

**IN THE HIGH COURT AT CALCUTTA
Commercial Appellate Division
ORIGINAL SIDE**

APDT/16/2025

WITH

IP-COM/28/2024

IA NO: GA-COM/1/2025

PANKAJ PLASTIC INDUSTRIES PRIVATE LIMITED

VS

ANITA ANU

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE RAI CHATTOPADHYAY

For appellant	: Mr. Debnath Ghosh, Sr. Adv. Mr. Sarosij Dasgupta, Adv. Mr. Avijit Dey, Adv. Mr. Biswaroop Mukherjee, Adv.
For the respondent	: Mr. Soumya Ray Chowdhury, Adv. Ms. Susrea Mitra, Adv. Ms. Bhawna Tekriwal, Adv.
Judgment on	: 24.09.2025

Arijit Banerjee, J. :-

1. By consent of the parties, the appeal and the connected application were taken up for hearing together.
2. This appeal is directed against a judgment and order dated May 6, 2025, whereby the defendant's application for revocation of leave granted under Section 12A of the Commercial Courts Act, 2015, being GA-COM 6 of 2025, was allowed by

a learned Judge of this Court. Consequently, the suit stood dismissed and the interim order passed in the suit stood vacated.

Submission of the appellant

3. The appellant / plaintiff is, *inter alia*, engaged in the manufacture and sale of plastic pipes, machines and machine tools, under the mark 'Pankaj Flex' and other trademarks i.e., 'Pankaj Flexy' and 'Pankaj' which have been assigned to the plaintiff. Alleging that the defendant is selling similar products under a deceptively similar trademark, i.e., 'Poly Punkaj', thereby creating confusion as regards the source of the goods, the appellant filed the instant suit for infringement of trademark and passing off.

4. In the plaint, the appellant sought for dispensation of pre-suit mediation under Section 12A of the Commercial Courts Act, 2015 (in short 'the CC Act'), on the basis of pleadings which read as follows:-

“98. The instant suit is for infringement and passing off, which contemplates urgent reliefs to protect the interests of the plaintiff. The Trade Marks Act, 1999 makes it abundantly clear that it is the option of the plaintiff to seek urgent interim reliefs. The defendant has obtained registration of the mark “POLY-PUNKAJ” imitating the same colour combination and artistic work which has been adopted by the plaintiff and the mark appears to have been registered on 3rd December, 2023. The plaintiff has duly filed an application for rectification on 4th January, 2024. The parties are already litigating over its rights in respect of the registrability of the defendant's mark “POLY PUNKAJ” before the Trade Marks Registry, wherein it is the specific case of the plaintiff that the impugned mark “POLY-PUNKAJ” is devoid of any distinctive character and is not capable of distinguishing the goods of the defendant

from those of the other. Furthermore, it is also the specific case of the plaintiff that the defendant's purported mark "POLY-PUNKAJ" is identical to the plaintiff's prior mark "PANKAJ" and is used in respect of similar goods covered by the said mark and there exists a likelihood of confusion on the part of the public and by adopting the impugned mark "POLY-PUNKAJ" the defendant is seeking a wrongful association with the plaintiff and its mark "PANKAJ". There is bad faith involved on the part of the defendant in applying for and obtaining the registration of the mark "POLY-PUNKAJ", despite being fully aware of the plaintiff's mark "PANKAJ". Every sale of goods by the defendant under the impugned mark gives rise to a fresh cause of action to the plaintiff to sue for infringement of copyright, trademark and passing off. In such circumstances, there is no possibility of any pre-suit mediation and the plaintiff is beseeching this Hon'ble Court to dispense with the provisions of Section 12A of the Commercial Courts Act, 2015. Considering that the defendant has not only adopted an identical and/or deceptively similar mark as that of the plaintiff's mark, while also adopting a slavish imitation of the artistic work for the goods marketed, sold and distributed under the said "PANKAJ" marks by the plaintiff, the plaintiff reasonably believes that any attempt at a pre-institution mediation and settlement of the disputes with the defendant would tantamount to an idle formality."

5. By an order dated September 20, 2024, a learned Judge granted leave to the plaintiff under Clause 12 of the Letters Patent 1865, Order 2 Rule 2 of the Code of Civil Procedure, 1908, and dispensed with the requirement of pre-suit mediation under Section 12A of the CC Act.

