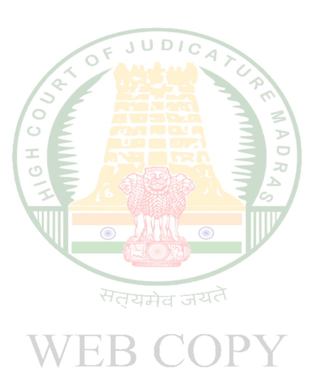

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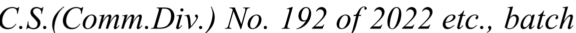

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2022

CORAM

THE HON'BLE MR. JUSTICE M. SUNDAR

C.S. (Comm.Div.) No. 192 of 2022
& O.A.Nos.573 & 574 of 2022 and A.Nos.3794, 3795 and 4989 of 2022
in C.S. (Comm.Div.) No. 192 of 2022
&
C.S. (Comm.Div.) No. 193 of 2022
& O.A.Nos.575 & 576 of 2022 and A.Nos.3796, 3797 and 4990 of 2022
in C.S. (Comm.Div.) No. 193 of 2022
&
C.S. (Comm.Div.) No. 194 of 2022
& O.A.Nos.577 & 578 of 2022 and A.Nos.3806,3807 and 5252 of 2022
in C.S. (Comm.Div.) No. 194 of 2022
&
C.S. (Comm.Div.) No. 195 of 2022
& O.A.Nos.579 to 581 of 2022 and A.Nos.3822 and 4991 of 2022
in C.S. (Comm.Div.) No. 195 of 2022
&
C.S. (Comm.Div.) No. 177 of 2022
& O.A.Nos.537 to 539 of 2022 and A.Nos.3756 and 5033 of 2022
in C.S. (Comm.Div.) No. 177 of 2022
&
C.S. (Comm.Div.) No. 183 of 2022
& O.A.Nos.551 to 553 of 2022 and A.Nos.3771 and 4931 of 2022
in C.S. (Comm.Div.) No. 183 of 2022
&
C.S. (Comm.Div.) No. 186 of 2022
& O.A.Nos.559 & 560 of 2022 and A.Nos.3785,3786 and 4987 of 2022
in C.S. (Comm.Div.) No. 186 of 2022

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C.S. (Comm.Div.) No. 192 of 2022

1.Mr.A.D.Padmasingh Isaac
Proprietor, Aachi Spices and Foods
Old No.4, New No.181/1
6th Avenue, Thangam Colony
Anna Nagar, Chennai – 600 040

2. M/s.Aachi Masala Foods Private Limited
No.1926, 34th Street, I Block
Ishwarya Colony, Anna Nagar West
Chennai – 600 040
Represented by its Director
Mr.Ashwin Pandian

3. M/s.Flora Foods
A Partnership Firm
No.1926, 34th Street, I Block
Ishwarya Colony, Anna Nagar West
Chennai - 600 040
Represented by its Partner
Mrs.Thelma Isaac ..Plaintiffs

Vs.

1. Karaikudi Achi Mess
Fairlands
Salem – 636 016
Tamil Nadu

2. Google LLC
1600, Amphitheatre Parkway
Mountain View
California
United States ..Defendants

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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 read with Sections 27(2), 29, 134 and 135 of the Trade Marks Act, 1999

a) granting a permanent injunction restraining the 1st defendant, by himself, his servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale or providing services using the name "**KARAIKUDI ACHI MESS**" or any other similar Trade Mark name or similar sounding expression in any media, websites, mobile applications, social media platforms and internet advertising and use the same in name board, invoices, letter heads and visiting cards, websites, mobile applications, social media platforms and internet advertising or by using any other trade mark/name which is in any way visually or deceptively or phonetically similar to the 1st plaintiff's trade mark/name AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN and use the same in pouches, packets or use the mark in invoices, letters heads and visiting cards, website and internet advertising or part of their restaurant name any other trade literature or Menu card by using any other trade mark which is in any way visually, or phonetically similar to the Plaintiffs' registered Trade Mark Nos.838786, 1116254, 1479159, 1715718 & 2965624 or in any manner infringing the 1st plaintiff's registered Trade Marks referred herein.

b) granting a Permanent injunction restraining the 1st defendant by itself, its agents or servants or anyone claiming through or under him any business marketing, selling advertising using in trade literature, menu cards, invoices, name boards, websites, mobile applications, social media platforms

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and internet advertisements the mark/name '**KARAIKUDI ACHI MESS**' in relation to the Restaurant or with respect to or any other food preparation or on any other business the impugned trademark/name which is in any manner deceptively or phonetically confusingly similar to the Plaintiffs Trade Mark/name AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN/AACHI NAMMA KITCHEN or in any other manner pass off their hotel, business or goods as and for that of the Plaintiffs;

c) mandatory injunction directing the 2nd defendant to remove or take down the name KARAIKUDI ACHI MESS of the 1st defendant from the business listings in the webpages of the 2nd defendant in relation to the Restaurant services or with respect to any other food preparation or on any other similar business or providing information, menus and user reviews pertaining to such Restaurant services or with respect to any other food preparation or on any other similar business in any manner so as to cause confusion to the public with respect to the Plaintiffs Trade Mark/name AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN/AACHI NAMMA KITCHEN

d) directing the defendants to surrender to the Plaintiffs all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the name KARAIKUDI ACHI MESS or other identical trade mark used in the pouches and packets bearing the word AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN/AACHI NAMMA KITCHEN;

e) directing the defendants to render an account of profits made by

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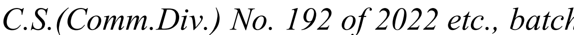

them by the use of the impugned trademark 'KARAIKUDI ACHI MESS' on the service referred and decree the suit for the profits found to have been made by the Defendants, after the Defendants has rendered accounts;

f) directing the defendants to pay to the plaintiffs the costs to the suit; and

g) pass such further or other orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice;

For Plaintiff : Mr.P.S.Raman
Senior Counsel for Ms.T.Hemalatha

For Defendants : Mr.S.Anand
of M/s.Leela & Co for D2
(in C.S (Comm.Div.) No.192 of 2022)

Mr.R.S.Diwaagar
of M/s.Vivrti Law (Law Firm) for D2

Mr.Allwin Godwin
& Ms.Akhila J for D3
(in C.S (Comm.Div.) No.193 of 2022)

Mr.R.S.Diwaagar
of M/s.Vivrti Law (Law Firm) for D2
Mr.P.Giridharan
along with Mr.H.Siddarth for D6
Mr.Allwin Godwin
along with Ms.Akhila J for D5
(in C.S (Comm.Div.) No.194 of 2022)

Mr.A.Suresh Sakthi Murugan
for D1
Mr.R.S.Diwaagar
of M/s.Vivrti Law (Law Firm) for D2
(in C.S (Comm.Div.) No.195 of 2022)

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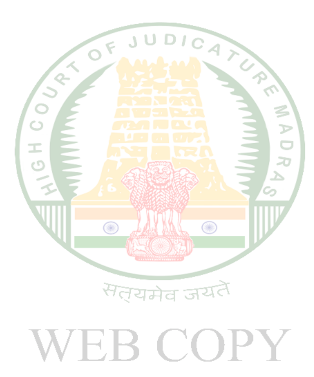
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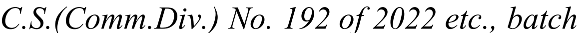

Mr.R.S.Diwaagar
of M/s.Vivrti Law (Law Firm) for D2
(in C.S (Comm.Div.) No.177 of 2022)

COMMON JUDGMENT

This common judgment / order will now dispose of the captioned seven suits and the captioned interlocutory applications.

2. Mr.P.S.Raman, learned Senior Advocate instructed by Ms.T.Hemalatha, counsel on record for plaintiffs in all seven suits is before this Commercial Division. Learned Senior counsel adverting to earlier proceedings addressed this Commercial Division on Section 12A of 'The Commercial Courts Act, 2015 (Act 4 of 2016)' [hereinafter 'CCA' for the sake of convenience and clarity]. It was submitted that facts are similar (with a minor difference in two out of the seven suits). It is submitted that C.S (Comm.Div.) No.192 of 2022 may please be treated as the lead case and it was also submitted that capturing facts in this lead case will suffice. The minor differences qua two suits will be captured in the factual matrix while setting out the same infra.

