

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**C.O. 2485 of 2025
AMPL Resources Pvt. Ltd.
Vs.
Eastern Coalfields Ltd. & ors.**

For the Petitioner	: Mr. Tanmoy Mukherjee Mr. Sounak Mandal Mr. Neelesh Choudhury Ms. Anuradha Poddar advocates
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For the Opposite Party	: Mr. Debnath Ghosh, Sr. Adv Mr. Nikhil Kumar Roy Mr. Syad Nurul Arafin ...advocates
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Reserved on	: 23.07.2025
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Judgment on	: 26.09.2025
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Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the first defendant and is directed against an order being no. 8 dated May 22, 2025 passed by the learned Judge, Commercial Court at Asansol in IA No. 05 of 2025 in Money Suit (Commercial) No. 01 of 2025.
2. By the order impugned, the application filed by the petitioner being IA No. 05 of 2025 praying for revocation of leave granted to the plaintiffs/opposite parties under Section 12A of the Commercial Courts Act 2015 (for short “the 2015 Act”) and for rejection of plaint stood rejected.

3. The opposite parties nos. 1 to 3 herein filed a suit for recovery of money amounting to Rs. 1,59,07,662/- (Rupees one crore fifty nine lakh seven thousand six hundred sixty two only) including interest at the rate of 18% per annum and for other consequential reliefs. The opposite parties filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure. The opposite parties filed an application under Section 12A of the Commercial Courts Act being IA No. 1 of 2025 dated January 21, 2025 praying for dispensing with the pre-institution mediation as prescribed under Section 12A of the 2015 Act and to permit the opposite parties to present the suit without taking recourse to pre-suit mediation.
4. The learned Judge, Commercial Court at Asansol by an order being no. 1 dated January 21, 2025 disposed of IA No. 1 of 2025 by granting leave under Section 12A of the 2015 Act.
5. Petitioner filed an application praying for revocation of leave granted under Section 12A of the 2015 Act and for rejection of plaint in Money Suit (Commercial) no. 1 of 2025 for non-compliance of the mandatory pre-institution mediation in terms of Section 12A of the 2015 Act. The said application was registered as IA no. 5 of 2025.
6. The learned Trial Judge rejected IA No. 5 of 2025 by the impugned order. Being aggrieved by such order, the first defendant has approached this Court by filing the instant application under Article 227 of the Constitution of India.
7. Mr. Mukherjee learned advocate appearing for the petitioner contended that prior to the institution of the instant suit, the petitioner along with NKAS Services Private Limited instituted a suit against the opposite party no. 1 inter alia praying for a decree that the Bank Guarantee dated 06.08.2015, 05.05.2017 and 17.04.2019 be adjudged null and void and be delivered up and for permanent injunction restraining the opposite party no. 1 from invoking the said Bank Guarantee and for a decree for recovering Rs. 1,55,91,610/-(Rupees one crore fifty five lakh ninety one thousand six

hundred ten only) . He contended that the said suit was instituted after exhausting the provisions of Section 12A of the 2015 Act. He further contended that the instant suit has been filed surreptitiously by the opposite parties in respect of the separate tender process wherein the second defendant is the successful bidder seeking for recovery of money without resorting to the mandatory provision of Section 12A of the 2015 Act. He contended that the learned Trial Judge mechanically granted leave to the opposite parties to present the instant suit without resorting to the mandatory provision of Section 12A of the 2015 Act. He further contended that the instant suit is a simplicitor suit for recovery of money without even seeking for any urgent relief. He submitted that the cause of action as pleaded in the plaint of the instant suit is alleged to have arisen sometimes on January 29, 2023 and the suit was instituted only on January 21, 2025 i.e., almost two years after the cause of action for filing the suit arose. Thus, according to Mr. Mukherjee there was no urgency for filing the instant suit without resorting to the mandate of Section 12A. Mr. Mukherjee submitted that if there is no urgent interim relief contemplated in the plaint, then there is no question of presenting a plaint without resorting to the mandatory provision of Section 12A of the 2015 Act. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.***, reported at **(2022) 10 SCC 1**. Mr. Mukherjee contended that the Court has to be satisfied after going through the averments made in the plaint, and the documents that the suit contemplates urgent interim reliefs. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Yamini Manohar v. T.K.D. Keerthi***, reported at **(2024) 5 SCC 815**. Mr. Mukherjee contended that the instant suit was instituted after August 20, 2022 without complying with the provisions of the Section 12A of the 2015 Act. By placing reliance upon the decision of the Hon'ble Supreme Court in the case ***Dhanbad Fuels (P) Ltd. v. Union of India***, reported at **(2025) Online SC 1129**, Mr. Mukherjee contended that

the plaint of the instant suit is liable to be rejected under provisions of Order 7 Rule 11 of the Code of Civil Procedure.

