



WEB COPY



C.S(Comm. Div.)No.208 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.09.2022

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

C.S(Comm. Div.)No.208 of 2022

& A.Nos. 4296 and 4297 of 2022

&O.A.Nos.626 to 628 of 2022

Mohamed Aboobacker Chank Lungi Pvt. Ltd.,

rep. by its Managing Director

Mr.Umar Farook

No.190, Thambu Chetty Street

Chennai - 600 001

... Plaintiff

vs.

1. Revathy Textiles

288, Eswaran Koil Street

Erode - 638 001

2. M.Usharani Sarees,

14, Prakasam Street

Pazhaniammal Complex

Erode - 638 001

3. K.Saminathan Tex

Shop No.27, Kani Market

61, Thiruvenkatasami Street

P.S.Park

Erode - 638 001

4. Shri Sabari Tex

76, 88, NMS Compound

Erode Fort

Erode - 638 001



C.S(Comm. Div.)No.208 of 2022

5. Mr.Ashok Kumar

... Defendants

WEB COPY

This Civil Suit is preferred, under Order IV Rule 1 of Madras High Court Original Side Rules, 1956 read with Order VII Rule 1 of the Code of Civil Procedure, 1908 read with Sections 27, 28, 29, 134 and 135 of the Trademarks Act, 1999 and Sections 51, 55 and 62 of the Copyright Act, 1957 and Sections 2(1)(c)(xvii) and 7 of the Commercial Courts Act, 2015 for the following reliefs:

a. For permanent Injunction restraining the defendants by themselves, their agents, servants, assigns, representatives or any one claiming through them from in any manner infringing the Plaintiff's Registered trademarks CHANK, SANGU and the devise of Conch as described in the Schedule A hereunder by using the identical mark SANGU, SENGU, SANGAM, CHANK, CHANKU and/or the offending deceptively similar label with the device of Conch, or any other mark, label or device which is identical or deceptively similar to or a colourable imitation of the plaintiff's trademarks SANGU and the device of Conch;

b. For permanent Injunction restraining the defendants by themselves, their agents, servants, assigns, representatives or any one claiming through them from in any manner infringing the copyright in the artistic features associated with the plaintiff's artistic work Device of Conch as contained in the Schedule B hereunder by using the offending label with the device of Conch or any other mark, label or device, which is a colourable imitation of the



WEB COPY

Plaintiff's copyright in artistic work Device of Conch either by manufacturing or selling or offering for sale or in any way advertising the same or in any other manner whatsoever;

c. For permanent Injunction restraining the defendants by themselves, their agents, servants, assigns, representatives or any one claiming through them from in any manner passing off or enabling others to pass off the defendants' products as and for that of the Plaintiff's products by using the identical trademark SANGU, SENGU, SANGAM, CHANK or CHANKU or through the offending label with the device of conch or any other trademark which is identical or deceptively similar to the Plaintiff's trademark CHANK, SANGU, the device of Conch and/ or the SANGU label, either by manufacturing or selling or offering for sale or in any way advertising the same or in any other manner whatsoever;

d. Directing the Defendants to surrender to the Plaintiff entire goods with the labels, packaging materials, stock of unused labels together with the blocks and dyes, name boards, signboards, stationery materials etc., containing the impugned mark SANGU, SENGU, SANGAM, CHANK or CHANKU and label with the device of Conch for destruction;

e. Directing the Defendants to render true and faithful accounts of the profits earned by them using the offending trademark SANGU and label with the device of Conch and pay such profits to the Plaintiff as damages;

f. Directing the Defendants to pay the Plaintiff the cost of the suit;



C.S(Comm. Div.)No.208 of 2022

WEB COPY

g. Grant such further or other orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.

For Plaintiff : Mr.A.Prabhakara Reddy
assisted by
Mr. A.Prasanna Venkat
of M/s.APR Associates (Law Firm)

ORDER

This Judgement / order will now dispose of captioned main suit, namely C.S (Comm.Div.) No.208 of 2022 and will consequently dispose of the captioned applications.

2. Captioned main suit along with captioned applications is listed today in the Motion Board before this Commercial Division. Mr.A.Prabhakara Reddy, learned counsel assisted by Mr.A.Prasanna Venkat of M/s.APR Associates (Law Firm) for the sole plaintiff-company, which is the applicant in the captioned applications (obviously as the matter is in Motion Board) is before this Commercial Division.

3. Learned counsel, adverting to the plaint and the plaint documents submits that the main suit has been filed *inter alia* with prayers for injunction qua alleged infringement of plaintiff's registered trademarks qua textiles (lungies, handkerchiefs, etc.,) besides prayers for injunctions qua alleged infringement of copyright, surrender of alleged offending material, rendition of



accounts, costs and the usual residuary limb of further or other orders.

