Form No. J (2)

In The High Court at Calcutta

CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

A.O. (COM.) No. 24 of 2025
IA NO: CAN/1/2025

Northern Arc Capital Limited
vs.
ASA International India Microfinance Ltd. & Ors.

For the Appellant :	Mr. Siddhartha Datta, Advocate Mr. Sakabda Roy, Advocate Ms. Trisha Mukherjee, Advocate Mr. Souvik Ghosh, Advocate Mr. Siddharth Dey, Advocate
For the Respondent No.1:	Mr. Swatarup Banerjee, Advocate Mr. Nirmalya Dasgupta, Advocate Ms. Saheli Sen, Advocate Mr. Rajib Mullick, Advocate Ms. Ayantika Saha, Advocate
For the Respondent No.3:	Mr. Pranit Bag, Bar-at Law Mr. Amit Pareek, Advocate Mr. Anuj Mishra, Advocate Mr. Sanchayan Sinha, Advocate
Heard and Judgment on:	02.12.2025

DEBANGSU BASAK, J.:-

1. Appeal is directed against order No.25 dated July 17, 2025 passed in MS (Com) 156 of 2024 by the learned Judge, Commercial Court at Rajarhat, North 24 Parganas.

2. By the impugned order, learned Judge was pleased to dismiss the suit on the ground of non compliance under Section 12A of the Commercial Courts Act, 2015. Learned Judge found that, due to such non compliance the plaint was liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908.

3. Learned advocate appearing for the appellant submits that, the appellant filed a suit for recovery of money from the defendants. Appellant obtained leave under Section 12A of the Act of 2015 which was granted on December 19, 2024. In fact, by the order dated December 19, 2024, learned Judge was pleased to pass an order of ad interim injunction restraining the respondent no.1 from making any disbursement or payment to third parties/alleged creditors before dues of the appellant were cleared. Subsequent thereto, appellant was enjoying the interim protection. He submits that, the order of injunction was assailed before the High Court. The same was modified and not vacated.

4. Relying upon ***2025 SCC OnLine SC 2375 (MITC Rolling Mills Private Limited and Anr. Vs. Renuka Realtors & Ors.)*** learned advocate appearing for the appellant submits that, by the impugned order suit stands rejected and therefore, the order partakes character of a decree. The impugned order is therefore, appealable under Section 13 of the Act of 2015.

5. Learned advocate appearing for the respondent no.1 refers the contents of the impugned order. He submits that, learned Judge, took into consideration the

conduct of the plaintiff. He contends that, no leave under Section 12A of the Act of 2015 was granted. Moreover, according to him, leave once granted, cannot be sacrosanct. He relies upon ***(2025) 9 SCC 424 (Dhanbad Fuels Private Limited vs. Union of India & Anr.)*** for the proposition that, leave under Section 12A of the Act of 2015 once granted can be revoked.

6. Learned advocate appearing for the respondent no.1, draws the attention of the Court to the order dated January 17, 2025 passed in FMAT 3 of 2025 (Asa International India Microfinance Ltd. Vs. Northern ARC Capital Ltd. & Anr.) and contends that, the Coordinate Bench allowed the application for revocation of leave under Section 12A of the Act of 2015 to be filed and considered.

7. Learned advocate appearing for the respondent no.3 submits that, the respondent no.3 was not made a party defendant in the suit. Respondent no.3 applied for examination as pro inter se sue. Such application was, obviously with the dismissal of the suit, met its fate. He contends that, in the event, the suit is restored the application be revived.

8. Appellant before us filed a suit in the Commercial Court at Rajarhat being MS (Com) 156 of 2024. The suit was dismissed by the impugned order under Order VII Rule 11 of the Code of Civil Procedure Code, 1908.

9. Order of dismissal of the suit is a final decision on the lis between the parties to the suit. Order of dismissal of a suit under Order VII Rule 11 of the Code of Civil Procedure, 1908 partakes the character of a decree within the meaning of

Section 2(2) of the Code of Civil Procedure, 1908. This is so held in ***MITC Rolling Mills Private Limited & Anr. (supra).***

10. Prior to the dismissal of the suit by the order impugned, appellant applied under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 seeking urgent interim relief in such commercial suit. Appellant also applied under Section 12A of the Act of 2015 for grant of leave.

