IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION

BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY

CO 204 of 2024

Haldibari Tea Manufacturers LLP & Anr.
Versus
Mahindra Tubes Limited & Ors.

For the petitioners	:	Mr. Avishek Guha Mr. Bikramaditya Ghosh Ms. Supriya Singh
For the opposite party nos. 1 & 2.	:	Mr. Shunak Mukhopadhyay
For the opposite party nos. 3, 4 & 5.	:	Mr. Vikram Chandravanshi Mr. Diwash Gupta Mr. Ravi Prasad
Heard on	:	27.11.2024, 28.11.2024, 29.11.202 & 04.12.2024.
Judgment on	**:**	**05.02.2025**.

RAJA BASU CHOWDHURY, J:

1. Challenging the order dated 10th September, 2024 passed in Commercial Suit No. 1 of 2023 rejecting the application for rejection of the plaint under Order VII rule 11 of the Code of Civil Procedure 1908 read with Section 151 thereof (hereinafter referred to as the said Code), the instant revisional application has been filed.
2. The aforesaid application under Order VII rule 11 of the Code has been filed, *inter alia*, on the ground that the instant suit could not have been filed bypassing the remedy of mandatory pre-institution

mediation as provided for in Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as the “said Act”) especially having regard to the fact that the plaint does not contemplate an urgent relief.

3. It may be noted that the instant suit was filed on 15th March, 2023 and simultaneously with the filing of the suit an injunction application was moved. However, since, there were deficit court fees, the learned Court by the order no.2 dated 16th March, 2023 refused to pass any interim order under the provisions of Order XXXIX rule 1 and 2 of the Code without payment of the deficit court fees. It appears that by order no.3 dated 23rd March, 2023, the factum of payment of deficit court fees of Rs.20/-had been recorded. By order no.4 dated 28th March, 2023, the learned Court refused to pass any *ex parte* interim order of injunction and directed service of notice on the defendants. By an order dated 14th July, 2023 the suit was dismissed for default. By the order no. 11 dated 5thMarch, 2024, the suit was restored by setting aside the order of *ex parte* dismissal dated 14th July, 2023. On 14th May, 2024 the defendant nos. 2 and 4 entered appearance and filed written objection to the application under Order XXXIX rule 1 and 2 of the Code. On the next date i.e. on 12th June, 2024 the defendant no.1 and 5 entered appearance by filing vokalatnama and also filed written statement and written objection to the injunction application. On the aforesaid date, an application under Order VII rule 11 of the Code read with Section 151 thereof was filed by the defendant nos. 1 and 5. It is the

rejection of the aforesaid application under Order VII rule 11 of the code by the by the order dated 10th September, 2024, which formed subject matter of challenge in the present revisional application.

4. Mr. Guha, learned advocate appearing in support of the aforesaid application, on behalf of the defendant nos. 1 and 5/petitioners would submit that the law on the subject as to whether the mandatory provision of Section 12A of the said Act can be bypassed has already been settled. He would submit that the provisions of Section 12A of the said Act is mandatory. Unfortunately, when the plaint was filed bypassing such mandatory provision, the order recording presentation of the plaint did not record the satisfaction of the learned Judge that the suit contemplates an urgent relief. He would submit by placing reliance on the plaint that as to whether the suit contemplates urgent relief is required to be ascertained/gathered from the pleadings and averments contained in the plaint itself, on a holistic consideration thereof. He would submit that upon a scrutiny of the plaint, it would transpire that no urgent relief has been pleaded nor would the plaint demonstrate that any urgent relief has been sought for. The instant case is a clear case of bypassing mandatory provision of Section 12A of the said Act. By placing reliance on the judgment delivered in the case of ***Yamini Manohar v. T. K. D. Keerthi***, reported in **(2024) 5 SCC 815**, he would submit that although, the provisions of Section 12A of the said Act may not require grant of a formal leave by a Court but the same does not do away with the object of consideration as

