

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on: 21st April, 2023*
Judgment Delivered on: 8th May, 2023

+ **CRP-IPD No.4/2023, CM No.48/2023 & CM No.49/2023**

YAMINI MANOHAR

..... Petitioner

Through: Mr. J Sai Deepak with Ms.Shraddha
Chirania, Mr.Kartikey Bhatt and
Mr.R. Abhishek, Advocates.

versus

T K D KEERTHI

..... Respondent

Through: Mr. Kunal Khanna, Ms.Vridhi
Pasricha and Mr.Prakasha Walia,
Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

1. The present revision petition assails the order dated 6th February, 2023 passed by the District Judge (Commercial Court)-01, South District, Saket Courts, New Delhi, whereby the application filed on behalf of the petitioner/defendant under Order VII Rule 11 of the Civil Procedure Code, 1908 (CPC) seeking rejection of the plaint, was dismissed.

2. The suit from which the present petition arises was filed seeking permanent injunction restraining infringement of trademark and passing off along with other ancillary reliefs. The suit was filed along with an application under Order XXXIX Rules 1 and 2 of the CPC for grant of

interim injunction and an application seeking exemption from compliance with Section 12A of the Commercial Courts Act, 2015.

3. The petitioner/defendant filed an application under Order VII Rule 11 of the CPC seeking rejection of the plaint as being not maintainable as the plaintiff failed to comply with provisions of Section 12A of the Commercial Courts Act mandating pre-institution mediation before filing a commercial suit.

4. The case of the petitioner before the Commercial Court was that mere filing of an application under Order XXXIX Rules 1 and 2 of CPC would not exempt the plaintiff from compliance under Section 12A of the Commercial Courts Act, as the same is a mandatory requirement. Reliance in this regard has been placed on the judgment of the Supreme Court in ***Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.***, 2022 SCC OnLine SC 1028.

5. The case set up by the respondent/plaintiff before the Commercial Courts was that in cases pertaining to intellectual property, the relief of interim injunction, including *ex parte* ad interim stage is extremely important as the cases relating to intellectual property are not only for the benefit of the plaintiff but also for the benefit of the public at large. In the present case, the respondent/plaintiff had made valid grounds for grant of an ad interim injunction order.

6. Agreeing with the submission of the respondent/plaintiff that grant of an ad interim injunction in intellectual property cases is extremely important and in view of the fact that the respondent's/plaintiff's suit contemplated urgent interim relief against the petitioner/defendant, the Commercial Court held that there was no requirement for the plaintiff to undergo pre-institution

mediation before filing the present suit and hence, the application filed by the petitioner/defendant under Order VII Rule 11 of the CPC was dismissed. Relevant observations of the Commercial Court are set out below:

*“8. As per the experience seen in intellectual property cases, the relief of interim injunction, even during ad-interim stage, is extremely important. In the present case, the plaintiff has filed the suit on 26.03.2022 for permanent injunction restraining infringement of trademarks, passing off, unfair trade competition, rendition of account, damages, delivery up etc of its trademark Life impressions against the defendant. The said plaint was accompanied with an application U/o 39 Rule 1 and 2 r/w Section 151 CPC for ad-interim injunction. **In view of the foregoing discussion and particularly, when the plaintiff’s suit contemplated urgent interim relief for ad-interim injunction against the defendants, there was no requirement of the plaintiff to undergo pre-institutional mediation before filing the present suit.** The application of the defendant filed U/o 7 Rule 11 CPC for rejection of the plaint is devoid of any merits and the same is hereby dismissed with a costs of Rs.5,000/- payable to the plaintiff within two weeks. The said application stands disposed of accordingly.”*

7. The present revision petition has been filed assailing the aforesaid order on the following grounds:

- i. The impugned order is not in conformity with the judgment of the Supreme Court in **Patil Automation** (supra) wherein it has been held that there has to be mandatory compliance of pre-institution mediation in terms of Section 12A of the Commercial Courts Act, 2015.
- ii. The contemplation of urgent interim relief under Section 12A of the Commercial Courts Act cannot be left at the sole discretion of the plaintiff. Section 12A of the Commercial Courts Act uses the words ‘*contemplate any urgent interim relief*’ in respect of the suit.

