IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM

THE HON'BLE MR. JUSTICE M. SUNDAR

C.S. (Comm.Div.) No. 202 of 2022
&
O.A. No. 612 of 2022 & Application No. 4280 of 2022
in
C.S. (Comm.Div.) No. 202 of 2022

Mr.K. Varathan
Proprietor, M/s. Cinetekk
Having Corporate Office at
"Cinetekk Towers", No.93,
Pantheon Road,
Opposite to Government Museum,
Egmore – Chennai – 600 008. ..Plaintiff

Vs.

Mr. Prakash Babu Nakundhi Reddy,
Proprietor, M/s. Shankarnag Theatre,
Having Office at
2nd Floor, Shubash Chandra Bose
P.U.B. Building,
Shankarnag Chitramandira,
M.G. Road, Ashoknagar,
N. Bengaluru – 560 001. ..Respondent

Prayer: This Civil Suit is preferred under Order IV Rule 1 of OS rules read with Order VII Rule 1 of CPC and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act of 2015 seeking to grant a judgment and decree (a) directing the defendant to pay the outstanding dues to the plaintiff a sum of Rs.6,37,85455.27 (Rupees Six Crores Thirty Seven Lakhs Eighty Five Thousand Four Hundred and Fifty Five and Twenty Seven Paisa only) as on the date with 18% interest from till payment of dues (b) Grant costs of the suit.

For Plaintiff :: Mr.C. Manishankar,
Senior Counsel for
Mr.Akhil Akbar Ali of
M/s. Akhil Akbar Ali Associates
assisted by
Ms.Vandana Parasuram and
Mr.Aditya Krishna

J U D G M E N T

This order will now dispose of captioned suit namely C.S. No. 202 of 2022 and will consequently dispose of captioned applications.

2. Captioned main suit along with captioned applications is listed

today in the motion board before this Commercial Division. Mr.C. Manishankar, learned Senior Advoate instructed by Mr.Akhil Akbar Ali of M/s. Akhil Akbar Ali Associates (Law Firm) and assisted by Ms.Vandana Parasuram and Mr.Aditya Krishna is before this Commercial Division. Learned Senior Counsel, adverting to the plaint averments submits that the main suit has been filed inter alia with a prayer for a direction to the defendant to pay a little over Rs.6.37 crores with 18% future interest and costs. To put it otherwise, it is a money suit. It was also submitted that pursuant to a tripartite agreement dated 05.04.2019 [plaint document No. 18], an entity, which goes by the name M/s. Harman International India Private Limited (not a party to the captioned suit) supplied various equipments such as Projectors, Speakers for cinema theatre and the plaintiff, which is also a party to this agreement financed such purchase. The defendant had to repay the financed amount inter alia in instalments. This Commercial Division is informed that the contract value is a little over Rs.5.69 crores including GST. A little over Rs.3.19 crores was paid and the balance Rs.2.5 crores had to be paid in 50 equal instalments along with 5% interest per annum. To be noted, these are payments which had to be made

by the defendant to the plaintiff, which is said to have financed the purchase. On failure to make payments, plaintiff is entitled to levy 18% interest. It is not necessary to dilate further and be detained by facts any more owing to the trajectory the matter took in the hearing (narrated supra).

3. Learned Senior Counsel was requested to address this Commercial Division regarding requirements qua Section 12A of 'The Commercial Courts Act, 2015 (Act 4 of 2016)', (hereinafter 'CCA' for the sake of convenience and clarity) in the light of ***Patil Automation*** case law ***(2022 SCC OnLine SC 1028)*** as date of institution of captioned suit is 14.09.2022 (post 20.08.2022), the submissions in response to this request were two-fold. One facet of the submission is that Section 12A of CCA is inapplicable to the captioned main suit as according to the learned Senior Counsel, institution of suit is prior to 20.08.2022. Another facet of the submission (obviously on a demurrer) is that the suit on hand [captioned suit] is one where 'urgent interim relief' is contemplated and therefore, it will not be hit by ***Patil Automation principle*** i.e, ratio laid down/law declared by Hon'ble Supreme Court in ***Patil Automation Private Limited & Others V. Rakheja Engineers Private Limited*** reported in ***2022 SCC OnLine SC***

4. A broad summation of aforementioned two-fold submissions is as follows:

(a) Four dates were stated to be critical and the same, as projected before this Commercial Division by learned Senior Counsel has been captured in the proceedings made in earlier motion list listing on 11.10.2022 by way of a tabular column and the same reads as follows:

12.08.2022	Date of filing LTS application
17.08.2022	LTS application (A.No.3426 of 2022) ordered
29.08.2022	Certified copy of LTS order
30.08.2022	Plaint presented with entire Court Fee

Adverting to the aforesaid tabulation, learned Senior Counsel submitted that it is a case where the institution of suit is prior to 20.08.2022. In this regard, it should be borne in mind that it was very fairly submitted that when the intended plaint was presented along

with 'leave to sue' application ['LTS' for brevity and convenience] on 12.08.2022, court-fee had not been paid and the court-fee in full was paid only on 30.08.2022 when the plaint was presented after LTS application was ordered on 17.08.2022. As this Commercial Division is capturing the submissions, it is deemed appropriate to scan and reproduce the docket sheet in the plaint and the coding sheet, which are as follows:

LTS

20

Scanned 15/09/22

Appl. No. 3426/2022

Order Date: 17/08/2022

Sr. No. 87888/2022

Rejected RSJ 13/10/2022

No Caveat filed by caveator / his

Counsel for Plaintiff 30/08/2022

Leave to Sue ordered in A.No 3426/22 on 17-08-22 by SKRJ

96168

IN THE HIGH COURT OF JUDICATRUE AT MADRAS
(Ordinary Original Civil Jurisdiction - Commercial Division)

202

C.S.(Commercial) No. of 2022

202/22

Mr. K. Varathan,
Proprietor, M/s. Cinetekk
..... Plaintiff

-Vs-

Mr. Prakash Babu Nakundhi Reddy,
Proprietor, M/s. Shankarnag Theatre,
.....Defendant

Admitted on 14/9/2022.

