

**CR No. 6650 of 2023****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.****Case No. : CR No. 6650 of 2023****Pronounced On : May 31, 2024**

St. Patrick's Realty Private Limited Petitioner
vs.

Wharton Engineers and Developers Pvt.Ltd. Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Ashok Aggarwal, Senior Advocate with
Mr. Akshay Jindal, Advocate,
Mr. Amit Aggarwal, Advocate,
Mr. Nilesh Bhardwaj, Advocate and
Mr. Shrenik Jain, Advocate
for the petitioner.

Mr. Ravi Gupta, Senior Advocate with
Mr. Amitabh Tiwari, Advocate and
Mr. Aman, Advocate
for the respondent.

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GURBIR SINGH, J. :

1. Challenge in the present revision petition is to the order dated 18.10.2023 (Annexure P-8), passed by learned Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court, Gurugram (hereinafter referred to as – the Trial Court), whereby the application filed by respondent under Section 12-A of the Commercial Courts Act, 2015 has been allowed, thereby exempting the respondent from undergoing pre-institution mediation.

2. Brief facts, as culled out from the paper book, are that the respondent/plaintiff filed a suit for specific performance and permanent injunction, for directing the petitioner/defendant to perform all its



obligations under the Collaboration Agreement dated 16.12.2016, including handing over the peaceful physical, vacant possession of the developed residential plots, as mentioned in the plaint and further restraining the petitioner/defendant for selling, alienating, parting with possession or creating any third party rights in the suit property.

3. Along with the said suit, respondent/plaintiff also filed an application under Section 12-A of the Commercial Courts Act, 2015 (for brevity – the Act) seeking exemption from pre-institution mediation under the Act. It was submitted therein that the matter is of very grave and urgent nature as the petitioner/defendant was bent upon to illegally create third party interest and alienate the suit property. So, respondent/plaintiff was left with no other option but to file the said application. At an earlier stage, when suit was filed, application was allowed at that stage vide order dated 12.09.2023 and the suit was entertained without exhausting the remedy of pre-institution mediation.

4. The petitioner/defendant contested the application and raised objection qua the application being vague and filed to avoid mandatory provisions of Section 12-A of the Act. Averments of plaint and injunction application were stated to be false and baseless and petitioner/defendant, bent upon to create third party interest or alienate the suit property, was also denied.

5. After having considered the rival submissions of both the parties, the learned Trial Court, prima-facie observing that the interim relief sought by the respondent/plaintiff was urgent in nature, entertained the suit by allowing the application under Section 12-A of the Act and the earlier order



dated 12.09.2023, vide which the application was allowed at that stage, was also confirmed.

6. Aggrieved against the aforesaid order dated 18.10.2023 (Annexure P-8), the petitioner/defendant has preferred the present revision petition.

7. Learned counsel for the petitioner, at the outset, has contended that the learned Trial Court has given a complete go-by to the provisions of Section 12-A of the Act while allowing the application of the respondent because these provisions are mandatory and a suit cannot be instituted unless remedy of pre-institution mediation is exhausted. The suit land was owned by the respondent, who entered into a Collaboration Agreement dated 16.12.2016 with the petitioner. It was also argued that no urgent relief was required, as alleged in the application as it was just an attempt to come out of the rigors of Section 12-A of the Act. The urgency so created is only for the purpose of bypassing the mandatory provisions of Section 12-A of the Act.

8. On the other hand, learned counsel for the respondent contended that the suit land was owned by the respondent and it contributed land measuring 8.8625 acres for development of the same to be carried out by the petitioner at its own costs and expenses. The respondent was entitled to residential plots of area measuring 10635 sq.yds., within the suit property contributed by it as it had already handed over vacant physical possession of the suit property to the petitioner for development. But now, the petitioner was denying the right of the respondent over aforesaid 10635 sq.yds. of developed plots out of the suit property of their share. Instead, respondent came to know that the petitioner was trying to sell portion of the suit



property though it could not do so till the share of respondent is demarcated and possession thereof is handed over to the respondent. So, the respondent was compelled to issue legal notice dated 14.08.2023 revoking General Power of Attorney dated 16.12.2016 and Special Power of Attorney dated 16.12.2016 executed by the respondent in favour of the petitioner and when no response was received, the present suit was filed along with injunction application.

