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

% **Date of decision: 10th April, 2024**

+ **C.R.P. 130/2024 and CM APPL. 21235/2024 (Stay)**

BHIMAVARAM COMMUNITY NETWORK BCN

..... Petitioner

Through: Mr. Kunal Tandon, Mr. Aditya
Krishna, Ms. Shuti Jain and Mr.
Sharak Sampath, Advs.

versus

M/S SUPER CASSETTES INDUSTRIES PVT. LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. This hearing is being conducted through hybrid mode.

C.R.P. 130/2024 & CM APPL. 21235/2024

2. The petitioner, who is the defendant in the commercial suit instituted by the respondent/plaintiff, has preferred the present petition under Section 115 of the Civil Procedure Code, 1908¹, challenging the impugned order dated 13.03.2024 whereby its application under Order VII Rule 11 of the CPC has been dismissed by the learned District Judge (Commercial Court)-12, Central District, Tis Hazari Courts, Delhi.

3. None appeared on behalf the respondent despite advance notice.

¹ CPC



4. Mr. Kunal Tandon, learned counsel for the petitioner has urged that the respondent/plaintiff did not resort to Pre-Institution Mediation as mandated under Section 12-A of the Commercial Courts Act, 2015² and although an application was moved by the respondent/plaintiff along with the suit, the same was not even considered by the learned Trial Court, which procedure is contrary to the decision of the Supreme Court in the case of **Yamini Manohar v. T K D Keerthi**³.

5. It is vehemently urged that even as per the respondent/plaintiff, the knowledge of the alleged infringement of copyright was gained on 12/13th June 2023 and a legal notice was thereafter sent on 19.06.2023 followed by a “*Cease and Desist Notice*” dated 21.08.2023, but the suit was instituted after much delay on 04.12.2023. Therefore, the plea of the respondent/plaintiff that it was not desirable to waste two-three months in mediation under Section 12-A of the CC Act, and that there was ‘urgency’ in the matter was absolutely unfounded. It is urged that the respondent/plaintiff has very conveniently by-passed a mandatory provision of law.

6. Having heard learned counsel for the petitioner and on perusal of the record, shorn of unnecessary details, the respondent/plaintiff claims itself to be a leading and most reputed company in the music industry operating under its label ‘T-Series’ and claims to have a credible track record in the field of music production.

7. The respondent/plaintiff has alleged that the petitioner/defendant company is infringing their copyright and

² The CC Act

³ 2023 SCC OnLine SC 1382



broadcasting content on its channel by removing/overshadowing the 'T-Series' Logo and instead showing its own logo on the Right Hand Top Corner while telecasting their musical programmes.

8. In the aforesaid backdrop, indeed from the pleadings of the plaint as a whole, it appears that the knowledge of such infringement came to be acquired on 12/13th June 2023, and a legal notice was issued to the petitioner/defendant on 19.06.2023, which was thereafter followed by *Cease and Desist Notice* dated 21.08.2023, and the plaint was instituted after delay of three months on 04.12.2023.

9. However, the respondent/plaintiff also brings to the fore that the said two notices were not even replied by the petitioner/defendant. On being asked as to why the legal notice and *Cease and Desist Notice* were not replied to, it was canvassed by learned counsel that the such notices were never served upon the petitioner/defendant, which plea is not fathomable, considering that the petitioner/defendant has been served with the summons in the suit on the same address as reflected in the plaint.

10. At this juncture, it would be apposite to refer to the decision in **Yamini Manohar v. T K D Keerthi**, heavily relied upon by the 1d senior counsel for the petitioner/defendant, wherein it was held as under:-

'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-



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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.'

11. I am afraid that on a careful consideration of the aforesaid observations by the Supreme Court, it is difficult to hold that the respondent/plaintiff has disguised their prayers for seeking urgent relief to wriggle out of complying with Section 12-A of the CC Act. There is no gain saying that while considering an application under Order VII Rule 11 of the CPC, the Court cannot travel beyond the pleadings so as to look into the defence espoused, put forth or set up



by the opposite party. Further, in appreciating whether or not there is a cause of action which is legally sustainable and nor barred by jurisdiction in any manner, the Court has to consider the pleadings as a whole.

12. Although the learned Trial Court was enjoined upon to firstly consider and decide the application of the respondent/plaintiff seeking exemption from recourse to Section 12-A of the CC Act at the threshold, but that technical blemish apart, there could be no two opinions other than that the alleged infringement of copyright was a continuous and recurring cause of action, and evidently the relief sought was of urgent nature.

13. At the cost of repetition, the petitioner/defendant has not even cared to respond to the legal notice dated 19.06.2023 as also the *Cease and Desist Notice* dated 21.08.2023, which silence on their part raises an inference that there was no intent to enter into meaningful negotiation. Be that as it may, the alleged infringement has been continuous and recurring in nature, and therefore, evidently the “trinity tests” for grant of urgent relief existed in favour of the respondent/plaintiff. The delay of three months and few days in filing the suit on 04.12.2023 might have been a ground for denial of *ex-parte ad interim injunction*. Having said that, the learned Trial Court vide order dated 23.02.2024 affirmed and made absolute the interim order dated 06.12.2023 passed by the Court, which order has not been assailed in appeal. The said order has not been challenged and thus the order dated 23.02.2024 passed by the Court holds sway.



14. In view of the foregoing discussion, this Court finds that the present petition is bereft of any merits. There is no patent perversity or illegality that has been committed by the learned Trial Court in dismissing the application under Order VII Rule 11 of the CPC. Hence, the present civil revision petition is dismissed. The pending application also stands disposed of.

DHARMESH SHARMA, J.

APRIL 10, 2024

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