WEB COPY

4. Learned counsel for plaintiff-company has multiple trademark registrations primarily under Classes 24 and 25 of the relevant Schedule / Rules qua 'The Trademarks Act, 1999' [hereinafter 'TM Act' for the sake of brevity and convenience] pertaining to fabrics, clothing etc., Learned counsel submits that the plaintiff came to know about alleged infringing activities of the defendants i.e., activity of applying deceptively similar marks on their products, owing to which instant suit has been launched.

5. This Commercial Division wanted to know from learned counsel for plaintiff about the requirement under Section 12-A of 'The Commercial Courts Act, 2015 (4 of 2016)' [hereinafter 'CCA' for the sake of brevity, convenience and clarity]. In response to this query of this Commercial Division regarding Section 12-A of CCA, learned counsel for plaintiff made submissions, a summation of which is as follows:

a) Plaintiff has taken out an application for appointment of Advocate Commissioner (A.No.4296 of 2022, i.e., one of the captioned applications) with prayers for seizing the offending materials and this by itself demonstrates urgency qua interlocutory reliefs;



WEB COPY

b) A perusal of Section 135 of TM Act will make it clear that there is a provision under the TM Act for grant of *ex parte* injunctions, interim orders, more particularly vide sub-section (2) of Section 135 of TM Act and therefore, this answers Section 12-A;

c) The offending products are being sold in complete contravention of 'The Legal Metrology (Packaged Commodities) Rules, 2011', being Rules made by Central Government by exercise of rule making power under the parent statute concerned;

d) Interestingly and intriguingly it was submitted that Section 12-A of CCA is not attracted qua the captioned suit;

e) It was submitted that if the defendants are called for mediation, other similar alleged infringers (referred to as 'fly-by-night operators' by learned counsel) would also vanish from the market and plaintiff will not be able to prosecute such alleged infringers.

6. This Court carefully considered the aforementioned submissions made by learned counsel for plaintiff in response to the query regarding requirement



qua Section 12-A of CCA which was put to the learned counsel by this Commercial Division with specificity. This Commercial Division after carefully considering the submissions in the light of Section 12-A of CCA and elucidation of the same by Hon'ble Supreme Court vide ***Patil Automation Private Limited and Ors. Vs. Rakheja Engineers Private Limited*** reported in ***2022 SCC OnLine SC 1028*** [*inter alia* holding that Section 12-A is mandatory] has no hesitation in applying ***Patil Automation*** principle / ratio and coming to the conclusion that the plaint in the captioned matter is liable to be rejected. The discussion and dispositive reasoning i.e., reasons are as follows:

(i) When CCA kicked in on 23.10.2015, there was no Section 12-A. Section 12-A of CCA was introduced on and from 03.05.2018 by way an amendment to CCA vide The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 (28 of 2018). Section 12-A provides for two aspects qua Central Government. One is, notification of authorities under sub-section (2) and other is, making of Rules for 'manner and procedure' of Pre-Institution Mediation and Settlement. This is under sub-section (1) of



WEB COPY

Section 12-A read with Section 21-A of CCA which is the source of Rule making power qua Central Government. Both these provisions have since been given effect to i.e., notification has been made and Rules in the form of subordinate legislation has also been made, both with effect from 03.07.2018. The notification reads as follows:

'S.O-3232(E) – In exercise of the powers conferred by sub-section (2) of Section 12A of the Commercial Courts Act, 2015, the Central Government hereby authorises the State Authority and District Authority constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation and settlement under Chapter III-A of the Commercial Courts Act, 2015.'

(ii) The Rules i.e., subordinate legislation go by the title 'The Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 [hereinafter 'Pre-Institution Mediation Rules' for convenience]. This means that Section 12-A kicked in on 03.05.2018, the notification under sub-section (2) and Rules by way of subordinate legislation under sub-section (1) of Section 12-A read with Section 21-A kicked in on 03.07.2018;

(iii) Therefore, a complete working mechanism has been put in



WEB COPY

place qua 'manner and procedure' of pre-institution mediation and settlement under section 12-A of CCA;

(iv) In the case on hand, a careful perusal of the plaint, more particularly the cause of action paragraph being paragraph 44 at pages 23 and 24 of the plaint makes it clear that the plaintiff has made an averment with clarity and specificity that the cause of action arose in the last week of July of 2022. Paragraph 44 of the plaint reads as follows:

'44. The cause of action for the above suit arose at Chennai within the jurisdiction of this Hon'ble Court where the plaintiff is carrying on the business. The cause of action arose in the year 1927 when the plaintiff adopted the trademark CHANK, SANGU and device of Conch; on all subsequent dates when the plaintiff has been openly, continuously and extensively using the said marks and label to the exclusion of others; on 27.04.1951 when the Plaintiff's predecessor firm was registered on 19.06.2000 when the plaintiff was incorporated. On 30.06.2000, when the suit trademarks and copyrights came to be assigned in favour of the Plaintiff. On 19.05.2019 when the Plaintiff was converted into a private limited company. On 10.03.2021 when the Plaintiff filed an application to bring on record the change in its constitution before the Registrar of Trademarks. The cause of action arose in the last week of July 2022 when the Plaintiff took notice of the Defendants selling the infringed goods. The cause of action continues to arise de die in diem, as the Defendants



WEB COPY



C.S(Comm. Div.)No.208 of 2022

continue to use the impugned trademark illegally and the products under the impugned mark / label are available for sale by the defendants.'

(underlining made by this Court for ease of reference)

(v) There are other averments in the plaint which are good enough to believe that cause of action arose earlier as there is reference to an earlier suit and advocate commissioner's report but this Commercial Division deems it sufficient to proceed on a demurrer (assuming July of 2022 to be date of knowledge). Therefore, it is the plaintiff's averment i.e., pleadings in the plaint, that the plaintiff-Company came to know about the alleged infringement in July of 2022 itself. Admittedly, no cease and desist notice has been issued. No notice has been issued. This means that the plaintiff, on coming to know about the alleged infringement, has chosen to not to put the alleged infringers on notice, i.e., a cease and desist notice much less notice calling upon them to sit for mediation. This by itself completely militates against Section 12-A of CCA which has been held to be mandatory by Hon'ble supreme Court vide ***Patil Automation*** case law;



WEB COPY

(vi) This Commercial Division now proceeds to consider the arguments made by learned counsel, an adumbration of which has been set out supra in the form of summation.

(vii) As regards the aforementioned application for appointment of Advocate Commissioner (A.No.4296 of 2022) that by itself does not demonstrate urgency. The expression used in Section 12-A of CA is 'urgent interim relief'. Therefore, it should not only be an application for 'interim relief' but it should also be 'urgent'. There is no explanation as to what prevented the plaintiff from putting the defendants on notice, on coming to know about alleged infringement in July of 2022.

(viii) The expression 'a suit, which does not contemplate any urgent interim relief' occurring in section 12-A of CCA was examined by Hon'ble Telangana High Court in ***M.K. Food Products Vs. S.H.Food Products*** {order dated 21.02.2019 rendered by a Division Bench} reported in ***LAWS(TLNG)-2019-2-109***. This is a case which



C.S(Comm. Div.)No.208 of 2022

WEB COPY

arises out of a copy right suit and judgment / order made by a District Court being judgment / order dated 04.06.2018 before notification and subordinate legislation under sub-sections (2) and (1) of Section 12-A respectively of CCA as this notification and Rules kicked in only on 03.07.2022. Be that as it may, in this order, Hon'ble Telangana High Court interfered with the order of the District Court primarily because (in the opinion of Hon'ble Division Bench) the District Court in that case had understood 'contemplation of urgent interim relief' and 'entitlement to urgent interim relief' to be synonymous. To be noted, in this **M.K.Food Products** case, the expression 'a suit, which does not contemplate any urgent interim relief' has been referred to as 'A suit which does not contemplate any urgent relief' and this appears to be a typographical / secretarial error but it is not necessary to go into this aspect of the matter and it will suffice to say that **M.K.Food Products** does not come to the aid of the plaintiff in the case on hand. That is a case where District Court had treated 'contemplation' and 'entitlement' to be synonymous (as alluded to in the earlier part of this order). As **M.K.Food Products** is different on facts, it is not applied and therefore, this order shall not



WEB COPY

be construed as following **M.K.Food Products**. As it is Division Bench judgment of another Hon'ble High Court, it has only persuasive value as a precedent and I leave it open for being gone into in another case if cited. In **Patil Automation** case law, Hon'ble Supreme Court after making it clear that Section 12-A is mandatory, has also made it clear that it is open to a Commercial Division to suo motu reject a plaint if there is no adherence to Section 12-A of CCA, i.e., without an application for rejection of plaint in this regard. This is captured in paragraphs 75 and 76 of **Patil Automation** case law {paragraphs as in SCC OnLine report}, which read as follows:

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



WEB COPY

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

“13. On the admitted facts appearing from the record itself, learned counsel for the respondent, was unable to show that all or any of these averments in the plaint disclose a cause of action giving rise to a triable issue. In fact, Shri Salve was unable to dispute the inevitable consequence that the plaint was liable to be rejected under Order VII Rule 11, CPC on these averments. All that Shri. Salve contended was that the court did not in fact reject the plaint under Order VII Rule 11, CPC and summons having been issued, the trial must proceed. In our opinion, it makes no difference that the trial court failed to perform its duty and proceeded to issue summons without carefully reading the plaint and the High Court also overlooked this fatal defect. Since the plaint suffers from this fatal defect, the mere issuance of summons by the trial court does not require that the trial should proceed even when no triable issue is shown to arise. Permitting the continuance of such a suit is tantamount to licensing frivolous and vexatious litigation. This cannot be done.”