8. Mr. Ghosh learned Senior Advocate appearing for the opposite party seriously disputed the submission advanced by Mr. Mukherjee. He contended that Section 12A of the 2015 Act provides that a suit which does not contemplate any urgent interim relief cannot be instituted without first resorting to pre-institution mediation and settlement. He contended that the plea of urgency has to be ascertained from the pleadings contained in the plaint, the documents on record and the oral submissions of the plaintiff and once an order is passed permitting the plaintiff to institute the suit without taking recourse to Section 12A, it cannot be revoked or set aside, in the absence of any changed circumstances or any instance of falsity or deception. Mr. Ghosh contended that the opposite parties have not resorted to camouflage and guise to bypass the statutory mandate of pre-litigation mediation and no case of deception or falsity on the part of the opposite parties is either apparent or established. Mr. Ghosh contended that in the instant case the contemplation of urgent interim reliefs is borne out from the plaint, documents and facts and, therefore, the case on hand does not fall within the scope and ambit of the decision of the Hon'ble Supreme Court in ***Yamini Manohar (supra)***.
9. Mr. Ghosh contended that in the case of ***Patil Automation (supra)*** the suits did not contemplate urgent interim reliefs. He, thus, contended that the decision in the case of the ***Patil Automation (supra)*** is distinguishable on facts and therefore, cannot be applied to the case on hand. Mr. Ghosh placed reliance upon a decision of the Hon'ble Division Bench in the case of ***Gavrill Metal (P) Ltd. v. Maira Fabricators (P) Ltd.***, reported at **(2023) SCC Online Cal 2443** wherein the Hon'ble Division Bench observed that the true test is not whether an urgent relief is immediately required but where the averments in the plaint point to a situation where even before expiry of three months, the plaintiff may feel the need to obtain interim relief. Mr. Ghosh placed strong reliance on the decision of the Hon'ble

Division Bench in the case of **Shristi Infrastructure Development Corpn. Ltd. v. Sarga Hotel (P) Ltd.**, reported at **(2024) SCC Online Cal 7817** wherein the Hon'ble Division Bench was of the opinion that when a plaintiff is allowed to file a suit without pre-institution mediation, the discretion of the Court should not be allowed to be interfered with at a later stage.

10. Mr. Ghosh contended that one of the grounds for waiver from pre-institution mediation was that the parties were already before the learned Court in another suit and, therefore, the opposite parties were of the view that any attempt to pre-institution mediation in the case on hand would be an empty formality. He contended that when the parties were already litigating before a forum the leave granted under Section 12A of the 2015 Act to the opposite parties should not be interfered with by this Court. In support of such contention he placed reliance upon a decision of the Hon'ble Division Bench of the Telengana High Court in the case of **Kohinoor Seed Fields India Pvt. Ltd. vs. Veda Seed Sciences Pvt. Ltd. and Ors.** reported at **Manu/TL/1081/2024 (DV)**.
11. Mr. Ghosh contended that in **Dhanbad Fuel (supra)** it has been held that the test under Section 12A is not whether the prayer for the urgent interim relief actually comes to be allowed or not but where on an examination of the nature and the subject matter of the suit and the cause of action the prayer for urgent interim relief by the plaintiff would be said to be contemplated when the matter is seen from the stand point of the plaintiff. He, therefore, contended that the learned Judge of the Commercial Court was right in rejecting the prayer for revocation of leave under Section 12A of the 2015 Act.
12. In reply, Mr. Mukherjee learned advocate appearing for the petitioner, contended that the decision of the Hon'ble Division Bench in the case of **Shrishti Infrastructure (supra)** cannot come to the aid of the opposite parties in the case on hand in view of the proposition of law laid down by the Hon'ble Supreme Court that contemplation of urgent relief is to be within the forecorners of the plaint.

