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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 5492 OF 2025
IN
COMMERCIAL SUIT (L) NO. 24873 OF 2025**

Shaikh Mohammed Rafique ... Applicant

In the matter between

Lakhani Realty LLP ... Plaintiff

Vs.

Kalina Vihar Darshan Co-operative ... Defendants

Housing Society and Others

**WITH
INTERIM APPLICATION NO. 5975 OF 2025
IN
COMMERCIAL SUIT (L) NO. 24873 OF 2025**

Dr. Abraham Mathai ... Applicant

In the matter between

Lakhani Realty LLP ... Plaintiff

Vs.

Kalina Vihar Darshan Co-operative ... Defendants

Housing Society and Others

**WITH
INTERIM APPLICATION (L) NO. 24924 OF 2025
IN
COMMERCIAL SUIT (L) NO. 24873 OF 2025**

Lakhani Realty LLP ... Applicant

In the matter between

Lakhani Realty LLP ... Plaintiff

Vs.

Kalina Vihar Darshan Co-operative ... Defendants

Housing Society and Others

Mr. Mayur Khandeparkar a/w.Mr. Devansh Shah, Mr. Santosh Pathak, Ms. Archana Karmokar i/b. M/s. Law Origin for the Plaintiffs and Applicant in IAL/24924/2025.

Mr. Karl Tamboly i/b. Mr. Milind Nar for the Applicant in IA/5975/2025 and Original Defendant no. 13.

Mr. Amogh Singh a/w. Mr. Nimish Lothikar, Mr. Deepesh Kadam i/b. Mr. Nimesh Lotlikar for Defendant No. 1 – Society.

Mr. Dhiraj Gole i/b. Mr. C. N. Gole for Defendant Nos. 2, 6 and 21 in IAL/24924/2025.

Mr. Sugdare a/w. Ms. Nehta Surte and Mr. Sandeep Sharma for Defendant No. 5.

Mr. Madhur Surana for Defendant nos. 12, 14 to 16, 18, 19, 22 to 24, 26 to 27 and 37 in IAL/24924/2025.

CORAM : GAURI GODSE, J.

DATE : 15th OCTOBER 2025

ORDER :

Interim Application No. 5492 of 2025 and

Interim Application No. 5975 of 2025

1. Interim Application No. 5492 of 2025 by defendant no. 5, and Interim Application No. 5975 of 2025 by defendant no. 13 are filed praying for rejection of the plaint under clause (d) of Rule 11 of Order VII of the Code of Civil Procedure (“CPC”). Objection raised by these defendants for rejection of the plaint is non-compliance with the mandatory provision

under Section 12A of the Commercial Courts Act, 2015 (“the said Act”).

2. The suit is filed for specific performance of the redevelopment agreements executed by the plaintiff with defendant no. 1-society, and some of their members, for the redevelopment of the society building. The plaintiff has also prayed for damages/penalty for the alleged non-compliance of the terms and conditions of the redevelopment agreements, which are the subject matter of the suit.

3. The interim application is filed by the plaintiff seeking interim relief of a mandatory injunction for directing defendant nos.. 2 to 37 to execute and register the Permanent Alternate Accommodation Agreement (“PAAA”) with respect to their entitlement and further directions to immediately vacate their respective premises and hand them over for the purpose of redevelopment. The plaintiff has also prayed for the appointment of a Court Receiver to take over possession and hand it over to the plaintiff for the purpose of taking steps for the redevelopment of the society building as per the terms and conditions of the redevelopment agreements, which are the subject matter of the suit.

4. Defendant nos. 5 and 13 have raised an objection that the suit does not contemplate any urgent interim relief and thus the plaint deserves to be rejected for non-compliance with the mandatory provision under Section 12A of the said Act. Learned counsel for defendant no. 5 referred to the list of documents annexed to the plaint with reference to the redevelopment agreements executed in favour of the plaintiff. He submitted that the last agreement, as per the list of documents, is dated 19th September 2024. The cause of action pleaded in the plaint is based on the correspondence between the plaintiff and the society for seeking a mandatory injunction for vacating the respective premises by the defendants. Hence, according to the learned counsel for defendant no. 5, the suit filed in August 2025 seeking specific performance of the redevelopment agreements does not contemplate any urgent interim relief that would entitle the plaintiff to seek a waiver of compliance with the mandatory provision under Section 12A of the said Act.

