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A.No.1576 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.03.2023

PRONOUNCED ON : 24 .03.2023

CORAM:

THE HON'BLE Mr. JUSTICE S.SOUNTHAR

A.No.1576 of 2023

in C.S (COMM DIV) No.24 of 2023

M/s.Ganga Complex,
No.84/6, Villivakkam Redhills Road,
Kolathur, Chennai,
Tamil Nadu – 600 099.

... Applicant

Vs.

M/s.TSR Films Private Limited,
Rep by its authorized Signatory,
M.V.Ravindranath, S/o.M.Veeraraghavan,
No.2, Old No.29,
Lake Area, First Cross Street,
Nungambakkam, Chennai – 600 034.

... Respondent

Application filed under Order XIV Rule 8 of Original Side Rules r/w Section 12A of Commercial Courts Act, 2015 r/w Order VII Rule 11 r/w Section 151 of CPC, praying to reject the plaint C.S(Comm. Div).No.24 of 2023 under Order VII and Rule 11 of CPC and direct the plaintiff to exhaust the remedy of pre-mediation as mandated under Section 12-A of the Commercial Courts Act, 2015.



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For Applicant
For Respondent

:M/s.Gaurav Chatterjee
:Mr.Dhanaram Ramachandran
for M/s.D.R.Law Chambers

ORDER

The applicant herein has come up with the application to reject the plaint on the ground that the respondent/plaintiff failed to exhaust the remedy of pre-mediation as mandated under Section 12-A of the Commercial Courts Act, 2015.

2. The respondent herein filed a suit for permanent injunction restraining the applicant/defendant from using the digital sound equipment for exhibition of cinematograph films more fully described in schedule to the plaint. The respondent also sought for a direction to the applicant to hand over the schedule mentioned equipments to him in a fair and working condition. Alternatively, he sought for a prayer that in the event of this Court coming to the conclusion that the second prayer in the suit cannot be granted, direct the applicant to pay a sum of Rs.1,21,02,500/- as damages to him towards the value of the equipments.

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3. The applicant has come up with this application seeking rejection of the plaint on the ground that the suit does not contemplate any urgent interim relief and hence it is not maintainable as the respondent/plaintiff failed to exhaust the remedy as mandated in the provisions of Section 12-A of Commercial Courts Act. It was also averred by the applicant that the pre-suit notice was issued by the respondent on 16.09.2022 and the same was replied by the applicant by his notice dated 10.10.2022. Thereafter, the respondent issued a re-joinder notice on 27.12.2022. The applicant also averred that the suit was filed only in January, 2023, after a long delay and hence that itself is sufficient to come to a conclusion that the suit does not contemplate any sort of urgent interim relief. On these averments the applicant sought for rejection of the plaint.

4. The respondent/plaintiff filed his counter and contended that along with the plaint, the respondent filed two applications for urgent order of interim relief. He further contended that the equipments mentioned



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in the schedule to the plaint are highly sophisticated and expensive. Without periodical service and maintenance of the equipments, it may face complete damage and become non-usable. It was also stated that “OEM” warranty period for the equipment was on the verge of expiry and therefore, the applicant was constrained to file an Application in A.No.747 of 2023 for appointment of Advocate Commissioner to visit the premises of the applicant to inspect the equipments of the respondent installed therein with the assistance of the technical experts and file a report regarding the working condition and services done to the equipments. It was also stated by the respondent that he had filed another Application in O.A.No.82 of 2023, seeking interim injunction restraining the applicant from using the schedule mentioned equipments for film projection or any other incidental purposes. Therefore, it was averred by the respondent in his counter that in cases where the interim relief is of urgent nature the mandate contemplated under Section 12-A of the Commercial Courts Act for compulsory pre-institution mediation would not get attracted.