(Emphasis supplied)



WEB COPY

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

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

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

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



WEB COPY

(ix) A careful perusal of Paragraphs 75 and 76 of ***Patil Automation*** case law makes it clear that it is open to this Commercial Division to *suo motu* reject a plaint.

(x) In paragraphs 77 to 79, a fine but certain distinction between 'presentation of plaint' and 'institution of suit' has been articulated and brought out with clarity and specificity. Paragraphs 77 to 79 read as follows:

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

“Order IV Rule 1. Suit to be commenced by plaint.—(1) Every suit shall be instituted by presenting a plaint in duplicate to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).”

78. Sub-Rule (3) of Order IV Rule 1 was inserted by Act 46 of 1999 w.e.f. 01.07.2002. Shri Sharath Chandran has drawn our attention to the Judgment of the High Court of Madras reported in Olympic Cards Limited v. Standard Chartered Bank. In the said case, the question, which arose was, whether there was an abandonment or withdrawal of suit within the meaning of Order XXIII Rule 1 of the CPC, which would



operate as a bar to file a fresh suit. In this context, we notice the following discussion:

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

17. It is, therefore, clear that any abandonment before the registration of Suit would not constitute



WEB COPY



C.S(Comm. Div.)No.208 of 2022

withdrawal or abandonment of Suit within the meaning of Order 23, Rule 1, C.P.C., so as to operate as a legal bar for a subsequent Suit of the very same nature. It is only the withdrawal or abandonment during the currency of a Legal proceedings would preclude the Plaintiff to file a fresh Suit at a later point of time on the basis of the very same cause of action."

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

(xi) In the case on hand, the date of presentation of plaint and date of filing of suit are 09.09.2022 as would be evident from the coding sheet, a scanned reproduction of which is as follows:



WEB COPY



C.S(Comm. Div.)No.208 of 2022

FILING SHEET		Page 1 of 1	
High Court of Judicature at Madras		Serial Number	
ORIGINAL SIDE		Age	
(to be filled by the Registry)			
Case Type	CS	No.	208 of 2022
Date of filing	d d m m y y y y		
D. No.	101683		
Date of presentation	d d m m y y y y		
(To be filled by the Plaintiff/Petitioner/Applicant in Black Ink)			
Plaintiff/Petitioner/Applicant	M/S. MOHAMED ABOOBACKER CHANK LUNG PVT. LTD.		
Defendant/Respondent/Counterparty	REVATNY TEXTILES & CO.		
Plaintiff's/Petitioner's/Applicant's Counsel	M/A. APR ASSOCIATES		
Defendant/Respondent/Counterparty Counsel			
Value of the suit	Rs. 20,000/-	Court fee	Rs. 750/-
Act involving provisions of law involved in the case	SECTIONS 29, 134 AND 135 OF THE TRADEMARKS ACT, 1999		
Subject matter in brief	SUIT FOR INFRINGEMENT AND PASSING OFF OF PLAINTIFF'S TRADEMARK		
Subject / Category (s)	0 3 9 1 0 0 0		
General/Particular Grounds (s) if any	Type	No.	of
Order Violated and Date of Order (For Contempt)	Type	No.	
Plaintiff's Signature	Counsel for Plaintiff		
(To be filled by the Court Officer / PA concerned in Court itself in Red Ink)			
Name of Depositor	By		
Date of Deposit	d d m m y y y y		
Court Officer/PA			



C.S.(Comm. Div.)No.208 of 2022

(xii) A scanned reproduction of the docket sheet of the plaint is as follows:

CS.D.101683/2022

Scanned 25/9/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Ordinary Original Jurisdiction - Commercial Division)

C.S. (Commercial) No. 208 of 2022

Plaintiff: M/s. Mithras Associates (Pvt.) Ltd.

Defendant: M/s. Ravathi Textiles & Co.

Presented on 14/9/22

Admitted on 22-9-22

PLAINT

FILED 22 SEP 2022

RECEIVED 22 SEP 2022

101683

14 SEP 2022

M/s. APR ASSOCIATES (PVT) LTD.

