

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

Present:

The Hon'ble Justice Krishna Rao

G.A. No. 2 of 2021

With

G.A. No. 3 of 2021

In

C.S. (COM) No. 312 of 2024

[Old No. C.S. 186 of 2021]

Goodfaith Holdings Private Limited

Versus

M/s. Supreme Wood Products Private Limited

Mr. Suman Dutt, Sr. Adv.

Mr. Ovik Sengupta

Mr. Anil Choudhury

Mr. Aurin Chakraborty

Md. Shah Minhajuddin

... For the plaintiff.

Mr. Nirmalya Dasgupta

Ms. Bhawna Parasramka

Ms. Patrali Ganguly

... For the defendant.

Hearing Concluded On : 04.04.2025

Judgment on : 29.04.2025

Krishna Rao, J.:

1. The defendant has filed the present application being G.A. No. 2 of 2021 praying for revocation of leave granted for dispensation of the requirement of Section 12A of the Commercial Courts Act, 2015.
2. The plaintiff has filed the suit being C.S. (Com) No. 312 of 2024 (Old No. CS 186 of 2021) against the defendant for recovery of an amount of Rs. 64,74,333/-. In the suit. the plaintiff has also prayed for leave under Clause 12 of the Letters Patent, 1865 and leave for dispensation of compliance of Section 12A of the Commercial Courts Act, 2015.
3. In paragraph 20 of the plaint, the plaintiff has pleaded urgency for grant of leave for dispensation of compliance of Section 12A of the Commercial Courts Act, 2015 which reads as follows:

“20. The plaintiff has now come to know that the defendant and its directors are in the process of transferring the assets including the share-holding in their connected companies so as to render the defendant company a shell company. There is grave urgency in the matter and as such, the plaintiff prays for leave for dispensation of compliance of Section 12A of the Commercial Courts Act, 2015 to present the instant plaint and to move an application seeking appropriate protection of its rights.”

4. By an order dated 16th September, 2021, this Court has granted leave under Clause 12 of the Letters Patent, 1865 as well as under Section 12A of the Commercial Courts Act, 2015 which reads as follows:

“The Court: Leave, as prayed for, under Clause 12 of the Letters Patent, 1865 and for dispensation of the requirement under Section 12A of The Commercial Courts Act, 2015 is granted.

The plaint is presented and admitted, subject to scrutiny by the department and subject to Court Fees being put in by the Advocate-on-record of the plaintiff within a week from date.”

5. 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).”

6. In the case of **Laxmi Polyfab Pvt. Ltd. Vs. Eden Realty Ventures Pvt. Ltd. and Another** reported in **2021 SCC OnLine Cal 1457**, the Coordinate Bench of this Court has laid down that:

“51. Section 12A of the Act of 2015 although being procedural in nature has a public purpose. The public purpose is to have commercial disputes within the meaning of the Act of 2015 disposed of expeditiously through mediation at the pre-institution stage. A mandatory pre-institution mediation will not only expedite the resolution of a commercial dispute within the meaning of the Act of 2015 on an amicable platform but will also facilitate and face up the time of a congested Commercial Division or a Commercial Court to devote time and energy to the disposal of the

pending suits. Section 12A of the Act of 2015 if construed as mandatory achieves twin objects of expeditious disposal and freeing up time and space for the Court.

52. *The object of the Act of 2015 is to ensure expeditious and speedy disposal of a commercial dispute. Expedition and speed in disposing of a commercial dispute is attained, in the wisdom of the legislature, by a pre-institution mediation. Section 12A(1) of the Act of 2015 distinguishes suits filed under the Act of 2015 into two categories. It treats the two categories of suits differently. Suits are categorized into two on the basis of need of the plaintiff to obtain urgent interim relief. One category is a suit where the plaintiff does not seek urgent interim relief. In such category Section 12A of the Act of 2015 debars the plaintiff from instituting a suit unless the plaintiff exhausts the remedy of pre-institution mediation. The provisions of Sub-Section (1) of Section 12A of the Act of 2015 are such that, a plaintiff is obligated to approach the appropriate authority for a pre-institution mediation, unless he seeks urgent interim relief, in respect of a commercial dispute, to approach the Court for resolution of the commercial dispute. Section 12A of the Act of 2015 prescribes an obligation on the plaintiff to undertake the pre-institution mediation and vests a corresponding right on the defendant. The defendant enjoys the right of a pre-institution mediation and in the default of the plaintiff not going for pre-institution mediation, then having a suit against the defendant by such defaulting plaintiff, being barred by law. Failure of the plaintiff to exhaust pre-institution mediation, unless, he seeks urgent relief, in a commercial dispute, gives a corresponding right to the defendants to claim that, such suit could not have been instituted by the plaintiff. Such failure of the plaintiff will result in the dismissal of the suit if allowed to be instituted. The other category of suits under Section 12A of the Act of 2015 is a suit where the plaintiff seeks urgent interim reliefs.*

53. *The two categories of suits under Section 12A of the Act of 2015 are treated differently. In*

the category of suits where the plaintiff does not seek urgent interim relief, the plaintiff is statutorily required to exhaust pre-institution mediation, whereas a plaintiff seeking urgent interim relief is not required to do so. In a suit where the plaintiff does not seek urgent interim reliefs, limitation is extended or kept in abeyance, as one may perceive it, till the conclusion of the statutorily mandated period of mediation while in the other category no such benefit is extended.”

