NIKITA YOGESH GADGIL
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 1373 of 2025

IN

COMMERCIAL SUMMARY SUIT NO 137 OF 2021

SMT. ROOPA ASHOK SHUKLA AND OTHERS)…APPLICANTS/ORI DEFENDANTS 2 TO 4

IN THE MATTER BETWEEN

KAMAKHYA DEVI STOCK AND INVESTMENT)...PLAINTIFF
V/s.
VASUDHA RESOURCES PRIVATE LTD & ORS.)…DEFENDANTS

WITH

INTERIM APPLICATION NO 91 OF 2022
INTERIM APPLICATION NO 493 OF 2025
SUMMONS FOR JUDGMENT NO 10 OF 2025
IN
COMMERCIAL SUMMARY SUIT NO. 137 OF 2021

Mr. Nagendra Dube a/w. Mr. S.S.Dube, Advocate for the Applicants/Defendants No 2 to 4.

Mr. Akshay Patil a/w. Ms. Devika Madhekar i/by Mayur Thorat, Advocate for the Respondent/Plaintiff.

CORAM	**:**	**ABHAY AHUJA, J.**
RESERVED ON	**:**	**13th AUGUST 2025**
PRONOUNCED ON	**:**	**06th NOVEMBER 2025**

ORDER. :-

1. This is an interim application filed by the Defendants No. 2 to 4 in Commercial Summary Suit No. 137 of 2021 seeking rejection of the

Plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (the "CPC") on grounds that (i) the Suit was filed without complying with the mandatory provisions of Section 12-A of the Commercial Courts Act, 2015 (the "Act") (ii) a Summary Suit cannot be entertained and tried in the Commercial Division of this Court and (iii) the Suit is barred by Limitation in addition to other objections seeking rejection of the Plaint.

2. The Plaintiff has filed the Summary Suit for recovery of sum of Rs. 25,36,31,684/- along with further interest at the rate of 24% per annum from 1st April 2021 till realization thereof. The claim of the Plaintiff is based on various written contracts such as the Loan Agreements, Letter of Confirmation of debt, Sureties Declaration cum Undertaking, Guarantee Deed, Promissory Notes and Acknowledgment of Debt etc. executed by the Defendant No.1 in favour of the Plaintiff.

3. The background facts as submitted by the Plaintiff are as under.

4. The Plaintiff is a company incorporated and registered under the provisions of the Companies Act, 1956 and is a 'Non Banking Finance Company' (NBFC) carrying on business throughout India.

5. The Defendant No.1 is a company incorporated and registered under the provisions of the Companies Act, 1956 engaged in the business of mining and extraction of mines and minerals. Defendant No.1 was promoted by Mr. Ashok Rajmani Shukla. That Defendant No. 2 is the director of Defendant No.1 and Defendant No.3 was director of Defendant No.1 from 29th September 2010 to 10th March 2018.

6. The Plaintiff executed two Loan Agreements dated 05th June 2009 and 27th March 2010 with Respondent No.1 and advanced two loans amounting to Rs.1,50,00,000/- and Rs.50,00,000/- respectively on the terms and conditions stipulated under the said Loan Agreements to the Defendant No.1. According to the terms and conditions as recorded in Clause 1 of the Loan Agreement dated 05th June 2009, the Promoter/Shareholder through Mr. Ashok Rajmani Shukla had agreed to transfer their 1600000 Shares of the Defendant No.1 Company in favour of the Plaintiff as and by way the security for the Loan amount plus interest thereon, with the understanding that the Plaintiff shall keep said shares as security till the repayment thereof. And on repayment, the Plaintiff was to transfer back the shares to Mr. Ashok Shukla who was the promoter of Defendant No.1. That Mr. Ashok Shukla also executed two Declarations cum Undertaking as sureties in

favour of the Plaintiff dated 05th June 2009 and 27th March 2010 and issued promissory notes for a sum of Rs.1,50,00,000/- and 50,00,000/- along with interest @ 24% per annum due and payable to the Plaintiff. The Plaintiff had in all disbursed a total sum of Rs. 2,00,00,000/- as term loans to Defendant No.1. The Defendants did not repay the loan amounts within the stipulated time.