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3. As the cases on hand now turn on Section 12A of CCA, short facts (shorn of elaboration and granular particulars) will suffice. As already alluded to supra, facts as in the lead case [C.S (Comm.Div.) No.192 of 2022] are captured. Short facts are that the suit has been filed claiming reliefs alleging infringement of plaintiffs' registered trademarks; that three trademarks, namely 'AACHI' 'AACHI CHETTINAD RESTAURANT' and 'AACHI KITCHEN' constitute the nucleus of this *lis*; that there is a reference to 'AACHI NAMMA KITCHEN' also as noticed by this Commercial Division as regards the mandatory injunction relief; that 29.08.2022 and 30.08.2022 are the dates of presentation of plaint and institution of suit respectively; that in other suits also date of institution is post 20.08.2022; that the plaintiffs in July of 2022 came across the first defendant in online platform and it is alleged to be an infringement of plaintiffs' trademarks as the first defendant's business is in the name of KARAIKUDI ACHI MESS; that plaintiffs' registrations are in Classes 30 and 43 primarily for spices, flour and beverages; that it was submitted that these are classes in Nice classification (there is no classification or publication of index by the Registrar of Trademarks as mandated in 'Trademarks Act, 1999' [hereinafter 'TM Act' for

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the sake of brevity, convenience and clarity] but this question is left open as this order turns on Section 12A of CCA). To be noted, this is left open as the matter now turns on Section 12A of CCA and the question that is left open is whether such registrations are permissible absent classification and publication by the Registrar more so for products like masala powder which do not find place in Nice classification; that plaintiffs on coming to know about the alleged infringement, conducted investigation by employing third party investigators and found that the first defendant does not exist in the address given; that it is the case of the plaintiffs that investigator reported that no restaurants are being run in the said address; that first defendant is alleged to be riding on the popular marks of the plaintiffs in the e-commerce platform is plaintiffs' further case; that nearly a month later, plaintiffs directly filed i.e., presented the plaints without issuing any pre-suit notice much less a cease and desist notice or a notice under Section 12A of CCA; that Hon'ble predecessor Judge granted an interim order in C.S (Comm.Div.) Nos.192 to 195 of 2022 but without reference to Section 12A of CCA; that the submissions were made on Section 12A of CCA in the light of elucidation of same in ***Patil Automation*** case law i.e, ratio laid down/law declared by

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Hon'ble Supreme Court in ***Patil Automation Private Limited & Others V. Rakheja Engineers Private Limited*** reported in ***2022 SCC OnLine SC 1028.***

4.As already alluded to supra, the facts are slightly different in two cases, namely C.S (Comm.Div.) No.195 of 2022 and C.S (Comm.Div.) No.177 of 2022. The difference is only on one aspect of the matter and that difference is, it is not the case of the plaintiffs that first defendant is not available in the address given. There is no disputation that first defendant is in fact available in the address given and is carrying on business. To be noted, in one of these two suits, namely C.S (Comm.Div.) No.195 of 2022, a learned counsel has entered appearance on behalf of first defendant and he also made submissions on Section 12A of CCA.

5. A broad summation of the submissions made by learned Senior counsel for Plaintiffs is as follows:

(i) Plaintiff came to know about the alleged infringement by first defendant in July 2022 and the suit was filed in one month;

(ii) First defendant is not available in the address and

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therefore, resorting to Section 12A of CCA is of no avail;

(iii) Hon'ble predecessor Judge has granted an interim order;

(iv) In the lead case, the plaint is dated 17.08.2022 and therefore, it is prior to 20.08.2022;

(v) In Copyright and Trademark statutes, infringement is not just a civil wrong but it has penal consequences also;

(vi)In ***Phonepe*** case law [***Phonepe Private Limited Vs. Mobilepe e-commerce Private Limited and Ors.*** (O.A.No.651 of 2022 in C.S (Comm.Div.) No.205 of 2022)] and in ***Medopharm*** case law [***Medopharm and Another Vs.Leeford Healthcare Limited*** (O.A.No.710 of 2022 in C.S (Comm.Div) No.224 of 2022)], this Commercial Division has granted interim orders on 19.10.2022 and 14.11.2022 respectively;

(vii) There is dilution of marks as the first defendant is selling inferior quality food and food products are such that it can cause injury to the health of the unwary consumers;

(viii) Learned counsel for first defendant in C.S (Comm.Div.) No.195 of 2022 submits that he is in fact carrying on

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business at the address given. Learned counsel draws the attention of this Commercial Division to Plaint documents Nos. 39 and 40 filed by the plaintiffs which contains at least four photographs of the first defendant's small eatery.

(ix) It was also submitted that sub-rules (8) and (6) of Rule 3 of Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 provide for a time frame for mediation and if the noticee does not respond, it will be construed as a case of non-starter qua pre-institution mediation.

6. Before proceeding further, it is necessary to set out that in the captioned suits while the first defendant is the alleged infringer, the intermediaries qua e-commerce platform i.e., 'intermediaries' within the meaning of Section 2(1)(w) of 'The Information Technology Act, 2000 (21 of 2000)' [hereinafter 'IT Act' for the sake of convenience and clarity] have been arrayed as other co-defendants. Different learned counsel, who have entered appearance for different intermediaries submit that they will stand bound by the ratio in ***Shreya Singhal*** case law [***Shreya Singhal Vs. Union of India*** reported in ***(2015) 5 SCC 1***: ***2015 SCC OnLine SC 248***].

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7. This Commercial Division carefully considered the submissions made by learned Senior counsel in the light of the case file and the obtaining legal position i.e., legal position qua Section 12A of CCA as elucidatively explained by Hon'ble Supreme Court in ***Patil Automation*** case law. This Commercial Division is of the view that ***Patil Automation*** case law is instructive. After careful consideration of these materials and the submissions, this Commercial Division is of the view that the captioned suits are hit by non-compliance with Section 12A of CCA and the plaints are liable for *suo motu* rejection as laid down elucidatively and instructively in ***Patil Automation*** case law. The reasons for this conclusion i.e., points, discussion and dispositive reasoning are as follows:

(i) The first point urged (captured supra) is that plaintiffs came to know about infringement of defendants in July 2022 and the suit was filed within one month. In this regard, attention of this Commercial Division was drawn to relevant portion of paragraph 29 of the plaint in lead case, which reads as follows:

'29. In July 2022, the Plaintiffs came across the 1st Defendant's Hotel business in the name 'KARAIKUDI ACHI

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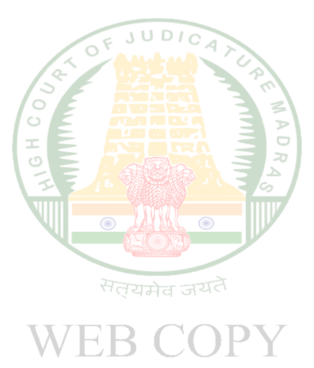
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MESS' as reflected in the local search results of the 2nd Defendant's online platform which is a blatant infringement of the Plaintiffs registered Trade Marks AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN......'

The aforementioned plaint pleadings lack specificity. It has not been mentioned with specificity as to the date in the month of July in which the plaintiffs came to know about the alleged infringement. Assuming the worst case scenario of the date being 31.07.2022, the plaint has been presented a month later and the institution of suit is clearly a month later. If it was on 01.07.2022, it is two months. Therefore, in terms of imminence, the plaintiffs fail to cut ice qua arguments before this Commercial Division. This Commercial Division vide judgments / orders 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 explained the term '*contemplate*' and the expression '*urgent interim relief*' occurring in Section 12A of CCA. Most relevant paragraphs in

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Mohamed Aboobacker Chank Lungi case are sub-paragraph Nos.(xxiv) and (xxv) of paragraph No.6 and the same read as follows:

> *'(xxiv) 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. This means that ultimate prerogative to examine 'contemplation' within the meaning of the term 'contemplate' occurring in sub section (1) of section 12-A vests in this Commercial Division. To be noted, the expression used in sub section (1) of section 12-A is not merely 'interim relief', it is 'urgent interim relief'. This takes this Commercial Division to the term 'contemplate' deployed in sub section (1) of section 12-A. This term has not been defined in said Act. It has not been defined in The General Clauses Act, 1897. Therefore, this Commercial Division resorts to dictionary meaning of the term 'contemplate'. Scanned reproduction of New 9th Edition Oxford Dictionary' is as follows:*

con·tem·plate /ˈkɒntəmpleɪt; *NAmE* ˈkɑːn-/ *verb* **1** [T] to think about whether you should do sth, or how you should do sth SYN **consider, think about / of**: **~sth** *You're too young to be contemplating retirement.* ◇ **~doing sth** *I have never contemplated living abroad.* ◇ **~how / what, etc...** *He continued while she contemplated how to answer.* **2** [T] to think carefully about and accept the possibility of sth happening: **~sth** *The thought of war is too awful to contemplate.* ◇ **~how / what, etc...** *I can't contemplate what it would be like to be alone.* ◇ **~that...** *She contemplated that things might get even worse.* **3** [T, I] **~(sth)** (*formal*) to think deeply about sth for a long time: *to contemplate your future* ◇ *She lay in bed, contemplating.* **4** [T] **~sb / sth** (*formal*) to look at sb / sth in a careful way for a long time SYN **stare at**: *She contemplated him in silence.*

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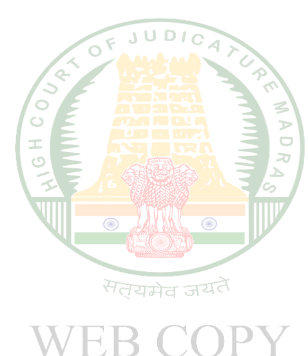
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*(xxv) A careful perusal of the meaning of the term 'contemplate' makes it clear that a thoughtful look and a profound thought at length would essentially be the determinants qua 'contemplate'. Therefore it is not for the asking qua plaintiff to say 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 12-A 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 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***

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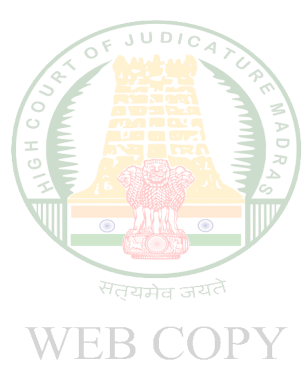
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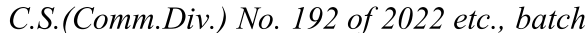

are factually distinguishable, not applicable to case on hand. Therefore, this order is not to be understood as following the same.'

Most relevant paragraphs in ***K.Varathan*** case are paragraph Nos.14 to 16 and the same read as follows:

'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*	*that needs to be dealt*

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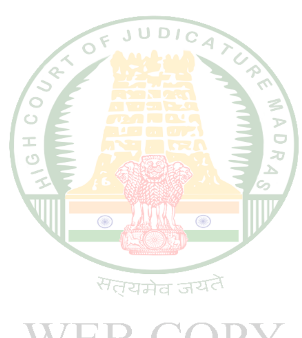
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	Oxford Dictionary	*with or happen immediately*
	Concise Oxford English Dictionary	*requiring immediate action or attention*
	P.Ramanatha Aiyar's Advanced Law Lexicon (5th Edition)	*Demanding prompt action*
	Stroud's Judicial Dictionary of Words and 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*

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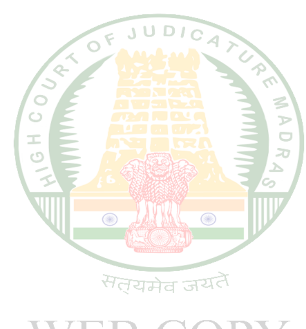
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		means "intervening" and when used as an adjective, it means "temporary" or "provisional"
	Black's Law Dictionary (Tenth Edition)	*Done, made, or occurring for an intervening time; temporary or provisional.*
	Stroud's Judicial Dictionary of Words 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	*'Relief' and 'relieve' are*

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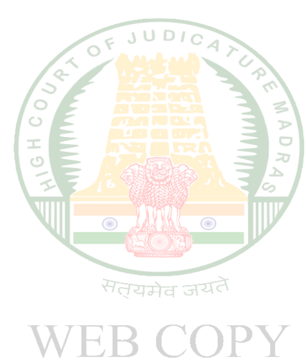
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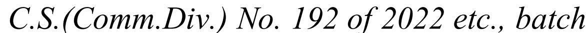

	Judicial Dictionary of Words and Phrases (Ninth Edition)	*appropriate terms to describe the remedial action of the court in cases where a penalty or forfeiture has been incurred, and which the court thinks it equitable that the complainant should not lie under or suffer.*

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

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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.'

There will be a little more elaboration on this infra i.e., there will be little more discussion on the parameters and explanation of the term *'contemplate'* and expression '*urgent interim relief*' elsewhere infra in this common judgment / common order.

(ii) Next argument is that first defendant is not available in the address given. The relevant portion of paragraph 29 of the plaint in this regard in lead case is as follows:

> *'29........ On investigation it was found that at the said address, the 1st Defendant's restaurant name 'KARAIKUDI ACHI MESS' does not exist. The investigator reported that*

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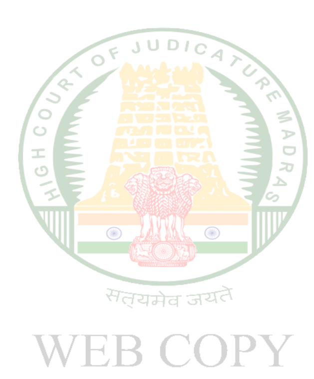
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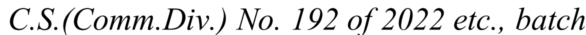

no restaurants are being run in the said address. The 1st Defendant appears to be carrying on a clandestine business using the Plaintiff's hugely popular trademark on the e-commerce platforms.'

Even this allegation does not pass muster and does not cut ice with this Commercial Division as it is the *ipse dixit* of the plaintiffs. The purported report of the investigator has not been placed before this Commercial Division. In any event, it is understood that it is a private investigator engaged by the plaintiffs.

(iii) Be that as it may, attention of this Commercial Division was drawn to Plaint Document Nos.39 to 41. These three documents are merely the first defendant's name as reflected in the online e-commerce platform together with a Google map and an affidavit under Section 65B of the Evidence Act, 1872. A scanned reproduction of these documents are as follows:

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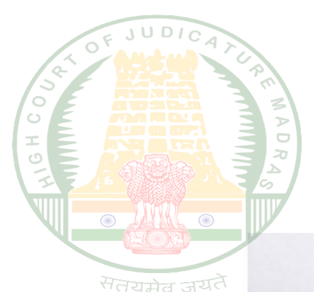

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/22, 3:45 PM Karaikudi Achi Mess Fairlands, Salem - Google Search

Karaikudi Achi Mess

Directions Save

4.0 ★★★★★ 386 Google reviews

Chettinad restaurant

Service options: Dine-in · Takeaway

Address: M49R+JMF, Fairlands, Salem, Tamil Nadu 636016

Hours: Open · Closes 11PM

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17/22, 2:17 PM Karaikudi Achi Mess - Google Maps

372

Google Maps Karaikudi Achi Mess

Map data ©2022 500 m

Karaikudi Achi Mess

ாரைக்குடி ஆச்சி மெஸ்

★★★★ 386 reviews

hettinad restaurant

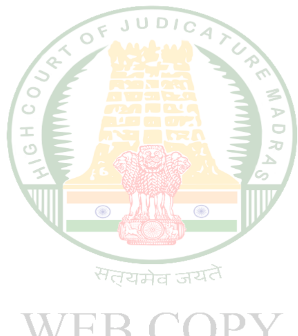
irections Save Nearby Send to phone Share

Dine-in · ✓ Takeaway

M49R+JMF Fairlands, Salem, Tamil Nadu 636016

Open · Closes 11PM

968



373

8/17/22, 2:17 PM Karaikudi Achi Mess - Google Maps

Claim this business

Suggest an edit

Add missing information

Popular times Wednesdays

LIVE *Not too busy*

6a 9a 12p 3p 6p 9p

Photos

All Menu Food & drink Vi

Add a photo

Don't see what you need here?
Questions are often answered by the community within 20 minutes.

