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A.No.2593 of  
C.S.(Comm.Div).No.35 of 2023



**A.No.2593 of 2023**  
**in**  
**C.S.(Comm.Div).No.35 of 2023**

**S.SOUNTHAR, J.**

The instant application has been filed by the applicant/defendant seeking rejection of the plaint on the ground that the respondent/plaintiff failed to exhaust the mandatory pre-institution mediation process as per Section 12-A of the Commercial Courts Act, 2015.

2. The respondent herein filed a suit seeking injunction restraining the applicant/defendant from infringing the registered Trade Mark of the plaintiff 'Paramporul Foundation' and also for other reliefs set out in the plaint.

3. Pending suit, the respondent also filed O.A.Nos.122, 123, 124 and 125 of 2023 seeking following interim reliefs:-

*“(i) To grant an interim injunction restraining the Defendant, their partners, their employees, officers, servants, agents and all others acting for and on their behalf from manufacturing, selling, distributing, exporting, advertising, offering for sale, and in any other manner directly or indirectly, dealing with any products and/or services in the name of PARAMPORUL and/or Paramporul*



amounting to passing off pending disposal of the suit.

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(ii) To grant an interim injunction restraining the Defendant, their partners, their employees, officers, servants, agents and all others acting for and on their behalf from manufacturing, selling, distributing, exporting, advertising, offering for sale, any products, service and in any other manner, directly or indirectly, dealing with any products and/or paramporul which is deceptively similar or phonetically identical to the Plaintiffs copyright over the mark 'PARAMPORUL FOUNDATION' and its formative marks and the logo PARAMPORUL FOUNDATION amounting to an infringement of the Applicant's copyright in any manner whatsoever, pending disposal of the suit.

(iii) To grant an interim injunction restraining the Defendant, their partners, their employees, officers servants, agents and all others acting for and on their behalf from manufacturing, selling, distributing, exporting, advertising, offering for sale, any products, service and in any other manner, directly or indirectly, dealing with any products and/or service under the mark PARAMPORUL and/or paramporul which is deceptively similar or phonetically identical to the Plaintiffs registered trademark PARAMPORUL FOUNDATION and its formative marks and the logo PARAMPORUL FOUNDATION amounting to an infringement of the Applicant's registered trademarks bearing the applicants no.5139568 in any manner whatsoever, pending disposal of the suit.



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(iv) *To grant an interim injunction restraining the Defendant, their partners, their employees, officers, servants, agents and all others acting for and on their behalf from using mark PARAMPORUL or any mark which is deceptively similar and or phonetically identical to the Plaintiffs registered trademark PARAMPORUL FOUNDATION in any of the websites, domain names, social media Platform, email, mobile application and other intermediaries in any language pending disposal of the suit.”*

4. After service of suit summons, the applicant herein entered appearance and filed the present application seeking rejection of the plaint on the ground of non-compliance of mandatory procedure contemplated under Section 12-A of the Commercial Courts Act, 2015.

5. A perusal of Section 12-A of the Commercial Courts Act, 2015, would suggest that it contemplate two suits (1) suits which contemplate urgent interim relief; and (2) suits which does not contemplate any urgent interim relief.

6. As held by the Hon'ble Apex Court in ***Patil Automation Private Limited and Ors. vs. Rakheja Engineers Private Limited*** reported in ***MANU/SC/1004/2022***, if the suit does not contemplate any urgent interim relief, the plaintiff is not entitled to present the plaint without exhausting the



pre-institution mediation procedure. However, in respect of other class of suits which contemplates urgent interim relief recourse to pre-institution mediation procedure is not mandatory.

7. I had an occasion to consider the scope of Section 12-A of the Commercial Courts Act, 2015, in the light of Patil Automation case (cited supra) in A.No.1576 of 2023 in C.S.(Comm.Div).No.24 of 2023 in M/s.Ganga Complex vs. M/s.TSR Films Private Limited reported in MANU/TN/1645. The relevant observations in the said order is as follows:-

*“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 the suits, which do not contemplate any urgent interim orders. However, in respect of the other class of suits namely the suits which contemplate*



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*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 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*



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*application for rejection of the plaint.”*

8. In the case on hand, the plaintiff clearly averred in the plaint that the applicant/defendant is infringing his registered Trade Mark 'Paramporul Foundation' by adopting the mark 'Paramporul' which is deceptively identical to the registered Trade Mark of the plaintiff.

9. The plaintiff also in his plaint averred that the applicant/defendant is using a phonetically and visually identical Trade Mark to that of the plaintiff's registered trade mark for identical products and services which are likely to pass through identical trade channels and purchased by identical customers. It is also asserted that if the applicant was allowed to continue with the use of mark which is identical to that of the registered mark of the plaintiff, the respondent/plaintiff would be put to great hardship and the same cannot be compensated by way of settlement. Based on these averment, he also filed applications for interim injunction seeking interim orders restraining the applicant/defendant from using the offending marks. Hence, the present plaint is one which contemplates urgent interim relief and therefore, the plaintiff need not exhaust the pre-institution mediation procedure as mentioned under Section 12-A of the Commercial Courts Act, 2015.



A.No.2593 of  
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10. In view of the discussions made above, the present application filed by the defendant for rejection of plaint is devoid of merits and consequently, the same is dismissed.

**27.04.2023**  
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