to whether the suit contemplates an urgent relief or not. By relying on the said judgment, he would submit that the Hon'ble Supreme Court has specifically provided that the mandatory provision of Section 12A of the said Act cannot be permitted to be bypassed. He has also placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***Patil Automation Private Limited & Ors. v. Rakheja Engineers Private Limited***, reported in **(2022) 10 SCC 1**. Reliance is also placed on the rules framed by this Hon'ble High Court in the form of practice directions, which had been notified in the Kolkata Gazette on 23rd November, 2023, as also an unreported judgment delivered in the case of ***International Conveyors Limited v. Ranjit Dash*** in C.S. 257 of 2022 dated 21st December, 2022 and another delivered in the case of ***Skipper Limited v. Prabha Infrastructure Private Limited,*** reported in **2023 SCC OnLine Cal 5482**, both by a coordinate Bench of this court to drive home the point that unless a plaint contemplates an urgent relief which can be gathered from the plaint at the time of admission and not at a subsequent stage, the remedy of pre institution mediation cannot be bypassed. Two other judgments, one delivered by the Hon'ble Madras High Court in the case of ***T. V. Krishna Moorthy & Anr. v. Kanakadhara Finance & Anr.***, reported in **2024 (3) CTC 449** and the other delivered by the Hon'ble High Court of Himachal Pradesh at Shimla in the case of ***Novenco Building & Industry v. Xero Energy Engineering Solutions Private Ltd. & Anr.***, reported in **2024 SCC OnLine HP**

4266., has been relied on in support of his contention that mere filing of an application under Order XXXIX Rule 1 and 2 of the code cannot be used as a ploy to wriggle out of the rigours of Section 12A of the said Act.

5. In this case since the plaint does not contemplate urgent interim relief and since, there is no satisfaction of the learned judge recorded as regards the plaint contemplating an urgent relief at the time of institution of the suit, the plaint cannot be permitted to be retained on the file. According to Mr. Guha, the learned Judge by the order impugned has failed to address the issues raised and return any specific finding as regards its satisfaction to entertain the suit bypassing the procedure provided for in Section 12A of the said Act. On such ground, the order is unsustainable and should be set aside, and the plaint be rejected.
6. Mr, Chandravanshi, learned advocate enters appearance on behalf of the defendant nos. 2 to 4/opposite party nos. 3, 4 and 5.
7. *Per contra*, Mr. Mukhopadhyay, learned advocate representing the plaintiffs/ opposite party nos. 1 and 2 would submit that though the provision of Section 12A of the said Act is mandatory, the same does not pre-supposes grant of any leave for instituting a suit contemplating an urgent relief. Such issue has been settled in the case of ***Yamini Manohar*** *(supra)*. Although, practice directions have been issued by this Hon'ble Court, such practice directions to the extent the same is contrary to the judgement delivered in the case of ***Yamini Manohar*** *(supra)* may not be acted upon. In any event since

the aforesaid suit was instituted much prior to the practice directions being published, the same can have no bearing in the instant case. In support of his aforesaid contention, he has placed reliance on an unreported judgment delivered by the Division Bench of Hon'ble High Court at Telangana in the case of ***Kohinoor Seed Fields India Pvt. Ltd. v. Veda Seed Sciences Pvt. Ltd. & Anr.***, on 9th September, 2024 in Civil Revision Petition No. 2297 of 2024. Distinguishing the judgment delivered in the case of ***International Conveyors Limited*** *(supra)* and in the case of ***Skipper Limited*** *(supra),* he would submit that both the judgments had been rendered by a Coordinate Bench of this Court while dealing with suits filed before this Hon'ble Court. He submits that the suit filed before the District Court unlike the Hon'ble Court is not presented before the learned Judge and as such there is no scope at the initial stage for the learned Judge to record his satisfaction in the order as to whether the suit contemplates an urgent relief. He would submit that when the aforesaid issue had been raised by filing an application under Order VII Rule 11 of the code, the learned Judge had duly returned his finding. By placing reliance on a judgment delivered by Hon'ble Division Bench of this Court in the case of ***Gavrill Metal Pvt. Ltd. v. Maira Fabricators Pvt. Ltd.***, reported in **(2023) ibclaw.in 700 HC.,** he would submit that it is not necessary for the interlocutory application to succeed for maintaining a suit without complying with the mandatory provision of Section 12A of the said Act. So long the plaint contemplates a case of urgent relief, though a weak one, there is no embargo in receiving the plaint. Having regard thereto, he submits that no interference is called for.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. The issues that fall for consideration are as follows:

