

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)**

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

I.A. No. GA-COM/1/2024
I.A. No. GA-COM/2/2024
I.A. No. GA-COM/3/2024
In IP-COM/31/2024

UNIQUE ENTERPRENUERS AND FINANCE LIMITED
Vs
REALLY AGRITECH PVT LTD. AND ANR

For the petitioner : Mr. Ranjan Bachawat, Senior Advocate
Mr. Shuvasish Sengupta, Advocate
Mr. B. Garodia, Advocate
Mr. Sagnik Basu, Advocate

For the respondents : Mr. Debnath Ghosh, Senior Advocate
Mrs. Nabanita De, Advocate
Mr. Biswaroop Mukherjee, Advocate
Mrs. Kiran Kumari Mahato, Advocate
Mr. Sohom Saha, Advocate

Judgment on : 20 March, 2025

Ravi Krishan Kapur, J.:

1. This is an application seeking revocation of dispensation granted to the plaintiffs without exhausting the remedy of Pre-Institution, Mediation and Settlement under section 12A of the Commercial Courts Act 2015.
2. The suit is for infringement and passing off. The plaintiffs are the owners and registered proprietors of the mark "*Ralli*" "*Ralli Engine*" "*Ralli Sprayer*" and "*Ralli Agricultural Machines*" (word as well as the device) under classes 7 and 8 respectively without any limitation or condition. The grievance of the plaintiffs is against the defendant no.2 having obtained registration of a deceptively similar mark "**Really**" (device) in class 7.

3. The relevant averments in the plaint for obtaining dispensation under section 12A of the Act are as follows:

21. "In or about May, 2024, the plaintiffs were "informed by the industry sources particularly, manufacturers, dealers and traders that the defendant/respondent no. 1 has adopted the mark "**Really**" as a part of its trade name and/or corporate name and is carrying on identical business of manufacturing, trading and selling of agricultural machine tools and sprayers and/or its allied products by wrongfully and illegally using the registered mark of the petitioners "RALLI."

64. "The instant suit is for infringement of trade mark and passing off, which contemplates urgent reliefs to protect the interest of the plaintiffs. The Trade Marks Act, 1999 makes it abundantly clear that it is the option of the plaintiffs to seek urgent interim reliefs which includes injunction, together with orders for delivery up of the label and mark and destruction thereof, at the interim stage. The plaintiffs are entitled to ex-parte order of injunction and other interlocutory orders namely, discovery of documents, preserving of infringing goods and other evidences which are related to the subject matter of the suit, and also restraining the defendants and/or their men, servants agents, assigns, dealers and distributors and/or anyone claiming on their behalf, from dealing with their assets and properties which adversely affect the plaintiffs' ability to recover damages, costs and other pecuniary remedies that would be finally awarded to the plaintiffs in the suit. The cause of action of the plaintiffs against the defendant is a recurring or continuous one, and each sale and/or attempt to sale the impugned products of the defendants, affords a fresh cause of action to the plaintiff. It has been judicially recognized by the Hon'ble Supreme Court of India that once a case of infringement and passing off is made out, the Court should pass a prompt order of ex-parte injunction followed by an order of appointment of a Commissioner, and the absence of such orders would occasion a failure of justice and such injury to the plaintiffs as would not be capable of being undone at a later stage. Besides, it is all the more incumbent on this Hon'ble Court to allow the leave under Section 12A of the Commercial Courts Act, 2015 and restrain the defendants, who are fly by night operators and whose continuing acts of infringement and/or passing off have diluted and tarnished and/or are capable of diluting and tarnishing the reputation of the plaintiffs' well known trade mark, and such acts involve the larger interest of the customers/consumers of the plaintiffs' product under the marks "RALLI", "RALLI ENGINE". "RALLI SPRAYER" and "RALLI AGRICULTURAL MACHINES" in question. Hence, the suit contemplates urgent interim reliefs for the protection of the plaintiffs' statutory and common law rights, and also in order to avoid confusion, deception, unfair and fraudulent practices in the market place, and unless such urgent reliefs are granted, the plaintiffs shall suffer irreparable loss,

prejudice and injury. In such circumstances, there is no possibility of pre-suit mediation and the plaintiffs are beseeching this Hon'ble Court to dispense with the provisions of Section 12A of the Commercial Courts Act, 2015.

