

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Krishna Rao

**G.A. (COM) No. 1 of 2024
With
G.A. (COM) No. 2 of 2024
With
G.A. (COM) No. 3 of 2024
With
G.A. (COM) No. 5 of 2025
With
G.A. (COM) No. 6 of 2025
With
G.A. (COM) No. 7 of 2025
In
C.S. (COM) No. 701 of 2024**

M/s. CAC & Ors.

Versus

Sutapa Ganguly

Mr. Aniruddha Mitra, Sr. Adv.

Mr. T.K. Sen

Mr. Aditya Chakraborty

Mr. Anirban Ghosh

... For the plaintiffs.

Mr. Tarique Quasimuddin
Mr. Abbas Ibrahim Khan
Ms. Meena Shabnam

... For the defendant.

Hearing Concluded On : 01.09.2025

Judgment on : 11.09.2025

Krishna Rao, J.:

1. The plaintiffs have filed an application being G.A. (Com) No. 5 of 2025 praying of amendment in the plaint. The defendant has filed an application being G.A. (Com) No. 6 of 2025 for revocation of leave granted under Section 12A of the Commercial Courts Act, 2015 and for dismissal of suit.
2. Mr. Tarique Quasimuddin, Learned Advocate representing the defendant submits that before filing of the case by the plaintiffs before this Court, the defendant had filed a suit before the Learned Court of Vth Bench Judge, City Civil Court at Calcutta, praying for declaration and permanent injunction. In the suit filed by the defendant, the defendant has also filed an application under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908 read with Section 151 of the said Code for ad-interim injunction.
3. Mr. Quasimuddin submits that by an order dated 21st December, 2023, the prayer for injunction was rejected by the Learned Judge. Being aggrieved with the said order, the defendant has preferred an

appeal before the Division Bench of this Court along with an application for ad-interim relief. By an order dated 27th February, 2024, the Hon'ble Court has passed an order of status quo over the suit property. The plaintiffs herein appeared in the said appeal on 15th March, 2024. He submits that when the plaintiffs have filed the instant suit, the plaintiffs had the knowledge that the defendant has also filed a suit as well as an appeal and, in the appeal, there is an order of injunction.

4. Mr. Quasimuddin submits that the suit and appeal filed by the defendant and the suit filed by the plaintiffs herein, the disputes pertain to one shop room and schedule in the present suit is part and portion of the schedule of the property of the suit filed by the defendant.
5. Mr. Quasimuddin submits that the plaintiffs by way of clever drafting had made out a case for urgent interim relief with the sole intention to bypass the provisions of Section 12A of the Commercial Courts Act, 2015. He submits that the plaintiffs despite being aware of the fact of pendency of the suit and appeal filed by the defendant and the existence of the interim order, the plaintiffs with the sole intention to bypass or to overcome the bar under Section 12A of the Commercial Courts Act, 2015, has prayed for interim order with respect to the office space which is the part and portion of the suit filed by the defendant.

6. Mr. Quasimuddin submits that the plaintiffs have filed the instant suit by violating the provisions of Section 12A of the Commercial Courts Act, 2015, thus the leave granted by this Court for dispensation of provisions of Section 12A of the Commercial Courts Act, 2015, is liable to be revoked and the suit is to be dismissed.
7. Mr. Quasimuddin in support of his submissions relied upon the following judgments:
- i. ***Dhanbad Fuels Private Limited Vs. Union of India & Another*** reported in **2025 SCC OnLine SC 1129**.
 - ii. ***Patil Automation Private Limited and Others Vs. Rakheja Engineers Private Limited*** reported in **(2022) 10 SCC 1**.
 - iii. ***Kaulchand H. Jogani Vs. Shree Vardhan Investment and Others*** reported in **2022 SCC OnLine Bom 4752**.
 - iv. ***Chandra Kishore Chaurasia Vs. R.A. Perfumery Works Private Ltd*** reported in **2022 SCC OnLine Del 3529**.
 - v. ***Novenco Building & Industry Vs. Xero Energy Engineering Solutions Private Limited and Others*** reported in **MANU/HP/2527/ 2024**.
8. Mr. Aniruddha Mitra, Learned Senior Advocate representing the plaintiffs submits that by an order dated 13th May, 2024, the Appellate Court extended the interim order for a period of two weeks or until further order whichever is earlier. Two weeks' time from 13th May, 2024 expired on 27th May, 2024. From 28th May, 2024 till 7th July, 2024 there was no interim order and the plaintiffs have filed the suit on 13th

June, 2024 and the plaint was presented before this Court on 18th June, 2024. This Court granted leave for dispensation of provisions of Section 12A of the Commercial Courts Act, 2015 and leave under Order II, Rule 2 of the CPC and admitted the plaint. On 24th June, 2024, this Court has taken up for hearing of injunction application and granted ad-interim injunction.