7. Sometime in March 2018, the Defendant No.1 issued two cheques dated 18th March 2019 for a sum of Rs.9,60,18,456/- to discharge the liability of Defendant No.1 towards the outstanding debt as on 31st March 2019. However, both the cheques were dishonored. That despite repeated reminders and follow up in the years 2019 and 2020, the Defendants failed to repay their outstanding dues.

8. The Suit is filed seeking to enforce the personal guarantee given by then Promoter of Defendant No.1 Mr. Ashok Rajmani Shukla to secure the loan given by the Plaintiff to Defendant No.1, and Defendants No. 2, 3 and 4 who are the heirs of Late Mr. Ashok Rajmani Shukla are arraigned as party with their liability restricted to the estate they have inherited from Late Mr. Ashok Rajmani Shukla.

9. Mr. Nagendra Dube, learned Counsel for the Applicant has submitted that the Plaint, as filed, does not mention the reason for bypassing the mandatory pre-litigation mediation and settlement under Section 12-A of the Act. Mr. Dube has submitted that the Plaint has been notarized on 07th May 2021, and the Suit has been lodged on 15th November, 2021 along with the Interim Application seeking disclosures against the Defendants and attachment of bungalow known as Ravish Bungalow, M.S. House, Jai Hind Co-operative Housing Society Limited, Opposite Goswami Tower, Plot NO. 35, J.V.P.D. scheme, 11 North South Road, Juhu, Vile Parle West Mumbai, 400 049 belonging to Late Mr. Ashok Rajmani Shukla forming part of the estate of Late Mr. Ashok Rajmani Shukla and/or devolved on the Respondents from the estate of Late Mr. Ashok Rajmani Shukla.

10. Mr. Dube has submitted that the Plaint as filed does not contemplate any urgent reliefs so as to by-pass the mandatory pre-litigation mediation and settlement mechanism. Mr. Dube has submitted that even after filing of the Plaint and Interim Application the Plaintiff has not moved the Court for any urgent reliefs until 15th December 2021, on which date also the Plaintiff did not press for any urgent interim relief. And in these circumstances, it can safely be

argued that this Suit does not contemplate any urgent relief.

11. Mr. Dube, has submitted that having instituted the suit and trying to proceed with it by filing an Interim Application will not mean that there is an urgent interim relief contemplated.

12. Mr. Dube has also submitted that Order XIII-A of the CPC, bars Order XXXVII of CPC and therefore the Suit cannot be filed under the Act and that the Plaintiff could not have instituted the suit in the Commercial Division of this Court. Mr. Dube has submitted that the non-obstante clause in Rule 3 of Order XIII-A titled as "Summary Judgment" applies and that no summary judgment can be obtained in a suit in respect of any commercial dispute that is originally filed as a summary suit under Order XXXVII. Mr. Dube has submitted that the Act does not permit filing and maintaining of a summary suit under the Act, when the class of a suit squarely falls within the ambit and scope of Order XXXVII Rule 1 Sub-Rule 2 of the CPC.

13. Mr. Dube has also submitted that the suit is also barred by the law of limitation. Mr. Dube has submitted that the 1st Loan Agreement is of 05th June 2009 and the 2nd Loan Agreement is of the year 27th

March 2010. That under Article 21 of the Limitation Act, 1963 the the period of limitation for money lent under an agreement shall be payable on demand within 3 years from when the loan is made. Mr. Dube has submitted that three years from the date of the loan agreement is 05th June 2012 for the first agreement and 27th June 2013 for the second agreement, and the Suit has been lodged on 15th November 2021 and the same is hopelessly time barred.

14. Mr. Dube has also submitted that the purported friendly loan agreement mentions the period of repayment of loan amount and the same mentions that the loan is to be paid within 2 years. That the agreement mentions that on occurrence of default a 15 days' notice will be given to rectify the default and if the same is not rectified within 15 days, the Plaintiff ought to have taken action. Mr. Dube has submitted that no notice was issued by the Plaintiff either enforcing the loan agreements or invoking the deeds of guarantee or demanding the amount from the Defendant No. 2 to 4 or calling upon them to give inventory for selling the materials as per the respective loan agreements. That only notice was given on 05th April 2019 under Section 138 of the Negotiable Instruments Act, 1881, demanding the amount of dishonoured cheques. Mr. Dube has submitted that therefore

the claim arising from the loan agreements, deeds of guarantees, deeds of declaration cum undertaking, promissory note, receipts and acknowledgments have been given up and abandoned/relinquished.