Ask the community

Review summary

5
4
3
2
1

4.0

386 reviews

"Best **place** who need budget **food** with **Tasty**

969

https://www.google.com/maps/place/Karaikudi+Achi+Mess/@11.6690584,78.1416787,15z/data=!4m5!3m4!1s0x0:0xd0b70bdaf1d2944a!8m2!3d1... 2/7

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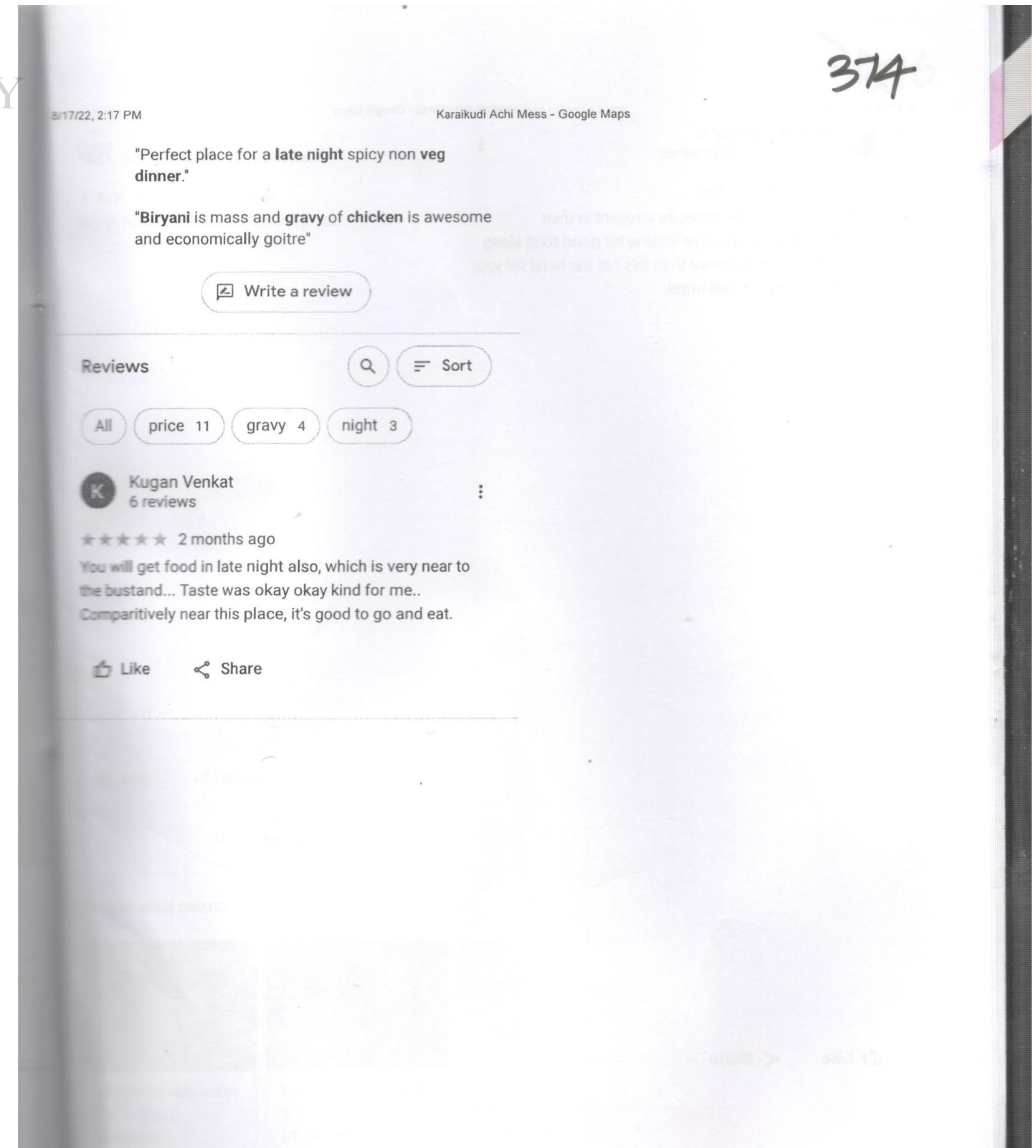
374

8/17/22, 2:17 PM Karaikudi Achi Mess - Google Maps

"Perfect place for a **late night** spicy non **veg dinner**."

"**Biryani** is mass and **gravy** of **chicken** is awesome and economically goitre"

Write a review

Reviews Sort

All | price 11 | gravy 4 | night 3

Kugan Venkat
6 reviews

2 months ago

You will get food in late night also, which is very near to the bustand... Taste was okay okay kind for me.. Comparitively near this place, it's good to go and eat.

Like Share

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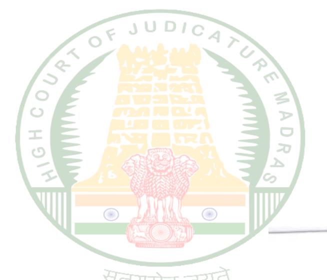
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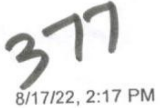

8/17/22, 2:17 PM Karaikudi Achi Mess - Google Maps

https://foursquare.com › karaikudi-aach...

Karaikudi Aachi Mess - Salem, Ta...

See what your friends are saying about Karaikudi Aachi Mess. By creating an account you are able to follow friends and experts you trust and see the places ...

https://restaurant-guru.in › ...

Karaikudi Chettinadu Aachi Mess ...

Karaikudi Chettinadu Aachi Mess காரைக்குடி செட்டிநாடு ஆச்சி மெஸ். Add to wishlist ... Salem, Tamil Nadu, India.

https://zaubee.com › IN › Salem

Karaikudi Achi Mess - M49R+JMF...

Karaikudi Achi Mess is a Chettinad restaurant located in M49R+JMF, Salem, Tamil Nadu, IN . Phone number, Photo, Opening hour, Payment method and Map details ...

About this data

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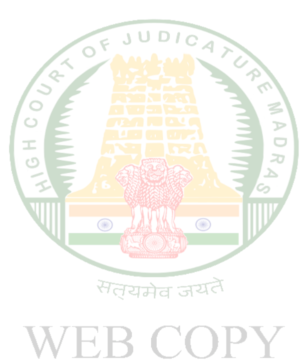
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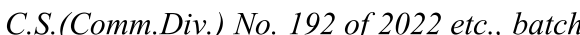

379

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

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

1. Mr. A. D. Padmasingh Isaac
   Proprietor, Aachi Spices and Foods
   Old No. 4, New No. 181/1,
   6th Avenue, Thangam Colony,
   Anna Nagar, Chennai – 600 040

2. M/s. Aachi Masala Foods Private Limited
   No.1926, 34th Street, I Block,
   Ishwarya Colony, Anna Nagar West,
   Chennai - 600 040
   Represented by its Director
   Mr. Ashwin Pandian

3. M/s. Flora Foods
   A Partnership Firm,
   No. 1926, 34th Street, I Block,
   Ishwarya Colony, Anna Nagar West,
   Chennai - 600 040
   Represented by its Partner
   Mrs. Thelma Isaac

Plaintiffs

Versus

1. Karaikudi Achi Mess
   Fairlands, Salem - 636 016
   Tamil Nadu

2. Google LLC,
   1600, Amphitheatre Parkway,
   Mountain View, California,
   United States

Defendants

Page No.: 1
No.of Corrns.: Nil.

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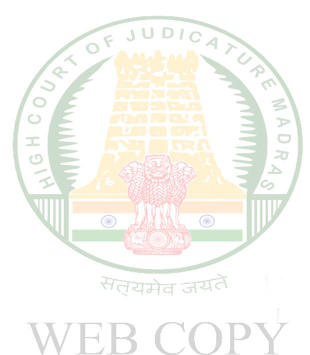

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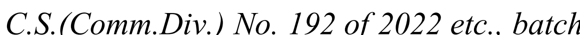

380

AFFIDAVIT OF MR. D. VENKATAKRISHNAN
(under Section 65 B of the Evidence Act, 1872)

I, D. Venkatakrishnan, son of late N. Dhandayuthapani, Hindu, aged 55 years, having residence at No. 2, 3rd Street, Duraisamy Nagar, Keelkatallai, Chennai – 600 117, do hereby solemnly and sincerely affirm and state as follows:-

1. I am the Manager employed at Daniel & Gladys, the Counsel for the Plaintiffs and as such I am well acquainted with the facts and circumstances of the case.

2. I submit that the Plaint Document No. 21 filed along with the Plaint is the printout taken out by me from the database shared by the 2nd Plaintiff.

3. I submit that the Plaint Document No. 24 filed along with Plaint is the printouts taken out by me from the online portal.

4. I submit that the Plaint Document No. 26 filed along with Plaint is the printouts taken by me from USPTO Website:-
https://ttabvue.uspto.gov/ttabvue/v?pno=92058629&pty=CAN&eno=51

Page No.: 2
No.of Corrns.: Nil.