6. On October 1, 2024, a learned Single Judge passed an ex-parte ad interim order in favour of the plaintiff, the operative portion whereof reads as follows:-

“Considering the above, this Court finds that the plaintiff has made out a *prima facie* case and the balance of convenience and inconvenience is in favour of the plaintiff.

Accordingly, the defendant, her men, servants, agents, assigns, dealers, distributors and/or anyone claiming on behalf of the defendant are restrained from passing of the artistic representation of the plaintiff's registered mark 'PANKAJ' deceptively in the artistic manner by selling, manufacturing, marketing, advertising and/or otherwise dealing in any goods or services, under the impugned trademark 'POLY-PUNKAJ' or under the same label as that of the plaintiff, or under any other label or trade dress which is identical or deceptively similar or an obvious imitation of the artistic manner as that of the plaintiff's registered trademarks 'PANKAJ FLEX', 'PANKAJ FLEXY' and 'PANKAJ' involving the word 'PANKAJ' till 22nd November, 2024.”

Operation of the interim order was extended from time to time.

7. Subsequently, the defendant filed GA-Com 6 of 2025 seeking revocation of the order dispensing with the requirement of pre-suit mediation under Section 12A of the CC Act. By the judgment and order under appeal, the learned Single Judge allowed such application, dismissed the suit and vacated the interim order.

Case of the appellant

8. Appearing for the appellant/plaintiff, Mr. Deb Nath Ghosh, learned Senior Counsel, submitted that the defendant's application for revocation of 'leave' granted under Section 12A of the CC Act and rejection of the plaint, was and is merely an afterthought. It is a belated and feeble attempt by the defendant to impede the

plaintiff in exercising its rights in relation to its intellectual property. The application is replete with baseless and frivolous allegations, built entirely on conjectures and surmises, suffers from gross suppression and misrepresentation of material facts and should have been dismissed in limine.

9. Mr. Ghosh submitted that the plaintiff applied for registration of the mark 'PANKAJ FLEX' on February 14, 1979, with user date of April 14, 1976. Certificate of registration was granted by the Registrar of Trade Marks on March 15, 1989.

The plaintiff applied for registration of the mark "PANKAJ". On January 20, 2009, with user date of November 24, 2001. The certificate of registration was issued in favour of the plaintiff on July 7, 2014. The plaintiff applied for registration of the mark "Pankaj Flex" on a 'proposed to be used basis' on May 10, 2018. Certificate of registration was issued in favour of the plaintiff on January 24, 2021.

The plaintiff applied for copy right registration in respect of the artistic work of 'Pankaj Flex Delivery Hose' on July 20, 2019. Certificate of registration was issued to the plaintiff on September 17, 2019.

The defendant applied for registration of the work mark "Poly Pankaj" on a proposed to be used basis on February 3, 2023. Certificate of registration was issued on December 3, 2023.

10. On January 4, 2024, the plaintiff came to learn of the defendant's registration and filed an application for rectification of the "Trade Marks Register" by expunction of the defendant's mark. Such proceeding is still pending. The plaintiff instituted this suit on or about September 10, 2024. The learned Single Judge, on a holistic reading of the plaint and upon examining the nature and subject matter of the suit, the cause of action, and the prayer for interim relief, exercised his discretion and dispensed with the rigours of Section 12A of the CC Act. Thereafter on October 1, 2024, an order of ad interim injunction was passed

by another learned Judge being prima facie satisfied with the plaintiff's case. There was no reason for the learned Judge to subsequently revoke the leave granted under Section 12A of the CC Act.

11. It was submitted that the plaintiff did not resort to fraud or deception or suppression or misrepresentation before the learned Single Judge to paralyse Section 12A of the CC Act or for any other purpose. Such a case is not borne out from the pleadings in the plaint or from the averments in the defendant's demurrer application. The plaint has to be read as a whole and the facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. In this connection reference was made to 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.***

12. Mr. Ghosh submitted that the plaintiff has pleaded in the plaint that it was discovered in or about January 2024, that the defendant has been dealing with her products and services under an identical and/or deceptively similar impugned mark, in an identical and/or deceptively similar trade dress and under an artistic work which is a slavish imitation of the artistic work in which the plaintiff enjoys copyright. The defendant has not only reproduced the trademarks of the plaintiff, but has also copied the words used in association with such marks. In this connection learned Counsel referred to a decision of the Delhi High Court in the case of ***Veeda Seed Sciences Pvt. Ltd. v. Kohinoor Seed Fields India Pvt. Ltd. reported at 2022 SCC OnLine Del 4455 paras 4, 12-16.***