7. The Hon’ble Division Bench of this Court in the case of **Gavrill Metal Pvt. Ltd. Vs. Maira Fabricators Pvt. Ltd.** reported in **2023 SCC OnLine Cal 2443** held that:

“14. *The section stipulates three months' time from the date of the application of the plaintiff which can be further increased by two months with the consent of parties for completion of the mediation process. Take the example of a suit for recovery of money lent and advanced. The defendant debtor has huge debts in the market. Several claims of creditors against him are pending. When the plaintiff is contemplating filing of the suit against him, he is in the process of transferring his immovable property so as to defeat the claim of the defendant as well as other creditors. Immediately with the filing of the suit, the plaintiff needs to move an interim application and obtain an order restraining the defendant from transferring the property and for the property to be taken possession of by a receiver to be appointed by the court.*

15. *Now, if the plaintiff is to undergo mediation compulsorily, the defendant might keep it pending for three months. For three months the plaintiff would be unable to institute the suit and hence, unable to obtain any relief. In the meantime, the defendant could be successful in transferring the property, thus defeating the claim of the plaintiff. Hence, the justification for the exception in Section 12A that in suits contemplating urgent reliefs pre-litigation mediation could not be required.*

16. *The legislature, in my opinion, has used the expression “contemplated” to express the intention that an interim relief may be required at the time of filing of the suit or may be required any time the defendant expresses an intention to do some act to defeat the decree to be passed.*

17. *So, the test, in my opinion, is not whether an urgent interim relief is immediately required but whether the averments in the plaint point to a situation where even before expiry of three months, the plaintiff may have the need to obtain interim relief.”*

- 8.** In the case of ***Shristi Infrastructure Development Corporation Limited Vs. Sarga Hotel Private Limited and Another*** reported in ***2024 SCC OnLine Cal 7817*** , the Hon’ble Division Bench of this Court held that:

“31. *Say the plaint discloses a simple money suit, but it is likely that on notice of it, the defendant might start disposing of some of his assets to defeat the decree that might be passed against him. So, the plaintiff may “contemplate” the urgent relief of an attachment before judgment but need not plead it in the plaint, as the cause of action has not arisen at the time of institution of the suit.*

32. *please note the working of 12A(1). The legislature does not mention “plaint”. It uses the word “suit”. It employs the word “contemplation”. Hence it avoids such words as “averments or statements in the plaint”. In other words, the legislature does not say that from the statements or averments in the plaint urgent reliefs obtained by the plaintiff should be apparent. I would interpret the Section as suggesting that if at the time of presentation of the plaint before the judge from the averment in the plaint and an affidavit to be filed by the plaintiff it would appear that in the contemplation of the plaintiff a situation for urgent relief might arise in the period when mediation has to be undergone, the court may allow the plaintiff to institute the suit without mediation.”*

9. Recently another Division Bench of this Court in the case of ***Asa International India Microfinance Ltd. Vs. Northern ARC Capital Ltd. & Anr.*** passed in ***FMAT No. 3 of 2025*** dated ***17th January, 2025*** taking into consideration of the judgments in the case of ***Gavrill Metal Pvt. Ltd. (supra)*** and ***Shristi Infrastructure Development Corporation Limited (supra)*** and held that:

“10. In this context, the legislative intent of the phrase “an urgent relief” and the expression “contemplate” are to be understood and applied.

11. Contemplation thus would not mean an instant immediacy but the prejudice and the irreparable loss and injury that the plaintiff is likely to suffer if the plaintiff is made to wait for pre-litigation mediation. The Court has to examine whether the facts and circumstances justify a genuine apprehension as opposed to a camouflage of an irreparable injury the plaintiff is likely to suffer.

16. Pre suit correspondence and conduct between the parties can be indicative of existence of genuine apprehension in the mind of the plaintiff since any further delay might cause irreparable and irretrievable prejudice to the plaintiff as there might be every likelihood of the assets and properties being dissipated or alienated”

10. It is the admitted fact that though the plaintiff has obtained leave for dispensation of requirement of Section 12A of the Commercial Courts Act, 2015 as per statement made in para 20 of the plaint but the plaintiff has neither prayed for any urgent relief in the suit nor has filed any application for grant of urgent relief. After admission of the plaint, writ of summons was served upon the defendant and on receipt of writ of summons, immediately the defendant has filed the present

application. After receipt of the application filed by the defendant, the plaintiff has filed an application being G.A. No. 3 of 2021 for grant of interim relief.