    I. Whether the plaint at the time of institution contemplated an urgent relief.

    II. Whether it is obligatory for the learned Judge to record his satisfaction that the plaint contemplates an urgent relief at the time of institution, and in absence of such recording, whether the plaint filed is bound to be rejected.

    III. Whether the plaintiffs had by couching in a prayer for urgent relief have attempted to bypass the mandatory provision of Section 12A of the said Act.

9. This apart, another question has been posed as to whether it is necessary to obtain or seek leave for instituting a suit contemplating an urgent relief for bypassing the mandatory provisions of pre-institution mediation and whether in absence of such leave, a plaint can be rejected. Insofar as the aforesaid question is concerned, I shall deliberate about the same later.

10. To understand the scope and ambit of the questions raised, it is necessary to appreciate the legislative mandate as regards pre-litigation mediation. A perusal of the provision contained in Section 12A of the said Act though, in no uncertain terms provides for pre-

institution mediation, the self-same provision has curved out an exception which, *inter alia,* recognises the right of the plaintiff to institute a suit by temporarily bypassing the provision of pre-institution mediation, provided the suit contemplates an urgent interim relief under the said Act. From the judgments cited above, it would be apparent that what would be the relevant consideration for permitting a suit to be instituted by temporarily bypassing the remedy of pre-institution mediation is the fact that the plaint must contemplate an urgent relief at the time of institution itself and that such fact should be apparent from an holistic/overall reading of the plaint. Although, I find that by placing reliance on the judgment delivered in the case of ***Yamini Manohar*** *(supra)*, the plaintiffs/opposite party nos.1 and 2 have attempted to make out a case that the right to temporarily bypass the remedy of pre-institution mediation is at the discretion of the plaintiff for which no application of mind by the learned Judge having regard to the provision contained in the civil rules and orders is necessary, I, however, notice that the Hon'ble Supreme Court in paragraph 11 of the aforesaid judgment has categorically returned a finding that it would be difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyse Section 12A of the said Act by making a prayer for urgent relief and bypassing of statutory mandate of pre-institution mediation and that the same should be checked, when deception and falsity is apparent or established. Thus, the limited role of Commercial Courts is to screen out deception and falsity of attempting to bypass the statutory remedy provided for under section 12A of the said Act cannot be overlooked. Having regard to the above, it is difficult to accept that there is no role of the learned Judge in receiving a plaint which seeks to bypass the remedy of pre-institution litigation. It is true that the **Division Bench** of the Hon'ble High Court of Telangana in the case of ***Kohinoor Seed Fields India Pvt. Ltd.*** *(supra)* in paragraph 16 and 19 despite noting that there is no requirement to seek leave of the Court or to file an application for dispensation with the statutory mandate under Section 12A of the said Act for instituting a suit so as to circumvent the pre-institution mediation requirement, had also observed that the Court can look into the pleadings and the prayer in a meaningful manner so as to reach a conclusion and return a finding as to whether the pleadings in the plaint calls for urgent intervention.

11. The judgment delivered in the case of ***International Conveyors Limited*** *(supra)* and in the case of ***Skipper Limited*** *(supra)* though delivered in relation to a suit instituted before the Hon'ble High Court recognises the cardinal principle that the plaintiff's right to bypass the statutory remedy by filing the plaint contemplating urgent relief has to be borne out from a plaint and the plaintiff does not have an absolute choice or right to paralyse Section 12A of the said Act by making a prayer for urgent interim relief to camouflage and disguise and bypass statutory mandate of pre-institution mediation.