COUNSEL FOR PLAINTIFF

PH: 9828819010

40

(xiii) The above will bring to light that according to docket sheet, the dates of 'presentation of plaint' and 'filing of suit' are 14.09.2022 and



C.S(Comm. Div.)No.208 of 2022

22.02.2022 respectively. This Commercial Division is informed that this is owing to an inadvertent error in the Registry. However, learned counsel for plaintiff very fairly submitted that the dates as found in the docket sheet, namely 14.09.2022 (presentation of plaint) and 22.09.2022 (filing of suit) are the correct dates and therefore, this Commercial Division proceeds by taking these two dates. To be noted, all these dates are post 20.08.2022 and therefore, as regards applicability of **Patil Automation** principle, there is no confusion.

(xiv) While on the rejection and while on *suo motu* rejection by this Commercial Division as elucidatively articulated and explained by Hon'ble Supreme court in **Patil Automation** case law, it is also deemed appropriate to refer to Paragraphs 84 and 91 of **Patil Automation** case law {paragraphs as in SCC OnLine report}, which deal with Court fee which read as follows:

'84. On the findings we have entered, the impugned orders must be set aside and the applications under Order VII Rule 11 allowed. This would mean that the plaints must be rejected. Necessarily, this would involve the loss of the court fee paid by the plaintiffs in these cases. They would have to bring a fresh suit, no doubt after complying with Section 12A, as permitted under Order VII Rule 13. Moreover, the declaration of law by this Court would relate back to



WEB COPY



C.S(Comm. Div.)No.208 of 2022

the date of the Amending Act of 2018.

91. The statute which has generated the controversy is the Amending Act of year 2018. We have noticed that there is undoubtedly a certain amount of cleavage of opinion among the High Courts. The other feature which is to be noticed is that, this is a case where the law in question, the Amending Act containing certain Section 12A is a toddler. The law necessarily would have teething problems at the nascent stage. The specified value has been lowered drastically from Rs. 1 crore to Rs. 3 lakhs. The imperative need to comply with the mandate of Section 12A which we have unravelled if it has not been shared by the parties on the advice they received or on the view prevailing in the High Courts would necessarily mean that unless we hold that the law, we declare is prospective such suits must perish. The court fee paid would have to be written off. In a fresh suit which would be otherwise barred by limitation, shelter can be taken only under Section 14 of the Limitation Act. The availability of the power under Section 14 itself may have to be decided by the court. '

It has been made clear that Court fee has to necessarily be forfeited and the plaintiff has to come to Court again by way of a fresh suit. Therefore, the question of refund of court fee would also not arise.

(xv) In the case on hand, as would be evident from the scanned reproduction of the coding sheet and docket sheet, it is clear that both the dates, i.e., presentation of plaint and date of institution of suit are post



20.08.2022. To be noted, 20.08.2022 is the cut off date which has been prescribed in **Patil Automation** case law as Hon'ble Supreme Court has made it clear that the ruling is prospective. The prospective ruling principle has been brought into play in **Patil Automation** case law and in the case on hand, the dates of presentation of plaint and institution of suit are 14.09.2022 and 22.09.2022 respectively and therefore that by itself is both lethal and fatal to the plaintiff.

(xvi) The argument predicated on sub-section (2) of Section 135 of TM Act may not carry the plaintiff any further as regards urgency as sub-section (2) of Section 135 of TM Act is an adumbration of reliefs including interim reliefs and it also provides for *ex parte* interim reliefs. In the case on hand, as already alluded to supra, the plaintiff has not even issued a Cease and Desist notice. The plaintiff has not issued any notice much less a notice within the meaning of Section 12-A. The plaintiff has straight away come to this Commercial Division and launched this captioned matter nearly after two months from the date of knowledge of alleged infringement. Therefore, plaintiff's argument that the plaintiff is entitled to urgent interim relief, in the considered view of this Commercial Division, is no argument. The reason is (as already alluded



to supra), the expression used in Section 12-A, more particularly sub-section (1) thereat is not merely 'interim relief', it is 'urgent interim relief'.

Therefore, the plaintiff, having come to Court after admittedly coming to know about the alleged infringement in July of 2022, has gone into a lull, after being lax / torpid state and has casually come to this Commercial Division in mid / late September of 2022 which is clearly insouciant. Therefore, the argument that 'urgent interim reliefs' are 'contemplated' does not hold water and it does not cut ice with this Commercial Division.

(xvii) As regards the Legal Metrology (Packaged Commodities) Rules, 2011, if there is a violation of any Rules or Statute thereat, it is well open to the parties concerned to initiate proceedings against the defendant. It is also open to the plaintiff to complain to the authorities concerned. Therefore, arguments in answer to Section 12-A do not clear the threshold hurdle.

