it equitable that the complainant should not lie under or suffer.</i></p>
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15. *A careful perusal of the aforementioned definitions / descriptions bring to light that a plaintiff should think carefully about possibility of a thing happening. The thinking process should be profound and thoughtful, such thinking process should lead the plaintiff to believe that prompt action (not attributable to plaintiff's own doing) is demanded or the matter requires immediate attention and needs to be dealt with immediately and that it is so immediate that time consumed in exhausting the remedy of pre institution mediation that will lead to wrong or injury which the plaintiff in law and equity should not be made to stand and suffer. To put it differently, a relief for the time being which is temporary or provisional is so imperative that possible wrong or injury will overtake the process of exhausting remedy of pre institution mediation.*

16. *This Commercial Division having explained*



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*the expression 'contemplation of urgent interim relief' deems it appropriate to make an adumbration of parameters / tests and they are as follows:*

*(a)whether the prayer for interim relief is a product of profound thinking carefully about the possibility of the happening;*

*(b)whether the matter demands prompt action and that promptitude is of such nature that exhausting the remedy of pre institution mediation without any intervention in the mean time can lead to a irreversible situation, i.e., a situation where one cannot put the clock back;*

*(c)where the urgency is of plaintiff's own doing, if that be so the plaintiff cannot take advantage of its own doing;*

*(d)high standard is required to establish the requirement of this prompt action (urgency);*

*(e)plaintiff should be on fair ground in urging urgency and an interim measure;*

*(f)actual or apprehended wrong or injury should be so imminent that the plaintiff should be able to satisfy the court that plaintiff should not be made to stand and suffer the same.'*

(e) This Commercial Division has also set out parameters.



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To be noted, it was made clear that aforementioned parameters / tests are not exhaustive and they are only illustrative. Learned counsel for plaintiff contended that he satisfies every parameter.

(f) This Commercial Division now examines the parameters / tests as in *K.Varathan* case. Whether the plaint in the captioned suit being presented on 30.09.2022 with O.A.No.666 of 2022 being filed on 14.10.2022 is a product of profound thinking carefully about the possibility of a happening is a far cry in view of the aforementioned document Nos.42 and 43. Attention was drawn only to the consequences which are in the form of CIBIL notification on 27.08.2022 and another letter from another entity by name Progressive Star Finance Limited dated 27.09.2022 and this Commercial Division is informed that Progressive Star Finance Limited is an NBFC. These are all consequences of the aforementioned Document Nos.42 and 43. The plaintiff had allowed the matter to slip into sleep nay go into slumber after sending the reply (Plaint Document No.43) wherein the plaintiff on his volition suggested that PNB should



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have discussions considering the long standing cordial association. This Commercial Division has already observed that this conciliatory tone and tenor by itself makes it clear that mediation was a certain possibility even as of 22.12.2021. Nothing prevented the plaintiff from calling upon PNB to participate in a mediation (to revisit Plaint Document No.42) in the light of Section 12A as notification under Section 1A(2) of CCA and Rules 12A(1) of CCA, both by the Central Government kicked in on 03.07.2018. The plaintiff not having done that would only mean that it is the plaintiff's own making in coming to this Court and presenting the plaint only on 30.09.2022. To be noted, thereafter the institution of suit was on 17.10.2022. It is also be noted that the interlocutory application has been filed on 30.09.2022 but the Judge's summons has been filed only on 14.10.2022. It is submitted that judge's summons was filed along with the affidavit on 30.09.2022 but the same was not traceable in the Registry and therefore, fresh Judge's summons was filed on 14.10.2022 but that hardly makes any





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difference to the dispositive reasoning and therefore, this Commercial Division deems it appropriate to leave it at that.

(g) As regards the parameter of prompt action and promptitude of such a nature that exhausting the remedy of pre-institution mediation would create an irreversible situation, that is certainly absent in the case on hand as there is no explanation as to what prevented the plaintiff from invoking Section 12A after 22.12.2021 e-mail. The rest are all consequences.

(h) As regards urgency, it is clearly a matter of plaintiff's own doing. One other parameters is that a high standard is required to establish requirement of prompt action urgency and the plaintiff, in the light of narrative thus far, certainly does not meet this high standard. As regards the parameter that the plaintiff should be on fair ground in urgency and interim measure, the plaintiff has received a notice from first defendant PNB on 09.12.2021 regarding invocation of personal guarantee and that too with exposure to the tune of Rs.440.49 crores is certainly not on fair ground in urgency at this distant point of



time.

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(i) As regards actual apprehended wrong or injury and the same being so imminent that a plaintiff should be able to satisfy the Court that he should not stand and suffer the same, an argument as regards NCLT proceedings initiated by SBI and an order dated 18.10.2022 said to have been made in C.P.No.106 of 2021 (not before the Court) and not filed as a plaint document was made but this is hardly of any relevance as 'urgent interim relief' and 'contemplation' should be tested as on the date of institution of suit i.e., 17.10.2022. As Hon'ble Supreme Court has made it clear that Section 12A is mandatory, it is in the nature of a jurisdictional fact. A jurisdictional fact should precede the suit and there can be no *ex post facto* jurisdictional fact. The plaintiff cannot be heard to contend that this Commercial Division should look at the matter as it stands today. The test is as it stood on the date of institution of suit i.e., 17.10.2022 in this case.

(j) Learned counsel for PNB who has entered appearance



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pursuant to suit summons being served was also given audience as the suit summons has been served and vakalatnama has been filed. The audience is limited to Section 12A legal drill.

(k) Ms.Vinithra Srinivasan, learned counsel pointed out that after 09.12.2021 communication from PNB and plaintiff's reply dated 22.12.2021 (Plaint Document Nos.42 and 43), all other documents such as CIBIL Notification are only consequences. This Commercial Division has no difficulty in accepting this submission in the light of discussions supra.

(l) As regards the service of suit summons, this Commercial Division is informed that the exact date is not readily available. This Commercial Division called for the records and it comes to light that first defendant has been served with suit summons on 26.10.2022 and the Manager of the first defendant Bank at the branch concerned has duly received the suit summons.

9. Before concluding, this Commercial Division deems it appropriate



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to preserve the rights of the plaintiff to come before this Commercial

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Division with a similar or a same suit if the need arises after exhausting pre-institution mediation as per the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 read with notification authorizing the State and District Authorities under the Legal Services Authorities Act, 1987 as the authorities under Section 12A of the Commercial Courts Act, 2015, both dated 03.07.2018. This obviously is if the mediation becomes a non-starter or if there is a failure report. This is more so, as already alluded to supra, the plaintiff by his own volition in his reply to PNB vide Document No. 43 dated 22.12.2021 has said that basic courtesy of discussing such a serious matter considering the long cordial association should have been extended.

10. It is also made clear that this judgment will have no impact on other collateral proceedings be it in DRT or NCLT or any other fora. In any event it is pointed by learned counsel for PNB that these proceedings are against BVPL as corporate debtor. In other words, observations in this judgment /order will neither serve as an impetus nor be an impediment for either of the parties in collateral proceedings. This judgment/order will only



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stand to say that plaint has been rejected and the suit has been terminated.

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10.11.2022

Non-speaking Order  
Index: No  
gpa

**M. SUNDAR,J.**

gpa

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