13. Heard the learned advocates for the parties and perused the materials placed.
14. The following issues fall for consideration in the Civil Revision Application-
 - (1) Whether the instant suit contemplates urgent interim relief under the 2015 Act.
 - (2) Whether the learned Judge of the Commercial Court was justified in rejecting the application praying for revocation of leave granted to the opposite parties under Section 12A of the 2015 Act.
15. The 2015 Act was promulgated in the year 2015 with the object of securing speedy disposal of commercial dispute of specific value by constituting the Commercial Courts, Commercial Division and the Commercial Appellate Division of the High Court. When the 2015 Act was enacted there was no provision for pre-institution mediation and settlement.
16. Chapter III A of the 2015 Act was inserted by the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts (Amendment) Act 2018 (Act 28 of 2018) w.e.f. 03.05.2018. The said chapter contains Section 12A which deals with pre-institution mediation and settlement. Section 12A mandates that the suit shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation. The period within which the mediation has to be completed is also provided therein. It is also provided that the period during which the parties would remain occupied with the pre-institution mediation shall not be computed for the purpose of limitation under Limitation Act. The settlement arrived at under Section 12A shall have the same status and effect that of an arbitral award.
17. There are cases where urgent interim reliefs may be necessary. The legislature provided for waiver of the mandatory pre-institution mediation and settlement in certain types of cases as specifically provided in Section 12A. It would be evident from a bare reading of Section 12A of the 2015 Act

that in a suit which does not contemplate any urgent interim relief, the plaintiff can approach the special forum without exhausting the requirement laid down under Section 12A (1) of the 2015 Act for pre-institution mediation and settlement.

18. The dispute between the parties relates to applicability of Section 12A of the 2015 Act to the facts of the case on hand and, therefore, it would be beneficial to extract Section 12A of the 2015 Act which reads as follows –

“12A. Pre-Institution Mediation and 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-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.*

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987, the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:

Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]”

19. The seminal question that arose for consideration before the Hon’ble Supreme Court in the case of **Patil Automation (supra)** was whether the

statutory pre-institution mediation contemplated under Section 12A of the 2015 Act as amended by the Amendment Act of 2018 is mandatory. The Hon'ble Supreme Court declared that Section 12A of the Act is mandatory and held that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure and such power can be exercised even suo motu by the Court. The Hon'ble Supreme Court made such declaration effective from 20.08.2022 so that the stake holders concerned become sufficiently informed.

20. However, the Hon'ble Supreme Court in ***Patil Automation (supra)*** in paragraph 100 of the reports clarified that in the cases that were before the Hon'ble Supreme Court, the suits do not contemplate urgent interim relief.
21. As to what is meant by the use of the words “contemplate any urgent interim relief” used in Section 12A(1) of the 2015 Act fell for consideration before the Hon'ble Supreme Court in ***Yamini Manohar (supra)***. It was held therein that the said words suggest that the suit must “contemplate”, which means that the plaint, documents, and facts should show and indicate the need for an urgent interim relief. It was further held that such is the process and limited exercise that the Commercial Courts will undertake in order to keep in check and ensure that the legislative object/ intent behind the enactment of Section 12A of the Commercial Courts Act is not defeated. The Hon'ble Supreme Court held thus-

“5. Section 12-A of the CC Act does not contemplate leave of the court, as is clear from the language and words used therein. Nor does the provision necessarily require an application seeking exemption. An application seeking waiver on account of urgent interim relief setting out grounds and reasons may allay a challenge and assist the court, but in the absence of any statutory mandate or rules made by the Central Government, an application per se is not a condition under Section 12-A of the CC Act; pleadings on record and oral submissions would be sufficient.

6. The words used in Section 12-A of the CC Act are — “A suit which does not contemplate any urgent interim relief”, wherein the word “contemplate” connotes to deliberate and consider. Further, the legal position that the

plaint can be rejected and not entertained reflects application of mind by the court viz. the requirement of “urgent interim relief”.