15. Mr. Dube has submitted that under Section 18 of the Limitation Act, 1963, a fresh period of limitation is computed from the time when any acknowledgment of liability in respect of any right is made in writing before the expiration of the prescribed period for a Suit or Application in respect of that right. Mr. Dube has further submitted that the alleged acknoweldgement dated 30th September 2018 is well after the expiry of the prescribed period and therefore there is no fresh period of limitation available to the Plaintiff.

16. Mr. Dube has also submitted that the suit has been filed without obtaining Clause XII Leave under the Bombay High Court ("Letters Patent") Act, 1866 and that as the registered office of the Plaintiff is in Kolkata, the Mining Lease Agreement dated 20th February 2006 is executed in Karnataka, the Memorandum of Understanding dated 20th October 2008 is executed in Karnataka, the loan amount paid by the Plaintiff from its banker is situated in Lucknow for the project of Defendant No.1 in Karnataka, therefore even if part of cause of action

has arisen within the jurisdiction of this Court, a part of cause of action has arisen outside the jurisdiction of this Court, and therefore this Court does not have jurisdiction to try the suit as filed without leave under Clause XII of the Letters Patent.

17. It is submitted that the plaint therefore be rejected.

18. On the other hand Mr. Akshay Patil learned Counsel for the Respondent/Plaintiff has opposed the Application.

19. Mr. Patil has submitted that as per the terms of Deeds of Guarantee, Mr. Ashok Rajmani Shukla was the surety and had furnished his personal guarantees for repayment of the term loans and although Mr. Shukla has expired on 27th April 2019, the two deeds of guarantee executed between the parties clearly state that the term surety includes legal heirs of the surety. Mr. Patil has submitted that that therefore after the death of Mr. Ashok Shukla, his legal heirs i.e. Defendants No. 2 to 4 are now personally liable for repayment of the term loan amounts due and payable to the Plaintiff by Defendant No.1 to the extent of the estate of the late Mr. Ashok Shukla which has devolved upon them or to extent of their inheritance from late Mr. Ashok Shukla.

20. Mr. Patil has submitted that as per the terms of the loan agreement dated 05th June 2009, Mr. Ashok Shukla executed personal guarantee for repayment of the principal and interest. The lenders having agreed to lend a sum of Rs. 1,50,00,000/- the Promoters/Shareholders through Mr. Ashok Shukla agreed to transfer the 1600000 Shares of the Defendant No.1 Company in favour of the Plaintiff as and by way of security for the loan amount plus interest thereon guaranteed to the Plaintiff, with the understanding that the Plaintiff was to keep the said shares just as security, till the repayment was made by the Defendant No.1. And upon the occurrence of an event of default on part of the Defendant No.1, the Plaintiff would dispose off or transfer the shares to anyone.

21. Mr. Patil has submitted that the Promoters/Shareholders of the Defendant No.1 company have not filed their financial statement and balance sheet with the Registrar of Companies, post financial year 2015-2016 and the Defendant No.1 company has no assets and is no more involved in any business activities being defunct, no longer in use and existence and therefore the shares of the company kept as security with the Applicant, would no longer be admitted for trading and would hold no value.

22. Mr. Patil has submitted that the Defendants No. 2 and 3 do not have any source of income and are utilizing the estate of Late Mr. Ashok Shukla for sustaining their lifestyle and Defendant No.2 was also wasting the estate of Late Mr. Ashok Shukla.

23. Mr. Patil, has submitted that the Plaintiff has lodged the suit and Interim Application on 15th November 2021, as sometime in October 2021, the Plaintiff became aware that after the death of Mr. Ashok Shukla, the said Defendants were in serious financial difficulty and the Plaintiff apprehended that the Defendants would attempt to dispose of movable and immovable properties of Late Mr. Shukla to wriggle out of their liabilities and apprehended that the Defendants would attempt to defeat any orders that may be passed in the Suit by disposing of or encumbering the assets of Late Mr. Ashok Shukla.

24. Mr. Patil would submit that therefore, the Plaintiff was seeking urgent interim reliefs in the Suit as per the provisions of Section 12-A of the Act. That the Plaintiff has urgently moved before this Court without pre-litigation mediation and settlement mechanism by filing the Interim Application No. 91 of 2022 in the Suit for reliefs as prayed for therein and therefore the Plaint ought not be rejected.