(xviii) The argument that Section 12-A is not attracted (as alluded to supra) is not only interesting but intriguing. As delineated elsewhere earlier in this order, CCA kicked in on 23.10.2015. There was no Section 12-A prior to 23.10.2015. Section 12-A captioned 'Pre-institution



WEB COPY

Mediation and Settlement' slotted under Chapter III-A of CCA kicked in only on 03.05.2018 followed by subordinate legislation (Rules) qua manner and procedure and notification by Central Government under sub sections (1) and (2) thereat on and from 03.07.2018. Thereafter, a conundrum of sorts broke out as various High Courts took different views as to whether Section 12-A is mandatory or merely directory. While Hon'ble Bombay High Court held that it is directory, Hon'ble Calcutta High Court held it to be mandatory. Hon'ble Supreme Court in ***Patil Automation*** case law put this conundrum to rest by holding that section 12-A of CCA is mandatory and non compliance calls for suo motu rejection by the court concerned. While this conundrum of sorts unfurled post 03.05.2018, the matter travelled to Hon'ble Supreme Court from Chandigarh along with two other applications (one from this very Court) leading to the ***Patil Automation*** ratio. Therefore, the argument that Section 12-A is not attracted does not stand scrutiny for a moment and it is completely flattened in the light of ***Patil Automation*** principle.

(xix) As regards prosecution, an argument that it is imperative for the plaintiff to prosecute not only the defendant but also similarly placed alleged infringers is not an argument to contend that Section 12-A can be



given a go by.

WEB COPY

(xx) Further argument that if the defendants are called for a mediation, they would vanish from the market cannot be accepted for two reasons /facets which are fatal to the plaintiff. One facet is, an argument that an alleged infringer being called for mediation would lead to the infringers stopping the infringement being made as a ground to circumnavigate Section 12-A is no argument as it begs the question / runs contrary to the very spirit and objective behind section 12-A of CCA and secondly, if the defendant and other similarly placed alleged infringers stop their activities that would only enure to the benefit of the plaintiff, promoting the objective behind Section 12-A including docket explosion which has also been touched upon by Hon'ble Supreme Court in ***Patil Automation*** principle.

(xxi) Though not contended, for the purpose of completion of not only the narrative but the discussion and dispositive reasoning, this Commercial Division deems it appropriate to take note of two orders made by two Hon'ble Single Benches of the Delhi High Court post ***Patil Automation*** case law. One is an order dated 29.08.2022 in ***Bolt Technology OU Vs. Ujoy Technology Private Limited and another***



C.S(Comm. Div.)No.208 of 2022

reported in **(2022) SCC OnLine Del 2639** and the other is **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.

(xxii) As regards **Bolt Technology** case law, it is no doubt an Intellectual Property Rights matter. A careful perusal of the facts makes it clear that it does not come to the aid of plaintiff in the case on hand. The reason is, in **Bolt Technology**, the plaintiff on coming to know about alleged infringement issued a cease and desist notice to the defendant, the defendant on receipt of the cease and desist notice, sent a reply calling upon the plaintiff to pay a sum of Rs.5 Crores for unnecessarily harassing the noticee and also claimed a sum of Rs.75,000/- towards legal expenses. In this view of the matter, Hon'ble single Judge of the Delhi High Court took the view that Section 12-A gets obliterated and it would serve no purpose to say that Section 12-A can be resorted to. It is made clear that by applying the celebrated **Padma Sundara Rao** case law [**Padma Sundara Rao Vs. State of Tamil Nadu** reported in **(2002) 3 SCC 533**], more particularly paragraph 9 thereat, this Commercial Division has no difficulty in coming to the



conclusion that **Bolt Technology** case law does not come to the aid of the plaintiff in the case on hand. To be noted, **Padma Sundara Rao** case law is not only a ratio, but it is a declaration of law as it has been made by a Constitution Bench. 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.’

To be noted, as already alluded to supra, in the case on hand, even a cease and desist notice has not been issued and therefore, it is completely factually distinguishable on facts qua **Bolt Technology**.

(xxiii) As regards, **Retail Royalty** case law, a careful perusal of the order being order dated 01.09.2022 made by a Hon'ble single Judge of the Delhi High Court in CS(COMM) No.601 of 2022 makes it clear that the plaintiff has taken out an application (I.A.No.14030 of 2022)



WEB COPY

purportedly under Section 12-A of CCA with a prayer seeking exemption from institution of pre-litigation mediation. In the light of the ***Patil Automation*** principle, this Commercial Division has no hesitation in coming to the conclusion that such an application is not maintainable. The reason is, Hon'ble Supreme Court has held with clarity and specificity that Section 12-A is mandatory. Hon'ble Supreme Court took this view after noticing a conundrum of sorts which had erupted post 03.05.2018 as different High Courts took different views as to whether Section 12-A is mandatory or directory. Once Hon'ble Supreme Court settled the same by saying that Section 12-A of CCA is mandatory, any application seeking exemption from a mandatory provision is of no consequence. To be noted, there is no provision under Section 12-A of CCA for dispensing with Section 12-A either. This means that the law makers i.e., the Parliament in its wisdom has thought it fit to make Section 12-A not only mandatory but also absolute. In this view of the matter, ***Retail Royalty*** case law does not come to the aid of the plaintiff.