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5. I submit that the Plaint Document No. 27 filed along with Plaint is the printouts taken by me from the IP Australia Website:- www.ipaustralia.gov.au

6. I submit that the Plaint Document Nos. 30 & 32 filed along with the Plaint is the printouts of the image taken by me.

7. I submit that the Plaint Document No. 39 filed along with the Plaint is the printouts taken by me from the Google web search:- https://www.google.com/search?q=Karaikudi+Achi+Mess+Fairlands%2C+Salem&rlz=1C1CHBF_enIN741IN741&oq=Karaikudi+Achi+Mess++Fairland...

8. I submit that the Plaint Document No. 40 filed along with the Plaint is the printouts taken by me from the Google web search:- https://www.google.com/maps/place/Karaikudi+Achi+Mess/@11.6690584,78.1416787,15z/data=!4m5!3m4!1s0x0:0xd0b70bdaf1d2944a!8m2!3d1

9. I submit that the Plaint document Nos. 21, 24, 26, 27, 30, 32, 39 and 40 are the computer outputs and are admissible without further production of proof as original. I submit that at the time when the computer outputs were generated the computer was used regularly to store and process information for the purpose of the said activities. The computer from which the output was generated was under my lawful control and use. The computer was operating properly during

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Page No.:3
No.of Corrns.: Nil.

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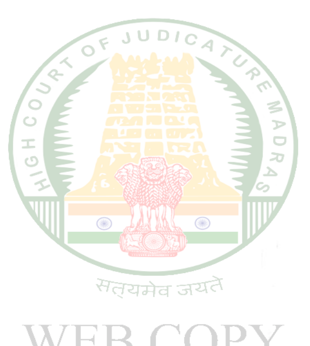
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the period and the electronic record/computer output is accurate in its contents. The outputs were generated by using a single computer. It is submitted that the said documents filed as Document Nos. 21, 24, 26, 27, 30, 32, 39 and 40 along with the Plaint were generated in the above manner from a computer over which I had lawful control and the computer was in working condition. This certificate is being furnished in compliance with Section 65 B of the Indian Evidence Act, 1872.

Solemnly affirmed at Chennai on this the 17th day of August 2022 and signed his name in my presence

Before Me,
839/22
ANITHA.R
Advocate::: Chennai
223, NSC Bose Road,
Chennai-1

The aforesaid three documents do not aid the plaintiffs as there is nothing to justify a pre-suit notice not being issued. That the defendant is not available in the address is only *ipse dixit* of the plaintiffs as already alluded to supra. As would be evident in at least two cases, first defendant is available in one case, first defendant entered

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appearance through a counsel and learned counsel has also made submissions before this Commercial Division.

(iv) The next point urged pertains to the interim order granted by Hon'ble predecessor Judge. As already captured in the facts narrative portion of this common judgment/common order, that was an interim order which was granted without reference to Section 12A. Therefore, there are two facets to this matter. An interim order granted before notice to the respondents can be varied or vacated by another single Judge.

(v) Be that as it may, ***Patil Automation*** case law is an authoritative pronouncement that Section 12A of CCA is mandatory and non-compliance with the same in cases which do not qualify qua 'urgent interim relief' or 'contemplate' (explained by this Commercial Division post ***Patil Automation*** case law in ***Mohamed Aboobacker Chank Lungi*** and ***K.Varathan*** case laws supra) are liable for *suo motu* rejection. Relevant paragraphs in ***Patil Automation*** case law are paragraphs 75, 76 and 92, which read as follows:

'***75.*** *Order VII Rule 11 declares that the plaint can be rejected on*

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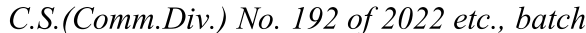

6 grounds. They include failure to disclose the cause of action, and where the suit appears from the statement in the plaint to be barred. We are concerned in these cases with the latter. Order VII Rule 12 provides that when a plaint is rejected, an order to that effect with reasons must be recorded. 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:

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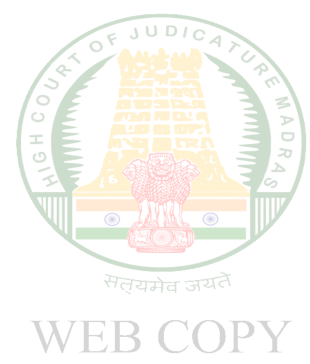
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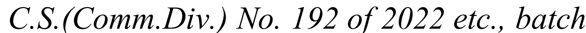

> *"13. On the admitted facts appearing from the record itself, learned counsel for the respondent, was unable to show that all or any of these averments in the plaint disclose a cause of action giving rise to a triable issue. In fact, Shri Salve was unable to dispute the inevitable consequence that 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:*

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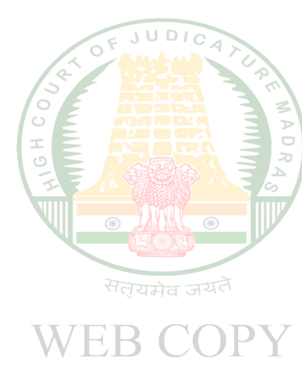
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(A) A suit is commenced by presentation of a plaint. The date of the presentation in terms of Section 3(2) of the Limitation Act is the date of presentation for the purpose of the said Act. By virtue of Order IV Rule 1 (3), institution of the plaint, 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

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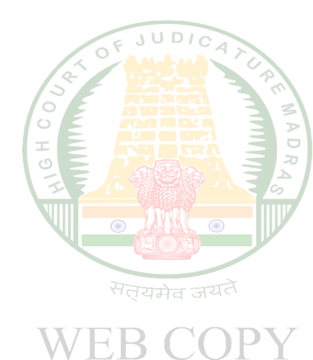
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be exercised suo motu.(See in this regard, the judgment of this Court in Madiraju Venkata Ramana Raju (supra)'

92. *Having regard to all these circumstances, we would dispose of the matters in the following manner. We declare that Section 12A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11. This power can be exercised even suo moto by the court as explained earlier in the judgment. We, however, make this declaration effective from 20.08.2022 so that concerned stakeholders become sufficiently informed. Still further, we however direct that in case plaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff. Finally, if the plaint is filed violating Section 12A after the jurisdictional High Court has declared Section 12A mandatory also, the plaintiff will not be entitled to the relief.'*

(vi) To be noted, paragraphs in ***Patil Automation*** case law are from SCC OnLine report i.e., ***2022 SCC OnLine SC 1028.*** It has become necessary to mention this as there is a difference in paragraph numbers between ***Patil Automation*** case law as uploaded in the official website of Hon'ble Supreme Court and in SCC OnLine. This difference in paragraph numbers appears to be owing to the SCC

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OnLine report giving paragraph numbers to paragraph breaks in Paragraphs 21 and 23 of the Judgement of Hon'ble Supreme Court. Hon'ble Supreme Court has made paragraph breaks but has not assigned numbers to paragraphs whereas in SCC OnLine report, numbers have been assigned. It has become necessary to mention this as the paragraphs which have been extracted and reproduced supra are of immense significance qua this common judgment.

(vii) This takes this Commercial Division to the next argument. In the considered view of this Commercial Division, the argument that plaint is dated 17.08.2022 is no argument. The reason is in ***Patil Automation*** case law, Hon'ble Supreme Court after making a clear reference *inter alia* to Rule 21 of Civil Rules of Practice has made it clear that the relevant date is institution of suit and not even presentation of plaint. Therefore, date of the plaint being prior to 20.08.2022 is hardly an argument. Most relevant paragraphs in ***Patil Automation*** case law (again from SCC OnLine report) in this regard are paragraphs 77 to 79 and the same read as follows:

*'**77.** Another area of debate has been about the distinction between*

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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 Cards Limited v. Standard Chartered Bank[29]. 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*

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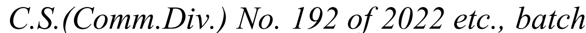

of Civil Rules of Practice contains the basic difference between presentation and institution. There is no dispute that the date of filing the Plaint would be counted for the purpose of limitation. However, that does not mean that the Suit was validly instituted by filing the Plaint. The Plaint, which 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."

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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.'*

(viii) The next argument turns on the Copyright Act, 1957 and the Trademarks Act, 1999 providing for penal consequences and alleged infringement not being just civil wrongs. This argument again is a non-starter qua Section 12A of CCA. If there is a penal consequences and if there is a provision for proceeding for alleged criminal offence, nothing prevents the plaintiffs from resorting to the same. That by itself cannot justify non-compliance with Section 12A which has been held to be mandatory by Hon'ble Supreme Court.