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 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.*

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.”*

22. It, therefore, follows that when a plaint is filed before the Commercial Court under the 2015 Act, it is the duty of the Court to examine the plaint, documents and the facts and has to be satisfied therefrom that the suit contemplates urgent interim reliefs in order to entertain a suit filed without first resorting to pre-institution mediation.
23. The Hon’ble Supreme Court in ***Dhanbad Fuel (supra)*** summarised the findings in paragraph 62 of the said reports. The Supreme Court held that the declaration of the mandatory nature of Section 12A of 2015 Act relates back to the date of the Amending Act. It was further held that in Paragraph 113.1 of the decision in ***Patil Automation (supra)*** that any suit which is instituted under the 2015 Act without complying with Section 12A is liable

to be rejected under Order 7 Rule 11 of the Code which declaration applies prospectively to suits instituted on or after 20.08.2022. In Paragraph 62 of the said reports it was held thus –

“62. In light of the aforesaid discussion, we summarise our findings as under:

a. The decision of this Court in Patil Automation (supra) lays down the correct position of law as regards Section 12A of the 2015 Act by holding it to be mandatory in nature.

b. As held in paragraph 104 of the decision in Patil Automation (supra), the declaration of the mandatory nature of Section 12A of the 2015 Act relates back to the date of the Amending Act.

c. As held in paragraph 113.1 of the decision in Patil Automation (supra), any suit which is instituted under the 2015 Act without complying with Section 12A is liable to be rejected under Order VII Rule 11. However, this declaration applies prospectively to suits instituted on or after 20.08.2022.

d. A suit which contemplates an urgent interim relief may be filed under the 2015 Act without first resorting to mediation as prescribed under Section 12A of the 2015 Act.

e. Unlike Section 80(2) of the CPC, leave of the court is not required to be obtained before filing a suit without complying with Section 12A of the 2015 Act.

f. The test for “urgent interim relief” is if on an examination of the nature and the subject-matter of the suit and the cause of action, the prayer of urgent interim relief by the plaintiff could be said to be contemplable when the matter is seen from the standpoint of the plaintiff.”

24. In ***Dhanbad Fuel (supra)*** a Money Suit filed on 09.08.2019 and in the written statement filed on 20.12.2019 the defendant raised a preliminary objection as regards the maintainability of the suit without availing the remedy of pre-institution mediation under Section 12A of the 2015 Act and the defendant filed the application for rejection of plaint on 30.09.2020. The Hon’ble Supreme Court in answer to the question as to whether a suit filed without complying Section 12A of the 2015 Act must be dismissed or be kept in abeyance with a direction to the parties to explore mediation held that if the suit was instituted prior to 20.08.2022 without complying with

Section 12A of the 2015 Act, and if the same does not fall within one of the exceptional categories as explained in Paragraph 47 of the Judgment, then it would be open to the Court to keep the suit in abeyance and direct the parties to explore the possibilities of mediation in accordance with the 2015 Act and the rules framed therein. In the light of the said observations on the facts of the said case it was held that the approach adopted by the High Court in the impugned order in keeping the suit in abeyance and referring the parties to mediation, High Court struck a perfect balance between the mandatory nature of Section 12A of the 2015 Act as well as the prospective applicability of the consequence of non-compliance with Section 12A as held in ***Patil Automation (supra)***.

25. In ***Dhanbad Fuel*** (supra) the suit was instituted prior to 20.08.2022 and in paragraph 45 of the said decision it was clarified that in the said case no urgent interim relief was prayed for at the time of institution of the suit by the union.
26. The instant suit has been filed after 20.08.2022 without first resorting to mediation as prescribed under Section 12A of the 2015 Act. It is now well settled that a suit instituted under the 2015 Act without complying with Section 12A is liable to be rejected under Order VII Rule 11 unless the suit contemplates urgent interim relief.
27. This Court has to now consider whether the suit contemplates any urgent interim relief.
28. The case made out by the opposite parties in the plaint is summarised hereunder as follows.
29. Defendant nos. 1 and 2 together formed a joint venture named AMPL NKAS (JV) and they had participated in an e-tender process of the ECL as published on their online website through e-tender notice dated July 4, 2014. The defendant nos. 1 and 2 being the successful bidder was awarded the said NIT job. The plaintiff, by a letter dated 05.11.2015, highlighted various defects or shortcomings in the work conducted by the defendant