PLAINT FILED UNDER ORDER IV RULE 1 OF OS RULES READ WITH ORDER VII RULE 1 OF CPC AND SECTION 7 OF THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS ACT OF 2015

Plaint → Rs. 19,13,564/-
Batta → Rs. 30/-
Appl → Rs 20/-
Documents → 55x5 → Rs. 275/-

Presented on 30/08/2022.

HIGH COURT OF JUDICATURE RECEIVED 30 AUG 2022 SECTION ORIGINAL SIDE MADRAS

FILED 14 SEP 2022 Assistant Registar (O.S.)

N/L 1/8/22 28/9/ JR(OS) 30/8/2022

mr. c. manishankar S.C

Asst to Varadarajaperumal and Mr. Aditya Ishwar

M/s.Akhil Akbar Ali Associates
Akhil Akbar Ali (CMS 3321/15)
M.Kaviyarasi (CMS 2834/12)
Counsel for Plaintiff
Mob.No.9941983133

In order

13/9/22

23

MODEL PROFORMA

Single / DB
Senior Citizen
Age

CODING SHEET

High Court of Judicature at Madras

ORIGINAL SIDE

(to be filled by the Registry)

Case Type CS (Comm.) No 202 of 2022 Date of Filing 30/08/2022

D.No. 96168 Date of Presentation 30/08/2022

(To be filled by the Plaintiff/Petitioner/Applicant in Black ink)

Plaintiff/Petitioner/ Applicant: Mr. K. Varatharaj (Proprietor M/s. Cinetalk)

Defendant/Respondent/ Applicant: Mr. Prakash Babu Nagarathi Reddy

Plaintiff/Petitioner/ Applicant Counsel: M/s. Anand Sridharan Associates.

Plaintiff/Petitioner/ Contemner Counsel:

Value of the Suit: 63785455.27 Court Fee: 1913564

Act including provision (s) of law involved in the case: ORDER IV RULE 1 OF OS

Subject matter, in brief: SUIT FOR RECOVERY OF MONEY

Subject/Category Code: 149140

Connected /Previous/ Covered case, if any: Type No of

Order Violated and Date Of order (For Contempt Petitions): Type No

13/9/22

Passing Officer

Counsel for Plaintiff/Petitioner/Applicant

(To be filled by the Court Officer/PA concerned in Court itself in Red Ink)

Nature of Disposal By

Date of Disposal

Court Officer/PA

The above scanned docket sheet and coding sheet will be set out infra while this Commercial Division discusses and gives its dispositive reasoning qua this submission.

(b) In support of the above contention, learned Senior Counsel pressed into service an order of this Commercial Division dated 10.10.2022 in ***Sri Padman Biosciences Private Limited V. M/s. Bookmed Technologies Private Ltd [C.S.(Comm.Div.) 198 of 2022]*** to say that in the instant case also, LTS was granted on 17.08.2022 and 18.08.2022 was a working day. It was also pointed out that certified copy of LTS order was made available only on 29.08.2022 and therefore, the plaint could not be presented prior to 30.08.2022.

(c) As regards the second facet of submission, to say, on a demurrer, that even if Section 12A of CCA is made applicable, captioned suit will fall under the category of suits, where 'urgent

interim relief' is contemplated. Adverting to interlocutory application O.A. No. 612 of 2022 [prayer is interim injunction restraining the defendant from alienating cinema theatre products that were supplied under the tripartite agreement] and Application No. 4280 of 2022 [a typical 'attachment before judgment' ('ABJ') application] under Order XXXVIII Rule 5 of 'The Code of Civil Procedure, 1908 (Central Act V of 1908)' [hereinafter 'CPC' for the sake of brevity], it was submitted that the very filing of these documents would satisfy the urgent interim relief determinant. In this regard, it is to be noticed that the undisputed facts as regards the trajectory the matter took post aforementioned 05.04.2019 agreement is as follows:

05.04.2019 (Pg.20)	Agreement
18.09.2019	Letter requesting payment of 5.695 crores
13.10.2019	Email was sent
18.10.2019	Reply Email from Defendant
31.12.2019 (Pg.53)	Minutes of Meeting – Meeting was held and liability by defendant was accepted, and payment schedule was drawn.
22.01.2020	Part Payment was made
01.06.2020	Demand for outstanding due was made by Plaintiff

22.02.2022	Defendant had accepted liability of 6,02,95,952/-
08.03.2022	Email: Claim was rejected by the Defendant, raising allegations as to the quality of the gods delivered.
18.09.2019	Letter requesting payment of 5.69 crores
13.10.2019	Email was sent
18.10.2019	Reply Email from Defendant
01.06.2020	Demand for outstanding due was made by Plaintiff
22.02.2022	Defendant had accepted liability of 6,02,95,952/-
08.03.2022 (Pg 63)	Email: Claim was rejected by the Defendant, raising allegations as to the quality of the goods delivered.
09.03.2022 (Pg.64)	Reply was given by the Plaintiff for denying the claim.
14.03.2022 (Pg. 68)	Demand notice for Rs.6,02,95,952/- Approx.

(*to be noted, in the above tabulation 'Pg' denotes 'page' and it is page in typed set of plaintiff containing plant documents*)

5. This Commercial Division now proceeds to discuss submissions and give its dispositive reasoning. To be noted, the aforementioned arguments do not cut ice with this Commercial Division and this Commercial Division would be resorting to suo motu rejection of plaint in tune with ***Patil***

Automation case.

6. As regards the first facet of submission that the date of institution of the suit is prior to 20.08.2022, the order dated 10.10.2022 ***(Sri Padman Biosciences Private Limited V. M/s. Bookmed Technologies Private Ltd [C.S.(Comm.Div.) 198 of 2022]*** is clearly distinguishable on facts. That was a case where the plaint was lying with the Registry post LTS order. There was one working day, ie, 18.08.2022 but the suit was ultimately numbered only on 02.09.2022 whereas in the case on hand, though LTS was granted on 17.08.2022, plaint was presented only on 30.08.2022 (admittedly, with court-fee which means that on 12.08.2022, the intended plaint was not presented with court-fee). This is being explained by saying that the plaintiff's counsel was waiting for a certified copy of LTS order and the order copy was received only on 29.08.2022. Even if this argument is accepted, still it does not cut ice for the reason that the judgment in ***Patil Automation case*** was rendered by Hon'ble Supreme Court on 17.08.2022 where the cut-off date of 20.08.2022 had clearly been prescribed vide paragraph No.92. There is no explanation from the plaintiff as to what made the plaintiff to present the

plaint on 30.08.2022 on the teeth of ***Patil Automation case*** dated 17.08.2022 and paragraph No.92 thereat which made it clear that suits instituted post 20.08.2022 without adhering to Section 12A of CCA would be hit by the rigor of Section 12A. To be noted, in ***Patil Automation case,*** Hon'ble Supreme Court had made it clear that 20.08.2022 is being fixed as effective date from which the declaration would kick in for the purpose of ensuring that concerned stakeholders become sufficiently informed. The relevant portion at paragraph No.92 reads as follows:

> *'...We, however, make this declaration effective from 20.08.2022 so that concerned stakeholders become sufficiently informed'*
>
> *(Underlining made by this Commercial Division for ease of reference.)*

If the plaintiff had presented the plaint with court-fees on 30.08.2022, well and truly after ***Patil Automation case*** on 17.08.2022, the plaintiff cannot claim the suit to have been one that was instituted prior to 20.08.2022. As regards presentation of plaint and institution of suit, a subtle but significant distinction has been articulated elucidatively by Hon'ble Supreme Court in ***Patil Automation case*** in paragraph Nos. 77 to 79, which read as follows:

' 77. Another area of debate has been about the distinction between the presentation of a plaint and institution of a suit. Section 3(2) of the Limitation Act, 1963, provides that for the purpose of the Limitation Act a suit is instituted in the ordinary case, when the plaint is presented to the proper Officer. In the case of a pauper, the suit is instituted when his application to leave to sue as a pauper is made. Order IV Rule 1 of the CPC reads as follows:

> ***"Order IV Rule 1. Suit to be commenced by plaint**.—(1) Every suit shall be instituted by presenting a plaint in duplicate to the Court or such officer as it appoints in this behalf.*
>
> *(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.*
>
> *(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2)."*

78. Sub-Rule (3) of Order IV Rule 1 was inserted by Act 46 of 1999 w.e.f. 01.07.2002. Shri Sharath Chandran has drawn our attention to the Judgment of the High Court of Madras reported in Olympic Card Ltd. V. Standard Chartered Bank. In the said case, the question, which arose was, whether there was an abandonment or withdrawal of suit within the meaning of Order XXIII Rule 1 of the CPC, which would operate as a bar to file a fresh suit. In this context, we notice the following discussion:

"16. Rule (1) of Order 4 of C.P.C. provided for institution of Suits. Rules 3 & 4 of Order 4 contains the statutory prescription that the Plaint must comply with the essential requirements of a valid Plaint and then only the process of filing would culminate in the registration of a Suit. Rule 21 of Civil Rules of Practice contains the basic difference between presentation and institution. There is no dispute that the date of filing the Plaint would be counted for the purpose of limitation. However, that does not mean that the Suit was validly instituted by filing the Plaint. The Plaint, which does not comply with the Rules contained in Orders 4 & 7, is not a valid Plaint. The Court will initially give a Diary Number indicating the presentation of Suit. In case the Plaint is returned, it would remain as a "returned Plaint" and not a "returned Suit". The act of numbering the Plaint and inclusion in the Register of Suits alone would constitute the institution of Suit. The stages prior to the registration of Suit are all preliminary in nature. The return of Plaint before registration is for the purpose of complying with certain defects pointed out by the Court. The further procedure after admitting of the Plaint is indicated in Rule 9 of Order 7. This provision shows that the Court would issue summons to the parties after admitting the Plaint and registering the Suit. Thereafter only the Defendants are coming on record, exception being their appearance by lodging caveat. Even after admitting the Plaint, the Court can return the Plaint on the ground of jurisdiction under Rule 10 of Order 7 of C.P.C. The fact that the Plaintiff/Petitioner served the Defendant/respondent the

copies of Plaint/Petitions before filing the Suit/Petition would not amount to institution of Suit/filing Petition. It is only when the Court admits the Plaint, register it and enter it in the Suit register, it can be said that the Suit is validly instituted.

17. It is, therefore, clear that any abandonment before the registration of Suit would not constitute withdrawal or abandonment of Suit within the meaning of Order 23, Rule 1, C.P.C., so as to operate as a legal bar for a subsequent Suit of the very same nature. It is only the withdrawal or abandonment during the currency of a Legal proceedings would preclude the Plaintiff to file a fresh Suit at a later point of time on the basis of the very same cause of action."

79. The contention appears to be that it may be a fair view to take that there is no institution of the suit within the meaning of Section 12A until the Court admits the plaint and registers it in the suit register. In other words, presentation of the plaint may not amount to institution of the suit for the purpose of Order IV Rule 1 of the CPC and Section 12A of the Act. If this view is adopted, it is pointed out that before the plaint is registered after presentation and there is non-compliance with Section 12A, the plaintiffs can, then and there, be told off the gates to first comply with the mandate of Section 12A. This process would not involve the Courts actually spending time on such matters. In the facts, this question does not arise and, it may not be necessary to

explore this matter further.'

To be noted, the aforesaid distinction turns on Rule 21 of Civil Rules of Practice. The aforementioned aspect in the captioned suit makes it clear that institution was only on 14.09.2022 which is also fatal and lethal for the plaintiff.

7. Learned Senior Counsel brought to the notice of this Commercial Division the order made by a learned Single Judge in ***G. Bagyalakshmi and Others V. Nachimuthu [(2022) 5 CTC 305]*** to say that when the plaint is presented with insufficient court-fee or without court-fee, there is no need to resort to Section 149 CPC. Attention of this Commercial Division was drawn to paragraph No.33, which reads as follows:

> *'33. However, on a plain reading of Section 149 CPC, it is evident that a litigant required to pay court fee is not required to file an application for extension of time to pay the deficit Court Fee.'*
>
> ***(Underlining made by this Commerial Division for ease of reference)***

8. This Commercial Division as a matter of Judicial Discipline

chooses to respectfully follow law laid down by a Hon'ble Division Bench of this Court in ***K. Natarajan V. P.K. Rajasekaran*** reported in ***2003 SCC OnLine Madras 344***. To be noted, law laid down by a Hon'ble Division Bench of this Court is that Section 149 of CPC [Power to make up deficiency of Court-fees] is a proviso to Section 4 of Tamil Nadu Court Fees and Suits Valuation Act, 1955 (which makes payment of court fee with plaint statutorily imperative). The most relevant paragraph is paragraph No.21 in ***K. Natarajan's case***, which reads as follows:

> *'21. We deem it necessary to clarify the legal position and lay down the procedure to be followed as under:*
>
> *(1) Section 149 of Code of Civil Procedure is a proviso to Section 4 of Tamil Nadu Court Fees and Suits Valuation Act, 1955.*
>
> *(2) The word 'document' employed in Section 149 of Code of Civil Procedure would include plaint also.*
>
> *(3) Whenever a plaint is received, the same shall be verified and if found to be not in order, the same shall be returned at least on the third day (excluding the date of presentation so also the intervening holidays).*
>
> *(4) If the suit is prsented on the last date of limitation affixing less Court fee, than the one mentioned in the details*

of valuation in the plaint, an affidavit shall be filed by the plaintiff giving reasons for not paying the requisite Court fee.

(5) In such cases, the Court shall before exercising its discretion and granting time to pay the deficit Court fee, shall order notice to the defendants and consider their objections, if any. However, such notice is not necessary in cases where the plaintiff has paid almost the entirety of the requisite court fee and the Court is satisfied on affidavit by the party that the mistake happened due to some bona fide reasons such as calculation mistake or the alike.

(6) The discretion referred to in Section 149 of Code of Civil Procedure is a judicial discretion and the same has to be exercised in accordance with the well-established principles of law.

(7) But however, in cases where the time granted to pay the deficit Court fee falls within the period of limitation, the defendant need not be heard.

(7A) In case where the plaint if presented well within the period of limitation with deficit court fee and the court returns the plaint to rectify the defect giving some time (2 or 3 weeks), which also falls within the period of limitation, the Court is bound to hear the defendant, notwithstanding the fact that the plaintiff has paid substantial court fee (not almost entirety) at the first instance, before condoning the delay in paying the deficit court fee.

(8) In cases where part of the time granted to pay the deficit Court fee falls outside the period of limitation and the deficit court fee is paid within the time of limitation (i.e., the plaint is represented with requisite court fee), the court need not wait for the objections of the defendant and the plaint can be straight away numbered.

(9) The court should exercise its judicial discretion while considering as to whether time should be granted or not. Cases where the plaintiff wrongly (bona fide mistake) valued under particular provisions of law under Court Fee Act or where he could not pay the required Court fee for the reasons beyond his control, due to some bona fide reasons, the Court shall condone the delay. Payment of substantial court fee is a circumstance, which will go in favour of the claim of the plainitff that a bona fide mistake has crept in.

But however, in cases where the plaintiff acted wilfully to harass the defendant(like wilful negligence in paying court fee, awaiting the result of some other litigation, expecting compromise, etc.)

(10) If the court had exercised its discretion without issuing notice, then it is open to the defendant to file application under Section 151 of Code of Civil Procedure for proper relief. It will be open to the defendant to file a revision under Article 227 of Constitution of India . That apart, objection can also be raised at the trial or even at the appellate stage, since the failure to exercise judicial

discretion in a manner known to law (as laid down in various decisions of the Supreme Court) amounts to Court applying a wrong provision of law.'

9. The law laid down by this Court (as already alluded to supra) is that Section 149 CPC is a proviso to Section 4 of 'Tamil Nadu Court Fees and Suits Valuation Act, 1955' ['Tamil Nadu Court Fees Act' for the sake of convenience and clarity]. Section 4 of Tamil Nadu Court Fees Act is one that mandates payment of court-fees along with the plaint and the same reads as follows:

> *'**4. Levy of fee in Courts and public offices.** - No document which is chargeable with fee under this Act shall -*
>
> *(i) be filed, exhibited or recorded in, or be acted on, or furnished by, any Court including the High Court, or*
>
> *(ii) be filed, exhibited or recorded in any public office, or be acted on or furnished by any public officer,*
>
> *unless in resepct of such document there be paid a fee of an amount not less than that indicated as chargeable under this Act.*
>
> *Provided that whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is in the opinion of the Court necessary to prevent a failure of justice, nothing contained in this section shall be*

deemed to prohibit such filing or exhibition.'

10. As regards suo motu rejection, in paragrah Nos. 75 & 76 of ***Patil Automation case,*** Hon'ble Supreme Court has made it clear that rejection powers under Order VII Rule 11 CPC can be exercised by a Commercial Division without waiting for an application. Paragraph Nos. 75 & 76 of ***Patil Automation case*** read as follows:

> *'**75.** Order VII Rule 11 declares that the plaint can be rejected on 6 grounds. They include failure to disclose the cause of action, and where the suit appears from the statement in the plaint to be barred. We are concerned in these cases with the latter. Order VII Rule 12 provides that when a plaint is rejected, an order to that effect with reasons must be recorded. Order VII Rule 13 provides that rejection of the plaint mentioned in Order VII Rule 11 does not by itself preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Order VII deals with various aspects about what is to be pleaded in a plaint, the documents that should accompany and other details. Order IV Rule 1 provides that a suit is instituted by presentation of the plaint to the court or such officer as the court appoints. By virtue of Order IV Rule 1(3), a plaint is to be deemed as duly instituted only when it*

complies with the requirements under Order VI and Order VII. Order V Rule 1 declares that when a suit has been duly instituted, a summon may be issued to the defendant to answer the claim on a date specified therein. There are other details in the Order with which we are not to be detained. We have referred to these rules to prepare the stage for considering the question as to whether the power under Order VII Rule 11 is to be exercised only on an application by the defendant and the stage at which it can be exercised. In Patasibai v.Ratanlal, one of the specific contentions was that there was no specific objection for rejecting of the plaint taken earlier. In the facts of the case, the Court observed as under:

> *"13. On the admitted facts appearing from the record itself, learned counsel for the respondent, was unable to show that all or any of these averments in the plaint disclose a cause of action giving rise to a triable issue. In fact, Shri Salve was unable to dispute the inevitable consequence that the plaint was liable to be rejected under Order VII Rule 11, CPC on these averments. All that Shri Salve contended was that the court did not in fact reject the plaint under Order VII Rule 11, CPC and summons having been issued, the trial must proceed. In our opinion, it makes no difference that the trial court failed to perform its duty and proceeded to issue summons without carefully reading the plaint and the High Court also overlooked this fatal defect. Since the*

plaint suffers from this fatal defect, the mere issuance of summons by the trial court does not require that the trial should proceed even when no triable issue is shown to arise. Permitting the continuance of such a suit is tantamount to licensing frivolous and vexatious litigation. This cannot be done."