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5. The learned counsel for the applicant by relying on the

Judgment of the Apex Court reported in **(2022) 10 SCC 1** in Patil Automation Private Limited and others Vs. Rakheja Engineers Private Limited submitted that mandate under Section 12-A of Commercial Courts Act is mandatory and failure to explore pre-institution mediation as per Section 12-A of Commercial Courts Act should necessarily result in rejection of the plaint. The learned counsel further submitted that the two interim applications filed by the respondent at the time of filing the suit were not really urgent and it cannot be treated as an application for urgent interim relief as contemplated under Section 12-A of Commercial Courts Act. The learned counsel relied on the following decisions of this Court in this regard:

(i) Mohamed Aboobacker Chank Lungi Private Limited rep by its Managing Director Vs. Revathy Textiles and two others, order dated 27.09.2022, in Application Nos.4296 and 4297 in O.A.Nos.626 to 628 of 2022 in C.S (Comm Div).No.208 of 2022.

(2) Mr.K.Varathan Vs. Mr.Prakash Babu Nakundhi Reddy, Proprietor, M/s.Shankarnag Theatre, order dated 13.10.2022, in O.A.Nos.612 and Application No.4280 of 2022 in C.S.No (Comm Div).No.202 of 2022;



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(3) Aravind Gupta, Vs. Punjab National Bank, order dated 10.11.2022, in O.A.No.666 of 2022 in C.S (Comm.Div) No.216 of 2022.

6. Per contra, the learned counsel for the respondent/plaintiff submitted that the equipments in question require periodical maintenance and in the absence of regular service and maintenance the equipments will get damaged beyond repair. According to the learned counsel for the respondent, the respondent tried his best for recovery of the equipments from the applicant, but ended in vain and therefore, he was constrained to file a suit seeking recovery of the equipments and also sought for injunction restraining the applicant from using the equipments as he committed breach of the agreement. The learned counsel submitted that he filed an interim application for appointment of Advocate Commissioner to inspect the equipments with the help of technical experts and file a report with regard to the working conditions and service done to the equipments. Therefore, the equipments can be saved from being damaged beyond repair by mishandling of the applicant.



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7. The learned counsel for the respondent/plaintiff by relying on **(2022) 10 SCC 1** in Patil Automation Private Limited and others Vs. Rakheja Engineers Private Limited, submitted that where the suit is filed along with interim applications seeking urgent relief, the need for exploring the pre-institution mediation gets dispensed with.

8. The learned counsel for the respondent/plaintiff also relied on the order passed by this Court dated 05.12.2022 in O.A.Nos.603 to 606 of 2022 and Application No.4055 of 2022 in C.S. (Comm Div).No.200 of 2022 and submitted that the pre-institution mediation is mandatory only in cases where the plaint is not accompanied by any application for urgent relief. The learned counsel also relied on the judgment of the Calcutta High Court in I.A.No.GA.Nos.1 and 2 of 2022 in C.S.No.227 of 2022, in Aditya Birla Finance Limited Vs. Williamson Financial Services Limited and another, dated 03.11.2022 in support of his contention.



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9. The short question that arise for consideration in this matter is whether the application filed by the applicant seeking rejection of the plaint on the ground that there is no contemplation of urgent relief in the present suit within the meaning of Section 12-A of Commercial Courts Act is to be allowed or not. Admittedly, the respondent herein has filed a suit for permanent injunction restraining the applicant from using plaint schedule mentioned equipments in any manner and also for a direction to applicant to hand over the said equipments to the respondent. It is also the admitted case that along with the plaint, the respondent/plaintiff filed two interim applications in O.A.No.82 of 2023 and A.No.747 of 2023. The original application No.82 of 2023 was filed seeking interim injunction restraining the applicant from using the plaint schedule mentioned equipments for film projection or any other incidental purpose. The Application No.747 of 2023 is for appointment of Advocate Commissioner to visit the applicant's premises and inspect the plaint schedule equipments with the assistance of technical experts and file a report regarding the working condition and services done to the equipments.



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10. Section 12-A of Commercial Courts Act 2015, reads as

follows:

(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-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) The Central Government may, by notification, authorize the Authorities constituted under the Legal Services Authorities Act, 1987, for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987, the Authority authorized by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1): 19 of 1987

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:



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Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 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 to the dispute and the mediator.

*(5) The settlement arrived at under this section shall have 26 or 1996 the same status and effect as if it is an arbitral award on agreed terms under sub-section(4) of section 30 of the Arbitration and Conciliation Act, 1996.”**

11. A close reading of the above said provision would make it clear that it creates two classes of suits namely:

- (i) Suits which contemplate urgent interim orders;
- (ii) Suits which do not contemplate urgent interim orders.