13. Mr. Ghosh then submitted that in matters pertaining to intellectual property, the urgency of Court intervention arises from the intangible nature of the property. Misappropriation of intellectual property leads to immediate injury to the proprietor/creator including financial loss. Therefore, time is always of the essence as even a single "consumption" of the concerned mark by an unauthorized user can

result in immeasurable injury to the owner/proprietor of the mark. Keeping that in mind, in the facts of the present case, the plaintiff could not have been required to resort to pre-suit mediation. In this connection reference was made to the decision in ***Kohinoor Seed Fields India Pvt. Ltd. v. Veda Seed Sciences Pvt. Ltd. & Ors. reported at MANU/TL/1081/2024 (DB), paras 28 to 34.***

14. Mr. Ghosh submitted that the case sought to be made out by the defendant must be treated with suspicion. The pleadings of the defendant would show that the defendant is unwilling to settle the disputes and differences between the parties through mediation. In none of the pleadings filed by the defendant, she has made a meaningful offer to resolve the disputes and differences through the mechanism of mediation. The purported grounds for vacating the interim order that the plaintiff had obtained, averred by the defendant in her vacating petition, are moonshine and perverse. In this connection learned Senior Advocate referred to the decision of a Division Bench of this Court in the case of ***Shristi Infrastructure Development Corporation Limited v. Sarga Hotel Private Limited & Anr., reported at 2024 SCC OnLine Cal 7817 paras 24,28-30,33,34.***

15. Learned Senior Counsel then referred to a decision of our Court in the case of ***Unique Entrepreneurs and Finance Limited v. Really Agritech Pvt. Ltd. and Anr reported at 2025 SCC OnLine Cal 2426.*** He drew our attention to paragraph 17 of the reported judgment wherein it was observed that whether there exists the need for urgent interim reliefs or not is required to be examined in the totality of circumstances. There must be a holistic approach. The fact that there is merely a time gap between the knowledge of infringement of rights or breach of obligation and the institution of the suit is not the only parameter which determines whether the suit contemplates urgent interim reliefs or not. It was then submitted that time lapse between the date of knowledge and date of institution of the suit would not be a factor for disentitlement to urgent interim reliefs. In the case of ***Chemco Plastic***

Industries Pvt. Ltd. v. Chemco Plast reported at 2024 SCC OnLine Bom 1607 Paras 21-40, a time lapse of 8 years did not stand in the way of the plaintiff obtaining urgent interim relief and the Court dispensed with the rigours of Section 12A of the CC Act. In the case of ***Quality Services & Solutions Pvt Ltd and Ors v. QSS Inspection and Testing Pvt Ltd and Ors reported at 2024 SCC OnLine Bom 2120 paras 18-21***, a time gap of about 14 years did not prevent the plaintiff from obtaining urgent interim reliefs after the Court dispensed with the requirements of Section 12A of the CC Act. In the case of ***Dr. Reddys Laboratories Ltd v. Smart Laboratories Pvt. Ltd. reported at 2023 SCC OnLine Del 7276, paras 37-48, 78***, the plaintiff was granted urgent interim relief upon dispensation of the rigours of Section 12A of the CC Act, although there was a time lapse of one year between the date of knowledge and the date of filing of the suit. In ***Ultra Media and Entertainment Pvt. Ltd. v. Y-Not Films and Anr reported at 2024 SCC OnLine Bom 3085 paras 56-64, 71***, in spite of a lapse of about 2 years, the rigours of Section 12A of the CC Act were dispensed with and the plaintiff was granted urgent interim relief. Relying on the aforesaid judgments it was submitted by Mr. Ghosh that considering the best argument of the defendant, in the instance case, there has been a time lapse of about 8 months between the date of knowledge and date of institution of the suit which, per se, cannot be a ground for revocation of the dispensation granted under Section 12A of the CC Act.

