



A.No.3847 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.3847 of 2024

in C.S(Comm Div).No.58 of 2024

1.News Tamil 24 x 7,
Owned and controlled
by S.Plus Media Ltd.
Represented by its Director
Mr.Sakilan Padmanabhan,
No.145, Rukmani Lakshmipathi Road,
Pudupet, Chennai – 600 008. ... Applicant/1st Defendant

2.S Plus Media Ltd.,
Represented by its Director,
Mr.Sakilan Padmanabhan,
No.145, Rukmani Lakshmipathi Road,
Pudupet, Chennai – 600 008. ... Applicant/2nd Defendant

vs.

Ananda Vikatan Publishers (P) Ltd.,
Represented by its Authorised signatory,
Editor/Publisher Mr.Kalaiselvan Theiste,
No.757, Anna Salai,
Chennai – 600 002. ... Respondent/Plaintiff

PRAYER : This Application has been filed under Order XIV Rule 8 of OS rules R/w Order VII Rule 11 of C.P.C & S12-A of the Commercial Courts Act, 2015, praying to reject the plaint in the above C.S. (Comm. Div.) No.58 of 2024.



A.No.3847 of 2024

WEB COPY

For Applicants : Richardson Wilson

For Respondent : Mr.Perumbulavil Radhakrishnan

ORDER

By this application, the first defendant seeks rejection of the plaint as being barred by law under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (the CPC) for alleged non-compliance with Section 12A of the Commercial Courts Act, 2015 (the Commercial Courts Act). Most of the material facts are not in dispute. The plaintiff asserts in the plaint that it noticed the use of allegedly infringing promotional material by the defendants on their channel in September 2023. A cease and desist notice was issued in the circumstances on 10.10.2023. Such notice was replied to on 19.10.2023. The plaint was signed thereafter on 22.12.2023 along with an interlocutory application (O.A.No.200 of 2024). It is stated by the plaintiff that the plaint and interlocutory application were filed in the registry on 02.01.2024. The record discloses that such plaint was admitted on 12.03.2024. Later, the interlocutory application was dismissed by order dated 05.07.2024. Upon being carried in appeal, the Division Bench set aside the order dated 05.07.2024 and remanded the interim application for *de novo* consideration



after first deciding the application for rejection of plaint.

WEB COPY

2. Learned counsel for the applicant/first defendant contends that the plaint is liable to be rejected. The first ground on which such contention is advanced is that the plaint does not contain any averments that the plaintiff is seeking urgent interim relief. According to learned counsel, as per the judgment of the Hon'ble Supreme Court in *Yamini Manohar v. T.K.D.Keerthi (Yamini Manohar)*, 2023 SCC online SC 1382, in order to justify non-compliance with mandatory pre-institution mediation, it is necessary that the plaint should contain averments that the plaintiff seeks urgent interim relief. By referring to the plaint, learned counsel contends that no explanation is provided for filing the suit in 2024 after noticing the alleged act of infringement in September 2023. In support of the contention that the plaint is liable to be rejected in these circumstances, learned counsel refers to and relies upon the orders of this Court in *T.V.Krishnamoorthy and others v. Kanakadhara Finance and others*, MANU/TN/1331/2024, and *Sangeetha Caterers and Consultants LLP v. Sara Sangeeth Veg Restaurant* MANU/TN/4394/2024. In both these cases, learned counsel submits that the Court concluded that the suit does not contemplate urgent interim relief because such suit was filed after a time lag of about three months between the



A.No.3847 of 2024

date of issuance of the lawyer's notice and the date of presentation of the suit.

WEB COPY

3. Learned counsel next contended that even the interlocutory application does not contain any assertion that urgent interim relief is requested. He contends that filing of an interim application does not *per se* satisfy the requirements of Section 12A. For this proposition, *Yamini Manohar* is once again pressed into service. In conclusion, on the merits, learned counsel points out that the plaintiff's mark is used in relation to the print medium, whereas the first defendant's mark is used in the television medium. He also points out that the first defendant's device mark is clearly distinguishable and that the use thereof is unlikely to result in confusion or deception.

4. In response to these contentions, learned counsel for the respondent/plaintiff submits that the plaintiff was constrained to file the suit because the plaintiff's endeavour to resolve the dispute amicably by issuing the cease and desist notice did not yield results. He further submits that such cease and desist notice was replied to on 19.10.2023. Since such reply clearly indicated the unwillingness of the defendants to resolve the dispute amicably,



he submits that the plaintiff collated necessary documents to file the suit.

Since such documentation is extensive, learned counsel submits that the process could be completed only in December 2023 and that the suit was filed immediately upon the re-opening of the Court in January 2024. Learned counsel next refuted the contention that the suit does not contemplate urgent interim relief. Towards this end, learned counsel referred to several paragraphs of the plaint, such as paragraphs 30, 32 and 35.