(xxiv) In ***Patil Automation***, more particularly paragraph 76 (extracted and reproduced elsewhere in this order / judgment) Hon'ble



C.S(Comm. Div.)No.208 of 2022

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 /kɒntəmpleɪt; NAmE ˈkɑːn-/ verb **1** [T] to think about whether you should do sth, or how you should do sth **(37)** *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** [I, t] ~ (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 **(37)** *stare at*: She contemplated him in silence.

(xxv) A careful perusal of the meaning of the term 'contemplate'



WEB COPY

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

(xxvi) After making this position clear, this Commercial Division now proceeds to one observation in **Bolt Technology** contained in Paragraph 14 which in turn refers to Paragraph 81 of **Patil Automation**, which reads as follows:

'14. As to the manner in which Section 12A of CCA would operate, the recent judgment of the Supreme Court in Patil Automation (supra) has completely settled the legal position in this regard. The relevant observations of the Supreme Court in the said judgment are as under:

"81. In the cases before us, the suits do not contemplate urgent interim relief. As to what should happen in suits which do contemplate urgent interim relief or rather the meaning of the word 'contemplate' or urgent interim relief, we need not dwell upon it. The other aspect raised about the word 'contemplate' is that there can be attempts to bypass the statutory mediation under Section 12A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis. Section 80(2) of the CPC permits the suit to be filed where urgent interim relief is sought by seeking the leave of the court. The proviso to Section 80(2) contemplates that the court shall, if, after hearing the parties, is satisfied that no urgent or immediate relief need be granted in the



WEB COPY



C.S(Comm. Div.)No.208 of 2022

suit, return the plaint for presentation to the court after compliance. Our attention is drawn to the fact that Section 12A does not contemplate such a procedure. This is a matter which may engage attention of the lawmaker. Again, we reiterate that these are not issues which arises for our consideration. In the fact of the case admittedly there is no urgent interim relief contemplated in the plaints in question.

XXX

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.'

(xxvii) **Bolt Technology** may have to be necessarily read in the context of Paragraph 62 of **Patil Automation** case law, which reads as follows:



WEB COPY



C.S(Comm. Div.)No.208 of 2022

'62. The potential of Section 89 of the CPC for resolving disputes has remained largely untapped on account of the fact that mediation has become the product of volition of the parties. Courts, no doubt, have begun to respond positively. However, there was a pressing need to decongest the trial courts, in commercial matters in particular, as they bear the brunt of docket explosion. It is noteworthy that Section 12A provides for a bypass and a fast-track route without for a moment taking the precious time of a court. At this juncture, it must be immediately noticed that the Law -giver has, in Section 12A, provided for pre-institution mediation only in suits, which do not contemplate any urgent interim relief. Therefore, pre-institution mediation has been mandated only in a class of suits. We say this for the reason that in suits which contemplate urgent interim relief, the Law-giver has carefully vouch-safed immediate access to justice as contemplated ordinarily through the courts. The carving out of a class of suits and selecting them for compulsory mediation, harmonises with the attainment of the object of the law. The load on the Judges is lightened. They can concentrate on matters where urgent interim relief is contemplated and, on other matters, which already crowd their dockets.'

(xxviii) A careful perusal of Paragraphs 62 and 81 of **Patil**

Automation case law brings to light the fact that Hon'ble Supreme Court has clearly noticed that pre-institution mediation has been mandated only



WEB COPY

in a class of suits i.e., class of suits where there is no contemplation of urgent interim reliefs. The aforementioned expressions 'interim relief' as well as 'urgent interim relief' have already been delineated by this Court supra. As regards, **Patil Automation** case law, that was a matter where in paragraph 81, it was made clear that it is an observation made on the facts of that case but the principle i.e., ratio is Section 12-A of CCA is mandatory and non compliance warrants suo motu rejection of plaint. That Section 12-A is mandatory means that there can be no application for exemption from the same circumnavigating Section 12-A.