contractors. The plaintiff company claims to have issued several letters asking the defendants to improve their performance. The work that was awarded to the defendants was for crushing 85 lakh tonnes of coal and the rate at which the defendants were obliged to work was Rs.19.25 per ton and the defendants had only crushed 64,54,31.16 tonnes of coal. The plaintiff company claims to have given three extensions to the defendant which the defendants had accepted but still could not achieve the target and the defendants on 29.01.2023 did not accept the 4th extension given by the plaintiff company by a letter dated 19.01.2023. Since the defendant contractor could not complete the total work within the time specified in the NIT and has failed in achieving the awarded quantity, the plaintiff company finding no other alternative was compelled to float a new tender for completion of the remaining unexecuted quantity of 20,45,685.84 tonnes. The said work was awarded to NKAS who was one of the partners of the earlier joint venture consortium. The newly awarded rate was Rs. 25.84 per ton. The extra payment that the company has to bear is Rs. 1,34,81,069.61 and the plaintiff claims that the plaintiff is entitled to interest at the rate of 18% per annum on the aforesaid sum and for such reason the instant suit was filed claiming recovery of a sum of Rs. 1,59,07,662 including interest at the rate of 18% per annum.

30. The said suit was filed on January 21, 2025. On that date the plaintiffs/ opposite parties also filed an application under Section 12A of the Commercial Courts Act 2015 being IA No. 01 of 2025 praying for leave to file the suit without resorting to pre-institution mediation. On the self-same day the opposite parties also filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure for temporary injunction with an ad interim prayer.
31. Section 12A of the 2015 Act does not require an application seeking exemption. However, in the case on hand, the opposite parties have filed an application seeking waiver on account of urgent interim relief thereby setting

out the grounds for filing the suit without resorting to pre-institution mediation.

32. The Hon'ble Supreme Court in ***Yamini Manohar (supra)*** held that an application seeking waiver on account of urgent interim relief setting out grounds and reasons may allay a challenge and assist the Court, but in the absence of any statutory mandate or rules made by Central Government, an application per se is not a condition under Section 12A of the 2015 Act and the pleadings on record and oral submission would be sufficient.
33. Thus, it is now well settled that though filing of an application is not a condition precedent under Section 12A of the 2015 Act but an application setting out the grounds and reasons seeking waiver on account of urgent interim relief may also assist the Court to be satisfied whether the suit contemplates any urgent interim relief.
34. To the mind of this Court if a separate application is filed setting out the grounds and reasons seeking waiver of the mandatory requirement of pre-institution mediation, the Court has to examine the statements contained in such application in order to be satisfied whether the suit contemplates urgent interim reliefs.
35. The opposite parties filed an application being IA No. 1 of 2025 praying for dispensing with the pre-institution mediation under Section 12A of the 2015 Act and to permit the petitioner to file the suit without taking recourse under Section 12A of the 2015 Act. In the said application it has been stated that the defendant has already instituted TS(Commercial) no. 14 of 2024 which is currently at the advance stage of hearing and if the suit is decreed the opposite parties will be irreparably prejudiced as it would foreclose the opposite party's ability to press its claim.
36. The urgency as pleaded in the said application for filing the suit without undergoing pre-institution mediation is the failure of the pre-institution mediation process in the earlier suit and the advance stage of Title Suit (Commercial) No. 14 of 2024 which was fixed for arguments. It was also

stated therein that unless proper orders of attachment and injunction without requiring the plaintiff to serve a notice upon the defendants is passed, there is every likelihood that the reliefs contemplated and prayed for in the instant suit may become infructuous.

37. Same nature of urgency has also been pleaded in the plaint more particularly in paragraph 25 thereof.
38. That apart, the opposite parties have also filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure praying for an order of injunction restraining the defendants from operating the bank accounts without securing a sum of Rs. 1,59,07,662 and an order of injunction was also sought for restraining the defendants from selling, alienating and disposing of the property in any manner whatsoever. Ad interim order was also prayed for in the said application.
39. The cause of action as pleaded in the plaint arose on and from the date the defendants refused to complete the work and the plaintiff was compelled to issue a fresh tender notice for completion of the balance work. Plaintiff has pleaded a continuing cause of action. The nature of the suit and the cause of action pleaded in the plaint would indicate that there is urgency. That there was urgency in filing the suit would be further evident from the fact that the plaintiff filed the application for temporary injunction on the date of filing the suit. The plaint further discloses that the defendants have already filed a suit with respect to the same tender which is pending which might be the cause for filing the suit and the application for temporary injunction.
40. Mr. Mukherjee would strenuously contend that ad interim or interim order was not passed on the date when the suit along with the application for temporary injunction was filed and on the contrary notice was directed to be issued.
41. The question is not whether any ad-interim or interim order was passed on the date of filing the suit but whether the suit contemplated urgent interim reliefs as it was held in **Yamini Manohar** (supra) that non grant of interim

relief at the ad interim stage when the plaint is taken up for registration/admission and examination would not justify dismissal of commercial suit under Order 7 Rule 11 of the Code as at times interim relief is granted after issuance of notice.