25. It is submitted that the following pleadings in paragraphs 15 to 18 at pages 10 to 12 in the Plaintiff's Interim Application No. 91 of 2022 "contemplate urgent relief":

"15. It is in these grave circumstances, the Applicant humbly submits that it is just and necessary that the Respondents be directed to disclose on Affidavit all the movable and immovable properties, assets and bank accounts standing (owning) in the name of Late Mr. Shukla or forming part of late Mr. Shukla. Having considered the past conduct of the Respondents to evade the repayment of the outstanding dues payable to the Applicant, the dishonor of the cheques issued by the Respondent No.1, and the financial inability of the Respondents, the Applicant strongly suspects that the Respondents would attempt to part with its assets to elude the repayment of the outstanding dues. The Applicant thus strongly apprehends that the Respondents to avoid the repayment of the amounts due and payable to the Applicant, <u>would try to dispose of assets and properties forming part of the estate of Late Mr. Shukla.</u>

16. The Applicant further submits that after the death of Late Mr. Shukla, t<u>he Respondents are in a serious financial difficulty.</u> The Applicant submits that if the Respondents are not prevented, prohibited and/or injuncted from transferring, selling or disposing off their properties and assets forming part of late Mr. Shukla, the recovery of the amounts under the suit would become impossible and would thereby render the present suit in fructuous.

17. The Applicant thus submits that during the pendency and final disposal of the suit, to secure the repayment of the outstanding dues payable by the Respondents to the Applicant, it is just and necessary that the Respondents be restrained from in any manner directly or indirectly dealing, selling, transferring, disposing or creating any third party *rights, title or interests or parting with any of their movable and immovable properties, assets and bank accounts.*

18. The Applicant respectfully submits that Applicant has a strong case on merits and is confident that a decree as prayed for in the Plaint would be passed in its favour. If the reliefs as prayed for are not granted, the Respondents will do acts and omission to ensure that the Decree which the Applicant is expecting against the Respondents becomes a paper decree. It is pertinent to note that the Respondents No. 2 & 3 are in process of disposing all their assets to defeat the claim of the Applicant. The Applicant humbly submits that it has made out a strong prima facie case for ad-interim and interim reliefs. In the event that the ad-interim and interim reliefs are passed against the Respondents, no harm, loss or injury would be caused to the Respondents. However, if the ad-interim and interim reliefs as prayed for are not granted, grave harm, irreparable loss and injury would be caused to the Applicant and the Applicant's right as well as the suit would suffer irreparable harm and damages. In view of the facts and circumstances, the balance of convenience is squarely in favor of the Applicant for grant of ad-interim and interim reliefs and against the Respondents."

26. Mr. Patil has submitted that the Plaint, documents, facts and circumstances of the case, considered holistically from the standpoint of the Plaintiff, indicate the need for urgent interim relief.

27. Mr. Patil has submitted that the Applicant has also wrongfully sought to contend that the suit cannot be filed under the Act and therefore ought to be rejected. Mr. Patil has submitted that the Act does

not bar or exclude the applicability of Order XXXVII of the CPC in proceedings before a Commercial Court. Mr. Patil would submit that the Act deals only with whether the nature of the dispute is commercial within the meaning of Section 2(1)(c) of the Act. Mr. Patil has submitted that the suit is commercial in nature as it arises from written contracts and instruments executed between companies and their guarantors for the loans and advances taken by the Defendants from the Plaintiff and that each of these instruments are mercantile in character and fall squarely within the scope of commercial dispute as defined under the Act.

28. Mr. Patil has submitted there is no provision in the Act that prohibits a summary suit under Order XXXVII of the CPC from being filed before the Commercial Court as long as the underlying dispute is a commercial dispute. Mr. Patil has submitted that Order XIII-A and Order XXXVII are parallel tracks and not substitutes or mutually exclusive. Mr. Patil relies on the decision of the Hon'ble Madras High Court in case of ***S.B.P. Cold Storage Pvt Ltd. vs G. Manogaran***[1] in support.