12. As far as the question of seeking leave as per the practice directions issued by this Hon'ble High Court for temporarily bypassing the remedy provided for under Section 12A of the said Act is concerned, the same having regard to the judgment delivered in the case of ***Yamini Manohar*** *(supra)* should be construed to be an application of mind by the learned Judge for receiving a plaint by recording satisfaction. However, the above issue may not require detailed consideration since the instant suit had been filed much prior to the practice directions being notified. Considering the above, the act of receiving the plaint by the learned Judge without recording satisfaction or the finding that the suit contemplates an urgent relief so as to weed away attempt of deception and falsity, cannot be said to be fatal.

13. Considering the above thought the order-sheet does not identify that any finding had been returned as regards the limited satisfaction of the learned Judge so as to permit the plaintiffs to temporarily bypass statutory remedy of pre-litigation mediation, I am of the view the same cannot *ipso facto* be a ground for rejection of the plaint having regard to the fact that the suit was instituted prior to the publication of the practice direction by this Hon'ble Court. However, once an application for rejection of the plaint is filed by relying on the case of ***Patil Automation Private Limited & Ors.*** (*supra*) on the ground that the plaint does not disclose/contemplate urgent relief, it becomes the obligation for the learned Judge to consider as to whether the plaint at the time of its

institution contemplated an urgent relief. While scrutinising the plaint, it may not be necessary for the learned Judge to ascertain whether the plaintiffs have a good chance of success in obtaining an urgent interim relief, rather what is necessary is to ascertain whether the plaint contemplates an urgent interim relief and not the chance of success thereof. Even in cases where the chance of success in an application for interim relief is weak or no ad interim order is granted, in my view the same cannot impede upon the plaintiffs right to pray for urgent interim relief provided the plaint at its institution contemplates one. Thus, on such ground the plaint cannot be rejected. The issues referred above, save and except whether the plaintiffs have by camouflaging the plaint to be one seeking urgent relief had instituted the suit bypassing the mandatory provision of section 12A of the said Act having been answered, I shall now consider the only remaining issue.

14. To consider the same it is necessary to discuss the plaint case in brief. The plaint case proceeds on the premise that the defendant no.1 is a limited liability partnership. Sometimes in the end of July 2021 the defendant no. 2 approached the plaintiff no.2 for financial assistance to run and manage the defendant no.1. In August 2021 the plaintiff no. 2 to help defendant no.1 had advanced Rs. 20 lakhs which the defendant nos. 2,3 and 4 assured to return within 3 months. In November 2021, the defendant no.2 again approached the plaintiff no.2 and sought for further financial assistance. On the assurance by the defendant no.2 that the entire amount would be

returned within 2 months, the plaintiff no.2 further advanced a sum of Rs25 lakhs. Later, the defendant no.2. made a proposal to the plaintiff no.2 requesting the plaintiffs to enter into a partnership with the defendant no.1. It was also represented that an agreement for assignment of lease of Haldibari Tea estate had been executed between the defendant no.1 and the defendant no.6 on 11th November 2019, whereby the entire Haldibari Tea garden was to be assigned in favour of the defendant no.1 on payment of consideration of Rs 23.50 crores, and that the defendant no.1 had transferred major part of the consideration and only Rs 3 crores remained which was to be transferred at the time of registration. The defendant no.2 further represented to the plaintiff no.2 that after the incorporation of the defendant no.1, the defendant no.2 had inducted the defendant no.5 as one of the partners having 20 per cent share on bringing certain contributions and after executing a reconstituted limited liability partnership agreement dated 31st January, 2020 but since the defendant no.5 did not bring any contribution, the defendant nos. 2 and 4, who were designated partners having 80 per cent share had expelled the defendant no.5 from the defendant no.1 and thereafter inducted back the defendant no.3 in his place. A deed of agreement dated 15th May, 2020 was also disclosed and portrayed as a forged document prepared by the defendant no.5 to take control of the business of the defendant no.1. The defendant no.2 also revealed that a criminal proceeding had been initiated by the defendant no.2 against the defendant no.5