- 9.** Mr. Mitra submits that the Appellate Court extended the interim order only on 8th July, 2024 and admittedly at the time of filing of the suit, there was no interim order was in existence.
- 10.** Mr. Mitra draw the attention of this Court to the order passed by the Appellate Court dated 5th August, 2024 wherein the Appellate Court noted the order passed by this Court on 24th June, 2024 and come to the finding that the apprehension of the defendant of being dispossessed from the other portion of the suit property in the appeal filed by the defendant, the apprehension has been taken care of by the order passed by this Court dated 24th June, 2024.
- 11.** Mr. Mitra submits that as there was no interim order on and from 27th May, 2024 and the plaintiffs were apprehending that the defendant will create third party interest over the suit property as there was no interim order, accordingly, the plaintiffs have filed the present suit with the prayer for urgent reliefs.
- 12.** The plaintiffs have filed the suit praying for the following reliefs:

"a) Declaration that the agreements dated 29th September 2021 and 1st September 2022, are agency agreements wherein the relationship of the plaintiff firm and the defendant was that of a Principal and Agent respectively;

b) Decree for recovery of vacant and khas possession of the suit premises, more fully described in the Schedule 'A' hereunder by evicting the defendant therefrom;

c) Decree for a sum of Rs. 20,45,134/- as agency fee in terms of the said agreements dated 29th September 2021 and 1st September 2022 as pleaded in paragraph 25 above against the defendant;

d) Permanent Injunction restraining the defendant from obtaining/ renewing any licenses/ permissions from Municipal/ Statutory Authorities showing the address of the Schedule A premises;

e) Permanent Injunction restraining the defendant from using the name "Tiswa's Kitchen" and "Calcutta Brew Cafe" for running any business;

f) Decree for mesne profits @ Rs.4,00,000/- per month on and from 1st August, 2023 till the recovery of actual possession of the said premises against the defendant;

g) Alternatively, an enquiry into damages for determination of the mesne profit and decree for such sum be passed as may be determined upon such enquiry;

h) Attachment before judgment;

i) Judgment upon admission;

j) Pendente lite interest and interest upon decree till actual payment;

k) Receiver;

l) Injunction;

m) Costs;

n) Such other or further relief(s)."

- 13.** Schedule of property in the present suit filed by the plaintiffs is as follows:

"SCHEDULE 'A'

(the said/suit premises)

A shop/commercial space measuring 1700 sq. ft. in total (900 sq. ft. in the ground floor and 800 sq. ft. in the mezzanine floor) including internal staircase at premises No.55A, Mirza Galib Street, P.S. Park Street, Kolkata - 700016.

SCHEDULE 'B'

(the restaurant space)

A portion of the Schedule A premises being an area of 250 sq. ft. (approx.) on the ground floor on the right hand side of the entrance with a kitchen and toilet space in the rear portion and an area measuring 400-450 sq. ft. (approx.) on the left hand side of the stair case in the mezzanine floor."

- 14.** The defendant has filed suit against the plaintiffs before the Learned Vth Bench Judge, City Civil Court at Calcutta being Title Suit No. 2584 of 2023 praying for the following reliefs:

"a) For a Decree of Declaration that the plaintiff is a lawful owner of the Business under the name and style of TISWA'S KITCHEN which is morefully and particularly described in the Part I of the Schedule 'B' written hereunder;

b) Decree of Declaration that the plaintiff is a lawful owner of the Business under the name and style of and CALCUTTA BREW CAFE, PARK STREET which is morefully and particularly described in the Part II of the Schedule 'B' written hereunder;

c) Decree of Permanent Injunction thereby restraining the defendants and their men and agents from causing any obstruction and/or hindrances in the peaceful and lawful running of the business of the plaintiff herein which she is running under the name and style of TISWA'S KITCHEN from ALL THAT the mezzanine floor having an area of about 400 sq.ft more or less which is lying and situated at premises being Premises No. 55A, Mirza Ghalib Street, Police Station -Park Street, Kolkata 700016 which is morefully and particularly described in the Part I of the Schedule 'B' written hereunder;