16. Mr. Ghosh then submitted that in any event, there is no delay on the part of the plaintiff in approaching this Court. The reliefs claimed in the suit are for passing off and also for infringement of trade mark. The plaintiff has specifically pleaded that there is a continuing cause of action. An act of passing off is an act of deceit and tort. Every time such tortious act is committed by the defendant, the plaintiff gets a fresh cause of action to approach the Court by way of appropriate proceedings. Similarly, infringement is also a continuing wrong. In this connection

learned Counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Bengal Waterproof Ltd. V. Bombay Waterproof Mfg. Co. and Anr reported at (1997) 1 SCC 99, paras 10-12.***

17. It was then submitted that a learned Single Judge, after considering the facts and circumstances of the case and the documents on record, had allowed the plaintiff to file the suit without resorting to pre-litigation mediation. Another Single Judge ought not to have interfered with such exercise of discretion at a later stage. Otherwise the proceedings are likely to become very dilatory. In this connection reference was made to the observations of the Division Bench of this Court in the case of ***Shristi Infrastructure (supra).***

18. Learned Senior Advocate relied on a decision rendered by a Division Bench of the Telangana High Court dated September 9, 2024, in Civil Revision Petition no. 2297 of 2024, in support of his submission that in cases of infringement of intellectual property rights, urgent intervention of the Court is warranted.

19. Learned Counsel cited another decision of a learned Judge of this Court rendered on May 15, 2025, in ***IP-COM/25/2024 (NOCIL Limited v. Finorchem Ltd and Anr.)*** and in particular drew our attention to the following observations in the judgment:-

“On a holistic reading of the plaint and in view of the averments made therein in particular paragraphs 26 and 29 of the plaint, it would be evident that the plaintiff had continuously been seeking information and making discreet enquiries to justify apprehensions and thus had waited for some time. The timelines of events and facts have been broadly explained and justified in the plaint and so has the urgency.

The limited window which has been left open in *Yamini Manohar (Supra)* is only of deception, suppression or falsely creating urgency in seeking dispensation under section 12A of the Act. On a combined reading of the

averments contained in the plaint and the supporting facts therein it cannot be said that there are no grounds pleaded which contemplate urgency. The length of delay or the interval or time gap cannot be considered in isolation (Unreported decision passed of this Court in IP-COM/31/2024 *Unique Entrepreneurs and Finance Limited vs. Really Agritech Pvt. Ltd. and Anr.* dated 20 March, 2025).

In such circumstances, there is no deception, falsehood or suppression. The plaintiff being *dominus litus* is in the best position to decide whether there is urgency or not in filing of the suit. This does not involve a microscopic examination on the aspect of urgency. The reopening of the question of whether or not dispensation was rightfully granted or not cannot become a weapon in the hands of every defendant in distress. The exercise at this stage which a Court undertakes does not require a forensic analysis of the plaint or the supporting facts to justify each day's delay. As evident from a holistic reading of the plaint, the timelines and sequence of events, the plaintiff has sufficiently pleaded the requirement of urgency. The rival contentions insofar as the merits of the case are concerned cannot be gone into at this stage of the suit. On a combined reading of the plaint and the documents in support thereof, urgency has been sufficiently pleaded and there are no grounds to revoke the dispensation granted."

20. It was finally submitted that it is well settled that if a learned Single Judge hearing a matter is inclined to take the view that an earlier decision of the High Court, whether of a Division Bench or of a Single Judge, needs to be reconsidered, he should not embark upon that enquiry but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. In this connection

learned Senior Counsel referred to the decisions of the Hon'ble Supreme Court in the cases of ***Mary Pushpam v. Telvi Curusunary & Ors. reported at (2024) 3 SCC 224, paras 20 and 21 and Lala Shri Bhagwan and Anr v. Shri Ram Chand and Anr reported at 1965 SCC OnLine SC 73, para 18.***

Submission of the respondent

21. Appearing for the respondent, Mr. Soumya Ray Chowdhury, learned Advocate submitted that the appellant has made arguments *de hors* the pleadings. He also referred to the grounds in the memorandum of appeal and in particular to ground (iv) which reads as follows:-

“IV. FOR THAT, even prior to passing the order impugned, the Hon'ble Single Judge has been pleased to verbally refuse to extend the interim order of injunction, by refusing all of the appellant's attempts to mention the matter upon notice and have the order of injunction extended at least till the date of pronouncement of the order impugned i.e. 06.05.2025 while, on the other hand, permitting the respondent to mention the matter and supply additional case laws, days after the conclusion of the hearing in the matter and depriving the appellant with any opportunity to consider and rebut such case laws, thereby, in effect, also pre-judging the appellant's case and erred in so doing.”