for the above act and the said agreement was forwarded to the Questioned Department Examination Bureau, CID, West Bengal for providing its expert opinion, who upon examining the same had described, the document is not genuine. Defendant no.2 further explained that the defendant no.5 in connivance with the defendant no.6 and each other had terminated the agreement executed between the defendant no.1 and the defendant no.6 and further the defendant no.5 claiming 100 per cent share in the defendant no.1 on the basis of the forged agreement dated 5th May, 2020 had initiated an arbitral proceedings.

15. The plaintiff no.2, thereafter upon seeking approval from its board of directors on the basis of the disclosure made, agreed to enter into a partnership with the defendant no.2 in the business of the defendant no.1. Accordingly, the defendant nos. 3 and 4 resigned from the defendant no.1 as partners and the plaintiff no.1 was inducted in the defendant no.1 as designated partner after executing a reconstituted deed of partnership dated 24th December, 2021. After the induction of the plaintiff no.1 in the defendant no.1 as designated partner, statutory formalities were complied with, thereafter the plaintiff no.1 fulfilled its obligation by contributing the remaining amount towards capital contribution by transferring an amount of Rs 3.50 crores on 3rd January 2022.

16. After becoming partner of the defendant no.1, the plaintiff no.2 started attaining arbitral reference. However, since the plaintiff no.2 got busy in making arrangements in his son's marriage, which

was fixed on 25th November, 2022, the defendant no.2 was permitted to represent the arbitral reference for and on behalf of the defendant no.1 LLP. Later the plaintiffs came to learn that the defendant no.5 had started claiming that the disputes between the defendant no.1, defendant no.5 was going to be settled and the defendant no.2 to 4 had agreed to the same and henceforth, the defendant no.5 will continue to manage and run the Tea Estate which was in his illegal possession for and on behalf of the defendant no.1. Based on this information the plaintiff no.2 wanted to get in touch and seek clarification from the defendant nos.1 to 4. However, since then, the defendants started avoiding the plaintiffs which compelled the plaintiffs to lodge the police complaint on 30th October 2022. The plaintiffs also by a written communication requested the learned arbitrator not to take a decision in the arbitral proceeding without the plaintiffs being heard. Since, thereafter the plaintiffs came to learn that on the basis of a fraudulent terms of settlement entered into by and between the defendant nos. 2, 3, 4 and 5, a consent award had been passed. It is in the facts noted hereinabove, the above suit has been filed.

17. Perusal of the statements made in the plaint spells out that the plaintiffs have prayed for an urgent interim relief. From the order-sheet filed in this case, it would transpire that simultaneously with the filing of the suit, on 15th March, 2023 the plaintiffs had also filed an application under Order XXXIX Rule 1 and 2 of the Code. Admittedly, the suit was filed to seek urgent relief. The

plaintiffs have however, failed to succeed in obtaining any *ex parte* interim order. Simply because the plaintiffs did not succeed in obtaining interim relief, the same cannot be a ground for rejection of the plaint. As noted above, even a weak case for urgent relief cannot be thrown out. The events subsequent to presentation of the plaint are not relevant consideration to decide whether the statutory remedy provided for in section 12A of the said Act can be bypassed, as such, I have not considered the same.

18. In the facts as noted hereinabove, the above suit cannot be said to have been filed with the object of bypassing the remedy with deception or falsity. Having regard thereto, I am of the view that no interference is called for. The revisional application fails and is accordingly dismissed.

19. There shall be no order as to costs.

20. Urgent Photostat certified copy of this order, if applied for, be made available to the parties on priority basis upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)

Later:

21. Mr. Guha, learned advocate representing the petitioners, prayed for stay of operation of this order, the same is considered and refused.

(RAJA BASU CHOWDHURY, J.)