d) Decree of Permanent Injunction thereby restraining the defendants and their men and agents from causing any obstruction and/or hindrances in the peaceful and lawful running of the business of the plaintiff herein which she is running under the name and style of CALCUTTA BREW CAFE, PARK STREET from ALL THAT from the ground floor of the mezzanine floor of the 'said Shop Room' having an area of about 250 sq.ft. more or less which is lying and situated at premises being Premises No. 55A, Mirza Ghalib Street, Police Station - Park Street, Kolkata 700016 which is morefully and particularly described in the Part II of the Schedule 'B' written hereunder;

e) Decree of Permanent Injunction thereby restraining the defendants and their men and agents from disposing the plaintiff herein from ALL THAT One Shop Room having an area of about 600 sq.ft more or less with mezzanine floor which is lying and situated at premises being Premises No. 55A, Mirza Ghalib Street, Police Station - Park Street, Kolkata 700016 with mezzanine floor and in total having an area of 1200 sq.ft more or less morefully and particularly described in the Schedule 'A' written hereunder

f) Commission;

g) For costs of the Suit;

h) For any other relief or reliefs as the plaintiff may 'be entitled to in less and equity;”

15. Schedule of property filed by the defendant before the Learned City

Civil Court is as follows:

“SCHEDULE 'A' ABOVE REFERRED TO

ALL THAT One Shop Room having an area of about 600 sq.ft more or less with mezzanine floor which is lying and situated at premises being Premises No. 55A, Mirza Ghalib Street, Police Station - Park Street, Kolkata -700016 with mezzanine floor and in total having an area of 1200 sq.ft more or less and the same is butted and bounded as follows:

ON THE NORTH: By another Shop of Saloon

ON THE SOUTH: By another Shop

ON THE EAST: By Common Passage

ON THE WEST: By the Road of Mirza Ghalib Street

**SCHEDULE 'B' ABOVE REFERRED TO
(Part-1)**

ALL THAT the BUSINESS under the name and style of TISWA'S KITCHEN running from ALL THAT the mezzanine floor having an area of about 400 sq.ft more or less which is lying and situated at premises being Premises No. 55A, Mirza Ghalib Street, Police Station - Park Street, Kolkata-700016.

(Part-II)

ALL THAT the BUSINESS under the name and style of CALCUTTA BREW CAFE, PARK STREET running from ALL THAT from the ground floor of the mezzanine floor of the 'said Shop Room' having an area of about 250 sq.ft. more or less which is lying and situated at premises being Premises No. 55A, Mirza Ghalib Street, Police Station Park Street. Kolkata -700016.”

16. The Appellate Court by an order dated 27th February, 2024, passed an order directing the parties to maintain status quo over the suit property till 6th April, 2024 with the liberty that the order may be varied or

recalled after hearing the respondents. The interim order extended time to time till 27th May, 2024. From 28th May, 2024 till 7th July, 2024 there was no order of extension of interim order. The summer vacation for the Calcutta High Court in 2024 was from 27th May, 2024 to 9th June, 2024 and the Court reopened on 10th June, 2024. The defendant has filed an application for extension of interim order on 24th May, 2024 but the application filed by the defendant was not taken up for hearing. The cause list shows that from 10th June, 2024 to 21st June, 2024, the Appellate Court was not in session. On 13th June, 2024, the defendant served the copy of extension application to the plaintiffs and the said application was taken up for hearing on 8th July, 2024 wherein the Appellate Court extended the interim order.

- 17.** In paragraphs 34 and 35, the plaintiffs have pleaded for dispensation of the provisions of Section 12A of the Commercial Courts Act, 2015 which reads as follows:

***“34.** The plaintiffs have come to know from reliable sources that the defendant is attempting to and/or trying to create third party interest in the suit premises and is also attempting to part with possession of the said premises in favour of third party, in an attempt to prejudice the interest of the plaintiff. The plaintiff is seeking urgent interim relief in the nature of injunction against the defendant from creating any third-party interest or dealing with or encumbering the suit premises in any nature whatsoever and appointment of Receiver and other reliefs. Unless interim reliefs are granted the plaintiffs will suffer irreparable loss and prejudice and will lead to multiplicity of judicial proceedings. Any delay will defeat justice.*

***35.** The instant suit contemplates urgent interim and immediate reliefs as stated*

hereinabove. The grounds of urgency are as stated above. The transactions between the parties are commercial in nature. The plaintiff, therefore, prays for leave under Section 12A of the Commercial Courts Act, 2015 in as much as seeks dispensation of pre-suit mediation for instituting the instant suit.”

