**THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

**Court No. 1**
**AFR**
Neutral Citation No. - 2024:AHC:15223

Present:
**The Hon'ble Justice Shekhar B. Saraf**

**FIRST APPEAL NO. 30 OF 2024**

**PANKAJ RASTOGI**

**v.**

**MOHD. SAZID AND ANOTHER**

**For the Appellant : Ashish Kumar Srivastava, Advocate**
**For the Respondents : Mohd. Arif, Advocate**

(Judgment dictated in Court)

1. This is a first appeal against an order dated October 31, 2023, wherein the application filed by the respondents/defendants under Order VII Rule 11 read with Section 151 of the Civil Procedure Code, 1908 in Original Suit No.15 of 2023 was allowed and the plaint filed by the appellant/plaintiff was rejected.

2. Upon perusal of the impugned order, it appears that the trial court enquired into the earlier factual matrix of the case and indicated that earlier a suit being Original Suit No.4 of 2022 was filed by the appellant without any application made for any urgent interim relief. Subsequently, the applicant sought to withdraw the said suit by way of making an application. The applicant also sought liberty to file a fresh suit. The said suit was allowed to be withdrawn vide order dated January 3, 2023.

3. Thereafter, second suit being Suit No.15 of 2023 was filed by the appellant along with an application seeking urgent interim relief. It was noted by the trial court that in the first suit, no prayer for grant of urgent

interim relief was made by the appellant. Therefore, the trial court concluded that the prayer made for urgent interim relief is "imaginary" and Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as the 'Act'), which mandates pre-litigation mediation, could not have been bypassed.

4. Sri Ashish Kumar Srivastava, learned counsel appearing on behalf of the appellant has placed reliance on the judgment of the Calcutta High Court in **M/s Odisha Slurry Pipeline Infrastructure Ltd. and Another v. IDBI Bank Ltd. and Others**, reported in, **2022 SCC OnLine Cal 3951**, the Delhi High Court in **Yamini Manohar v. T K D Keerthi**, reported in **2022 SCC OnLine Del 2653** which was affirmed by the Supreme Court in **Yamini Manohar v. T K D Keerthi**, reported in, **2023 SCC OnLine SC 1382** to buttress his argument that in a trademark suit, there is always an urgency. Accordingly, the provision of Section 12A of the Act was not needed to be complied with by the appellant.

5. Per contra, Sri Mohd. Arif, learned counsel appearing on behalf of the respondents has submitted that the aforesaid judgments relied upon by the learned counsel appearing on behalf of the appellant would not apply to the instant case, as the factual matrix in the instant case is different from those cases insofar is it clear that there was no urgency demonstrated by the appellant in the instant case. This is further evident from the fact that the appellant filed the first suit without any application seeking urgent interim relief. He further submitted that the trial court has, in detail, examined the facts and only thereafter concluded that the urgency contemplated in the present plaint is imaginary in nature.

**Analysis and Conclusion**

6. I have heard the learned counsel appearing on behalf of the parties.

7. Before delving into the controversy in the instant case, I feel it pertinent to extract Section 12A of the Act herein as under:

> *"**12A. Pre-litigation Mediation and Settlement**.—(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.*
>
> *(2) For the purposes of pre-litigation mediation, the Central Government may, by notification, authorise—*
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> *(i) the Authority, constituted under the Legal Services Authorities Act, 1987 (39 of 1987); or*
>
> *(ii) a mediation service provider as defined under clause (m) of Section 3 of the Mediation Act, 2023.*
>
> *(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority or mediation service provider authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of one hundred and twenty days from the date of application made by the plaintiff under sub-section (1):*
>
> *Provided that the period of mediation may be extended for a further period of sixty days with the consent of the parties:*
>
> *Provided further that, the period during which the parties spent for pre-litigation mediation shall not be computed for the purposes of limitation under the Limitation Act, 1963 (36 of 1963).*
>
> *(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties and the mediator.*
>
> *(5) The mediated settlement agreement arrived at under this section shall be dealt with in accordance with the provisions of Sections 27 and 28 of the Mediation Act, 2023.]"*

8. In the landscape of the Indian commercial laws, Section 12A of the Act stands as a pivotal provision, delineating a framework for pre-institution mediation and settlement of commercial disputes. This provisions places emphasis on mediation as a preferred method to resolve commercial disputes before they escalate into protracted legal battles. The significance of Section 12A of the Act lies not only in its attempt to decongest the overburdened judicial system but also in its promotion of efficiency, cost-effectiveness, and party autonomy in dispute resolution. India's courts are inundated with a staggering backlog of cases, including commercial disputes, which often

leads to significant delays in the dispensation of justice. By mandating pre-litigation mechanism, Section 12A of the Act acts as a gatekeeper, diverting disputes away from the already congested court dockets and towards a more expeditious resolution process. This not only relieves pressure on the judiciary but also ensures timely redressal for the parties involved, thereby enhancing the overall efficiency of the legal system.