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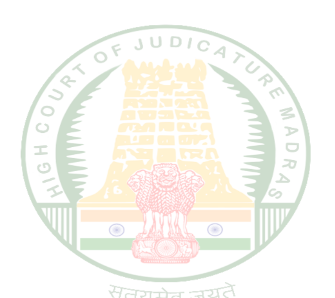
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(ix) The next argument turns on the two interim orders granted by this Commercial Division in ***O.A.No.651 of 2022 in C.S (Comm.Div.) No.205 of 2022*** [***Phonepe Private Limited Vs. Mobilepe e-commerce Private Limited and Ors.***] and ***O.A.No.710 of 2022 in C.S (Comm.Div) No.224 of 2022 [Medopharm and Another Vs.Leeford Healthcare Limited]***. Both these cases are clearly distinguishable on facts. This Commercial Division deems it appropriate to refer to ***Medopharm*** first. Most relevant paragraph of interim order in ***Medopharm*** is paragraph 5 and the same reads as follows:

> *'5 Be that as it may, on section 12A of 'the Commercial Courts Act, 2015 (Act 4 of 2016)' [hereinafter 'CCA' for the sake of convenience and brevity], plaintiffs some time in September 2021 on coming to know about the alleged infringement and passing off caused Cease and Desist notice dated 28.09.2021 (plaint document No23) to be issued to the defendant. This shall be referred to as 'first C&D notice' for convenience. The first C&D notice met with a reply dated 22.10.2021 from the defendant (plaint document No.24). Learned counsel adverting to this reply submitted that inter-alia at least three points emerge clearly from this reply and they are (a)plaintiffs are prior user, (b) defendant's registration has been*

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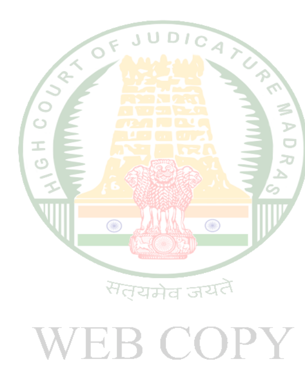

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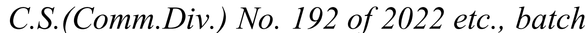

abandoned and (c)defendant is only making an attempt to say that its product is used only for dry cough. More importantly, attention of this Commercial Division is drawn to paragraphs 32 and 33 of the plaint which reads as follows:

> *'32.The Plaintiffs submit that after receipt of the Defendants response dated 22nd October 2021, the Plaintiff did not find any of the Defendant's goods available under the mark "EMICOF" in the market ever since until recently. The Plaintiffs therefore verily believed that the Defendants stopped using the mark "EMICOF" in relation to identical goods manufactured by them.*
>
> *33.While so, the Plaintiffs were shocked and surprised to come to know in the month of September 2022, that the Defendant has once again begun to actively promote and sell their goods under the mark "EMICOF" in complete violation of the Plaintiffs' rights in the mark EMCOF". A copy of the invoice dated September 23, 2022, evidencing the continued sale of the impugned goods under the mark EMICOF is filed herewith in the present proceedings.'*

In paragraph 5 of ***Medopharm*** case, this Commercial Division has extracted paragraphs 32 and 33 of the plaint thereat i.e., in that suit. A careful perusal of these two paragraphs will make it clear that ***Medopharm*** is a case where going by the plaint averments, the plaintiff has issued a Cease and Desist notice, the defendant has responded, there was a lull leading the plaintiff to believe that the defendant has ceased its activities but thereafter the alleged offending

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activity surfaced again. Even when it surfaced post Cease and Desist notice, the plaintiff sent a notice, that notice was received by the defendant and there was no response. It is in this context that '*urgent interim relief*' expression as explained by this Commercial Division in ***K.Varathan*** case was applied and interim order was granted. As already alluded to supra, there will be a little more delineation on this elsewhere infra in this common order. As regards interim order in ***Phonepe*** case, it was a case where Trademark registration applications of the defendants 1, 2 and 5 were accepted on a given date, the same was made known to the plaintiff later but what is of greater significance is, there was exchange of suit notices between the plaintiff and defendants 1 to 6 therein prior to the suit. There was a notice, rejoinder and sur-rejoinder. The most relevant paragraphs are paragraphs 7 to 9 which reads as follows:

> *'7. This takes this Commercial Division to Section 12A of 'The Commercial Courts Act, 2015 (Act 4 of 2016)' which will hereinafter be referred to as 'CCA' for the sake of convenience and clarity. As regards Section 12A, adverting to plaint documents, attention of this*

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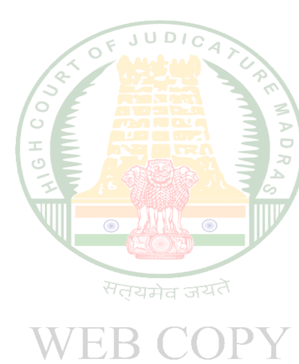
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Commercial Division was drawn to Cease and Desist Notice dated 14.03.2022, reply dated 29.03.2022, rejoinder dated 18.05.2022 and sur-rejoinder dated 01.06.2022 being plaint document Nos.16, 17, 18 and 19 respectively. Thereafter, attention of this Commercial Division was drawn inter alia to paragraph 80 of the plaint to say that the Trade Registration applications of defendants 1,2, 5 and 6 were accepted on 08.08.2022 and the same was made known to the plaintiff only on 29.08.2022 vide plaint document No.15. To be noted, the date of presentation of plaint is 12.09.2022, leave to sue was granted vide A.No.4095 of 2022 on 16.09.2022 and the date of institution of suit is 21.09.2022.

8. Mr.P.S.Raman, learned senior counsel on instructions submitted that after sur-rejoinder dated 01.06.2022 (plaint document No.19) from defendants 1,2,5 and 6, the plaintiff was lulled into belief that the matter has been concluded and that defendants 1 to 6 would not pursue their trade mark registration applications. However, plaintiff was taken by surprise when acceptance of the applications was communicated to plaintiff on 29.08.2022 is learned senior counsel's say. This submission is recorded subject of course to contestations by defendants. It was also submitted by learned senior counsel that there can be an interim order as against the proprietor of registered trade marks also and that the instant case qualifies as one in this view of the matter.

9. Submissions qua section 12-A of CCA were heard in the light of Patil Automation principle i.e., Patil Automation Private Limited and others Vs. Rakheja Engineer Private Limited case law

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reported in 2022 SCC OnLine SC 1028. The Patil Automation order is on 17.08.2022 and the prospective operation is on and from 20.08.2022.

The sequitur is, both ***Medopharm*** and **Phonepe** are a different kettle of fish altogether qua cases on hand. In this regard, this Commercial Division reminds itself of the Constitution Bench judgement of Hon'ble Supreme Court in the 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 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.'*

(x) The facts are completely different and there are very many crucial and critical facts qua Section 12A of CCA which have been

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delineated supra. In any event, it is also to be noted that in both those matters it is only interim orders (a limited order of *status quo* in one of the matters) and the same were granted preserving the rights of the defendant/s to raise Section 12A point if so desired and if so advised. This Commercial Division had also put in a caution and caveat in other orders that Section 12A has to be tested on a case to case basis depending on the facts and circumstances of each case.

(xi) Before proceeding further, it is deemed appropriate to add that unlike Section 80 of 'the Code of Civil Procedure, 1908' ['CPC' for the sake of brevity], there is nothing in Section 12A which provides for instituting a suit without serving any notice. In this regard, sub-section (2) of Section 80 of CPC is of relevance. Therefore, the test should be on the parameters as laid down by this Commercial Division in ***K.Varathan*** case, more particularly paragraph 16 extracted and re-produced supra.

(xii) The first parameter is whether the interim relief is a product of profound thinking carefully about the possibility of a

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happening. In the case on hand, the plaintiff has gone into slumber for anything between a bare minimum of one month or may be two months before institution of suit in this Court after coming to know about alleged infringement. As rightly pointed out by learned counsel for first defendant in C.S (Comm.Div.) No.195 of 2022, sub-rules (8) and (6) of Rule 3 of said Rules provide for a three months time frame for pre-suit mediation. Pre-suit mediation itself could have been completed. Therefore, this Commercial Division is unable to persuade itself to believe that it is a product of profound thinking carefully about the possibility of a happening.