9. I have heard the arguments advanced by both the parties and have perused the paper book.

10. The respondent/plaintiff filed the suit for specific performance of Collaboration Agreement dated 16.12.2016 executed between the parties to the suit property. Para nos.24, 25 and 26 of the plaint are as under :-

“24. That in the first week of August, 2023 the Plaintiff got to know that the Defendant is attempting to sell portions of the Suit Property. It is to submit that the Defendant has no right to sell any portion of the Suit Property till the time the share of the Plaintiff is demarcated and possession thereof is handed over to the Plaintiff herein.

25. It is to submit that considering the malafide intention on the part of the Defendant, the General Power of Attorney dated 16.12.2016 and Special Power of Attorney dated 16.12.2016, which were executed by the Plaintiff in favor of the Defendant have also been revoked, withdrawn, cancelled and terminated by the Plaintiff vide legal notice dated 14.08.2023. However, till date, the defendant has not even replied to the said legal notice.

26. It is clear that the intentions of the Defendant



have become dishonest and the Defendant is attempting to create third party rights in an attempt to defeat the rights of the Plaintiff.”

11. Along with the said suit, an application for grant of temporary injunction and another application for exemption from pre-institution mediation under the Act and for entertaining the suit for grant of interim relief was filed. The learned Court, vide order dated 12.09.2023, considered the application and entertained the suit without exhausting the remedy of pre-institution mediation. In case **Patil Automation Private Limited vs. Rakheja Engineers Pvt. Ltd. - (2022) 10 SCC 1**, it was held that Section 12-A of the Act provides for pre-institution mediation only in suits, which do not contemplate any urgent interim relief. In cases, where no urgent interim relief is sought, requirement of pre-institution mediation is mandatory. Any suit instituted violating mandate of Section 12-A of the Act, must be visited with rejection of plaint under Order 7 Rule 11 CPC and the said power can be exercised by the Court even suo motu. The above declaration of law was made effective with effect from 20.08.2022.

12. In the instant case, the suit was filed after giving notice dated 14.08.2023 revoking General Power of Attorney dated 16.12.2016 and Special Power of Attorney dated 16.12.2016, executed by the plaintiff in favour of the defendant. It has been illegally mentioned in the suit that the defendant, who was petitioner, was only tenant in the suit property. In case **K. Varathan vs. Prakash Babu Nakundhi Reddy – C. S. (Comm. Div.) No.202 of 2022**, decided on 13.10.2022 by Hon’ble Madras High Court, it as held as under :-



“16. This Commercial Division having explained the expression 'contemplation of urgent interim relief' deems it appropriate to make an adumbration of parameters/tests and they are as follows :

(a) whether the prayer for interim relief is a product of profound thinking carefully about the possibility of the happening;

(b) whether the matter demands prompt action and that promptitude is of such nature that exhausting the remedy of pre institution mediation without any intervention in the mean time can lead to a irreversible situation, i.e., a situation where one cannot put the clock back;

(c) where the urgency is of plaintiff's own doing, if that be so the plaintiff cannot take advantage of its own doing;

(d) high standard is required to establish the requirement of this prompt action (urgency);

(e) plaintiff should be on fair ground in urging urgency and an interim measure;

(f) actual or apprehended wrong or injury should be so imminent that the plaintiff should be able to satisfy the court that plaintiff should not be made to stand and suffer the same.

17. It is made clear that the above adumbration is illustrative and not exhaustive. It is also made clear that while applying the above tests / parameters, it should be borne in mind that it is not the case of testing whether the plaintiff is entitled to interim relief. The question is whether the plaintiff's prayer for interim

relief is urgent as elucidated supra and as to whether it is a product of contemplation as explained supra. This means that there can be cases where a Commercial Division can hold that there are enough reasons for contemplation of urgent interim relief but may either order short notice (without giving interim relief before notice to other side) or put in place some other interim measure (such as status quo) without acceding to the exact interim relief that has been sought for by the plaintiff.”

13. Since in this case, the plaintiff had apprehended that the property was going to be sold, so, the urgent interim relief was required. The Court concerned rightly entertained the suit without exhausting the remedy of pre-institution mediation. I do not find any ground to interfere in the order passed by the learned Trial Court.
14. Accordingly, the present revision petition is found to be without any merit and the same is hereby dismissed.
15. Pending applications, if any, shall stand disposed of along with this judgment.

May 31, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.