(Emphasis supplied)

76. *On a consideration of the scheme of the Orders IV, V and VII of the CPC, we arrive at the following conclusions:*

(A) A suit is commenced by presentation of a plaint. The date of the presentation in terms of Section 3(2) of the Limitation Act is the date of presentation for the purpose of the said Act. By virtue of Order IV Rule 1 (3), institution of the plaint, however, is complete only when the plaint is in conformity with the requirement of Order VI and Order VII.

(B) When the court decides the question as to issue of summons under Order V Rule 1, what the court must consider is whether a suit has been duly instituted.

(C) Order VII Rule 11 does not provide that the court is to discharge its duty of rejecting the plaint only on an application. Order VII Rule 11 is, in fact, silent about any such requirement. Since summon is to be issued in a duly instituted suit, in a case where the plaint is barred under Order VII Rule 11(d), the stage begins at that time when the

court can reject the plaint under Order VII Rule 11. No doubt it would take a clear case where the court is satisfied. The Court has to hear the plaintiff before it invokes its power besides giving reasons under Order VII Rule 12. In a clear case, where on allegations in the suit, it is found that the suit is barred by any law, as would be the case, where the plaintiff in a suit under the Act does not plead circumstances to take his case out of the requirement of Section 12A, the plaint should be rejected without issuing summons. Undoubtedly, on issuing summons it will be always open to the defendant to make an application as well under Order VII Rule 11. In other words, the power under Order VII Rule 11 is available to the court to be exercised suo motu.(See in this regard, the judgment of this Court in Madiraju Venkata Ramana Raju (supra)'

While on this, paragraph Nos. 84 to 91 of ***Patil Automation case*** can also be usefully referred to as they deal with refund of court-fee in case of such rejection and they are as follows:

'84. On the findings we have entered, the impugned orders must be set aside and the applications under Order VII Rule 11 allowed. This would mean that the plaints must be rejected. Necessarily, this would involve the loss of the court fee paid by the plaintiffs in these cases. They would have to

bring a fresh suit, no doubt after complying with Section 12A, as permitted under Order VII Rule 13. Moreover, the declaration of law by this Court would relate back to the date of the Amending Act of 2018.

85. There is a plea by Shri Saket Sikri, that if this Court holds that Section 12A is mandatory it may be done with only prospective effect. He drew support of the judgment of this Court in,Jarnail Singh and Others V. Lachhmi Narain Gupta.

> *"35. While interpreting the scope of Article 142 of the Constitution, this Court held that the law declared by the Supreme Court is the law of the land and in so declaring, the operation of the law can be restricted to the future, thereby saving past transactions.*
>
> *36. The power of this Court under Article 142 of the Constitution is a constituent power transcendental to statutory prohibition [(1997) 5 SCC 201]. In Orissa Cement Ltd. V. State of Orissa [(1991) Suppl.1 SCC 430], this Court observed that relief can be granted, moulded or restricted in a manner most appropriate to the situation before it in such a way as to advance the interests of justice. The doctrine of prospective overruling is in essence a recognition of the principle that the Court moulds the reliefs claimed to meet the justice of the case, as has been held in Somaiya Organics (India) Ltd. v. State of U.P. [(2001 5 SCC 519]. It was further clarified that while in Golak Nath (supra), 'prospective overruling' implied an earlier*

judicial decision on the same issue which was otherwise final, this Court had used the power even when deciding on an issue for the first time. There is no need to refer to other judgments of this Court which have approved and applied the principle of prospective overruling or prospective operation of judgments. There cannot be any manner of doubt that this Court can apply its decision prospectively, i.e., from the date of its judgment to save past transactions."

86. The Doctrine of prospective overruling began its innings with the decision of this Court in L.C. Golak Nath V. State of Punjab. This Court in the said case relied upon Articles 32, 141 and 142 of the Constitution and extended this doctrine which was in vogue in the United States. The principle involves giving effect to the law laid down by this Court, from a prospective date, ordinarily the date of the judgment. There is no dispute that while initially the doctrine was confined to matters arising under the Constitution, later on it has been applied to other areas of law as well.

87. In Taherakhatoon (D) By Lrs. v. Salambin Mohammad, this Court while dealing with its powers or rather limitation on its power even after grant of special leave underArticle 136 held as follows:

"20. In view of the above decisions, even though we are now dealing with the appeal after grant of special leave, we are not

bound to go into merits and even if we do so and declare the law or point out the error — still we may not interfere if the justice of the case on facts does not require interference or if we 31 AIR 1967 SC 1643 32 (1999) 2 SCC 635 feel that the relief could be moulded in a different fashion.…"

88. In Somaiya Organics (India) Ltd V. State of Uttar Pradesh, the Court went on to hold as follows in regard to the doctrine of prospective overruling.

"25. The words "prospective overruling" implies an earlier judicial decision on the same issue which was otherwise final. That is how it was understood in Golak Nath [AIR 1967 SC 1643: (1967) 2 SCR 762]. However, this Court has used the power even when deciding on an issue for the first time. Thus, in India Cement Ltd. V. State of T.N.[(1990) 1 SCC 12] when this Court held that the cess sought to be levied under Section 115 of the Madras Panchayats Act, 1958 as amended by Madras Act 18 of 1964, was unconstitutional, not only did it restrain the State of Tamil Nadu from enforcing the same any further, it also directed that the State would not be liable for any refund of cess already paid or collected.

28. In the ultimate analysis, prospective overruling, despite the terminology, is only a recognition of the principle that the court moulds the reliefs claimed to meet the justice of the case — justice not in its logical but in its equitable sense. As far as this country is concerned, the power has been expressly conferred

by Article 142 of the Constitution which allows this Court to "pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending 33 AIR 2001 SC 1723 before it". In exercise of this power, this Court has often denied the relief claimed despite holding in the claimants' favour in order to do 'complete justice'."