11. By the order no.3, dated December 19, 2024, learned Judge was pleased to allow the application under Section 12A of the Act of 2015 holding that, there was urgency and that, there was no scope of pre litigation mediation. Consequently, learned Judge proceeded to dispense with the compliance of Section 12A of the Act of 2015 and granted leave to the appellant to proceed with the suit and apply for injunction. By the same order dated December 19, 2024, learned Judge was pleased to pass ad interim order of injunction.

12. By a subsequent order dated December 20, 2024 passed in presence of the appellant and the respondent no.1, ex parte ad interim order of injunction granted on December 19, 2024 was modified. Learned Judge was pleased to direct the parties to avail of mediation subject to the condition that, the defendants pay 40% of the outstanding dues to the plaintiff within three weeks.

13. There is no material on record to suggest that, any of the defendants paid any money to the appellant, in terms of the order dated December 23, 2024. Mediation did not take place between the parties.

14. An appeal was carried against the interim order passed by the learned Trial Judge. The appeal being FMAT 3 of 2025 was disposed of by an order dated January 17, 2025 by the coordinate Bench. The coordinate Bench was pleased to hold that, since, the respondent no.1 paid sum of Rs. 1.5 Crores and was willing to pay a further sum and was agreeable to enter into an amicable settlement, the interim order was modified to the effect that, upon the respondent no.1 making payment of Rs.2 Crores and file affidavit of assets and schedule of payment in respect of other creditors, the respondent no.1 shall be permitted to utilize the rest amount. The respondent no.1 was allowed to file affidavit to the injunction petition. Appellant was permitted to file affidavit dealing with the affidavit of the respondent no.1, in the injunction petition. The coordinate Bench also observed that, in the event, any application for revocation of leave under Section 12A of the Act of 2015 was filed, it was to be heard only after compliance of the order.

15. Court is informed that, in terms of the directions contained in paragraph-19 of the order dated January 17, 2025, the respondent no.1 before us paid the sum of Rs.2 Crores and filed an affidavit of assets and schedule of payment in respect of creditors. Apparently, there was some delay in filing the affidavit. Respondent no.1 applied under Section 12A of the Act of 2015 which was considered and disposed of by the impugned order.

16. The impugned order proceeds on the basis that, the respondent no.1 continued making payments including significant sum prior to the institution

of the suit. There was no showing of financial collapse. It also proceeds on the basis, that chronology of payments made by the respondent no.1 to the appellant, even after the alleged default demonstrates the absence of an emergency to file the suit without opting for prelitigation mediation and settlement. Learned Judge was pleased to revoke the leave granted under Section 12A of the Act of 2015 by the order impugned. Learned Trial Judge relied ***Dhanbad Fuels Private Limited (supra)*** for the purpose of dismissing the suit.

17. In ***Dhanbad Fuels Private Limited (supra)***, Supreme Court held as follows:-

> **"71.** *In light of the aforesaid discussion, we summarise our findings as under:*
>
> 71.1. The decision of this Court in *Patil Automation lays down the correct position of law as regards Section 12-A of the 2015 Act by holding it to be mandatory in nature.*
>
> *71.2. As held in para 104 of the decision in Patil Automation, the declaration of the mandatory nature of Section 12-A of the 2015 Act relates back to the date of the Amending Act.*
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> *71.3. As held in para 113.1 of the decision in Patil Automation, any suit which is instituted under the 2015 Act without complying with Section 12-A is liable to be rejected under Order 7 Rule 11. However, this declaration applies prospectively to suits instituted on or after 20-08-2022.*

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

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

71.6. The test for "urgent interim relief" is if on an examination of the nature and 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.

71.7. The Courts must also be wary of the fact that the urgent interim relief must not be merely an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12-A of the 2015 Act.

71.8. Even if the urgent interim relief ultimately comes to be denied, the suit of the plaintiff may be proceeded with without compliance with Section 12-A if the test for "urgent interim relief" is satisfied notwithstanding the actual outcome on merits.

71.9. Suits instituted without complying with Section 12-A of the 2015 Act prior to 20-08-2022 cannot be rejected under Order 7 Rule 11 on the ground of non-compliance with Section 12-A unless they fall within the exceptions stipulated in paras 113.2 and 113.3 of the decision in Patil Automation.