42. Thus, merely because of the fact that an ad interim order of injunction was not passed on the date of filing the suit and the notice of the injunction application was issued, the same would not necessarily imply that the suit does not contemplate urgent interim relief.
43. After going through the averments made in the plaint and the application filed seeking exemption from complying with the mandate of Section 12A of the 2015 Act, this Court is of the considered view that the plaint, documents and application indicate that the suit contemplates urgent interim relief. This Court is not inclined to accept the contention of Mr. Mukherjee that the application for temporary injunction was filed as a camouflage and guise to bypass the statutory mandate of pre-institution mediation.
44. This Court accordingly holds that the purpose of filing the instant suit would be frustrated if the plaintiff would have to wait for pre-institution mediation.
45. In view of the aforesaid discussion, the issue No. 1 is decided in the affirmative and against the petitioner.
46. The Hon'ble Division Bench in ***Shristi Infrastructure (supra)*** held that if at the time of presentation of the plaint before the judge, from the averment in the plaint and an affidavit to be filed by the plaintiff, it would appear that in the contemplation of the plaintiff a situation for urgent relief might rise in the period when the mediation has to be undergone, the Court may allow the plaintiff to institute the suit without mediation. A Special Leave Petition (Civil) Diary no. 43860 of 2024 was filed challenging the decision in the case of ***Shristi Infrastructure (supra)*** and the Hon'ble Supreme Court by an order dated 22.11. 2024 dismissed the said Special Leave Petition.

47. Mr. Mukherjee learned advocate for the petitioner would contend that the proposition laid down by the Hon'ble Division Bench runs counter to the proposition of law laid down by the Hon'ble Supreme Court. Without making any comment on such issue, it is observed that from the averments made in the plaint, the documents and the facts stated in the application filed by the opposite parties under Section 12A of the 2015 Act would show and indicate the need for an urgent interim relief and the learned Judge of the Commercial Court undertook the exercise of considering as to whether the suit contemplates any urgent interim relief. The instant case stands on a higher pedestal than **Shristi Infrastructure** (supra).
48. The decision in the case of **Dhanbad Fuel (supra)** cannot come to the aid of the petitioner. It would be evident from paragraph 45 of the said decision that in the said case no urgent interim relief was prayed for at the time of institution of the said suit.
49. The opposite parties cited the ground of pendency of a suit filed by the defendant against the present plaintiffs as a ground for waiver of the pre-institution mediation. The Hon'ble Division Bench of the Telengana High Court in **Kohinoor Seed Fields** (supra) held that pendency of a suit filed by the defendant is a ground for waiver of the mandatory requirement of pre-institution Mediation under Section 12A of the 2015 Act.
50. The learned Judge Commercial Court after taking note of the averments made in paragraph 25 of the plaint and the fact that the opposite parties have filed an application for interim protection under Order 39 Rule 1 and 2 of the Code of Civil Procedure and also that the suit filed by the petitioner herein against the opposite party is pending was right in holding that the suit filed by the plaintiffs/ opposite parties contemplated grant of urgent relief and accordingly leave was granted to the plaintiff by dispensing with pre-institution mediation. This Court has already observed that the instant suit contemplates urgent interim relief. The learned Judge upon being satisfied granted leave to the plaintiff to institute the suit by dispensing with pre-institution mediation. It is not a case where such leave was obtained

through deception or falsity. The learned Judge of the Commercial Court assigned cogent reasons while rejecting prayer for revocation of the leave.

51. The Hon'ble Division Bench in ***Gavrill Metal Pvt. Ltd.*** (supra) held that if there is no change of facts, leave once granted, cannot be revoked. By applying the said proposition of law to the facts of this case, this Court holds that the learned Trial Judge was right in rejecting the prayer for revocation of leave. The second issue is accordingly answered against the petitioner.
52. For all the reasons as aforesaid this Court is not inclined to interfere with the order impugned.
53. Accordingly, CO 2485 of 2025 stands dismissed. There shall be, however, no order as to costs.
54. Urgent photostat certified copy of this judgment be supplied to the parties, if applied for, after compliance of all the formalities.

(HIRANMAY BHATTACHARYYA, J.)