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C.S.(Comm. Div.)No.226 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.11.2022

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.(Comm. Div.)No.226 of 2022

and

O.A.No.730 of 2022

in

C.S.(Comm. Div.)No.226 of 2022

M/s.Mango Mass Media Pvt. Ltd.,
Rep. by its Managing Director, Mr.V.Ramakrishna
Plot No.2, Women's Co-operative Society
Road No.2, Banjara Hills
Hyderabad - 500 034.

.. Plaintiff

Vs.

1. M/s.Bayshore Records
Rep. by its Proprietor Mr.Haja Mohideen
No.37, Wallers Road
Chennai-600 002.
2. M/s.PVP Capital Ltd.,
Rep. by its Director
D.No.2, 9th Floor, KRM Centre,
Harrington Road, Chetpet
Chennai-600 031.
3. M/s.Jaya Balajee Real Media Private Ltd
(Formerly M/s.Balaji Real Media Private Limited)
Rep. by its Director Mr.T.Ramesh



C.S.(Comm. Div.)No.226 of 2022

Saligramam, Chennai-600 093.

.. Defendants

WEB COPY

This Civil Suit is preferred, under Order VII Rule 1 of Civil Procedure Code, 1908 read with Order IV Rule 1 of Original Side Rules read with Section 2(1)(C)(xvii) of the Commercial Courts Act and Section 62 of Copy Rights Act 1957 praying

(i) For a permanent injunction restraining the defendants 1 and 2 herein, their agents, servants or anybody claiming through or under them from in any manner claiming any right more particularly satellite rights of the picture title "Aaradugula Bullet" under the Fabricated Agreement dated 16.08.2013 or otherwise;

(ii) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case;

For Plaintiff	:	Ms.Jayanthi Venkatesh
For Caveator	:	Mr.K.Harishankar
		with Ms.Varsha Chandrasekhar

J U D G M E N T

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

2. In the captioned main suit, there is a lone plaintiff company and there are three defendants. In this judgment / order from hereon and henceforth, parties shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity.



C.S.(Comm. Div.)No.226 of 2022

WEB COPY

3. Captioned main suit has been filed seeking reliefs regarding rights in a Telugu cinematograph film with title 'AARADUGULA BULLET' [hereinafter 'suit movie' for the sake of convenience and clarity].

4. 08.11.2022 and 16.11.2022 are the dates of presentation of plaint and institution of suit respectively qua captioned main suit. This means that the date of institution of captioned suit is post 20.08.2022 and therefore, law laid down by Hon'ble Supreme Court in ***Patil Automation*** case law [***Patil Automation Private Limited and Others vs. Rakheja Engineers Private Limited*** reported in ***2022 SCC OnLine SC 1028***] which is an elucidation of Section 12A of 'The Commercial Courts Act, 2015 (4 of 2016)' [hereinafter 'CCA' for the sake of brevity, convenience and clarity] would apply.

5. As the captioned main suit is being tested qua adherence to mandatory requirements of Section 12A of CCA, short facts (shorn of elaboration and granular particulars) will suffice. Short facts are that the plaintiff company is in the business of aggregation and distribution



C.S.(Comm. Div.)No.226 of 2022

business of non-theatrical film rights in the film industry besides syndication and licensing; that the plaintiff has been in such business for over 25 years; that the plaintiff entered into three agreements with second defendant, all dated 28.09.2021 [plaint document Nos.6, 7 and 8] and acquired (a) satellite, digital and other electronic rights (b) entire copyrights and (c) dubbing rights, all in suit movie; that the second defendant in turn has acquired such rights in suit movie from the third defendant vide four agreements, all dated 27.09.2021 and they are (a)satellite, digital rights (b) ownership rights (c) settlement agreement and (d) dubbing rights assignment; that the plaintiff was visited with a 'cease and desist notice' ['C & D notice' for the sake of brevity] dated 27.12.2021 [plaint document No.9] from the first defendant; that vide this C & D notice the plaintiff was *inter alia* called upon to take down screening of suit movie in OTT platform; that the first defendant has predicated this C & D notice on an agreement dated 16.08.2013 [plaint document No.12]; that the plaintiff sent a reply notice dated 29.12.2021 [plaint document No.10]; that the first defendant sent a rejoinder dated 04.01.2022 [plaint document No.11]; that the captioned suit has now been instituted in this Commercial Division on 16.11.2022 seeking aforementioned reliefs (to be



C.S.(Comm. Div.)No.226 of 2022

noted plaint prayer has been extracted and reproduced below cause title supra).

