

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12724 OF 2024

CCI Projects Pvt. Ltd.

..Petitioner

Versus

Brighton Facility Indian Maintenance
Services LLP & Ors.

...Respondent

Mr. Dinesh Kumar Seth a/w Mehul Rathod a/w Darshana
Vora, for the Petitioner.

Mr. Amrut Joshi a/w, Yazad Udveadia, i/b, Nikhil Mishra, for
the Respondent No. 1.

CORAM: N. J. JAMADAR, J.

DATE : 24th NOVEMBER 2025

P.C.:

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 22nd July, 2024 whereby the notice of motion taken out by the petitioner seeking rejection of the plaint for non-compliance of the mandatory pre-institution mediation under Section 12A of the Commercial Courts Act, 2015, came to be rejected.
3. The learned Judge, City Civil Court, referred to an earlier order dated 09th February, 2023 passed by the learned Judge,

whereby the petitioner was permitted to file the notice of motion without resorting to mandatory pre-institution mediation.

4. The learned Counsel for the petitioner invited the attention of the Court to the order dated 09th February, 2023. It was submitted that, the said notice of motion seeking interim relief was never filed and served on the petitioner. It was only at the stage of argument of the notice of motion taken out by the petitioner for the rejection of the plaint, the Court was informed that, the plaintiff had obtained permission of the Court to institute the suit without resorting to mandatory pre-institution mediation. Reliance was placed on the observations in the order dated 09th February, 2023 to the effect that, though the petitioner was permitted to register the suit without pre-institution mediation, after decision of the notice of motion, the suit be referred for mediation.

5. Evidently, an order was passed by the learned Judge, City Civil Court on 09th February, 2024 permitting the plaintiff/respondent to institute the suit without resorting to pre-institution mediation, under the provisions of Section 12A of the Commercial Courts Act, 2015.

6. In the case at hand, the learned Judge, City Civil Court in the order dated 09th February, 2023 has recorded in clear terms

that permission to register the suit without pre-institution mediation was granted. The bar under Section 12A of the Commercial Courts Act, is to the very institution of the suit. Once the Court, on the basis of the averments in the plaint and the documents, forms an opinion that the suit contemplates an urgent interim relief, and grants permission to institute the suit without resorting to pre-institution mediation, the provision contained in Section 12A ceases to operate. There is no provision for again referring the parties to mediation depending upon the outcome of the application for interim relief. It has been consistently clarified that, the non-grant of interim relief at the ad-interim stage or rejection of the application for interim relief cannot be the touchstone on which, the question as to whether a suit contemplates an urgent interim relief can be determined. A useful reference in this context can be made to the observations of the Supreme Court in the case of **Yamini Manohar Vs. T.K.D. Keerthi**¹.

“10. 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

1 (2024) 5 SCC 815

the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.”

7. Therefore, in this view of the matter, at this stage, there is no propriety in entertaining the petition.

8. The petition thus stands dismissed.

[N. J. JAMADAR, J.]