1 MANU/TN/4685/2024

29. Mr. Patil has submitted that the Suit has been filed within the period of limitation as the Defendants have admitted their debt liability on 30th September 2018 by their own/letter confirmation annexed at Exhibit DD to the plaint. Mr. Patil would further submit that the defendants have also admitted their liability once again by issuing two cheques dated 18th March 2019. That upon dishonor of both the cheques, the Plaintiff had issued legal demand notice on 05th April 2019 on the defendants. Mr. Patil would submit that there is a continuing cause of action and that no part of cause of action is barred by the law of Limitation and the suit is therefore filed within limitation.

30. I have heard the learned Counsel at length and also considered the rival contentions. The hearing of this Application was concluded on 13th August 2025, and order was reserved with liberty to the parties to place on record written submissions within a period of two weeks. The Applicant has filed written submissions on 04th September 2025 and the Respondents have not filed written submissions.

31. The Applicant has raised multiple grounds for rejection of plaint at the time of arguments. As the ground of non-compliance of Section 12-A of the Act goes to the root of the matter the said ground is taken up first.

32. Before examining the assertions made, it would be apposite to refer to the position of law, when rejection of plaint is sought on the ground of non-compliance of Section 12-A of the Act.

33. In ***Patil Automation Private Limited v Rakheja Engineers Private Limited***[2]***,*** the Hon'ble Supreme Court has observed that Section 12-A of the Act is mandatory and non-compliance with Section 12-A is a ground for rejection of the plaint under Order VII Rule 11 of the CPC and that the power to reject a plaint under the said Order and Rule of the CPC for non-compliance with Section 12-A can be exercised by a Court *suo motu.* Paragraph 113 of the said decision is relevant and is usefully quoted as under:

> *"113. Having regard to all these circumstances, we would dispose of the matters in the following manner:*
>
> *113.1. We declare that Section 12-A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order 7 Rule 11. This power can be exercised even suo motu by the court as explained earlier in the judgment. We, however, make this declaration effective from 20-8-2022 so that stakeholders concerned become sufficiently informed.*
>
> *113.2. Still further, we however direct that in case plaints*

2(2022) 10 SCC 1

have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff.

113.3. Finally, if the plaint is filed violating Section 12-A after the jurisdictional High Court has declared Section 12-A mandatory also, the plaintiff will not be entitled to the relief."

34. As per Clause 113(3) of the judgment, if the jurisdictional High Court has declared Section 12-A mandatory, the plaintiff will not be entitled to relief. The division bench of this Court in the case of ***Deepak Raheja v. Ganga Taro Vazirani***[3] has on 01st October 2021 held Section 12-A of the Act as mandatory, and a commercial suit of specified value, which does not contemplate any urgent interim relief under the Act cannot be instituted unless the Plaintiff exhausts the remedy of pre-institution mediation.

35. In the case of ***M/s. Dhanbad Fuels Private Limited v. Union of India***[4] the Hon'ble Supreme Court has held that Suits instituted without complying with Section 12A of the Commercial Courts Act, 2015 prior

3 (2021) SCC OnLine Bom 3124
4 2025 INSC 696

to 20th August 2022 cannot be rejected under Order VII Rule 11 on the ground of non-compliance with Section 12A unless they fall within the exceptions stipulated in paragraph 113.2 and 113.3 of the decision in *Patil Automation Private Limited v Rakheja Engineers Private Limited (supra).*

36. The plaint in the present facts is filed after this Court has declared Section 12-A of the Commercial Courts Act, 2015 as mandatory. It is the case of the Plaintiff that the Plaintiff has filed Interim Application seeking urgent reliefs due to which the Plaintiff has instituted the Suit without undergoing pre-institution mediation.

37. In ***Yamini Manohar v. T.K.D. Keerthi*** [5], the Hon'ble Supreme Court has further elaborated on the term "contemplate urgent relief" used in Section 12-A of the said Act and has held that the Commercial Court should examine the nature and 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. The Hon'ble Supreme Court has also highlighted that camouflage and guise to bypass the statutory mandate of pre-institution mediation should be checked when deception and falsity is apparent or established.

5 2023 SCC OnLine SC 1382

38. In ***Future Corporate Resources Pvt Ltd. v. Edelweiss Special Opportunities Fund and Another*** [6], this Court has observed that Section 12-A cannot be bypassed by simply filing an application for interim relief.