4. Upon filing of the suit, by an order dated 30 September 2024, the plaintiffs obtained dispensation of Pre-Institution, Mediation and Settlement under section 12A of the Act.
5. On behalf of the defendants it is contended that the plaintiffs have deliberately misrepresented and suppressed the true and correct facts as to knowledge of the impugned mark. The plaintiffs were aware that the defendants had been selling goods under the impugned mark as far back as in December 2018. This would be evident from the promotional materials pertaining to an Industrial Trade Fair and Exhibition *Kishan Mela* held at Moshi, Pune between 12 and 16 December 2018. The documents relied on by the defendants indicate that the plaintiffs had participated at the said exhibition and had notice and knowledge of the rival goods being sold under the impugned mark. The defendants also rely on a series of WhatsApp messages dated 9 March 2022 exchanged between an employee of the plaintiffs, which reveal that while in service in the Production Management Team of the plaintiffs, the said employee had in the usual course of business, dealt with and exchanged specific information pertaining to the products of the defendants being sold under the impugned mark. Accordingly, the averment in the plaint that the plaintiffs only came to learn of the impugned mark in May 2024, is *ex facie* false and incorrect. In such circumstances, the plaintiffs have fabricated a false sense of urgency in order to mislead this Hon'ble Court

into permitting the plaintiffs to institute the suit without exhausting the remedy of Pre-Institution Mediation and Settlement. In support of such contentions, the defendants rely on the decisions in *SRMB Srijan Pvt. Ltd. vs. B.S. Sponge Pvt. Ltd.* APO 157 of 2023, *Sanjay Kumar Mishra vs. Godavari Commodities Ltd.* GA No.2 of 2023 in C.S. No. 267 of 2022, *Proactive Ship Management vs. Owners and Parties Interested in the Vessel Green Ocean* (2024) SCC OnLine Cal 1838.

7. On behalf of the plaintiffs, it is submitted that the catalogue pertaining to the *Kisan Mela* relied on by the defendants indicates that the same had been conducted in the name of Karan Enterprises and not in the name of either of the defendants. There is no mention of “**Really**” in any of the materials. A stall of the respondent no.2 in the name of Karan Enterprises does not imply that the plaintiffs would necessarily have any knowledge of the existence of the goods being sold by the defendants under the impugned mark. Insofar as the WhatsApp messages relied on by the defendants are concerned, the plaintiffs contend that the said employee has long left the services of the plaintiffs. In any event, knowledge of an employee of the plaintiffs cannot be deemed to be knowledge of the plaintiffs. In support of such contentions, the plaintiffs rely on the decisions in *Yamini Manohar vs T.K .D Keerthi*, (2024) 5 SCC 815, *Dr Reddy Laboratories Limited vs Smart Laboratories Pvt. Ltd.* (2023) SCCOnline Del 7276, *Ultra Media Entertainmentr pvt Ltd. vs Y-Not Films LLP & Anr* (2024) SCC Online Bom 3085, *Quality Services & Solution Pvt Ltd & Ors vs QSS Inspection & Testing Pvt Ltd., Chemco Plastic Industries Pvt. Ltd vs. Chemco Plast* (2024) SCC OnLine Bom 1607 and *Novex*

Communications Pvt. Ltd. vs. Goregoan Sports Club (2024) SCC OnLine Bom 3476.

8. Section 12A of the Commercial Courts Act, 2015 is as follows:

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

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 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).]”

9. In *Yamini Manohar vs. T.K.D. Keerthi*, 2023 SCC OnLine SC 1382, it has been held as follows:

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 [Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1 : (2023) 1 SCC (Civ) 545] .