18. Section 12A of the Commercial Courts Act, 2015, reads as follows:

“12-A. 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, authorize the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purpose of pre-institution mediation.

NOTIFICATION

Noti. No. S.O. 3232 (E), dated July 3, 2018.- *In exercise of the powers conferred by sub-section (2) of Section 12-A of the Commercial Courts Act, 2015, the Central Government hereby authorizes the State Authority and District Authority constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purpose of pre-institution mediation and settlement under Chapter IIIA of the Commercial Courts Act, 2015.*

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 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 urgency pleaded by the plaintiffs for grant of leave for dispensation of the provisions of Section 12A of the Commercial Courts Act, 2015, is that the plaintiffs came to know that the defendant is trying to create third party interest in the suit premises and also intending to part with the possession of the suit premises in favour of third party. On the other hand, the defendant has filed an application for interim order before the City Civil Court, though it was refused but the Appellate Court directed the parties to maintain status quo. The defendant has filed an application for extension of interim order before the Appellate Court and the copy of the said application was served upon the plaintiffs on 13th June, 2024. The plaintiff has presented the present suit before this Court on 18th June, 2024 and this Court admitted the suit by granting leave for dispensation of provisions of Section 12A of the Commercial Courts Act, 2015 as well as Order II, Rule 2 of the Code of Civil Procedure, 1908. The plaintiffs have suppressed the fact that the defendant has filed an application for extension of interim order

before the Appellate Court and copy of the same was served upon the plaintiffs. One party already obtained interim order with respect to the same property, there cannot be said to be an urgency.

20. The plaintiffs have prayed for urgent relief against the defendant, restraining the defendant from creating any third party interest over the suit Schedule "A" property and for utilizing any area beyond the Schedule "B" property. The defendant has prayed for interim order restraining the plaintiffs from interfering with the possession of the defendant over the Schedule "B" property and disposing of the Schedule "A" property.
21. In the case of ***Patil Automation Private Limited (supra)***, the Hon'ble Supreme Court held that Section 12A of the Commercial Courts Act, 2015 is mandatory and if any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908. In this Case, though the plaintiffs have not initiated pre-institution mediation process but have prayed for leave for dispensation of Section 12A of the Commercial Courts Act, 2015.
22. In the case of ***Dhanbad Fuels (supra)***, the Hon'ble Supreme Court held that the test of "urgent interim relief" is on the examination of the nature and the subject-matter of the suit and the cause of action, prayer of urgent relief by the plaintiffs could be said to be contemplated when the matter is seen from the standpoint of the plaintiffs.

- 23.** In the present case, the plaintiffs have mentioned that the cause of action arose on 30th July, 2023 when the defendant failed and neglected to deliver peaceful possession of the suit property. Simultaneously, the plaintiffs have made out a specific case that the plaintiffs came to know that the defendant is trying to create third party interest in the suit property but has not specified the date when the plaintiffs came to know about the said fact. Admittedly, the cause of action arose for filing of suit arose on 30th July, 2023 but the plaintiffs have not taken any action for about one year. The plaintiffs have filed the suit only when the defendant has initiated a suit against the plaintiffs. The defendant has also obtained interim order from the Appellate Court. The plaintiffs have the option to raise all the issues in the suit filed by the defendant. Merely to get rid of the provisions of Section 12A of the Commercial Courts Act, 2015, the plaintiffs have made a bald statement that the defendant is going to create third party interest.
- 24.** Considering the cause of action, urgent relief prayed for by the plaintiffs and the prayers made in the plaint, this Court finds that there is no urgent relief is contemplated. In view of the above, leave granted for dispensation of Section 12A of the Commercial Courts Act, 2015, is revoked.
- 25. G.A. (Com) No. 6 of 2025 is allowed. G.A. (Com) No. 5 of 2025 and G.A. (Com) No. 7 of 2025 are accordingly dismissed.** Consequently,

C.S. (Com) No. 701 of 2024 along with **G.A. (Com) No. 1 of 2024**,
G.A. (Com) No. 2 of 2024 and **G.A. (Com) No. 3 of 2024** are
accordingly **dismissed**. Interim order is hereby vacated.

(Krishna Rao, J.)