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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 227/2024 & I.As. 5976-5983/2024**

M/S IMBERATEK LLC

..... Plaintiff

Through: Mr. Anirban Sen, Advocate.

versus

APPLE INC & ANR.

..... Defendants

Through: Mr. Neeraj Kishan Kaul, Senior Advocate with Mr. Saikrishna Rajagopal, Mr. Sidharth Chopra, Ms. Sneha Jain, Mr. Saif Rahman Ansari, Ms. Shruti Jain and Mr. Raghav Agarwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

14.03.2024

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1. At the outset, before going into the merits of the case, Mr. Anirban Sen, counsel for Plaintiff, has apprised the Court that the subject patent, against which, infringement is alleged, is approaching the end of its term on 31st March, 2024. Thus, the Plaintiff is not insisting on any interim relief. Therefore, Plaintiff's case, in essence, purely pertains to a claim of damages which they would have to establish by proving infringement.

2. Considering the above position, the Court has queried as to why the mandate under Section 12A of the Commercial Courts Act, 2015 [*hereinafter*, "Act"] has not been followed in the instant suit. Mr. Sen, after making some submissions, on instructions, states that the Plaintiff is inclined to explore pre-institution mediation and seeks permission to withdraw the



present suit with liberty to approach the Court in case the mediation attempt is unsuccessful. Since the suit is being withdrawn on the first date itself with an intent to explore mediation, he further requests for refund of court fee.

3. Considering the above, the suit is dismissed as withdrawn. In the peculiar facts and circumstances of the case and considering that Mr. Sen has, without dwelling into merits, at the outset, sought to withdraw the present suit to endeavour to resolve the matter amicably, the request for refund of court fee is allowed. Registry is directed to issue a certificate for refund of full court fee in favour of the Plaintiff.

4. Needless to say, Plaintiff shall always be at liberty to approach the Court in the event pre-institution mediation does not fructify.

5. Dismissed as withdrawn, along with pending applications, with liberty as aforesaid.

SANJEEV NARULA, J

MARCH 14, 2024

d.negi

At 01:45 P.M.

6. At this juncture, Mr. Sen has mentioned the matter to submit that he did not have instructions to withdraw the suit. Accordingly, the Court has proceeded to consider the effect of non-compliance with Section 12A of the Act in the present suit.

7. Section 12A of the Act mandates a party to first explore mediation prior to instituting a commercial suit. This requirement is however dispensed with when the suit contemplates “any urgent interim relief”. As noted



hereinabove, given the approaching end-date of the life of subject patent, Plaintiff does not wish to press for an interim relief. The judgments in *Yamini Manohar v. T.K.D. Krithi*,¹ and *Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.*,² have explicitly laid down that a commercial suit cannot be instituted without exhaustion of pre-litigation mediation and that a Court has no discretion to exempt the application of the provision to any party.

8. In view of the settled legal position, in the opinion of the Court, absent an urgent interim relief, the Plaintiff cannot be permitted to circumvent the mandate of Section 12A of the Act.

9. The suit is accordingly dismissed in view of such non-compliance.

10. In view of the events that have transpired, the earlier direction to Registry to issue a certificate of refund of court fee is revoked.

SANJEEV NARULA, J

MARCH 14, 2024

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At 02:44 P.M.

11. Mr. Sen has yet again mentioned the matter, stating that he has now received instructions to withdraw the suit.

SANJEEV NARULA, J

MARCH 14, 2024/d.negi

¹ 2023 SCC OnLine SC 1382.

² Neutral citation: 2022/DHC/004454.