Learned Counsel submitted that such ground is scandalous and should be expunged. Learned Counsel submitted that this Court should proceed on the basis of whatever is recorded in the order of the learned Single Judge. The appellant cannot make any factual statement that would be consistent with the factual recordings in the order of the learned Single Judge. In this connection reference was made to the decision of the Hon'ble Supreme Court in the case of ***Jagvir Singh & Ors. v. State (Delhi Admn.) reported at (2007) 5 SCC 359 para 4.***

22. Learned Counsel referred to the list of documents relied upon by the plaintiff which is annexed to the plaint and in particular to item No. 40 thereof which is the “Status Report dated 3rd February, 2023, relating to the Trade Mark Application No. 5791077 of the defendant obtained from the Website of the Government of India.” It was submitted that the aforesaid document is a public document and the plaintiff had or would be deemed to have had knowledge of the same. Mr. Ray Chowdhury then submitted that while it is true that every act of infringement or passing off may furnish a fresh cause of action to the aggrieved party, the same does not mean that he can wait for a long time after acquiring knowledge of the alleged act of infringement/passing off and then argue that since he has recurring cause of action, he is entitled to urgent relief without complying with the provision of Section 12A of the CC Act. In this case admittedly the plaintiff acquired knowledge of the alleged infringement/passing off being committed by the defendant on January 4, 2024. The suit was filed on September 10, 2024. Hence, there could be no justification for granting dispensation of the requirement of pre-suit litigation to the plaintiff. Referring to the judgment in the case of ***Patil Automation Private Limited and Another v. Rakheja Engineers Private Limited reported at (2022) 10 SCC 1***, learned Counsel submitted that Section 12A of the 2015 Act is mandatory in nature. Non-compliance of the said provision without sufficient cause must result in rejection of the plaint. In this connection reliance was also placed on the decision in the case of ***Dhanbad Fuels Private Limited v. Union of India and Another reported at 2025 SCC OnLine SC 1129***.

23. Mr. Ray Chowdhury submitted that the present suit was filed after the decision was rendered in ***Patil Automation Private Limited and Another v. Rakheja Engineers Private Limited, Supra***. Therefore, it was mandatory for the plaintiff to comply with the provisions of Section 12A of the CC Act.

24. Mr. Ray Chowdhury also referred to the decision of a Single Judge of this Court in the case of ***SRMB Srijan Private Limited v. B. S. Sponge Pvt. Limited, rendered on 02.08.2023 in CS 151 of 2023*** in support of his submission that where a long period of time elapses between the date when the plaintiff acquires knowledge of the alleged acts of infringement/passing off and the date of filing of the suit, leave under Section 12A of the CC Act ought not to be granted. It was then pointed out that the order of the learned Single Judge was upheld by a Division Bench of this Court on December 2, 2024, in APO 157/2023. On the same point reliance was also placed on a decision dated March 3, 2025, rendered by a Division Bench of this Court in ***APD 15 of 2023 (Pranoy Kumar Saha v. Rabindra Narayan Das)*** upholding the order of the learned Single Judge refusing to grant dispensation under Section 12A of the CC Act.

25. Mr. Ray Chowdhury then drew our attention to paragraphs 93 and 98 of the plaint which have been extracted above. Learned Advocate submitted that the reason for not complying with the mandatory provisions of Section 12A, therefore, was not that the plaintiff required urgent interim relief but because it thought that it would be useless to comply with the said statutory requirement. This is not permissible in law.

26. Learned Advocate submitted that the impugned order is in no manner perverse, arbitrary or capricious. Fundamental pleadings are not there in the plaint to justify dispensation under Section 12A of the CC Act. If in spite of that such leave is granted, it becomes an error of jurisdiction rather than an error within the jurisdiction of the Court. Therefore, the learned Single Judge rightly revoked the leave granted under Section 12A.

27. Learned Counsel also referred to the decision of a learned Single Judge of this Court in the case of ***Pro-active Management Private Limited v. Owners and Parties Interested in the Vessel Green Ocean reported at 2024 SCC OnLine***

Cal 1838 in support of his submission that the plaint forms the substratum of a suit and the case for urgent interim relief must be stated and spelt out in the pleadings in the plaint.

28. Mr. Ray Chowdhury also pointed out that Order 7, Rule 1 of the Code of Civil Procedure stipulates that the plaint shall contain the facts showing that the Court has jurisdiction. In the context of a commercial suit, the averments in the plaint must justify dispensation of the requirements of Section 12A of the CC Act.