6. The first defendant has lodged a caveat [caveat petition No.6253 of 2022] and Mr.K.Harishankar along with Ms.Varsha Chandrasekhar, learned counsel for caveator is before this Commercial Division.

7. Ms.Jayanthi Venkatesh, learned counsel on record for plaintiff drew the attention of this Commercial Division to the aforementioned plaint documents and submitted that C & D notice issued by first defendant is the trigger for captioned main suit,

8. On Section 12A of CCA, learned counsel for plaintiff had made only one submission and that one submission is predicated on paragraph No.13 of the plaint which reads as follows:

'13. The plaintiff also states that the third defendant also moved this honourable court and they are informed that the said suit was held against the third defendant as they no more held any rights and only this plaintiff has rights to whom the rights were transmitted from the second defendant who in turn derived it from the third defendant.'



C.S.(Comm. Div.)No.226 of 2022

WEB COPY

9. To be noted, there is no mention about any suit number or date of any order or judgment in paragraph No.13. It is also to be noted that there is no pleading in this regard in any other part of the plaint. Absent pleadings, this Commercial Division is under no obligation to look into or embark upon further investigating exercise. However as this is a *suo-motu* rejection of plaint legal drill as regards Section 12A of CCA in the light of ***Patil Automation*** case law owing to the peculiar facts and circumstances of this case heard out the submission of learned counsel that the third defendant had filed an earlier suit in C.S.No.87 of 2022 *inter alia* assailing aforementioned 16.08.2013 agreement [plaint document No.12 in captioned suit], the plaintiff was fourth defendant in the said suit, first defendant in captioned suit was defendants 1 and 2 in said suit {Interestingly and intriguingly, a proprietary concern said to be represented by a proprietor and natural person (proprietor) have been arrayed as defendants 1 and 2 in that suit but this Commercial Division deems it appropriate to leave it at that considering the scope of legal drill on hand}; that defendants 1 and 2 took out an application in A.No.3163 of 2022 *inter alia* under Order VII Rule 11(a) of 'The Code of Civil Procedure,



C.S.(Comm. Div.)No.226 of 2022

1908 (Central Act V of 1908)' [hereinafter 'CPC' for the sake of brevity]

contending that there is no cause of action; that a Hon'ble learned single Judge of this Court (Commercial Division) in and by order dated 13.09.2022 acceded to the rejection of plaint prayer and dropped the curtains on earlier suit. This Commercial Division is informed by learned counsel for caveator (first defendant in captioned suit) [to be noted, here also array of parties show proprietary concern to be represented by proprietor first defendant] who has lodged a caveat in caveat No.6356 of 2022 on 22.09.2022 that the same is subsisting and there is no intra-Court appeal until today. Learned counsel for plaintiff submits that plaintiff did not come to this Commercial Division earlier owing to pendency of aforementioned earlier suit. In the considered view of this Commercial Division, this is hardly an argument qua adherence to Section 12A of CCA as that was a suit where 16.08.2013 agreement was assailed by third defendant in the captioned suit. It was also submitted that in the course of earlier suit mediation was attempted and it did not fructify but there are no records to demonstrate the same. Section 12A of CCA is a pre-suit requirement qua every suit. Another reason as to why this is no argument is the exchange of notices in suit on hand i.e., C & D notice, reply and



C.S.(Comm. Div.)No.226 of 2022

rejoinder [plaint document Nos.9, 10 & 11 dated 27.12.2021, 29.12.2021 and 04.01.2022 respectively] ended in January 2022. Thereafter the plaintiff has gone into a lull nay a slumber and has instituted the instant suit more than 10 months later on 16.11.2022. Another perspective is **Patil Automation** case law was rendered by Hon'ble Supreme Court on 17.08.2022 with a clear caution to all the stakeholders, making it clear that 20.08.2022 would be the prospective operation date qua declaration of law that Section 12A is mandatory.

10. Pausing here, this Commercial Division deems it appropriate to make a mention about Section 12A of CCA. When CCA kicked in on 23.10.2015, there was no Section 12A in the Statute. On and from 03.05.2018, Section 12A captioned 'Pre-Institution Mediation and Settlement' was put in place. Sub-sections (2) and (1) of Section 12A of CCA talk about a notification and Rules (subordinate legislation) respectively, both to be made by the Central Government. The notification and Rules (subordinate legislation) i.e., Rules being Rules under Section 12A(1) read with Section 21 (Rule making power) of CCA were put in place on and from 03.07.2018.