Therefore, the Court has to apply its mind to assess whether the plaint and the application for interim relief contemplates an urgent relief that would require bypassing the mandatory provision of Section 12A of the Commercial Courts Act.

- iii. The Commercial Court failed to conduct the exercise to determine whether the present suit contemplated any urgent interim relief and dismissed the application filed by the petitioner only on the ground that in intellectual property cases, relief of interim injunction is extremely important.
- iv. The petitioner places reliance on Section 80(2) of the CPC to interpret the provisions of Section 12A of the Commercial Courts Act. Under Section 80(2) of the CPC, a person can file a suit against the Government without sending the requisite notice in terms of Section 80(1) of the CPC after taking leave of the Court. Therefore, while considering grant of leave under Section 80(2), the Court would have to apply its judicial mind to determine if urgency is contemplated in the suit or not. Reliance in this regard has been placed on the judgment of the Supreme Court in *State of A.P. v. Pioneer Builders*, (2006) 12 SCC 119.

8. Per contra, counsel for the respondent/plaintiff has made the following submissions:

- i. Reliance placed by the petitioner on *Patil Automation* (supra) is misplaced as in the said case, the Supreme Court was not concerned with cases where urgent interim relief was contemplated. Even otherwise, the present suit was filed on 5th March, 2022, and the

judgment in *Patil Automation* (supra) was applicable only to suits filed after 20th August, 2022.

- ii. In *Chandra Kishore Chaurasia v. R A Perfumery Works Private Ltd.*, 2022 SCC OnLine Del 3529, a Division Bench of this Court has categorically held that the question whether a suit involves any urgent relief or not, is to be determined solely by the pleadings and the relief sought by the plaintiff. Whether the Court accedes to such pleading or not is not relevant for the purposes of the plaintiff fulfilling the requirement under Section 12A of the Commercial Courts Act.
- iii. In *Bolt Technology OU v. Ujoy Technology Private Limited and Ors.*, 2022 SCC OnLine Del 2639, a case where facts were very similar to the facts of the present case, the Single Bench of this Court relying upon the pleadings in the suit held that the pre-institution mediation under Section 12A of the Commercial Courts Act was not required in the said case.
- iv. In the facts of the present case, the suit contemplated grant of urgent interim relief. The respondent/plaintiff issued a cease and desist notice to the petitioner on 6th November, 2020 and no response thereto was received. The respondent/plaintiff also filed a Notice of Opposition against the petitioner's trademark application, to which the petitioner/defendant filed a counter statement that the opposition was frivolous. In these circumstances, the plaintiff had filed the suit seeking urgent reliefs and therefore, there was no requirement to go through pre-institution mediation under Section 12A of the Commercial Courts Act.
- v. The language used in Section 80(2) of the CPC is quite dissimilar to

the language used in Section 12A of the Commercial Courts Act. Unlike Section 80(2) of the CPC, under Section 12A of the Commercial Courts Act, there is no requirement of taking leave of the Court.

9. I have heard the rival contentions.
10. At the outset, reference may be made to sub-section (1) of Section 12A of the Commercial Courts Act:

“12A. Pre-Institution Mediation and Settlement--(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.”

11. The aforesaid provision was the subject matter of consideration before the Supreme Court in ***Patil Automation*** (supra). The relevant observations of the aforesaid judgment are set out below:

“100. 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 12-A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis. Section 80(2)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 suit, return the plaint for presentation to the court after compliance. Our attention is drawn to the fact that Section 12-A 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 arise for our consideration. In the fact of the cases admittedly there is no urgent interim relief contemplated in the complaints in question.