5. He also referred to the counter affidavit filed in response to this application and pointed out that such counter affidavit also contains reasons for not resorting to pre-institution mediation. According to learned counsel, the plaintiff has not contravened Section 12A because the suit does contemplate urgent interim relief.

6. Based on the rival contentions, two questions arise for determination. The first question is whether the plaintiff contravened Section 12A of the Commercial Courts Act. Sub-section (1) of Section 12A, which is relevant for present purposes, is as under:

“12A. Pre-litigation Mediation and



WEB COPY



A.No.3847 of 2024

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”.

This provision was interpreted in multiple judgments, including two judgments of the Hon'ble Supreme Court. In the factual context of a suit being presented without an interim application, the provision was interpreted in *Patil Automation Private Limited and others v. Rakheja Engineers Private Limited (Patil Automation)*, 2022 SCC Online SC 1028. The Supreme Court concluded, in *Patil Automation*, that Section 12A is mandatory and that the Court may exercise *suo motu* powers to reject the plaint for non-compliance with this provision. Thereafter, the provision fell for interpretation in *Yamini Manohar* (referred to and cited earlier) in the context of an application being filed for interim relief by the plaintiff concerned. The following material findings were recorded in the said judgment:

“10. We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine



WEB COPY



A.No.3847 of 2024

the nature and the subject-matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12-A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order 7 Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order 7 Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely : (i) prima facie case, (ii) irreparable harm and injury, and (iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.

11. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyse Section 12-A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate



WEB COPY



A.No.3847 of 2024

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 12-A of the CC Act. An “absolute and unfettered right” approach is not justified if the pre-institution mediation under Section 12-A of the CC Act is mandatory, as held by this Court in Patil Automation.

12. The words “contemplate any urgent interim relief” in Section 12-A(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 12-A of the CC Act is not defeated.” (emphasis added)

7. The above excerpts from *Yamini Manohar* indicate clearly that the



plaintiff cannot unilaterally and conclusively decide that the suit contemplates urgent interim relief. Such satisfaction is required to be recorded by the court concerned after considering the nature of the suit, the cause of action and the like from the standpoint of the plaintiff. The Supreme Court proceeded to clarify that the success or failure of the plaintiff in the interlocutory application is immaterial for purposes of deciding whether the suit contemplates urgent interim relief. The Supreme Court further held that the plaint, documents and facts should be examined holistically to determine whether the suit contemplates urgent interim relief, including by considering whether the interim application is a device to circumvent pre-institution mediation. These principles should be applied to decide this application.

8. As stated at the outset, both the plaint and the interlocutory application were executed by the plaintiff on 22.12.2023. The suit is in respect of alleged infringement of copyright and passing off. In the plaint, at paragraph 34, after referring to the issuance of cease and desist notice dated 10.10.2023, the plaintiff asserts that the attempt to amicably resolve the issue prior to the institution of the present suit was not fruitful. At paragraph 35, in relevant part, the plaintiff asserts as under:



WEB COPY



A.No.3847 of 2024

“35.The plaintiff states that while a wrongful gain through such unfair trade practise is achieved by the Defendants, the Plaintiff is put to wrongful and unjust loss by such acts of the Defendants. The Plaintiff states that the continued acts of the Defendants pose grave prejudice to the intellectual property and interests of the Plaintiff, until the Defendants are restrained by suitable and effective Orders of this Hon'ble Court.”

In the affidavit in support of the application for interim injunction, similar averments are contained in paragraphs 32 and 33. The suit is admittedly in relation to intellectual property and associated common law rights asserted by the plaintiff, wherein every act of alleged infringement or passing off would give rise to a fresh cause of action. The plaint and affidavit were executed a little over two months after the receipt of the reply from the defendants to the cease and desist notice. When these facts and circumstances are considered cumulatively, it cannot be concluded that the interim application was designed to circumvent Section 12A or that the suit does not contemplate urgent interim relief.



A.No.3847 of 2024

9. Since a conclusion was reached that the plaintiff did not contravene Section 12A, it is unnecessary to dilate on whether the plaint is liable to be rejected under Order VII Rule 11(d) of the CPC. It is sufficient to record that a plaint is liable to be rejected on the ground that the suit is barred by law only if such conclusion can be drawn from the statements in the plaint. On closely examining the statements in the plaint, I am unable to conclude therefrom that the suit is barred by law.

10. For the reasons set out above, the application to reject the plaint is dismissed without any order as to costs.

25.09.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation: Yes/No
vm



WEB COPY



A.No.3847 of 2024

SENTHILKUMAR RAMAMOORTHY,J.

vm

A.No.3847 of 2024
in C.S(Comm Div).No.58 of 2024



WEB COPY



A.No.3847 of 2024

25.09.2024