12. The mandate under Section 12-A of Commercial Courts Act, with regard to the pre-institution mediation is applicable only to



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the suits, which do not contemplate any urgent interim orders. However, in respect of the other class of suits namely the suits which contemplate urgent interim relief, pre-institutions mediation is not insisted.

13. The above said position can be gathered from the observations of the Apex Court in ***Patil Automation case*** cited supra. The relevant observations of the Apex Court in the above said case in this regard is as follows:

74. 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.



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87. We will refer to Section 80 of the CPC to assist us in justifying our conclusion. Under [Section 80 \(1\)](#) of the CPC, a suit not covered by [Section 80\(2\)](#), which is filed in defiance of the former provision, that is without serving any notice, is not maintainable. The suit would be barred and liable to be rejected under Order VII Rule 11. The only exception is what is provided in [Section 80 \(2\)](#). It contemplates a suit to obtain an urgent or interim relief. Such a suit may be instituted with the leave of the court without serving any notice as required under [Section 80 \(1\)](#). In a case where a plaintiff does not seek urgent interim relief under [Section 80\(2\)](#), the suit would fall within the four walls of [Section 80\(1\)](#). [Section 80\(1\)](#) is mandatory. In regard to such suit, there is no question of substantial compliance. The suit must culminate in rejection of the plaint on invoking power under Order VII Rule 11.

88. We may immediately draw a parallel between Section 80(1) of the CPC and [12A of the Act](#). In [Section 12A](#) also, the bar of institution of the suit is applicable only in a case in which plaintiff does not contemplate urgent interim relief. The situation is akin to what is contemplated in Section 80(1) of the CPC. In other words, the suit under the Act which does not contemplate urgent interim relief is like a suit covered by Section 80(1) of the CPC which does not project the need for any urgent or interim relief.



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14. From the above decision of the Apex Court, it is clear that pre-mediation procedure under Section 12-A of Commercial Courts Act is mandatory only in cases where no urgent interim relief is contemplated. The expression “contemplate any urgent relief” under Section 12 (a) (i) of Commercial Courts Act refers to contemplation of any urgent interim relief on the basis of the averments found in the plaint. It is settled law, while considering the petition for rejection of the plaint the Court has to see, whether the plaint is liable to be rejected on the basis of the averments found in the plaint and Court cannot consider any defence and objection made by the defendant. Therefore, whether the suit belongs to the class of suits which do not contemplate any urgent relief or the other class of suits which do contemplate any such relief has to be decided on the basis of the averments found in the plaint and the affidavit filed in support of interim application. If the averments found in the plaint and the averments found in the affidavit filed in support of interim relief are taken as correct then it must be treated as a suit which contemplate an urgent relief. Then, the mandatory pre-institution mediation procedure is dispensed with. While considering this



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question, the Court has to see whether in the wisdom of the plaintiff, any urgent interim relief was contemplated at the time of institution of the suit.

The Court cannot go into the merits of the interim relief prayed for and come to a conclusion, whether the interim relief prayed for is tenable or not at the stage of application for rejection of the plaint.

15. In the case on hand, the plaintiff had averred that his equipments in the hands of defendant were highly sensitive and require regular maintenance. It was also stated that the defendant willfully mishandled the equipments and therefore, there was an imminent necessity for asses the condition of the equipments. The plaintiff also had averred that the defendant issued a notice underlining the need for maintenance and requested the defendant to return the schedule equipments.

16. In the light of the said averments, the plaintiff filed an application for appointment of Advocate Commissioner to inspect the equipments with the help of an expert in the field and file a report with regard to the status of the equipments. The specific averments of the plaintiff that



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scheduled equipments are highly expensive and require regular maintenance was not at all controverted by the applicant in his application seeking rejection of the plaint. In fact, even assuming applicant controverted the averments of the plaintiff, at the stage of rejection of the plaint, this Court cannot go into the defence raised by the applicant/defendant. Therefore, in the light of the averments found in the plaint as well as the affidavit in support of the interim relief, this Court comes to a definite conclusion that the present suit does contemplate an urgent interim relief and consequently, the respondent/plaintiff is entitled to dispense with the procedure for pre-mediation settlement and straightaway file a suit without exhausting the mandatory procedure contemplated under Section 12-A of Commercial Courts Act.