39. In ***Shraddha Shelter Pvt Ltd v. Ekta Housing Pvt Ltd***[7],this Court has observed that Plaintiff's contemplation as to urgent relief shall be borne out in the plaint. The Plaintiff in *Shraddha Shelters Pvt Ltd v. Ekta Housing Private Limited (supra)* was also seeking a relief of attachment before judgment. This Court observed that upon reading the plaint and examining the nature and subject matter of the Suit and the cause of action, it was apparent that the statements made in the plaint were only to wriggle out and get over the provision of Section 12-A. Ultimately, the plaint was rejected.

40. From the aforesaid elucidation it is clear that the procedure to be followed pursuant to Section 12-A of the said Act is a mandatory procedure and it has to be followed even if it is harsh. Only genuine urgency is excluded. Bare and vague allegations will not enable a Plaintiff to get over Section 12-A and it cannot be used as a mechanism to override the said Section. That, a genuine case has to be made out

6 2022 SCC OnLine Bom 3744
7 2024:BHC-OS:18384

on the basis of pleadings. That the same has to be ascertained on a holistic reading of the plaint and examining the nature and subject matter of the Suit and the cause of action to satisfy the contemplation of any urgent relief. But where there are only averments, devoid of bare minimum particulars and specific details, that would not qualify contemplation of any urgent relief.

41. It is settled law that it is only on the basis of the averments in the plaint alone, that it can be decided whether the Suit contemplates any urgent reliefs and not from additional material such as rejoinder or facts not contained in the plaint.

42. I have perused the plaint as well as the Interim Application. The Interim Application seeks relief *inter alia* in the nature of an attachment before judgment. None of the paragraphs in the plaint seek urgent interim reliefs and only the Interim Application filed by the Applicant, seeks attachment before judgment on the basis of which the Plaintiff is seeking exemption from the requirement of pre-institution mediation under Section 12-A of the Act. In fact, the plaint is completely silent on any urgent reliefs and the only prayers which the Plaintiff has sought in the plaint are as under :-

"*The Plaintiff therefore prays that:-*

a) The Hon'ble Court be pleased to pass a judgment and decree ordering the Defendants to pay to the plaintiff, a sum of RS. 24,36,31,684/- (Rs. Twenty Five Crores Thirty Six Lakhs Thirty One Thousand Six Hundred Eighty Four Only) as per the particulars of Claim (EXHIBIT "JJ") along with further interest @ 24% per annum from 1st April 2021 till payment and/or realization.

b) For the cost of the Present Suit

c) For such other Orders as this Hon'ble Court."

43. The afore-quoted reliefs do not contemplate urgent reliefs. Further as can be seen from the paragraphs 15 to 18 of the Interim Application, there is only averment that the Plaintiff apprehends that that the Defendants would attempt to part with its assets to elude the repayment of the outstanding dues and would try to dispose of assets and properties forming part of the estate of Late Mr. Shukla. The Plaintiff has also stated in the said paragraphs that real estate agents are scouting buyers for the bungalow of the Defendants and therefore the Applicant/Plaintiff apprehends that the Defendants will attempt to defeat any Orders that may be passed in the Summary Suit by

disposing of and encumbering assets of late Mr. Shukla but these averments are not supported by any documents or specific facts and are not included in the plaint.

44. The plaint as filed does not disclose any urgent interim reliefs and it is only the Interim Application filed by the Plaintiff which seeks for attachment before judgment. The Plaint is silent on any urgent ad-interim/interim relief, and the Plaint does not particularly mention/seek any exemption from the application of Section 12-A of the said Act. Except the bald averments in the Interim Application, there are no specific details or particulars of the apprehension or let alone a serious apprehension that the Plaintiff has, which demonstrates any urgency or any *prima facie* case. The averments are bereft of even bare minimum facts or particulars and cannot therefore be said to contemplate urgent reliefs.

46. Having examined the nature as well as the subject matter of the suit, the cause of action and the prayer for interim relief, I am clearly of the view that neither the plaint nor the Interim Application contemplate urgent relief. A holistic reading of the plaint clearly indicates that there is no material, which in the Plaint or in the Interim Application, satisfies the contemplation of any urgent relief. The

averments made in the Interim Application are bald, devoid of bare minimum particulars and are only to wriggle out of Section 12-A of the said Act and to bypass the statutory mandate of pre-institution mediation and done in a mechanical and a casual manner. No urgency has been made out.

