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

% *Date of decision: 04.04.2024*

+ **RFA(COMM) 117/2024**

HARISH VERMA

..... APPELLANT

Through: Mr Gurusharan Singh with Mr Mohd.
Ziauddin and Ms Perna, Advocates.

versus

JOGINDER PAL SINGH

..... RESPONDENT

Through: None.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 20240/2024

1. Allowed, subject to just exceptions.

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2. This appeal is directed against the judgment dated 17.02.2024 passed by the learned District Judge (Comm. Court)-02, West, Tiz Hazari Courts, Extension Block, Delhi.

3. *Via* the impugned judgment the learned District Judge rejected the plaint by recourse to provisions of Order VII Rule 11(d) of the Code of Civil Procedure, 1908 [in short, "CPC"].

4. The short ground on which the plaint has been rejected is the failure of the appellant/plaintiff to take recourse to pre-mediation under Section



12A of the Commercial Courts Act, 2015 [in short “the Act”].

5. According to the learned District Judge

- i) Firstly, the plaint did not contemplate urgent relief;
- ii) Secondly, the appellant/plaintiff failed to, *prima facie*, prove allegations set out in paragraph six (6) of the application seeking exemption from initiating pre-litigation mediation either by relying upon documents or otherwise.

6. Paragraph six (6) of the application for urgent relief, as extracted from the impugned judgment, reads as follows:

“...that the plaintiff has brought this matter before this Hon’ble Court because of extreme urgency. The defendant [has] retention [sic...retained] the amount of the plaintiff, as the defendant had taken money from several persons and has also withheld dues of several other persons and is also withdrawing the amount from his account and tried to wind up the business, which will cause irreparable lose to the plaintiff....”

7. According to us, the learned District Judge could not, at the threshold, conclude that the apprehension expressed by the appellant/plaintiff was baseless. This is made clear by the judgment rendered by the Supreme Court in *Yamini Manohar v. TKD Keerthi*, 2023 SCC OnLine SC 1382. For convenience, the relevant observations made by the judgment are extracted hereafter:

*“9. 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 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 12A 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 VII, Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order VII, 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.

10. 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."

[Emphasis is ours]

8. Clearly, the Supreme Court establishes standards against which the plaint and the application for urgent relief have to be tested, amongst others, on the following grounds:

- i) The commercial Court has to examine the nature, subject matter, cause of action, and the relief sought.
- ii) The facts and circumstances of the case have to be considered holistically from the viewpoint of the plaintiff.
- iii) Plaint, documents, and facts should show and indicate the need for urgent relief.

9. Therefore, to dismiss a plaint, a commercial Court has to undertake a thorough examination of the case while also looking out for deception and



falsity. The plaint cannot be dismissed at the threshold for failure to *prima facie* establish urgency.

10. Accordingly, the impugned order is set aside. The suit is restored to its original position and number. The appeal is disposed of in the aforesaid terms.

11. List the suit before the concerned Judge on 01.05.2024.

12. The Registry will dispatch a copy of this order to the concerned Court *via* all modes, including e-mail.

RAJIV SHAKDHER, J

AMIT BANSAL, J

APRIL 4, 2024/tr