10. In view of the above, there is limited scope for a Court to examine the grounds for revocation of dispensation with the requirement of Pre-Institution Mediation and Settlement. Section 12A of the Act is imperative and any suit which is instituted without following the mandate of the Act has necessarily to be rejected. This is no longer *res integra*. [Patil Automation vs. Rakheja Engineers (P) Ltd. (2022) 10 SCC 1, Laxmi Polyfab Pvt. Ltd. vs. Eden Realty Ventures Pvt. Ltd. AIR 2021 Cal 190.] It is too late to question whether in all cases mediation is a viable or practical option. The legislative intent is explicit and clear. As a consequence, every plaintiff is obliged to be vigilant or on the *qui vive* in seeking redressal of

their grievances. The plaintiff though *dominus litus* cannot escape the mandatory requirement of the Act. In order to seek dispensation with the requirement of Pre-Institution Mediation and Settlement, the plaint must contemplate grant of urgent interim reliefs. This needs to be pleaded and must appear from the plaint alongwith the supporting facts and documentary evidence available to the Court at that stage. The narrow compass in *Yamini Manohar (Supra)* which has been left open are in those cases where a plaintiff seeks to artificially or falsely create urgency only to circumvent the requirement of Pre-Institution Mediation or Settlement. In cases where the request for urgent interim reliefs as pleaded in the plaint, is not tainted nor artificial, ordinarily the Court must defer to the perception of the plaintiffs that is the need for urgent reliefs. A *fortiori* there cannot be any deception, falsehood or suppression in pleading urgency in order to obtain dispensation under section 12A of the Act. (*Dr. Reddys Laboratories Ltd. vs. Smart Laboratories Pvt. Ltd. (2023) SCC OnLine Del 7276*).

11. There can be no straight jacket formula in such cases. Each case depends on its facts. It is true that the section does not provide for any exemption to any particular class or category of suits, save and except those where the plaint contemplates urgent reliefs. Ordinarily, in intellectual property matters keeping in mind the question of public interest, nature of the rival rights or competing interests involved, the need for urgent *interim* reliefs is almost inevitable. However, this is not an inflexible rule nor an exception to the mandatory provisions under section 12A of the Act. It is also true that the cause of action in such cases is recurring and continuing in

nature. Nevertheless, this has to be tested in the backdrop of when the *right to sue accrues*. [*Sundaram Finance Ltd. vs. Noorjahan Beevi & Anr. (2016) 13 SCC 1*]. The mandatory obligation under section 12A of the Act cannot be bypassed in a circuitous manner to render the same nugatory and ineffective.

12. The crucial aspect which needs to be examined is the knowledge of the defendants' adoption and use of the impugned mark "**Really**" in the light of the averments in the plaint. Admittedly, the parties are trade rivals carrying on similar business. Both are registered proprietors of their respective marks. It is also true that an exhibition displaying the rival products in the same category of goods was held between 12 to 16 December 2018 at Moshi, Pune. This fact is also mentioned by the plaintiffs albeit for a different purpose. The exhibition was attended by both parties. The goods being sold under the impugned mark were on display. It is true that, at that point of time, the impugned mark belonged to "Karan Enterprises" prior to the change in favour of the defendant no.1 in July 2020. However, this does not mean that the plaintiffs could not have had any knowledge of the existence of the impugned mark "**Really**" which had already been launched and the products were available in the market. In any event, the WhatsApp messages exchanged between an employee of the plaintiffs, and an authorized dealer Express Agri, seeking specific information and details of spare parts for agricultural machines which were being sold and imported by the defendants under the impugned mark is conclusive. Accordingly, the plaintiffs are deemed to have had knowledge of the impugned mark "**Really**" being in the market

long prior to May 2024. The contention that knowledge of an employee is not attributable to the plaintiffs is unsubstantiated and without basis. In this regard, the decision in *Apollo Tyres Ltd. vs. Pioneer Trading Corporation & Anr.* 2017 SCC OnLine Del 9825 is distinguishable. In the said decision, the Court had found that the facts which had not been disclosed were trivial, inconsequential and did not fundamentally alter the case.