11. The plaintiff affirmed the plaint on 10th September, 2021 and the same was admitted on 16th September, 2021, subject to scrutiny by the department. Writ of summons were issued on 28th September, 2021. The defendant has filed the present application on 11th November, 2021. After receipt of the present application, the plaintiff has filed an application for interim relief on 22nd November, 2021 i.e. about more than two months. The plaintiff has moved the said application before this Court on 24th November, 2021 but this Court finds that the defendant has already filed an application for revocation of leave and the plaintiff has filed an application for interim relief after two months, accordingly, this Court passed an order for exchange of affidavits. This Court finds that after 24th November, 2021, the applications were listed on 8th November, 2024 i.e. after the period of two years and in between the plaintiff has not chosen to move the application for interim relief.

12. In the case of ***Yamini Manohar Vs. T.K.D. Keerthi*** reported in **(2024) 5 SCC 815**, the Hon'ble Supreme Court held that:

“10. We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine the nature and the subject-matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get

over Section 12-A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order 7 Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order 7 Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely : (i) prima facie case, (ii) irreparable harm and injury, and (iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.

11. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyse Section 12-A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The proposition that the commercial courts do have a role, albeit a limited one, should be accepted, otherwise it would be up to the plaintiff alone to decide whether to resort to the procedure under Section 12-A of the CC Act. An “absolute and unfettered right” approach is not justified if the pre-institution mediation under Section 12-A of the CC Act is mandatory, as held by this Court in Patil Automation.

12. The words “contemplate any urgent interim relief” in Section 12-A(1) of the CC Act, with reference to the suit, should be read as conferring power on the court to be satisfied. They suggest that the suit must “contemplate”, which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and ensure that the legislative object/intent behind the enactment of Section 12-A of the CC Act is not defeated.”

- 13.** The plaintiff has filed the present case for recovery of money. As per pleadings, the defendant lastly paid the amount to the plaintiff on 20th July, 2020. The cheque issued by the defendant dated 1st September, 2020 was dishonored. After dishonor of cheque, the plaintiff issued notice to the defendant on 22nd September, 2020. On 14th October, 2020, the defendant by its reply denied the claim of the plaintiff. After the period of one year from denial of the claim of the plaintiff by the defendant, the plaintiff has filed the present suit.
- 14.** In paragraph 20 of the plaint, the plaintiff has made an averment with regard to urgency on the ground that the plaintiff came to know that the defendant is in process of transferring the assets including the shareholding in its connected companies. The plaintiff has not made any prayer for urgent relief either in the plaint or by way of separate application immediately after filing of the suit. The plaintiff has filed an application for interim relief after receipt of notice of the present application filed by the defendant i.e. after the period of more than two months from the date of filing of the application.
- 15.** As per pleading in the plaint, the cause of action arose in the month of October, 2020 and the suit was filed on 10th September, 2021 and the plaint was presented and admitted on 16th September, 2021. On the same day, the plaintiff has obtained leave for dispensation of the requirement of Section 12A of the Commercial Courts Act, 2015 but the plaintiff has not prayed for any urgent interim relief. In the case of ***Yamini Manohar (supra)***, the Hon'ble Supreme Court held that when

a plaint is filed under the Commercial Courts Act, 2015 with a prayer for an urgent relief, the Commercial Court should examine the nature and the subject-matter of the suit, the cause of action and the prayer of interim relief. In the case in hand, the suit filed by the plaintiff is for recovery of money, cause of action arose in the month of October, 2020, the plaintiff has filed suit in the month of September, 2021 but no urgent relief is prayed for.

16. Recently, in the case of ***Asa International India Microfinance Ltd. (supra)***, the Hon'ble Division Bench of this Court also held that pre suit correspondence and conduct between the parties can be indicative of existence of genuine apprehension in the mind of the plaintiff that any further delay might cause further irreparable loss and injury to the plaintiff but in the present case such apprehension is missing as the plaintiff has not prayed for any urgent relief.
17. Considering the pleadings and the documents, this Court finds that suit filed by the plaintiff does not contemplate any urgent interim relief thus, the dispensation of the requirement under Section 12A of the Commercial Courts Act, 2015 granted on 16th September, 2021, is hereby revoked.
18. **G.A. No. 2 of 2021 is allowed.** Consequently, **G.A. No. 3 of 2021 and C.S. (Com) No. 312 of 2024 (Old C.S. No. 186 of 2021) are dismissed.**

(Krishna Rao, J.)