7. In the light of the narrative, discussion and dispositive reasoning thus far, the inevitable sequitur that follows, more particularly in the light of Paragraphs 75 and 76 of **Patil Automation** case law (*suo motu* rejection of plaint), plaint in captioned suit is rejected. The further sequitur is captioned applications also stand rejected. It is made clear that all the rights and contentions of plaintiff are preserved for coming to this Commercial Division after due compliance of Section 12-A. To put it differently, the views expressed in this order / judgment are for the limited purpose of rejection of plaint qua infraction of section 12-A and therefore, if the plaintiff chooses to come to this court again (after adhering to section 12-A of CCA) with same /



C.S(Comm. Div.)No.208 of 2022

similar prayer/s inter-alia on the same cause of action, all the rights and contentions of the plaintiff will stand preserved (if that be so). This order / judgment will neither impede a new suit nor serve as an impetus for the same but it is made clear that rights and contentions of plaintiff in this regard are preserved. There shall be no order as to costs.

27.09.2022

Speaking/Non-speaking order
Index : Yes/No
gpa/vvk



WEB COPY



C.S(Comm. Div.)No.208 of 2022

M.SUNDAR.J.,

gpa/vvk

C.S(Comm. Div.)No.208 of 2022
& A.Nos. 4296 and 4297 of 2022
&O.A.Nos.626 to 628 of 2022

27.09.2022



WEB COPY



C.S(Comm. Div.)No.208 of 2022

C.S(Comm. Div.)No.208 of 2022
& A.Nos. 4296 and 4297 of 2022
&O.A.Nos.626 to 628 of 2022

ADDENDA

M.SUNDAR.J.,

Two inadvertent typographical errors have crept in qua order dated 27.09.2022 in the captioned matter and this has necessitated the listing of the captioned matter under the cause list caption 'FOR BEING MENTIONED' today.

2 Mr.A.Prasanna Venkat of M/s.APR Associates (Law Firm) for plaintiff in main suit is before this Commercial Division.

3 The two typographical errors are as follows:

(a) In sub paragraph (vii) of paragraph 6 at page 11, instead of 'CCA' denoting 'The Commercial Courts Act, 2015' being the short form used for brevity, it has been typed as 'CA'. Therefore, in sub paragraph (vii) of paragraph 6 at page No.11 of the order in the 4th line in second sentence,



WEB COPY



C.S(Comm. Div.)No.208 of 2022

'Section 12-A of CA' will now read as 'Section 12-A of CCA';

(b) In sub paragraph (xiii) of paragraph 6 at page 21, while referring to dates of presentation of plaint and filing of suit, the date of filing of suit has been erroneously typed as 22.02.2022 instead of 22.09.2022. To be noted, it has been correctly typed as 22.09.2022 in the later part of the same paragraph. Therefore, in the first sentence of sub paragraph (xiii) of paragraph 6 (pages 20 and 21), the date '22.02.2022' will now read as '22.09.2022'.

4 Post aforementioned corrections of typographical errors, paragraph 6(vii) will now read as follows:

'(vii) As regards the aforementioned application for appointment of Advocate Commissioner (A.No.4296 of 2022) that by itself does not demonstrate urgency. The expression used in Section 12-A of **CCA** is 'urgent interim relief'. Therefore, it should not only be an application for 'interim relief' but it should also be 'urgent'. There is no explanation as to what prevented the plaintiff from putting



WEB COPY



C.S(Comm. Div.)No.208 of 2022

the defendants on notice, on coming to know about alleged infringement in July of 2022. '

Paragraph 6(xiii) will now read as follows :

(xiii) The above will bring to light that according to docket sheet, the dates of 'presentation of plaint' and 'filing of suit' are 14.09.2022 and **22.09.2022** respectively. This Commercial Division is informed that this is owing to an inadvertent error in the Registry. However, learned counsel for plaintiff very fairly submitted that the dates as found in the docket sheet, namely 14.09.2022 (presentation of plaint) and 22.09.2022 (filing of suit) are the correct dates and therefore, this Commercial Division proceeds by taking these two dates. To be noted, all these dates are post 20.08.2022 and therefore, as regards applicability of ***Patil Automation*** principle, there is no confusion. '

(The corrected part alone is shown in bold and in different font for ease of reference)



C.S(Comm. Div.)No.208 of 2022

WEB COPY

5 Learned counsel very fairly submitted that the above inadvertent errors are innocuous and therefore, the inadvertent errors need to be corrected merely to eliminate the typographical errors.

6 In other respects, the order dated 27.09.2022 will remain the same. This proceedings shall be uploaded with the caption '**ADDENDA**' to the aforesaid order dated 27.09.2022 and will be read as an integral part and parcel of the aforementioned order.

20.10.2022

vvk



WEB COPY



C.S(Comm. Div.)No.208 of 2022

M.SUNDAR.J.,

vvk

C.S(Comm. Div.)No.208 of 2022
& A.Nos. 4296 and 4297 of 2022
&O.A.Nos.626 to 628 of 2022

Dated : 20.10.2022