71.10. In suits instituted without complying with Section 12-A of the 2015 Act prior to 20-08-2022 which are *pending adjudication before the trial court, the court shall keep the suit in abeyance and refer the parties to time-bound mediation in accordance with Section 12-A of the 2015 Act if an objection is raised by the defendant by filing an application under Order 7 Rule 11, or in cases where any of the parties expresses an intent to resolve the dispute by mediation.*

72. *Thus, the answer to the question formulated by us whether a suit filed without complying with Section 12-A of the 2015 Act must be dismissed or be kept in abeyance with a direction to the parties to explore mediation is as follows:-*

72.1. If the suit is instituted on or after the date of the decision in Patil Automation i.e. 20-08-2022, without complying with Section 12-A of the 2015 Act, then it must meet with rejection under Order 7 Rule 11, either on an application by the defendant or suo motu by the court.

*72.2. If the suit was instituted prior to 20-08-2022 without complying with Section 12-A of the 2015 Act, and the same does not fall within one of the exceptional categories as explained in paragraph 55 of this judgment, then it would be open to the court to keep the suit in abeyance and direct the parties to explore the possibility of mediation in accordance with the 2015 Act, the PIMS Rules and the 2020 SOP.***”***

18. The suit was instituted on December 6, 2024. It contemplated urgent interim relief. Application for injunction was moved on December 19, 2024. Leave under Section 12A of the Act of 2015 was applied for and granted on December 19, 2024. Interim relief was also granted on December 19, 2024.

19. In terms of paragraph 72.1 of the ***Dhanbad Fuels Private Limited (supra),*** if the suit is instituted on or after August 20, 2022, without complying with Section 12A of the Act of 2015, then, it is to be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 on an application by the defendant or suo motu by the Court.

20. As noted above, in the facts and circumstances of the present case, the instance suit was instituted on December 6, 2024 with leave under Section 12A of the Act of 2015 being applied for and obtained on December 19, 2024. Therefore, the instant suit does not come within the ambit of paragraph 72.1 of the ***Dhanbad Fuels Private Limited (supra).***

21. ***Dhanbad Fuels Private Limited (supra)*** is also of the view that, the test for "urgent interim relief" is on the examination of the nature, subject matter of the suit and the cause of action through the prism of the plaintiff. There is a caveat that the Courts must not allow the plaintiff to bypass the mandatory requirement of Section 12A of the Act of 2015 on the basis of an unfounded excuse.

22. Learned Trial Judge proceeded to the need for urgent interim relief on the touchstone of conduct of the defendant subsequent to the filing of the suit.

Payments made pre and post filing of the suit were taken into consideration to hold that the appellant as the plaintiff was obliged to initiate mandatory mediation.

23. With respect, the test laid down in ***Dhanbad Fuels Private Limited (supra)*** for deciding existence of requirement of urgent interim relief. On the date of filing of the suit, amounts were admittedly due and payable by the respondent no.1. Respondent No.1 paid pursuant to orders passed by the learned Trial Judge and the Appeal Court. The need for urgent interim relief stood established by the conduct of the respondent no.1 itself.

24. Conduct post institution of the suit of the respondent no.1 as a defendant cannot be made the foundational basis to return a finding that the injunction petition of the appellant was an unfounded excuse to bypass the rigours of Section 12A of the Act of 2015.

25. In the facts and circumstances of the present case, there subsisted an order of injunction, albeit in modified form as on the date when the impugned order was passed.

26. The direction of the coordinate Bench, dated January 17, 2025 merely allowed the respondent no.1 before us to apply under Section 12A of the Act of 2015 which was required to be decided by the learned Trial Judge in accordance with law. It did not pronounce on the merits or demerits of such an application.

27. In our view, learned Judge did not apply the principles of law correctly and therefore, proceed to dismiss the suit erroneously.

28. Impugned order dated July 17, 2025 is set aside.

29. Needless to say, that, with the setting aside of the impugned order, MS (COM) 156 of 2024 is revived along with all interim applications pending therein and orders subsisting on the impugned order.

30. **AO (COM) 24 of 2025** along with connected application are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

31. I agree.

(Md. Shabbar Rashidi, J.)

CHC