89. We may next notice the judgment of this Court in P.V. George V. State of Kerala. In the said case, the doctrine was sought to be invoked in a service matter. The Full Bench of the High Court overruled a Division Bench which had declared a rule unconstitutional. On the strength of the Full Bench decision the employees were sought to be reverted. This Court adverted to the decision of the House of Lords reported in National Westminster Bank Plc. v. Spectrum Plus Ltd. & Ors.35 wherein the Court held:

"9. Prospective overruling takes several different forms. In its simplest form prospective overruling involves a court giving a ruling of the character sought by the bank in the present case. Overruling of this simple or 'pure' type has the effect that the court ruling has an exclusively prospective effect. The ruling applies only to transactions or happenings occurring after the date of the court decision. All transactions entered into, or events occurring, before that date continue to be governed by the law as it was conceived to be before the court gave its ruling.

10. Other forms of prospective overruling are more limited and 'selective' in their departure from the normal effect of court decisions. The ruling in its operation may be prospective and, additionally, retrospective in its effect as between the parties to the case in which the ruling is given. Or the ruling may be prospective and, additionally, retrospective as between the parties in the case in which the ruling was given and also as between the parties in any other cases already pending before the courts. There are other variations on the same theme."

(Emphasis supplied)

90. This is not a case where this Court is overruling its previous decision, which was the case in the decision reported in 2005 8 SCC 618. This is also not a case where this Court is pronouncing a law under which various transactions have been affected void. It may be true that the doctrine of prospective overruling may not be confined to either of the above circumstances as such and its ambit is co-extensive with the equity of a situation whereunder on the law being pronounced it is likely to intrude into or reopen settled transactions. This is not a matter where the court is overruling a decision of the High Court which has held the field for a long period. See in this regard, Harsh Dhingra V. State of Haryana. In the said judgment this Court held as

follows:

> *"7. Prospective declaration of law is a device innovated by this Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law it is deemed that all actions taken contrary to the declaration of law, prior to the date of the declaration are validated. This is done in larger public interest. Therefore, the subordinate forums which are bound to apply law declared by this Court are also duty-bound to apply such dictum to cases which would arise in future. Since it is indisputable that a court can overrule a decision there is no valid reason why it should not be restricted to the future and not to the past. Prospective overruling is not only a part of constitutional policy but also an extended facet of stare decisis and not judicial legislation. These principles are enunciated by this Court in Baburam V.C.C. Jacob [(1999) 3 SCC 362: 1999 SCC (L&S) 682: 1999 SCC (Cri) 433] and Ashok Kumar Gupta v. State of U.P.[(1997) 5 SCC 201: 1997 SCC (L&S) 1299]"*

91. 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 12A 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 12A 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.*

It is made clear that the plaintiff has filed the suit and therefore, there cannot be refund of court-fee.

11. The first facet of submission having been rejected, this Commercial Division proceeds to the second facet of 'urgent interim relief '.

12. The expression 'urgent interim relief' occurs in Section 12A of CCA and the expression has to be explained and this Commercial Division has done the same in ***Mohamed Aboobacker Chank Lungi Pvt. Ltd. V.***

Revathy Textiles and 4 others (C.S(Comm. Div.)No.208 of 2022, order dated 27.09.2022) and the relevant paragraph is as follows:

> **'6**. ...
>
> *(viii) The expression 'a suit, which does not contemplate any urgent interim relief' occurring in section 12-A of CCA was examined by Hon'ble Telangana High Court in **M.K. Food Products Vs. S.H.Food Products** {order dated 21.02.2019 rendered by a Division Bench} reported in **LAWS(TLNG)-2019-2-109**. This is a case which arises out of a copy right suit and judgment / order made by a District Court being judgment / order dated 04.06.2018 before notification and subordinate legislation under sub-sections (2) and (1) of Section 12-A respectively of CCA as this notification and Rules kicked in only on 03.07.2022. Be that as it may, in this order, Hon'ble Telangana High Court interfered with the order of the District Court primarily because (in the opinion of Hon'ble Division Bench) the District Court in that case had understood 'contemplation of urgent interim relief' and 'entitlement to urgent interim relief' to be synonymous. To be noted, in this **M.K.Food Products** case, the expression 'a suit, which does not contemplate any urgent interim relief' has been referred to as 'A suit which does not contemplate any urgent relief' and this appears to be a typographical / secretarial error but it is not necessary to go into this aspect of the matter and it will suffice*

*to say that **M.K.Food Products** does not come to the aid of the plaintiff in the case on hand. That is a case where District Court had treated 'contemplation' and 'entitlement' to be synonymous (as alluded to in the earlier part of this order). As **M.K.Food Products** is different on facts, it is not applied and therefore, this order shall not be construed as following **M.K.Food Products**. As it is Division Bench judgment of another Hon'ble High Court, it has only persuasive value as a precedent and I leave it open for being gone into in another case if cited. In **Patil Automation** case law, Hon'ble Supreme Court after making it clear that Section 12-A is mandatory, has also made it clear that it is open to a Commercial Division to suo motu reject a plaint if there is no adherence to Section 12-A of CCA, i.e., without an application for rejection of plaint in this regard. This is captured in paragraphs 75 and 76 of **Patil Automation** case law {paragraphs as in SCC OnLine report}, which read as follows:*

> *'**75.** Order VII Rule 11 declares that the plaint can be rejected on 6 grounds. They include failure to disclose the cause of action, and where the suit appears from the statement in the plaint to be barred. We are concerned in these cases with the latter. Order VII Rule 12 provides that when a plaint is rejected, an order to that effect with reasons must be recorded. Order VII Rule 13 provides that rejection of the plaint mentioned in Order VII Rule 11 does not by itself preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Order VII deals with various aspects about what is to be pleaded in a*

plaint, the documents that should accompany and other details. Order IV Rule 1 provides that a suit is instituted by presentation of the plaint to the court or such officer as the court appoints. By virtue of Order IV Rule 1(3), a plaint is to be deemed as duly instituted only when it complies with the requirements under Order VI and Order VII. Order V Rule 1 declares that when a suit has been duly instituted, a summon may be issued to the defendant to answer the claim on a date specified therein. There are other details in the Order with which we are not to be detained. We have referred to these rules to prepare the stage for considering the question as to whether the power under Order VII Rule 11 is to be exercised only on an application by the defendant and the stage at which it can be exercised. In Patasibai v.Ratanlal, one of the specific contentions was that there was no specific objection for rejecting of the plaint taken earlier. In the facts of the case, the Court observed as under:

> *"13. On the admitted facts appearing from the record itself, learned counsel for the respondent, was unable to show that all or any of these averments in the plaint disclose a cause of action giving rise to a triable issue. In fact, Shri Salve was unable to dispute the inevitable consequence that the plaint was liable to be rejected under Order VII Rule 11, CPC on these averments. All that Shri Salve contended was that the court did not in fact reject the plaint under Order VII Rule 11, CPC and summons having been issued, the trial must proceed. In our opinion, it makes no difference that the trial court failed to perform its duty and proceeded to issue summons without carefully reading the plaint and the*

High Court also overlooked this fatal defect. Since the plaint suffers from this fatal defect, the mere issuance of summons by the trial court does not require that the trial should proceed even when no triable issue is shown to arise. Permitting the continuance of such a suit is tantamount to licensing frivolous and vexatious litigation. This cannot be done."

(Emphasis supplied)

76. *On a consideration of the scheme of the Orders IV, V and VII of the CPC, we arrive at the following conclusions:*

(A) A suit is commenced by presentation of a plaint. The date of the presentation in terms of Section 3(2) of the Limitation Act is the date of presentation for the purpose of the said Act. By virtue of Order IV Rule 1 (3), institution of the plaint, however, is complete only when the plaint is in conformity with the requirement of Order VI and Order VII.

(B) When the court decides the question as to issue of summons under Order V Rule 1, what the court must consider is whether a suit has been duly instituted.

(C) Order VII Rule 11 does not provide that the court is to discharge its duty of rejecting the plaint only on an application. Order VII Rule 11 is, in fact, silent about any such requirement. Since summon is to be issued in a duly instituted suit, in a case where the plaint is barred under Order VII Rule 11(d), the stage begins at that time when the court can reject the plaint under Order VII Rule 11. No doubt it would take a clear case where the court is satisfied. The Court has to hear the plaintiff before it invokes its power besides giving reasons

under Order VII Rule 12. In a clear case, where on allegations in the suit, it is found that the suit is barred by any law, as would be the case, where the plaintiff in a suit under the Act does not plead circumstances to take his case out of the requirement of Section 12A, the plaint should be rejected without issuing summons. Undoubtedly, on issuing summons it will be always open to the defendant to make an application as well under Order VII Rule 11. In other words, the power under Order VII Rule 11 is available to the court to be exercised suo motu.(See in this regard, the judgment of this Court in Madiraju Venkata Ramana Raju (supra)'

13. In *Patil Automation*, more particularly paragraph 76 (extracted and reproduced elsewhere in this order / judgment), Hon'ble Supreme Court has made it clear that rejection of plaint can be done suo motu by the court concerned. Therefore, whether the suit (under Order VII Rule 11(d) of CPC) is barred by law (Section 12A of CCA) is the question which this Commercial Division can examine suo motu. To be noted, on and from 20.08.2022, in the light of *Patil Automation* pronouncement, Section 12A of CCA is mandatory. This means that the ultimate prerogative to examine '*contemplation* of *urgent interim relief*' within the meaning of sub section (1) of section 12A of CCA vests in this Commercial Division. It is to be borne in

mind that the expression as in section 12A(1) of CCA is not mere 'interim relief' but it is 'urgent' interim relief. In this scenario, if one were to borrow the language of Hon'ble Supreme Court in *Patil Automation*, section 12A of CCA is a toddler. Therefore, this Commercial Division considers it necessary to elucidate qua expression '*contemplation* of *urgent interim relief*'. If one were to examine, explain and elucidate this expression, it is imperative to first examine the meaning of four terms and they are: (a)contemplate, (b)urgent, (c)interim and (d)relief. All these four terms have not been defined in CCA. These four terms have not been defined in the General Clauses Act, 1897 also. Therefore, this Commercial Division turns to Law Lexicons, Law dictionary, judicial dictionary and English dictionary.

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

Term / Expression	***Name of Lexicon / Dictionary***	***Meaning***
Contemplate	New 9th Edition of Oxford Dictionary	to think carefully about and accept the possibility of happening
	Concise Oxford English Dictionary	look at thoughtfully; think about, think profoundly and at length
Urgent	New 9th Edition of Oxford Dictionary	that needs to be dealt with or happen immediately
	Concise Oxford English Dictionary	requiring immediate action or attention
	P.Ramanatha Aiyar's Advanced Law Lexicon (5th Edition)	Demanding prompt action
	Stroud's Judicial Dictionary of Words and Phrases (Ninth Edition)	A high standard is required to satisfy the court of the urgency 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.

Interim	New 9th Edition of Oxford Dictionary	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
	Concise Oxford English Dictionary	the intervening time; provisional; meanwhile
	P.Ramanatha Aiyar – The Law Lexicon	Meanwhile; in the meantime
	P.Ramanatha Aiyar's Advanced Law Lexicon (5th Edition)	Meanwhile; in the meantime; The word "interim" when used as a noun means "intervening" and when used as an adjective, it means "temporary" or "provisional"
	Black's Law Dictionary (Tenth Edition)	Done, made, or occurring for an intervening time; temporary or provisional.
	Stroud's Judicial Dictionary of Words and Phrases (Ninth Edition)	For the time being
Relief	Concise Oxford English Dictionary	The alleviation or removal of pain, anxiety or distress
	P.Ramanatha Aiyar's Advanced Law Lexicon (5th Edition)	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.
	P.Ramanatha Aiyar – The Law Lexicon	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.
	Stroud's Judicial Dictionary of Words and Phrases (Ninth Edition)	'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.

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 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.

17. It is made clear that the above adumbration is illustrative and not exhaustive. It is also made clear that while applying the above tests / parameters, it should be borne in mind that it is not the case of testing whether the plaintiff is entitled to interim relief. The question is whether the plaintiff's prayer for interim relief is urgent as elucidated supra and as to whether it is a product of contemplation as explained supra. This means that there can be cases where a Commercial Division can hold that there are enough reasons for contemplation of urgent interim relief but may either order short notice (without giving interim relief before notice to other side) or put in place some other interim measure (such as status quo) without acceding to the exact interim relief that has been sought for by the plaintiff.