17. Even under the Code of Civil Procedure, suits filed against Government are treated as separate class of suits. Section 80(1) of CPC mandates no suit shall be instituted against the Government until the expiration of two months next after notice in writing has been delivered to or left at the office of appropriate Officer of the Government. Section 80(2) carves an exception to Section 80(1) of CPC. It allows filing of suit when



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urgent or immediate relief against the Government are sought for, with the leave of the Court, without serving any notice as required by Section 80(1) of CPC. Therefore, as far as Section 80 of CPC is concerned, if the plaintiff in his wisdom contemplated a need for an interim relief he cannot straightaway file a suit by making averments to that effect. He has to obtain leave from the Court for filing suit for interim relief without issuing mandatory notice under Section 80(1) of CPC. However under Section 12-A of Commercial Courts Act, no such leave from the Court has been insisted upon, if the plaintiff wants to file a suit with urgent interim relief. Therefore, Section 80 of CPC is more stringent than Section 12-A of Commercial Courts Act. The Commercial Courts Act permits the plaintiff to institute a suit which does not contemplate any urgent interim relief without exhausting the remedy of pre-institution mediation. It does not insist upon any leave from the Court. The need for urgent interim relief is left to the wisdom of the plaintiff and hence whenever on the basis of the averments found in the plaint and the affidavit filed in support of such urgent interim relief a need for urgent interim relief is *prima facie* established the suit shall be treated as the one which contemplates



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urgent interim relief. Therefore, the burden of showing need for urgent interim relief on the plaintiff is very light and if there are averments supporting urgent interim relief certainly the suit can be treated as the one belonging to the class of the suit, which contemplates urgent interim relief. On the other hand, under CPC, the plaintiff who is in need of urgent or immediate relief against the Government, has to obtain a leave from the Court to dispense with the mandatory notice under Section 80(1). Therefore, under CPC, the question whether the suit belongs to a class of suits which requires urgent or immediate relief is left to the wisdom of the Court.

18. Hence, the role of the Court in deciding the question, whether the suit belongs to a class of suits which requires urgent interim relief is very very limited under Section 12-A of Commercial Courts Act. Therefore, when a plaintiff comes up with a prayer for urgent interim relief, the same shall be treated as a suit belonging to the class of suits which contemplates urgent interim relief, unless, the urgent interim relief sought for is so illusory and camouflage to avoid mandatory procedure of pre-institution mediation and settlement. The legislature in its wisdom thought it is not



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necessary to direct the plaintiff to get leave of the Court to file a suit without exhausting pre-institution mediation procedure. Therefore, if the plaintiff makes necessary averments in the plaint and in the affidavit filed in support of the interim relief and satisfy the Court about existence of a need for urgent interim relief, the same is sufficient and Court need not go into the question on merits, whether the interim relief sought for by the plaintiff is legally tenable.

19. In the decisions relied on by the learned counsel for the applicant cited in paragraph No.5 of this order, this Court on the basis of the averments of the plaintiff found in the plaint came to the conclusion that no interim relief was contemplated. As far as this case is concerned, as discussed earlier, on the basis of the averments found in the plaint and in the affidavit filed in support of the petition seeking interim relief, this Court is satisfied with the existence of the need for urgent interim relief. The entitlement of plaintiff to get an order of interim relief has to be decided when the interim applications are taken up for consideration on merits. Therefore, at this stage, the entitlement of the plaintiff need not to be gone into.



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20. When the application seeking urgent interim relief in O.A.No.82 of 2023 and A.No.747 of 2023 were listed before this Court, my predecessor entertained the same and issued notice to the respondent. Therefore, the present suit shall be treated only as a suit belonging to the class of suits which contemplates urgent interim relief. In view of the foregoing discussions, I reject the contention of the learned counsel for the applicant that the present suit is the one which does not contemplate any urgent interim relief and hence the power of this Court to reject the plaint need to be exercised.

21. Accordingly, the application is dismissed. No costs.

22. List the application in O.A.No.82 of 2023 and A.No.747 of 2023 for filing counter and on 10.04.2023.

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S.SOUNTHAR, J.

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Pre-Delivery Order made in
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