C.S.(Comm. Div.)No.226 of 2022

WEB COPY

11. Reverting to the case on hand, there is nothing to demonstrate as to what tied the hands of plaintiff or what was the impediment for the plaintiff in resorting to pre-institution mediation and (possible) settlement when both the law and a working mechanism were put in place and were operational.

12. In ***Patil Automation*** case law vide paragraph Nos.75 and 76 (to be noted, paragraph numbers in ***Patil Automation*** case law are as in SCC OnLine and this Commercial Division notices that there is a difference in paragraph numbers qua ***Patil Automation*** case law as uploaded in the website of Hon'ble Supreme Court and SCC OnLine, it is also to be noted that certain paragraph breaks forming part of same paragraph have been assigned paragraph numbers while reporting), it was made clear that *suo motu* rejection is permissible and therefore, it is incumbent upon this Commercial Division to examine *suo motu* rejection. Relevant paragraphs in this regard in ***Patil Automation*** case law as mentioned herein are paragraph Nos.75, 76 and the same read as follows:

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



WEB COPY



C.S.(Comm. Div.)No.226 of 2022

rejected on 6 grounds. They include failure to disclose the cause of action, and where the suit appears from the statement in the plaint to be barred. We are concerned in these cases with the latter. Order VII Rule 12 provides that when a plaint is rejected, an order to that effect with reasons must be recorded. Order VII Rule 13 provides that rejection of the plaint mentioned in Order VII Rule 11 does not by itself preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Order VII deals with various aspects about what is to be pleaded in a plaint, the documents that should accompany and other details. Order IV Rule 1 provides that a suit is instituted by presentation of the plaint to the court or such officer as the court appoints. By virtue of Order IV Rule 1(3), a plaint is to be deemed as duly instituted only when it complies with the requirements under Order VI and Order VII. Order V Rule 1 declares that when a suit has been duly instituted, a summon may be issued to the defendant to answer the claim on a date specified therein. There are other details in the Order with which we are not to be detained. We have referred to these rules to prepare the stage for considering the question as to whether the power under Order VII Rule 11 is to be exercised only on an application by the defendant and the stage at which it can be exercised. In Patasibai v.Ratanlal, one of the specific contentions was that there was no specific objection for rejecting of the plaint taken earlier. In the facts of the case, the Court observed as under:

“13. On the admitted facts appearing from the record itself, learned counsel for the respondent,



WEB COPY



C.S.(Comm. Div.)No.226 of 2022

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

(Emphasis supplied)

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

(A) A suit is commenced by presentation of a plaint. The date of the presentation in terms of Section 3(2) of the Limitation Act is the date of presentation for the purpose of the said Act.



C.S.(Comm. Div.)No.226 of 2022

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)'



C.S.(Comm. Div.)No.226 of 2022

13. Post ***Patil Automation*** case law, this Commercial Division explained the term '*contemplate*' and the expression '*urgent interim relief*' occurring in Section 12A of CCA in ***Mohamed Aboobacker Chank Lungi*** case vide judgment and order dated 27.09.2022 in ***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., Vs. Revathy Textiles and four others]*** and ***K.Varathan*** case vide Judgement and order dated 13.10.2022 made in ***C.S. (Comm.Div.) No. 202 of 2022 & O.A. No. 612 of 2022 & Application No. 4280 of 2022 in C.S. (Comm.Div.) No. 202 of 2022 [Mr.K. Varathan vs. Mr. Prakash Babu Nakundhi Reddy]*** respectively. Most relevant paragraphs in ***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



WEB COPY



C.S.(Comm. Div.)No.226 of 2022

'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 **(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** [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 **(SYN)** stare at: She contemplated him in silence.