13. In such circumstances, the assertion in the plaint of the plaintiffs having come to learn of the impugned product in May 2024 is patently false. A party litigant cannot be indifferent and negligent in its duty to place all relevant documents and materials in support of its contention and is bound to produce the same. One who comes to Court must come with clean hands. Non-mentioning and non-production of the true and correct information pertaining to the *Kisan Mela* or the WhatsApp messages and the documents in support thereof tantamounts to material suppression and in effect playing fraud on the Court. [*S.J.S. Business Enterprises (P) Ltd. vs. State of Bihar & Ors.* (2004) 7 SCC 166 and *Mayar (H.K.) Ltd. & Ors. vs. Owners & Parties, Vessel M.V. Fortune Express & Ors.*, (2006) 3 SCC 100.]
14. Both the above facts are material and germane on the aspect of knowledge of the impugned mark and suppression thereof can only be with the aim of wriggling out of the mandatory requirement under section 12A of the Act. Concealment of material facts disqualifies any litigant from obtaining relief. In the bargain, the plaintiffs have deprived themselves of an

opportunity of providing any explanation or justification whether believable or not either in the plaint or the petition.

15. In *S.J.S. Business Enterprises (P) Ltd. (Supra)* it has been held as follows:

“13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken....”

16. It is true that in someways the exercise undertaken by a Court while examining the revocation with the requirement of Pre Institution, Mediation and Settlement is akin to hearing a demurrer application. [*Indian Mineral & Chemicals Co. and Ors. vs. Deutsche Bank (2004) 12 SCC 376, Exphar Sa and Anr. vs. Eupharma Laboratories Ltd. and Anr. (2004) 3 SCC 688 and D Oceanic Dolphin Apparels Pvt. Ltd. vs. Leather Co. and Ors. (2024) SCC OnLine Del 6207*]. Nevertheless, in the light of the principle that *fraud unravels all*, any material fact or document which is alleged to have been suppressed can always be looked into by the Court to ascertain whether or not there has been fraud on Court. [*S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1, State of A.P. v. T. Suryachandra Rao, (2005) 6 SCC 149 and Amar Singh vs. Union of India and Others (2011) 7 SCC 69.*]
17. The ground that the plaintiffs had waited for 5 months before filing of the suit and this fact *per se* disentitles them to seek dispensation under section 12A of the Act is untenable and rejected. 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. In such circumstances, various factors come into play, including the relative position of the parties, the subsequent events which have transpired during the interregnum and the conduct of the parties. A finding cannot necessarily be based merely on the interval or time gap between the knowledge of the infringement and the institution of a suit. This cannot be determined in isolation. The entitlement to reliefs or the merits of whether Ralli and “**Really**” are phonetically similar is also irrelevant for the limited enquiry of finding as to whether on the basis of the materials on record, the plaintiff indeed contemplates urgent interim reliefs. This exercise also does not involve a mini trial. Ultimately, there must be deference to the plaintiff subject to the limited exception in *Yamini Manohar (Supra)*. [*Chemco Plastic Industries Pvt. Ltd. vs. Chemco Plast 2024 SCC OnLine Bom 1607*, *Quality Services & Solutions Pvt. Ltd and Ors. vs. QSS Inspection and Testing Pvt. Ltd and Ors. (2024) SCC OnLine Bom 2120*].

18. In view of the above, the non-mentioning of the true and material facts i.e. *Kisan Mela* or the WhatsApp messages by the plaintiffs is a clear attempt to suppress and misrepresent facts. The statement in the plaint that the plaintiff only came to learn of the impugned mark in May 2024 is *ex facie* false, incorrect and with the intent to bypass the mechanism of section 12A of the Act. The dispensation with the requirement of Pre-Institution

Mediation and Settlement granted in terms of the order dated 30 September 2024 stands revoked. There shall be an order in terms of prayers (a) and (b) of the Master's Summons in GA-COM 3 of 2024. The plaint filed in IP COM 31 of 2024 stands rejected. Consequently, all interim orders are vacated. GA-COM No.3 of 2024 and GA-COM No.2 of 2024 i.e. for vacating of the interim order stands allowed. IP-Com/31/2024 alongwith GA-COM No.1 of 2024 seeking interim orders stand dismissed.

(Ravi Krishan Kapur, J.)

Later:

After pronouncement of the judgment, the plaintiffs pray for stay. The prayer for stay is considered and rejected.

(Ravi Krishan Kapur, J.)