18. In the case on hand, as already alluded to supra, the last demand notice from the plaintiff is dated 14.03.2022 (plaint document No.53 at page No. 68 of the typed set of papers). The critical question to be examined is as to whether there has been any development after 14.03.2022, which necessitated filing of intended plaint along with LTS application on 12.08.2022 nearly 5 months later (2 days short of 5 months). The only answer in this regard is paragraph 15 of the support affidavit in Application No. 4250 of 2022 (ABJ application), which reads as follows:

> *'15. I humbly state that it has been reliably learnt that the Respondent owes huge amounts to various creditors and is therefore in the process of disposing of his assets including the equipment supplied by the Plaintiff. If the Respondent proceeds to dispose of the same then the Applicants will be left with nothing to recover from the Respondent. It is obvious that the Respondent's intention is very clear that he is indulging in such activities with the sole object of obstructing or delaying the execution of the decree that may be passed in favour of the Applicants. Hence it is very clear that the Respondent has no intention to settle the dues and especially in view of the fact that the Respondent is residing outside the Original Jurisdictional limits of this Hon'ble Court, it will not*

be possible to monitor the activities of the Respondent during the pendency of the suit. It is also submitted that the Respondent does not have any assets within the local jurisdiction of this Hon'ble Court. It is therefore just and necessary for the Applicants to come forward with this Application. It is also relevant to point out that the Respondent has acknowledged in writing that he ownes the amounts due to the Applicants, which is the subject matter of the suit but failed and neglected to settle my dues. In view of the above, the Applicants have come forward with this Application seeking attachment before judgment. I also humbly submit that the property that is sought to be attached if the Respondent does not furnish security lies within the jurisdiction of the City Civil Court, Bangalore. Hence, it is prayed that the Attachment order may be executed through the City Civil Court, Bangalore.'

The aforementioned averments do not show any specific development post 14.03.2022 much less does it contain averments which qualify as determinants qua an Order XXXVIII Rule 5 CPC application, as laid down by Hon'ble Supreme Court in ***Raman Tech & Process Engineering Co and Another V. Solanki Traders*** reported in ***(2008) 2 SCC Pg. 302***. In ***Solanki Traders case*** wherein Hon'ble Supreme Cort made it clear that Order

XXXVIII Rule 5 CPC is a distinct and extraordinary power and in this regard, it is made clear that this Commercial Division is not going into the merits of Order XXXVIII Rule 5 CPC but it is only making it clear that there is no averment to show that there has been any development post 14.03.2022 which necessitated the presentation of the intended plaint along with LTS application on 12.08.2022. This means that the plaintiff had gone into slumber for at least five months, if not more and has come to this Commercial Division languidly with laconic nay little (no) averments qua urgency. Therefore, 'urgent interim relief' expression also has not been satisfied. To be noted, it was clearly explained that it is not just 'interim relief' but it is 'urgent interim relief' and contemplation can always be examined by this Commercial Division in the light of ***Patil Automation case*** on facts, for suo motu rejection of plaint. Therefore, merely because the plaintiff asks for an interim relief, it would not satisfy the criteria to bring the case under the class of suits, which 'contemplate' 'urgent interim relief'. To be noted, paragraph Nos. 62 & 81 of ***Patil Automation case*** are of relevance and the same read as follows:

> *'62. The potential of Section 89 of the CPC for resolving disputes has remained largely untapped on account of the fact that*

mediation has become the product of volition of the parties. Courts, no doubt, have begun to respond positively. However, there was a pressing need to decongest the trial courts, in commercial matters in particular, as they bear the brunt of docket explosion. It is noteworthy that Section 12A provides for a bypass and a fast-track route without for a moment taking the precious time of a court. At this juncture, it must be immediately noticed that the Law-giver has, in Section 12A, provided for pre-institution mediation only in suits, which do not contemplate any urgent interim relief. Therefore, pre- institution mediation has been mandated only in a class of suits. We say this for the reason that in suits which contemplate urgent interim relief, the Law-giver has carefully vouch-safed immediate access to justice as contemplated ordinarily through the courts. The carving out of a class of suits and selecting them for compulsory mediation, harmonises with the attainment of the object of the law. The load on the Judges is lightened. They can concentrate on matters where urgent interim relief is contemplated and, on other matters, which already crowd their dockets.

...

81. 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 12A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis. Section 80(2) of the 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 12A 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."

19. The above only means that there are only two classes of suits, one class of suits where no 'urgent interim relief' is contemplated and another where ' urgent interim relief' is contmeplated. If a suit falls under the former class, it will be hit by Section 12A of CCA if a plaintiff comes to this Commercial Division without exhausting pre-institution mediation process under Section 12A of CCA and if it falls under the latter class, the position is

different. As regards the case on hand, this Commercial Division is of the view that it falls under the former class. As alluded and delineated supra, it is not necessary to discuss this aspect of the matter any further.

20. Before concluding, it is also necessary to make it clear that a notification required under sub-section (2) of Section 12A of CCA and Rules (subordinate legislation), which need to be made under sub-section (1) of Section 12A of CCA, both by the Central Government, have since been done i.e, on 03.07.2018.

21. To be noted, Section 12A of CCA was brought into the statute books on 03.05.2018 by an amendment to CCA and the aforementioned notification under Section 12A(2) and subordinate legislation i.e, under Section 12A(1) kicked in two months later, i.e, on 03.07.2018. Therefore, the manner and procedure for mediation has now been put in place and there is no other reason which detains this Commercial Division from rejecting the plaint.

22. Before writing the concluding paragraph of this order, it is made clear that all rights and contentions of the plaintiff are preserved for approaching this Commercial Division after exhausting pre-institution mediation and settlement under Section 12A of CCA. Any view expressed in this order will neither impede nor serve as an impetus if this suit unfurls on a future date. In other words, the views expressed in this order are only for the limited purpose of testing the captioned main suit under Section 12A of CCA, in the light of the elucidation that it is only after ***Patil Automation*** principle.

23. Sequitur is plaint in captioned main suit is rejected. Consequently, captioned applications are closed. There shall be no order as to costs.

13.10.2022

nv/vvk

Speaking Order/Non-speaking Order

Index: Yes/No

Internet: Yes/No

50\52

M. SUNDAR,J.

nv/vvk

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