(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



C.S.(Comm. Div.)No.226 of 2022

*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.'*

14. 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



WEB COPY



C.S.(Comm. Div.)No.226 of 2022

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 9 th 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 9 th Edition of Oxford Dictionary	that needs to be dealt with or happen immediately
	Concise Oxford English Dictionary	requiring immediate action or attention
	P.Ramanatha Aiyar's Advanced Law Lexicon (5 th 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 9 th Edition of	intended to last for only



WEB COPY



C.S.(Comm. Div.)No.226 of 2022

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



WEB COPY



C.S.(Comm. Div.)No.226 of 2022

	accruing after the date of suit.
<i>P.Ramanatha Aiyar – The Law Lexicon</i>	The remedy which a Court of Justice may afford in relation to some actual or apprehended wrong or injury; It is a maxim in our law that a plaintiff must show that he stands on a fair ground when he calls on a Court of justice to administer relief to him.
<i>Stroud's Judicial Dictionary of Words and Phrases (Ninth Edition)</i>	'Relief' and 'relieve' are appropriate terms to describe the remedial action of the court in cases where a penalty or forfeiture has been incurred, and which the court thinks it equitable that the complainant should not lie under or suffer.

15. A careful perusal of the aforementioned definitions / descriptions bring to light that a plaintiff should think carefully about possibility of a thing happening. The thinking process should be profound and thoughtful, such thinking process should lead the plaintiff to believe that prompt action (not attributable to plaintiff's own doing) is demanded or the matter requires immediate attention and needs to be dealt with immediately and that it is so immediate



that time consumed in exhausting the remedy of pre institution mediation that will lead to wrong or injury which the plaintiff in law and equity should not be made to stand and suffer. To put it differently, a relief for the time being which is temporary or provisional is so imperative that possible wrong or injury will overtake the process of exhausting remedy of pre institution mediation.

16. This Commercial Division having explained the expression 'contemplation of urgent interim relief' deems it appropriate to make an adumbration of parameters / tests and they are as follows:

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

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

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

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

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

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



same.'

WEB COPY

15. This Court carefully applied the tests / parameters adumbrated in paragraph No.16 of **K.Varathan** case to the case on hand.

16. In the light of the narrative thus far, particularly 10 months lull and also earlier suit theory being unacceptable, the sequitur is prayer for interim relief is certainly not a product of profound thinking or careful thought about the possibility of a thing happening. The demand for prompt action and promptitude is not of such nature that exhausting the remedy of pre-institution mediation without any intervention in the mean time will lead to a irreversible situation, i.e., a situation where one cannot put the clock back. The urgency that is faintly attempted to be projected (if at all and if that be so) is only plaintiff's own making as the plaintiff has gone into slumber for more than 10 months. In any event, there is nothing on record to show urgency much less earth shattering urgency. The sequitur is, high standard required to establish requirement of this prompt action is clearly absent and further sequitur is, this cannot be construed as a fair ground for seeking interim injunction.



C.S.(Comm. Div.)No.226 of 2022

WEB COPY

17. It follows as an inevitable sequitur, that actual or apprehended legal injury is not so imminent that the plaintiff should not be made to stand and suffer the same. To be noted, there is no imminence feature at all in the case on hand.

18. In the light of the narrative, discussion and dispositive reasoning set out thus far, plaint in captioned main suit cannot but be rejected for non-compliance with Section 12A of CCA.

19. Before drawing the curtains and writing the concluding paragraph, as CCA is a special Statute and as the *suo motu* rejection of plaint for non-compliance with Section 12A of CCA has been put in place by judicial pronouncement, this Commercial Division deems it appropriate to preserve the rights of the plaintiff to come to this Commercial Division again with same / similar reliefs or reliefs along with other incidental or collateral reliefs on the same cause of action, if the need arises i.e., if Section 12A of CCA mediation does not culminate in a settlement or becomes a non-starter. All the rights and contentions of the plaintiff are



C.S.(Comm. Div.)No.226 of 2022

preserved. Any observation made in this judgment / order will not come in the way i.e., be an impediment if the plaintiff comes to this Commercial Division again on the same cause of action. It will not serve as an impetus either. The reason is, observations made are part of discussion and dispositive reasoning qua Section 12A of CCA as elucidatively explained by Hon'ble Supreme Court in ***Patil Automation*** case law which is instructive.

20. Curtains drawn / drop on captioned matter. Plaint in captioned suit is rejected. Consequently, connected captioned application is closed. There shall be no order as to costs.

18.11.2022

Index : Yes/No
Speaking/Non-speaking order

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M.SUNDAR, J.



WEB COPY



C.S.(Comm. Div.)No.226 of 2022

mk

C.S.(Comm. Div.)No.226 of 2022
and
O.A.No.730 of 2022
in
C.S.(Comm. Div.)No.226 of 2022

18.11.2022