47. It is also evident that the Plaint has been notarized on 07th May 2021 and the Suit and the Interim Application has been lodged only on 15th November 2021. Therefore, the urgency contemplated in the Interim Application indicates that the same is an afterthought and that the apprehension expressed in the Interim Application is only imaginary and mechanical apprehension expressed without any supporting facts or documents.

48. I agree with Mr. Dube that having instituted the suit and trying to proceed with it by filing an Interim Application will not mean that there is an urgent interim relief contemplated. The very fact that there is no submission of urgency in the plaint and the urgency as contemplated in the Interim Application is bereft of any specific details or particulars suggests that there is falsity in the Plaintiff's case of urgency. From the reading of the Interim Application it is apparent that

the statements in the Application are only to wriggle out of the requirement of Section 12-A of the Act.

49. The Suit and the Interim Application for attachment before judgment were lodged on 15th November, 2021. The Interim Application was listed on 15th December, 2021, when time was sought on behalf of Defendant No. 2 to 4 for filing reply to the said Application and one weeks' time was granted to the Defendant for filing its reply and the Interim Application was adjourned to 06th January, 2022. That thereafter the Application was listed on 16th July, 2024 for direction, when the Counsel for the Defendant raised an objection on the ground of the Suit being barred by limitation and the matter was adjourned to 22nd August, 2024 for hearing of the preliminary objection. Thereafter the Suit has been listed on 22nd August, 2024, 13th January, 2025, 10th February, 2025. The present Application for rejection of plaint was filed on 06th March 2025. The very fact that the Interim Application was not circulated for interim reliefs by the Plaintiff itself demonstrates that there is hardly any apprehension, let alone a serious one, as to the intention of the Defendants to obstruct or delay the execution of any decree that may be passed against them. Merely stating that Defendants are disposing of their assets is not enough and the same

would not assist the case of the Plaintiff in avoiding the mandatory requirement of pre-institution mediation under Section 12-A of the Act. The urgency has to be demonstrated to be imminent, disclosing a real and genuine apprehension with detailed facts and particulars, and that if the urgent relief is not granted, grave prejudice and irreparable harm would be caused to the Plaintiff. The urgent relief should not be a disguise or mask to wriggle out of and get over the mandatory compliance of Section 12-A.

50. The averments sought to be relied upon in the Interim Application are conspicuously absent in the plaint and appear to have been introduced only in the Interim Application to give an impression of urgency solely with the intention to circumvent the mandatory compliance of Section 12-A but even the same are bereft of any specific facts or particulars of urgency. The contemplation of urgent interim relief does not seem to be genuine, substantiated by specific particulars, and pursued with *bona fide* urgency. A mere bald pleading or a perfunctory averment of urgency, unsupported by any material particulars or subsequent action to move the Interim Application, cannot be construed as satisfaction of the statutory exception. Therefore, I do not agree with Mr Patil that the documents, facts and

circumstances of the case, considered holistically from the standpoint of the Plaintiff, indicate the need for urgent interim relief.

51. The Plaint is therefore liable to be rejected under Order VII Rule 11(d) of the CPC and is hereby rejected as the Suit appears from the statement in the Plaint to be barred by law as the Commercial Summary Suit has been filed without complying with the mandatory provision of Section 12-A of the Commercial Courts Act, 2015. As the Plaint is rejected, the pending Interim Application No. 91 of 2022, Interim Application No. 493 of 2025 and Summons for Judgment No. 10 of 2025 in the Suit which are not on board are taken on board and the same accordingly to stand disposed. It goes without saying that the Plaintiff is at liberty to file a fresh Plaint in respect of the same cause of action after following the necessary procedure as mandated in Section 12-A of the Commercial Court Act, 2015.

52. In view of what has been held as above, it would not be necessary to deal with the other objections seeking rejection of Plaint or response to the same.

53. It is made clear that this Court has not expressed any opinion on

the merits of the suit and any observations on merits may have been made only to decide this application. In the event liberty as granted is exercised, and a suit is filed after complying with the mandatory requirement of Section 12-A of the said Act, the suit be decided on its own merits, uninfluenced by any such observations.

(ABHAY AHUJA, J)