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A.No.3132 of 2024
in
C.S(Comm.Div)No.64 of 2024

SENTHILKUMAR RAMAMOORTHY J.

By this application, the 2nd defendant seeks rejection of the plaint on the ground that the plaintiff failed to comply with the mandatory requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 (the Commercial Courts Act) and that, therefore, the suit is barred by law. The suit was instituted in respect of alleged infringement of Patent No.299036. The plaintiff prayed for injunctive relief, surrender of infringing products, rendition of accounts and a decree for profits earned by sale of the infringing product or by use of the infringing process. Along with the plaint, the plaintiff filed O.A.Nos.221 & 222 of 2024 seeking interim injunctions restraining sale of the infringing product or use of the infringing process, as the case may be. Both these applications are pending adjudication.



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2. Learned counsel for the applicant/2nd defendant contended that the plaint does not contain a statement or any indication that the plaintiff contemplates urgent interim relief. In fact, he contends that even the affidavits in support of the interim applications do not contain any indication that the plaintiff contemplates or seeks urgent interim relief and that merely seeking interim relief does not satisfy the statutory requirement. By relying on the judgment of the Hon'ble Supreme Court in *Patil Automation Private Limited and others v. Rakheja Engineers Private Limited (Patil Automation)*, 2022 SCC Online SC 1028, he contends that it was held therein that Section 12A of the Commercial Courts Act is mandatory and that the plaint is liable to be rejected, even *suo motu*, if the suit does not contemplate urgent interim relief. Consequently, he submits that the plaint is liable to be rejected.

3. In response to these contentions, learned counsel for the respondent/plaintiff contends that the plaint should not be looked at in isolation, but should be read along with the documents filed along



with such plaint. By referring to the cease and desist notice that preceded the suit, learned counsel contends that such notice was an invitation to mediate and that in the absence of an appropriate response, the plaintiff was entitled to approach this Court without opting for pre-institution mediation.

4. After pointing out that the plaintiff had applied for urgent interim relief, including by way of interim injunctions, she contended that the plaint is not liable to be rejected by referring to and relying upon the following judgments:

(i) Yamini Manohar v. T.K.D.Keerthi (Yamini Manohar),

MANU/SCOR/133281/2023 ;

(ii) Harish Verma v. Joginder Pal Singh, MANU/DE/2891/2024;

(iii) Ansa v. Zahid Shawl, MANU/DE/0324/2024;

(iv) Shahi Exports Pvt. Limited v. Gold Star Line Limited and others, MANU/TN/6125/2021;

(v) Bolt Technology OU v. Ujoy Technology Private Limited and others, MANU/DE/3151/2022; and



(vi) *Chemco Plastic Industries Pvt. Ltd. v. Chemco Plast,*

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5. By way of rejoinder, learned counsel for the applicant/2nd defendant also contends that this is the second suit in respect of alleged infringement of the same patent, and that this suit was filed because *ex parte ad* interim relief was not granted in the earlier suit (i.e. C.S (Comm. Div.)No.57 of 2024). Hence, even assuming without admitting that the earlier suit contemplates urgent interim relief, he contends that this suit is certainly not a suit contemplating any urgent interim relief. This contention is countered by learned counsel for the 1st respondent/plaintiff by asserting that the cause of action is distinct in as much as the infringing product and process are different in this suit as compared to the earlier suit.

6. Based on the rival contentions, the limited question that falls for consideration is whether the plaint is liable to be rejected. The applicant prays for such rejection on the ground that the plaint is



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barred by law under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (the CPC). The plaint is liable to be rejected as barred by law “where the suit appears from the statement in the plaint to be barred by any law”. Therefore, it is necessary to examine whether such conclusion can be reached on reading the plaint along with documents accompanying such plaint. In paragraphs 41 to 44 of the plaint, the plaintiff states as under:

“41. The Plaintiff states that, the Plaintiff caused registered notices to be sent through its Advocate on 11.01.2024 to the Defendants calling upon the Defendants to Cease and Desist from manufacturing /trading /marketing /exhibiting /selling /offering for sale in any manner the product 'Shriram Zintok: Chelated Zn-HEDP 17% or any product “with Zn-HEDP” infringing the Plaintiff's Patent No.299036 with immediate effect, Provide the accounts of all sales derived either directly or indirectly through the manufacture and/or sale of the Product 'Shriram Zintok: Chelated Zn-HEDP 17 %' by the Defendants, Agree and undertake not to manufacture/ market/ sell/ offer for sale any



product “with 17% Zn” or similar to the Patented invention owned by the Plaintiff in future in any manner whatsoever as well as provide an Undertaking on the same within fourteen days from the receipt of the notice. The Plaintiff further states that the Defendants having received the Notices on 15.01.2024 did not send any reply till date.

42. The Plaintiff submits that the Plaintiff has been incurring massive losses due to the infringement by the Defendant. The sale of the substandard product by the Defendant is causing great loss and damage to the reputation of the Plaintiff which cannot be compensated.