29. Referring to the decision of the Hon'ble Supreme Court in the case of ***Shivaji Balaram Haibath v. Avinash Maruthi Pawar, reported at (2018) 11 SCC 652***, learned Counsel submitted that the parties to a suit cannot travel beyond the pleadings and the Court also cannot record any finding on the issues which are not part of pleadings. Any finding recorded on an issue de-hors the pleadings is without jurisdiction.

30. Referring to the impugned order, learned Counsel submitted that the learned Single Judge has rightly recorded that there was no urgency in the matter so as to justify dispensation of the provisions of Section 12A of the CC Act. Therefore, the impugned order revoking such dispensation does not warrant interference.

Appellant's submission in reply

31. Mr. Ghosh, learned Senior Counsel, in his reply submitted that there is only a limited window for revocation of leave granted under Section 12A of the CC Act. In this connection he referred to the decision of the Hon'ble Supreme Court in the case of ***Yamini Manohar v. T.K.D. Keerthi, Supra.***

32. Mr. Ghosh then submitted that it is only the plaintiff's contemplation and perception of urgent relief that is relevant for the Court to consider whether or not leave should be granted under Section 12A of the CC Act. The Court should not independently try to assess whether or not there is urgency in the matter.

33. Finally, referring to Section 135 of the Trade Marks Act, 1999, Mr. Ghosh submitted that the said provision contemplates an ex parte order of injunction against the defendant. This demonstrates that in infringement/passing off matters, there is always need for urgent relief.

Order of the learned Single Judge

34. The relevant portion of the order under challenge in this appeal reads as follows:-

“It is no longer *res integra* that section 12A of the Act is imperative and any suit which is filed without exhausting the remedy under section 12A is liable to be rejected (*Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*, (2022) 10 SCC 1). The only exception with the requirement under Section 12A is where the plaint contemplates grant of urgent interim reliefs. This requires urgency to be pleaded in the plaint and must be supported by necessary facts and the documentary evidence. Undoubtedly, there is a very narrow window which has been left open in *Yamini Manohar (Supra)* i.e., those cases where a plaintiff seeks to artificially, falsely or deceptively create urgency only to circumvent with the requirement of Pre-Institution Mediation or Settlement.

There can be no straight jacket formula in such cases. Each case depends on its own facts and the facts can only appear from the plaint and documents in support thereof. It is also true that the length of time *per se* does not disentitle a plaintiff to seek dispensation. Similarly, the merits of the underlying dispute are irrelevant at this stage of the proceedings. The totality of the circumstances has to be considered and a holistic reading must be given to the plaint. However, urgency has to be primarily ascertained on the basis of the averments in the plaint and the facts in support thereof (*Proactive Ship Management Private Limited*

vs. Owners and Parties Interested in the Vessel Green Ocean 2024 SCC OnLine Cal 1838, Unreported decision in Unique Entrepreneurs and Finance Limited vs. Really Agritech Pvt. Ltd and Anr. dated 20th March, 2025 passed by the Hon'ble High Court at Calcutta and SRMB Srijan Private Limited vs. B.S. Sponge Pvt. Ltd. MANU/WB/1666/2023).

In the facts of this case, the plaintiff has admitted that they had knowledge of the impugned product since January 2024. Having admitted this factual position, it was incumbent on the plaintiff to provide grounds or justify as to why they had waited for nine months before instituting the suit and obtaining dispensation under Section 12A of the Act. The plaint is wholly silent on this aspect of the matter. The omnibus averment in the plaint is that being a suit pertaining to intellectual property rights, the cause of action is continuous and recurring and hence the need for urgent interim reliefs. There is no quarrel with the proposition that the cause of action in a suit for infringement and passing off is recurring in nature. Nevertheless, for the purposes of granting dispensation under section 12A of the Act, any examination can only be conducted on the touchstone of when the *right to sue* arose. Otherwise, no suit for infringement or passing off would ever require Pre-Institution Mediation or Settlement. The section cannot be interpreted in a manner to render the same meaningless or nugatory [*Union of India vs Deoki Nandan Aggarwal 1992 Supp (1) SCC 323*].

In *Yamini Manohar (Supra)* the Supreme Court held that suits where the urgency was artificially created would not bypass the requirement under section 12A of the Act. Non-furnishing of an explanation or justification despite having knowledge of the alleged act of infringement or passing off in the facts of this case is a clear attempt to artificially create urgency. In

the absence of any pleadings to justify the delay, there is no question of relying on any supporting evidence at all. Unfortunately, the plaint is merely a cut and paste job. The plaintiff has not even attempted to proffer any explanation as to what transpired from the date of knowledge i.e. January 2024 till the date of filing i.e. September 2024.