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113. Having regard to all these circumstances, we would dispose of the matters in the following manner:

113.1. We declare that Section 12-A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the complaint under Order 7 Rule 11. This power can be exercised even suo motu by the court as explained earlier in the judgment. We, however, make this declaration effective from 20-8-2022 so that stakeholders concerned become sufficiently informed.

113.2. Still further, we however direct that in case complaints 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 complaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff.

113.3. Finally, if the complaint is filed violating Section 12-A after the jurisdictional High Court has declared Section 12-A mandatory also, the plaintiff will not be entitled to the relief.”

12. The following position emerges from a reading of the aforesaid paragraphs:

- (i) Provisions of Section 12A of the Commercial Courts Act are mandatory in nature.
- (ii) A complaint can be rejected under Order VII Rule 11 of the CPC, if it is instituted without following the mandate of Section 12A of the Commercial Courts Act. However, this would be in respect of suits

filed after 20th August, 2022.

(iii) The cases before the Supreme Court did not contemplate any urgent interim relief and therefore, the Supreme Court did not make any observations with regard to the meaning of the expression, '*suits where urgent interim reliefs are sought*'.

(iv) There is a difference between the language used in Section 80(2) of the CPC and Section 12A of the Commercial Courts Act. Unlike Section 80(2) of CPC, Section 12A of the Commercial Courts Act does not contemplate taking leave of the Court.

13. In ***Chandra Kishore Chaurasia*** (supra), a Division Bench of this Court interpreted the expression, '*contemplate any urgent interim relief*' used in Section 12A of the Commercial Courts Act. In the case before the Division Bench, the Commercial Court did not accept the contention of the defendant that the plaint should be rejected under Order VII Rule 11 of the CPC on the ground that the suit had been filed without complying with the mandatory provisions of Section 12A of the Commercial Courts Act. Before the Division Bench, a contention was raised on behalf of the defendant that the plaintiff could not be the sole judge of determining whether the provisions of Section 12A of the Commercial Courts Act are applicable or not, as is sought to be done in the present case. It was in this backdrop that the Court considered the expression, '*contemplate any urgent interim relief*', as used in Section 12A(1) of the Commercial Courts Act and made the following observations:

“33. This Court also finds it difficult to accept that a commercial court is required to determine whether the urgent interim reliefs ought to have been claimed in a suit for

determining whether the same is hit by the bar of Section 12A(1) of the Commercial Courts Act, 2015. The question whether a plaintiff desires any urgent relief is to be decided solely by the plaintiff while instituting a suit. The court may or may not accede to such a request for an urgent interim relief. But that it not relevant to determine whether the plaintiff was required to exhaust the remedy of pre-institution mediation. The question whether a suit involves any urgent interim relief is not contingent on whether the court accedes to the plaintiff's request for interim relief.

34. *The use of the words “contemplate any urgent interim relief” as used in Section 12(1) of the Commercial Courts Act, 2015 are used to qualify the category of a suit. This is determined solely on the frame of the plaint and the relief sought. The plaintiff is the sole determinant of the pleadings in the suit and the relief sought.*

35. *This Court is of the view that the question whether a suit involves any urgent interim relief is to be determined solely on the basis of the pleadings and the relief(s) sought by the plaintiff. If a plaintiff seeks any urgent interim relief, the suit cannot be dismissed on the ground that the plaintiff has not exhausted the pre-institution remedy of mediation as contemplated under Section 12A(1) of the Commercial Courts Act, 2015.”*

14. A reading of the aforesaid observations makes it abundantly clear that whether a suit involves any urgent interim relief has to be determined solely on the basis of pleadings and the reliefs sought by the plaintiff. If a plaintiff seeks urgent interim relief, the suit cannot be dismissed on the ground of non-compliance with provisions of Section 12A of the Commercial Courts Act. The Division Bench goes on to hold that whether a suit involves any urgent interim relief is not contingent on whether the Court accedes to the request of the plaintiff for interim relief or not. Therefore, what has to be

seen are the pleadings in the plaint and the reliefs sought by the plaintiff.