43. The Plaintiff states that the Plaintiff is encountering severe difficulties and irreparable hardship due to the acts of the Defendant and are left with no other remedy but to approach this Hon'ble Court by instituting the present suit for permanent injunction restraining the Defendant, their men, agents, employees, servants or anyone claiming through them or under them in any manner whatsoever infringing the Plaintiff's product and process patent by manufacturing/marketing/selling/



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offering for sale an identical and/ or similar product.

44. The Plaintiff submits that if the reliefs as prayed for in the present suit are not granted then the Plaintiff will be subjected to irreparable loss and hardship including massive and unbearable financial losses as well as unquantifiable and irreversible consequences on the Plaintiff's entire business."

7. In paragraph 41, there is a clear assertion that the alleged acts of infringement by sale of the product 'Shriram Zintok: Chelated Zn-HEDP 17 %' are causing losses to the plaintiff. When this paragraph is compared and contrasted with paragraph 41 of the plaint in C.S.(Comm. Div.)No.57 of 2024, it appears that the two suits are directed at alleged infringement through sale of two different products and that this suit is directed at an additional party. Given that an application for the rejection of the plaint should be tested by assuming that assertions in the plaint are true, the contention of learned counsel for the applicant that this suit (being the later suit on the same cause of action) does not contemplate urgent interim relief



should be rejected.

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8. Paragraphs 42-44 of the plaint contains statements that losses from the sale of the infringing product are both unquantifiable and would have irreversible consequences on the plaintiff's business, thereby indicating that such losses cannot be compensated in monetary terms. While it cannot be clearly concluded from these statements that the suit contemplates urgent interim relief, it most certainly cannot be concluded on such basis that the suit does not contemplate urgent interim relief. Unless it can be concluded on the basis of statements made in the plaint that the suit is barred on the ground of non-compliance with Section 12A of the Commercial Courts Act, rejection of the plaint would not be tenable. In this connection, it is significant to notice that the Supreme Court adverted to rejection of the plaint for non-compliance with Section 12A in *Patil Automation* in the factual context of a suit in which no interim relief was requested. The question as to whether the statutory prescription under Section 12A was contravened, nonetheless, remains to be



considered.

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9. Reference to the language of Section 12A throws further light on the scope of inquiry to test compliance with the statutory prescription. In relevant part, Section 12A reads as under:

“12A. Pre-litigation 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-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government. “ (emphasis added)

The expression used in sub-section (1) of Section 12A is “A suit which does not contemplate any urgent interim relief under this Act” and not a plaint that does not contemplate urgent interim relief. Therefore, it is necessary to examine not only the plaint but also the applications filed along with the plaint.



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10. The admitted position is that the plaintiff filed multiple interim applications along with the plaint, including O.A.Nos.221 & 222 of 2024. These two applications are for interim injunctions restraining the sale of the allegedly infringing product or use of the allegedly infringing process, respectively. In *Yamini Manohar*, the Hon'ble Supreme Court referred extensively to the judgment of the Delhi High Court in *Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Limited*, 2022 SCC Online Del 3529, and thereafter recorded the following conclusions at paragraph 8 of the Manupatra report:

“8. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyze Section 12A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The proposition that the commercial courts do have a role, albeit a limited one, should be accepted, otherwise it would be up to the



plaintiff alone to decide whether to resort to the procedure under Section 12A of the CC Act. An 'absolute and unfettered right' approach is not justified if the pre-institution mediation under Section 12A of the CC Act is mandatory, as held by this Court in Patil Automation Private Limited (supra). The words 'contemplate any urgent interim relief' in Section 12A(1) of the CC Act, with reference to the suit, should be read as conferring power on the court to be satisfied. They suggest that the suit must "contemplate", which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and ensure that the legislative object/intent behind the enactment of section 12A of the CC Act is not defeated."

11. In effect, the conclusion of the Supreme Court was that the Court should be satisfied that the suit contemplates urgent interim relief, and that the plaintiff's satisfaction is not conclusive. The



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Supreme Court further concluded that commercial courts are under an obligation to examine whether the interim application is merely a camouflage or guise to bypass the statutory mandate. This application should be tested on this benchmark.

12. As narrated earlier, the plaintiff lodged at least two applications seeking interim injunctions. The suit is in respect of alleged infringement of the plaintiff's Patent No.299036. The suit was preceded by a cease and desist notice. Both in the plaint and in the affidavit, the plaintiff asserts that the acts of alleged infringement are causing large losses, which are unquantifiable, and would have irreversible consequences on the plaintiff's business. Both permanent and interim injunctions are requested for on that basis. In these facts and circumstances, it cannot be concluded that the suit does not contemplate urgent interim relief or that the interim applications were presented with a view to circumvent the requirement of Section 12A of the Commercial Courts Act. Even otherwise, as stated earlier, it cannot be concluded from the statements in the plaint or the



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documents accompanying such plaint that the suit is barred by any law.

13. For reasons aforesaid, the application to reject the plaint is dismissed without any order as to costs.

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