9. Moreover, the mandatory nature of Section 12A of the Act underscores the legislative intent to promote alternative dispute resolution mechanisms, particularly mediation, as a preferred method for resolving commercial disputes. In doing so, it reflects a broader global trend towards embracing consensual and collaborative approaches to conflict resolution, as opposed to the adversarial nature of traditional litigation. By making pre-litigation mediation compulsory, Section 12A of the Act institutionalizes the shift towards a more mediation-friendly legal framework, thereby fostering a culture of dispute resolution that prioritizes amicable settlement over prolonged courtroom battles.

10. In **Patil Automation Pvt. Ltd. and Others v. Rakheja Engineers Pvt. Ltd.**, reported in, **(2022) 10 SCC 1**, the Supreme Court expounded on the significance of Section 12A of the Act, and its mandatory nature. Relevant paragraph of the aforesaid judgment is delineated below:

> *"99.1. The Act did not originally contain Section 12-A. It is by amendment in the year 2018 that Section 12-A was inserted. The Statement of Objects and Reasons are explicit that Section 12-A was contemplated as compulsory. The object of the Act and the Amending Act of 2018, unerringly point to at least partly foisting compulsory mediation on a plaintiff who does not contemplate urgent interim relief. The provision has been contemplated only with reference to plaintiffs who do not contemplate urgent interim relief. The legislature has taken care to expressly exclude the period undergone during mediation for reckoning limitation under the Limitation Act, 1963. The object is clear.*
>
> *99.2. It is an undeniable reality that courts in India are reeling under an extraordinary docket explosion. Mediation, as an alternative dispute mechanism, has been identified as a workable solution in commercial matters. In other words, the cases under the Act lend*

> *themselves to be resolved through mediation. Nobody has an absolute right to file a civil suit. A civil suit can be barred absolutely or the bar may operate unless certain conditions are fulfilled. Cases in point, which amply illustrate this principle, are Section 80CPC and Section 69 of the Partnership Act.*
>
> *99.3. The language used in Section 12-A, which includes the word "shall", certainly, goes a long way to assist the Court to hold that the provision is mandatory. The entire procedure for carrying out the mediation, has been spelt out in the Rules. The parties are free to engage counsel during mediation. The expenses, as far as the fee payable to the mediator, is concerned, is limited to a one-time fee, which appears to be reasonable, particularly, having regard to the fact that it is to be shared equally. A trained mediator can work wonders.*
>
> *99.4. Mediation must be perceived as a new mechanism of access to justice. We have already highlighted its benefits. Any reluctance on the part of the Court to give Section 12-A, a mandatory interpretation, would result in defeating the object and intention of Parliament. The fact that the mediation can become a non-starter, cannot be a reason to hold the provision not mandatory. Apparently, the value judgment of the lawgiver is to give the provision, a modicum of voluntariness for the defendant, whereas, the plaintiff, who approaches the court, must, necessarily, resort to it. Section 12-A elevates the settlement under the Act and the Rules to an award within the meaning of Section 30(4) of the Arbitration Act, giving it meaningful enforceability. The period spent in mediation is excluded for the purpose of limitation. The Act confers power to order costs based on conduct of the parties."*

11. The Supreme Court in **Patil Automation (supra)**, further reiterated that non-compliance with Section 12A of the Act would lead to rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908. Relevant paragraphs are extracted herein below:

> *"92. Order 7 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 7 Rule 12 provides that when a plaint is rejected, an order to that effect with reasons must be recorded. Order 7 Rule 13 provides that rejection of the plaint mentioned in Order 7 Rule 11 does not by itself preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Order 7 deals with various aspects about what is to be pleaded in a plaint, the documents that should accompany and*

> *other details. Order 4 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 4 Rule 1(3), a plaint is to be deemed as duly instituted only when it complies with the requirements under Order 6 and Order 7. Order 5 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 7 Rule 11 is to be exercised only on an application by the defendant and the stage at which it can be exercised.*
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> ***
>
> *94.3. Order 7 Rule 11 does not provide that the court is to discharge its duty of rejecting the plaint only on an application. Order 7 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 7 Rule 11(d), the stage begins at that time when the court can reject the plaint under Order 7 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 7 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 12-A, 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 7 Rule 11. In other words, the power under Order 7 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 [Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy, (2018) 14 SCC 1] .)"*

12. One may also make reference to the judgment of the Calcutta High Court in ***Odisha Slurry Pipeline (supra)***, wherein the Court had outlined that in absence of a prayer for urgent interim reliefs, a suit cannot be instituted without mandatory compliance of Section 12A of the Act. The Calcutta High Court further stated that merely an application for urgent interim reliefs would not be sufficient, and if the court comes to a finding that the urgent interim reliefs contemplated are not justified, it may reject the plaint. Relevant paragraphs have been extracted below:

"*The law as it stands today is that the suit which does not contemplate any urgent interim reliefs cannot be instituted unless the plaintiff exhausts the mandatory remedy provided under Section 12A of the Act;* h*owever the position would be different when the suit contemplates an urgent interim relief. The language employed in Section 12A of the Act does not conceive the situation that even if the urgent interim reliefs are prayed in the suit instituted by the plaintiff, the leave under Order 12A of the said Act is required from the Court. What can be reasonably deciphered from the said provision that if the suit contemplates any urgent interim relief it served the purposes and cannot be said to be bad defective and/or invalid as the pre- institution mediation has not been exhausted. Does it mean that mere seeking an urgent interim relief suffice the purpose or the Court may apply its mind to find out whether their exits a circumstances for such urgent interim relief? The aforesaid section is silent in this regard simply because one of the reliefs claimed in the plaint uses the expression 'urgent interim reliefs' is sufficient enough to confirm the legislative mandate even if such urgent interim reliefs appears to be farcical and intended to avoid the rigour of Section 12A of the Act. The urgent interim relief is an expression of wide import and difficult to give exhaustive meaning. It varies from a case to a case and, therefore, there is no impediment on the part of the Court at the time of presentation the plaint to apply to its mind to find out whether it involves any urgent interim reliefs. Any other Course adopted by the Court would give a free handle to an unscrupulous plaintiff to override the mandatory provision of Section 12A by incorporating a relief which cannot be said to be an urgent interim reliefs nor the facts and circumstances or the cause of action pleaded in the plaint entitles the plaintiff to such relief on a bare reading of the averments made in the plaint. Often an application for urgent interim reliefs are filed in the suit and ultimately if the Court may not find any justification in passing such interim relief yet it would sub-serve the motive and the purpose of avoiding the pre-institution mediation as mandated under Section 12A of the Code. We do not find any restriction or a fetter in the language employed in the aforesaid section that the Court at the time of presentation of the plaint or even thereafter finds that it does not involve an urgent interim relief to reject the plaint and direct the plaintiff to exhaust the remedy under Section 12A of the Act.*

*However, the Division Bench of the Delhi High Court in case of Chandra Kishore Chaurasia Vs. R. A. Perfumery Works Pvt. reported in FAO (COMM) 128 of 2021 decided on 27.10.2022 interpreted the expression "contemplated any urgent interim reliefs" used in Section 12A of the Act is relatable to a qualification of the*

*category of the suit and determinant upon the frame of the plaint and the reliefs sought therein.*"

13. The Delhi High Court in the case of ***Yamini Manohar (supra)***, which arose from a suit seeking permanent injunction restraining infringement of trademark and passing off, had come to a finding that the plaint contained averments with regard to urgency and upheld the order of the commercial court with regard to the conclusion that the suit filed by the plaintiff contemplated grant of urgent relief. This matter went up to the Supreme Court in ***T K D Keerthi's case (supra)***, wherein the Supreme Court laid down the following ratio:

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

*8. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyze Section 12A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The proposition that the commercial courts do have a role, albeit a limited one, should be accepted, otherwise it would be up to the plaintiff alone to decide whether to resort to the procedure under Section 12A of the CC Act. An 'absolute and unfettered right' approach is not justified if the pre-institution mediation under Section 12A of the CC Act is mandatory, as held by this Court in Patil Automation Private Limited (supra). The words 'contemplate any urgent interim relief' in Section 12A(1) of the CC*

> *Act, with reference to the suit, should be read as conferring power on the court to be satisfied. They suggest that the suit must "contemplate", which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and ensure that the legislative object/intent behind the enactment of section 12A of the CC Act is not defeated."*

14. Based on the aforementioned judicial pronouncements, it can be conclusively inferred that the invocation of urgent relief should not serve as a pretext to circumvent or evade Section 12A of the Act. It is imperative that the factual matrix and contextual intricacies of each case are comprehensively assessed from the plaintiff's perspective. The Supreme Court, in its wisdom, has expounded that any attempt to cloak or disguise the true intent behind seeking such relief, with the intention of sidestepping the statutory obligation of pre-litigation mediation, warrants scrutiny, particularly in instances where duplicity and falsehood are manifest or substantiated.

15. In the instant case, it is clear that the plaintiff did not show any urgency as he had earlier filed a suit without seeking any urgent interim reliefs and then withdrew the same. Subsequently, he filed a suit along with an application for seeking ex parte urgent interim relief. Under these circumstances, I am of the view that the trial court has correctly examined the position and held that mandatory provision of Section 12(A) of the Act should have been complied with by the appellant.

16. Having considered the facts and circumstances, I am, however, of the view that for the ends of justice the order passed by the trial court rejecting the plaint may be set aside and modified with a direction upon the appellant to approach the mediation centre as per Section 12(A) of the Act.

17. Accordingly, the impugned order dated October 31, 2023, rejecting the plaint of the appellant is set aside and the appellant/plaintiff is directed to approach the mediation centre within a period of seven days from date. After

completion of the above mediation process, the plaint should be presented in accordance with law.

18. With the aforesaid directions, the instant appeal is disposed of.

**Date:** 30.01.2024
Kuldeep

(Shekhar B. Saraf, J.)