15. The facts of the present case are very similar to those before the Co-ordinate Bench in ***Bolt Technology*** (supra). Like in the present case, the plaintiff in ***Bolt Technology*** (supra), had issued a cease and desist notice dated 6th November, 2020 to the petitioner/defendant to which no response was received. In respect of the notice of opposition filed by the plaintiff therein against the trademark application of the defendant, the defendant filed a counter-statement stating that the opposition was frivolous. In this factual backdrop, the Court in ***Bolt Technology*** (supra), held as under:

“17. As per the experience seen in intellectual property cases, the relief of interim injunction, including at the ex parte stage and ad interim stage, is extremely important. Such matters do not merely involve the interest of the plaintiff and the defendants, which are the contesting parties before the court, but also involve the interest of the customers/consumers of the products and services in question. Intellectual property cases relate to a wide gamut of businesses such as — medicines, FMCG, food products, financial services, technology, creative works such as books, films, music, etc. Recent trends also point towards large scale misuse on the internet. In some cases, due to misuse of known marks and brands, the consumers are being duped into parting with large sums of money. The rights of the parties are affected almost on a daily basis as there is continuous manufacturing, selling, and offering of services or goods to the customers. The ambit of urgent interim relief that may be required to be granted is extremely varied and depends on the facts of each case. Such reliefs are usually granted by courts not merely for protection of statutory and common law rights, but also in order to avoid confusion, deception, unfair and fraudulent practices, etc. in the marketplace.”

16. In these circumstances, the Court in the aforesaid case held that the requirement of Section 12 A of the Commercial Courts Act stands satisfied

on both counts i.e., :

“i. Firstly, the Plaintiff had attempted an amicable resolution which was clearly refuted, rejected and condemned by the Defendants;

ii. Secondly, the Plaintiff has also sought urgent interim relief before this Court and is entitled to maintain the present suit.”

17. In light of the aforesaid findings, what has to be examined in the present suit is whether the plaint in the present suit contemplated any urgent interim relief or not. To determine this, a reference may be made to the relevant part of the plaint, which is set out below:

*“37. That the Defendant’s adoption of an identical mark is dishonest and motivated by a desire to usurp the vast reputation and goodwill which is enjoyed by the Plaintiff in India but throughout the world. The Defendant’s unlawful adoption of an identical mark is calculated to cause loss and injury to the Plaintiff’s reputation and business and dilute the distinctiveness of its LIFEIMPRESSIONS and ___ mark. **The loss and injury to the Plaintiff’s hard earned reputation being caused/ likely to be caused by such dilution is not capable of being calculated in monetary terms. Hence, an immediate order of injunction restraining the Defendant is imperative.**”*

18. The plaintiff has also filed along with the plaint an application for grant of *ex parte* interim injunction under Order XXXIX Rules 1 and 2 of the CPC against the defendant from using the impugned mark. In the said application also, it has been pleaded that the plaintiff shall ‘**suffer an irreparable loss and injury, which cannot be compensated in monetary terms unless an immediate order of injunction is passed**’. The plaintiff also filed an application seeking exemption from complying with the provisions

of Section 12A of the Commercial Courts Act on the ground that the plaintiff is seeking *ex parte* ad interim injunction against the defendant.

19. In light of these pleadings, the Commercial Court correctly came to the conclusion that the suit filed by the plaintiff contemplated grant of urgent interim reliefs against the defendant and therefore, the plaintiff was not required to exhaust the remedy of pre-institution mediation as contemplated under Section 12A(1) of the Commercial Courts Act.

20. In view of the discussion above, there is no merit in the present petition and the same is dismissed.

21. All pending applications stand disposed of.

MAY 08, 2023

at

AMIT BANSAL, J.

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