(xiii) The next parameter is whether prompt action is demanded and promptitude required is of such nature that exhausting the remedy of pre-suit mediation without any intervention in the meantime can lead to a irreversible situation i.e., a situation where one cannot put the clock back. There is nothing to demonstrate this other than saying that the subject matter is food products. There is no material to show that public at large have suffered owing to alleged inferior food served by the alleged infringers. Absent *prima*

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facie material, there is nothing to justify the plaintiff coming to this Court directly circumnavigating / bypassing Section 12A which has been held to be mandatory by Hon'ble Supreme Court.

(xiv) The next parameter is very significant as that is the test as to whether the urgency is the plaintiff's own doing. This is a classic case where it is of plaintiff's own doing as *inter alia* there is no explanation whatsoever as to what prevented the plaintiffs from issuing a cease and desist notice which has been repeatedly held by this Court to be a fair and sound practice and there is nothing to demonstrate that the matter falls in the category of an exception to this.

(xv) The next parameter / test is the high standard required to establish prompt action (urgency). Plaintiffs do not cross the fence to put it in equestrian terms. This is clearly a stumble for the plaintiffs. Dovetailed with this is the other test as to whether the plaintiffs are on fair ground in urging urgency. Plaintiffs on being unable to explain have given a semblance of explanation for not issuing a pre-suit notice or cease and desist notice much less a notice

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under Section 12A of CCA and filing the suit at least one and half month later (mean average between one month and two months owing to lack of specificity in the pleadings in paragraph 29 of the plaint in lead case) cannot be said to be on fair ground in urging urgency as an interim measure. Another facet of the test/parameter is actual or apprehended wrong or legal injury should be so imminent that plaintiff cannot be made to stand and suffer the same. The narrative thus far, discussion and dispositive reasoning make it clear that the urgency that is being attempted to be projected in the considered view of this Commercial Division is a mirage as it is all clearly plaintiffs' own making. Therefore, this parameter also becomes a stumble for the plaintiff.

8. In the light of the narrative, discussion and dispositive reasoning set out supra, this Commercial Division has no hesitation in coming to the conclusion that plaints in the captioned suits are liable to be rejected for non-compliance qua Section 12A which has been held to be mandatory vide ***Patil Automation*** case law as already alluded to supra. The sequitur is all the

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plaints are rejected. Further sequitur or consequence is, applications thereat stand closed.

9.At this stage, learned counsel on record for plaintiffs brought to the notice of this Commercial Division Application Nos. 4989, 4990, 5252, 4991, 5033, 4931 and 4987 of 2022 with prayers to 'direct post filing of suit mediation under Section 12A of CCA' being on Board. A careful perusal of the support affidavits bring to light that these applications, which are bereft of merits, are liable to be dismissed and the reasons are as follows:

(a) It has been contended that suits pertaining to trademark infringement cannot be bound by requirement of Pre-Institution Mediation and Settlement. This is no argument as the Commercial Courts Act does not make any distinction or exception as regards adumbration of 22 (21+1) categories of Commercial Disputes under Section 2(1)(c) of CCA. To be noted, the suit pertaining to trademark infringement will fall under 2(1)(c)(xvii) of CCA.

(b) It has been contended that ***Patil Automation*** case

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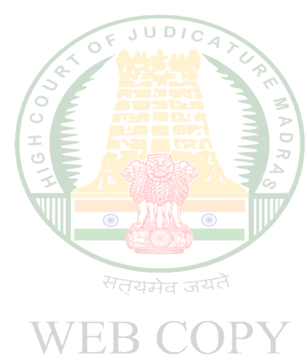

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law has been decided only on 17.08.2022 and the plaintiffs have filed the suit in August 2022. The date of the institution of the suit has not been mentioned with specificity (Paragraph 7 of the support affidavit). In ***Patil Automation*** case law, 20.08.2022 has been held to be the reckoning date and it has been held thus qua institution of the suit. Therefore, this contention is of no avail.

(c) There is a reference to ***Bolt Technology*** case law [***Bolt Technology OU Vs. Ujoy Technology Private Limited and another*** reported in ***(2022) SCC OnLine Del 2639***] being an order made by a Hon'ble single Judge of Delhi High Court in C.S (Comm) No.582 of 2022 [***Bolt Technology*** case law is completely distinguishable on facts]. This Commercial Division without expressing any opinion on whether it would follow ***Bolt Technology*** makes it clear that ***Bolt Technology*** is completely distinguishable on facts. That was a case where the defendant on receiving cease and desist notice sent a reply calling upon the plaintiff to pay a sum of Rs.5 Crores for

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issuing notice and allegedly unnecessarily harassing the defendant besides claiming a sum of Rs.75,000/- towards legal expenses whereas in the case on hand, pre-suit notice (leave alone cease and desist notice) has not been issued. As regards, ***Bolt Technology*** being distinguishable on facts, this Commercial Division reminds itself of celebrated ***Padma Sundara Rao*** case wherein a Hon'ble Constitution Bench made declaration of law qua precedents and relevant paragraph in ***Padma Sundara Rao*** case has already been extracted supra.

(d) As already alluded to in the earlier part of this paragraph, this Commercial Division does not express any opinion on whether it would follow ***Bolt Technology*** as in the case on hand it will suffice to say that ***Bolt Technology*** does not come to the aid of the plaintiffs, as it is wholly distinguishable on facts.

(e) Another order made by another Hon'ble single Judge of Delhi High Court in ***Retail Royalty Company & Anr. Vs.Nirbhay Marg New Broadcast Private Limited***, being

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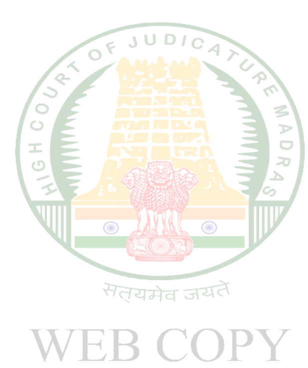
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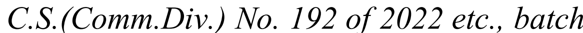

order dated 01.09.2022 made in C.S(Comm).No.601 of 2022 has also been referred. As regards that order, this Commercial Division has already taken a view that an application for dispensing with pre-institution mediation cannot be entertained after the Hon'ble Supreme Court has declared that Section 12A of CCA is mandatory.

10.For the above reasons, the averments in the affidavit are clearly contrary and fatal to the thrust of the argument and the same will be discussed in the main para infra.

11.Some of the captioned applications pertain to a prayer for post filing of suit mediation under Section 12A of CCA. Section 12A is in the nature of a jurisdictional fact. A jurisdictional fact has to precede the suit and it cannot be post suit. The lead case is ***Premier Distilleries*** case law [***Premier Distilleries Pvt. Ltd., Vs. Sushi Distilleries*** reported in ***2001 SCC Online Mad 546***] wherein it was held that the cause of action is something which has occurred and which gives a right to take action and the cause must

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precede the action and not follow it.

12.This Commercial Division has also held that Section 12A having been held to be mandatory by Hon'ble Supreme Court, any such manoeuvre qua the rigour of Section 12A of CCA either by way of dispensing with or post suit exercise when the law specifically talks about a pre-suit legal drill is impermissible. This Commercial Division has also made it clear that ***Retail Royalty*** case [***Retail Royalty Company & Anr. Vs.Nirbhay Marg New Broadcast Private Limited***], being order dated 01.09.2022 made in C.S(Comm).No.601 of 2022 will not come to the aid of the plaintiffs. This takes this Commercial Division to another facet of these applications [Application Nos.4989, 4990, 5252, 4991, 5033, 4931 and 4987 of 2022] wherein a typical prayer is as follows:

> *'For the reasons stated above, it is humbly prayed that this Hon'ble Court may be pleased to direct post filing of the suit mediation under Section 12 A of the Commercial Courts Act, 2015 under the powers of this Hon'ble Court under Section 151 of the Civil Procedure Code, 1908 and pass such further or other orders as this Hon'ble Court may deem fit and proper and thus render justice.'*

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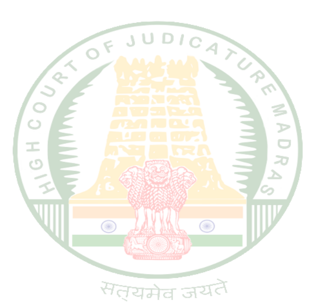