The attempt to slip in submissions or additional authorities in the Notes of Arguments which were not cited during the hearing is unfair, improper and pernicious to say the least. So, is the pleading, which has been deceptively inserted in the Notes of Arguments that this Court should release the matter and the same be placed before the Coordinate Bench which had granted dispensation under section 12A. Significantly, this point was never argued at the time of hearing of the application nor were any of the additional citations even referred to. The decision in *Shristi Infrastructure Development Corporation Limited (Supra)* is distinguishable. This was not a case of there being no pleadings to justify the delay. All other authorities cited by the plaintiff are inapposite. Judgments when cited as precedents are binding in the context in which they are rendered. In *Quinn v. Leathem (1901) AC 495*, which has been quoted and approved by the Supreme Court, it was held as follows:

“Now, ... there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it

actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.”

In view of the above, GA-COM 6 of 2025 stands allowed. There shall be an order in terms of prayers (a) and (b) of the Master’s Summons. IP-COM 28 of 2024 stands dismissed. All interim orders stand vacated. Consequently the interlocutory applications being GA-COM 4 of 2024 and GA-COM 1 of 2025 are dismissed. Accordingly, GA-COM 5 of 2025 is also rendered infructuous.”

Court’s view

35. We do not find any apparent infirmity in the order under challenge.

36. The learned Single Judge has noted and applied the correct principles of law. He has noted that in deciding whether or not to grant dispensation of pre-suit mediation under Section 12A of the CC Act, the Court should take a holistic view of the pleadings in the plaint and the facts and circumstances of the case. Indeed, that is the law as has been observed by the Hon’ble Supreme Court in **Yamini Manohar, Supra**. However, this does not mean that the plaintiff’s perception of urgency is decisive. A plaintiff should not be permitted to wriggle out of the rigors of Section 12A of the CC Act by creating an illusion of necessity of urgent interim relief by clever drafting.

37. The Supreme Court has held in **Patil Automation (P) Ltd., Supra**, that pre-suit mediation is mandatory except in cases which warrant urgent relief. This is a statutory mandate. One of the salutary objects of having Section 12A in the statute book is to reduce the pressure on the justice delivery system at least in so far as commercial cases are concerned. It is common knowledge that Courts in India at

all levels are overburdened with pending litigations. The causes of such pendency are manifold. Lack of requisite infrastructure and dearth of requisite number of judges are two of the reasons. Mediation as an alternative mechanism for dispute redressal is not only effective but also much less expensive and significantly speedier than court litigations. More and more people are resorting to mediation throughout the world for resolution of disputes. Presumably it is for that reason that Section 12A of the CC Act has been introduced in the statute book.

38. A litigant cannot be allowed to defeat the object and rationale behind Section 12A of the CC Act by portraying a false picture of urgency. While the perception of the plaintiff should definitely be given due consideration, that alone cannot determine whether the facts of a particular case warrant dispensation of the requirements of Section 12A of the CC Act. The Commercial Court must take the final call on an objective consideration and assessment of the entire facts and circumstances of the case including the plaintiff's subjective perception of urgency. This would find support from paragraph 11 of the decision of the Hon'ble Supreme Court in the case of **Yamini Manohar, Supra**, which has been extracted above as part of the impugned judgment and order.

39. The appellant/plaintiff contended that infringement of trade mark and passing off are recurring causes of action. Each act of infringement of trade mark and each act of passing off furnishes a fresh and distinct cause of action to the plaintiff. Hence, the lapse of a period of time between the date of knowledge of the plaintiff as regards the defendant's wrongful acts of infringement and/or passing off, would not disentitle the plaintiff to an urgent interim relief. It is not possible to accept this contention as an absolute proposition of law. Otherwise, in any action for infringement of trade mark and/or passing off, the plaintiff would be able to paralyse Section 12A of the CC Act. Each decision turns on the facts of that case.