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13.In the further considered view of this Commercial Division, this prayer itself nails the matter in favour of rejection of plaint for non compliance with Section 12A of CCA. The reason is the thrust of the argument of plaintiffs was mediation is a mirage and atleast a far cry as according to the plaintiffs, the alleged infringing defendants [with exception of two of the seven suits] are not available in the addresses given. The applications with prayers for mediation pending captioned suits directly run into the thrust of this argument. The most relevant averment in this regard in the support affidavit is as follows:

> *'Therefore, even though, Section 12 A of the Commercial Courts Act, 2015 requires a Pre-Institution Mediation, considering the subject matter of the present suit, justice will be rendered to the Plaintiff if there is a 'post suit mediation' avoiding an order of withdrawal or dismissal of the subject suit being passed by this Hon'ble Court on the basis of the requirement under Section 12 A. Thus, it is appropriate for this Hon'ble Court to direct a 'Post suit Mediation' under the powers conferred on this Hon'ble Court under Section 151 of the Civil Procedure Code, 1908.'*

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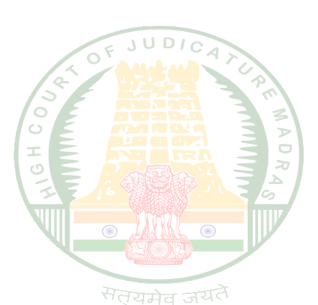
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14.The aforementioned averment by plaintiffs makes it clear that mediation is not a far cry much less a mirage. On the contrary, the above averment reinforces the stated position of the plaintiffs to be saying that mediation is a certain possibility and a clear option. When mediation is a certain possibility and a clear option, there is no reason as to why the plaintiffs did not resort to the same prior to institution of suits, though Hon'ble Supreme Court in ***Patil Automation*** supra has held in categorical terms that Section 12A is mandatory and non compliance with the same will call for rejection of plaint. Considering such rigor of the mandatory legal character of Section 12A of CCA, Hon'ble Supreme Court had made ***Patil Automation*** ratio prospective in terms of operation by fixing 20.08.2022 as reckoning date. To be noted, while doing so, Hon'ble Supreme Court has made it clear that such a course is being adopted, i.e., prospective operation doctrine being resorted to is with the intention of a caution/caveat to all stake holders but the plaintiffs have thrown caution to the winds and therefore, plaintiffs have to blame themselves. This dispositive reasoning buttresses the earlier part of this order wherein this Commercial Division has taken a view

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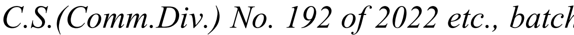

that the plaintiffs are not on fair ground in trying to bring the captioned matters under the umbrella of urgent interim reliefs. This also buttresses one other parameter set out in ***K.Varathan*** case law, i.e., high standard is required to establish urgent interim reliefs. In other words, the plaintiffs by their own averment in the support affidavit cannot say that they will go for mediation pending suit and also contend that they did not resort to pre-institution mediation because it was a mirage.

15.As regards high standard required for establishing '*contemplation*' of '*urgent interim relief*', as already alluded to and delineated, it does not mean testing interlocutory applications as regards degree or strength qua possibility of any interim order before notice or for that matter post notice. In a suit which qualifies to be heard by applying CCA, when the plaintiff institutes a suit in a Commercial Division/Commercial Court bypassing Section 12A of CCA by filing an interlocutory application, the test qua '*contemplation*' of '*urgent interim relief*' is not whether plaintiff will be entitled to interlocutory relief, be it an injunction application under Order XXXIX Rules 1 and 2 of CPC or any other interim relief. The test is whether '*contemplation*' of '*urgent*

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interim relief' by the plaintiff is profound and good enough to leapfrog and bypass the pre-institution mediation under Section 12A of CCA. As an illustration, there may be a case where Commercial Division / Commercial Court finds that '*contemplation*' of '*urgent interim relief*' by a plaintiff is good enough to pass muster as regards bypassing pre-institution mediation and entertaining the suit though the plaintiff has not resorted to pre-institution mediation under Section 12A but after entertaining such a suit, the Commercial Division/Commercial Court may not grant an interim order before notice to the respondents (be it an application under Order XXXIX Rules 1 and 2 CPC or any other interim order) or even ultimately dismiss the interlocutory application on merits. Therefore, a Commercial Division / Commercial Court entertaining institution of a suit bypassing Section 12A of CCA does not mean that plaintiff has made out a good enough case for grant of interim order, it only means that '*contemplation*' of '*urgent interim relief*' by plaintiff is good enough to bypass Section 12A of CCA. In this view of the matter, in the cases on hand, as plaintiffs have not issued any pre-suit notice much less a cease and desist notice or notice calling upon the defendants / noticees to participate in pre-institution mediation, the purported

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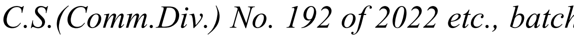

'contemplation' of 'urgent interim relief' nearly two months post knowledge of alleged infringement is clearly a damp squib and is not good enough to fire a trade mark suit seeking reliefs bypassing Section 12A of CCA. To put it differently, merely because plaintiffs choose to file an interlocutory application along with suits, i.e., along with institution of suits does not by itself become a licence to bypass Section 12A by saying that the suits fall under the category of suits where '*urgent interim relief*' is 'contemplated' as such a view would not just dilute or neutralize Section 12A of CCA, it will go as far as having the effect of effacing Section 12A of CCA from the statute book. The reason is, all that the plaintiffs have to do is to file a interlocutory application at the time of institution of suits to give a goby to / circumnavigate Section 12A of CCA. It is neither the spirit and objective behind Section 12A of CCA nor the spirit of ratio in ***Patil Automation*** which elucidates and explains the scope, purport and consequence of non compliance qua section 12A of CCA besides recognizing categories of suits i.e., those which 'contemplate' 'urgent interim relief' and those which do not. To be noted, ***Patil Automation*** on facts dealt with the case where no 'urgent interim relief' has been sought but this recognition of two categories is clearly

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a part of the ratio qua ***Patil Automation***. In any event, in the cases on hand, as plaintiffs have directly come to this Commercial Division nearly two months after gaining knowledge about alleged infringement without even issuing pre suit notice, this Commercial Division has no hesitation in holding that captioned suits do not pass the muster to qualify as suits in which there is '*contemplation*' of '*urgent interim relief*'. The sum sequitur is, suits do not clear the threshold fence in the cases on hand.

16.Before dropping the curtains and writing the concluding paragraph, this Commercial Division deems it appropriate to make it clear that all the rights and contentions of the plaintiffs are preserved to come to this Court on the same cause of action with a similar/same prayer or other ancillary prayers after exhausting the pre-institution mediation mechanism which has been put in place qua Section 12A. In this regard, it is to be noticed that when CCA kicked in on 23.10.2015, there was no Section 12A pre-institution mediation settlement. This was introduced in CCA by way of an amendment on and from 03.05.2018. Sub-sections (2) and (1) of Section 12A provide for Notification and Rules respectively qua pre-institution mediation, both to be

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made by Central Government. Central Government has made the notification and also put in place the Rules i.e., rules made in conjunction with Rule 21 which is the rule making power on and from 03.07.2018. The plaintiffs will do well to resort to the mechanism that has been put in place. On an extreme demurrer, assuming that the first defendant does not exist in the address given, it would be a case of notice under sub-rule (3) of Rule 3 of said Rules remaining unacknowledged within the meaning of sub-rule (4) of said Rules. This means that there will be a non-starter report. It is also made clear that if the plaintiffs take this route and if the pre-institution mediation becomes a non-starter and plaintiffs come to this Court again, observations made in this order will neither impede nor be an impetus as these are observations made for the limited purpose of testing Section 12A compliance. This means that the plaintiffs will have a second bite at the cake nay at the cherry. This preservation of rights and contentions of the plaintiffs is being made keeping in mind that CCA is a special statute and rejection of plaint is a *suo motu* legal drill done in the light and context of ***Patil Automation*** case law, more particularly Paragraphs 75, 76 and 92 (SCC OnLine paragraphs) which have already been extracted and reproduced supra.

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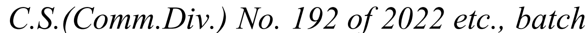

17.Curtains are dropped on the captioned matters. All plaints in all seven suits rejected. Consequently, all captioned applications thereat are closed. There shall be no order as to costs.

23.11.2022

Speaking Order/Non-speaking Order
Index: Yes/No
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M. SUNDAR,J.

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C.S.(Comm.Div.) No. 192 of 2022 etc., batch

Dated : 23.11.2022

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