40. It is true that each incident of infringement of trade mark and/or passing off, gives rise to a separate cause of action in favour of the plaintiff. However, to escape the rigors of Section 12A of the CC Act, the plaintiff should exhibit real sense of urgency by approaching Court with due diligence and alacrity seeking urgent interim relief. In the present case, the appellant admittedly came to know of the alleged acts of infringement and/or passing off on the part of the defendant in January 2024. However, it waited till September, 2024, to institute the present suit. There is no explanation in the plaint as to why the plaintiff did not take any action contemporaneously with acquiring knowledge about the alleged wrongful acts on the part of the defendant or soon thereafter. The plaintiff argues that the passage of time between the date of acquisition of knowledge of the alleged wrongful acts of the defendant and the date of filing of the suit, cannot stand in the way of granting urgent interim relief to the plaintiff. This is not acceptable. This may or may not have been so if there wasn't a statutory mandate for pre-suit litigation in Section 12A of the CC Act. However, after sleeping over its alleged rights for about 9 months, in my view, the plaintiff cannot be permitted to say that it should be granted exemption from pre-suit mediation under Section 12A of the CC Act since it is in need of urgent interim relief. Otherwise, the Court would be putting a premium on the plaintiff's devious attempt to circumvent the statutory mandate of pre-suit mediation. The primary ground averred by the plaintiff for dispensation of the requirement of pre-suit mediation mandated in Section 12A of the CC Act is that such mediation would be an exercise in futility. Such argument cannot be countenanced. Otherwise, any person intending to institute a commercial suit, would be able to render infructuous section 12A merely by making such an averment in the plaint.

41. Apart from the fact that the plaintiff's conduct does not demonstrate any sense of urgency, the plaintiff pleaded another unacceptable ground in support of

his prayer for leave under Section 12A of the CC Act. In paragraph 98 of the plaint, which has been extracted towards the beginning of this judgment, the plaintiff averred: - “....In such circumstances, there is no possibility of any pre-suit mediation and the plaintiff is beseeching this Hon'ble Court to dispense with the provisions of Section 12A of the Commercial Courts Act, 2015. the plaintiff reasonably believes that any attempt at a pre-institution mediation and settlement of the disputes with the defendant would tantamount to an idle formality.” In my considered opinion, the said averments cannot justify grant of leave under Section 12A of the CC Act. Otherwise, Section 12A of the CC Act would be rendered otiose and completely ineffective. Any intending plaintiff would then easily wriggle out of the rigors of Section 12A by averring that in his opinion, mediation would be a futile exercise and hence the requirement of pre-suit mediation should be dispensed with. This cannot be permitted.

42. I have noted the decisions cited on behalf of the appellant. Each case is decided on its own facts. No decision has been cited by the appellant which is to the effect that the length of time elapsing between the plaintiff's knowledge of the defendant's alleged wrongful act and the date of filing of the suit, is a wholly irrelevant factor and cannot be or should not be taken into consideration while deciding whether or not leave should be granted under Section 12A of the CC Act permitting the plaintiff to file the suit without complying with the requirements of Section 12A of the CC Act. If Mr. X sits back and permits Mr. Y to infringe his registered trade mark and/or pass off Mr. Y's product as that of Mr. X for a significant period of time, and only then Mr. X approaches the Court pleading urgency and praying for leave under Clause 12A of the CC Act, in my opinion, it would be wholly improper to accept such prayer of Mr. X. A plea of urgency raised by a person like Mr. X would be preposterous and would border on dishonesty.

43. On an overall consideration of the facts and circumstance of the case, I am of the considered view that leave under Section 12A of the CC Act ought not to have been granted to the plaintiff. The plaintiff's indolent conduct does not demonstrate that even the plaintiff perceived any real need for urgent interim relief. Hence, the leave granted under Section 12A of the CC Act was rightly revoked by the learned Single Judge. Consequently the suit was rightly dismissed. I do not find any infirmity in the judgment and order under appeal as would warrant interference.

44. The appeal and the connection application are accordingly dismissed. There will be no order as to costs.

45. I clarify that rejection of the plaint and dismissal of the suit is only on the ground of non-compliance with the mandatory statutory provisions of Section 12A of the CC Act and not on merits. It will be open to the plaintiff to file a fresh suit on the self-same cause of action after following the statutory mandate contained in Section 12A of the CC Act.

46. Urgent certified website copies of this judgment and order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(ARIJIT BANERJEE, J.)

(RAI CHATTOPADHYAY, J.)

Later:-

After judgment is delivered in Court, learned advocate for the appellant submits that the Court Fees should be returned for filing a fresh suit.

The appellant will be at liberty to make an appropriate application in that regard, which will be considered in accordance with law.

(ARIJIT BANERJEE, J.)

(RAI CHATTOPADHYAY, J.)