5. Learned counsel for defendant no. 13 referred to the relevant paragraphs in the plaint and, in particular, paragraph 3.41. According to the learned counsel for defendant no. 13,

the contention raised in the plaint for seeking urgent reliefs for vacating the premises by the defendants would not amount to any urgent relief for not following the mandatory provision under Section 12A of the said Act. He points out the redevelopment agreements and submits that the redevelopment agreements are executed between the plaintiff, the society, and some of the members who have signed them. Even as per the averments in the plaint, the plaintiff states that the redevelopment was contemplated since 2012, and that the redevelopment agreement and the supplementary redevelopment agreement were executed in 2024.

6. Learned counsel for defendant no. 13 submitted that the supplementary redevelopment agreement was not executed by passing a resolution by the general body. Hence, defendant no. 13 filed a complaint before the Registrar, Co-operative Society and the Municipal Corporation, making a grievance that the supplementary redevelopment agreement executed by the society at the behest of some of the members deletes the flat owned by defendant no. 13. He points out clause no. 4.1 of the

supplementary redevelopment agreement to show that in the supplementary redevelopment agreement instead of original flat numbers 159, only 158 flats have been made subject matter of the agreement. He submits that without following the due process some of the members of the society executed the supplementary redevelopment agreement which has caused serious prejudice to the rights of defendant no. 13 in respect of his Flat no. 417 which is deleted from the subject matter of the redevelopment agreement.

7. Learned counsel for defendant no. 13 submitted that in reference to the complaint filed by defendant no. 13 the society has not taken any action; however, only the plaintiff has responded to the allegations. The society has not taken any action or responded to the objection raised by defendant no. 13 that, without following due process of seeking approval from the general body of the society, the supplementary redevelopment agreement was executed. He submits that in the plaint, there are no averments that the general body meeting was conducted and a resolution was passed for execution of the supplementary redevelopment agreement. He points out that even the averments in the plaint and the documents relied upon by the plaintiff would

indicate that the share certificate was also issued in favour of defendant no. 13 in respect of Flat no. 417. However, at the behest of some of the members of the society, the said flat belonging to defendant no. 13 is sought to be deleted from the redevelopment process. He submits that the reasons stated in the plaint for seeking drastic interim relief of mandatory injunction and appointment of Court Receiver would not amount to any urgent interim relief for not complying with the mandatory provision of Section 12A of the said Act.

8. Thus, by referring to the averments in the plaint and the nature of interim relief claimed in the suit, learned counsel appearing for defendant nos. 5 and 13 submitted that the prayer for interim relief is a prayer in disguise only to wriggle out of the mandatory compliance under Section 12A of the said Act. Hence, they submitted that the plaint deserves rejection for non-compliance with the mandatory provision of Section 12A of the said Act.

9. To support his submissions, learned counsel for defendant no. 5 relied upon the legal principles settled by the Hon'ble Apex Court in the case of *Patil Automation Private*

***Limited and Others vs. Rakheja Engineers Private Limited*¹**

and in the case of ***Yamini Manohar vs. T.K.D.Keerthi***². He submits that the Hon'ble Apex Court has explained the words 'contemplate any urgent interim relief' under Section 12A of the said Act. He submits that, the Supreme Court held that, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyse Section 12A of the said Act by making a prayer for urgent interim relief camouflaged and under the guise to bypass the statutory mandate of pre-litigation mediation; hence, should be checked when deception and falsity is apparent or established based on the reasons stated in the plaint for seeking urgent interim relief for not complying with the mandatory provision of Section 12A of the said Act. He thus submits that in the present case, a prayer for urgent interim relief is in disguise or masked to wriggle out of and get over Section 12A of the said Act.

10. Learned counsel for defendant no. 5 points out the legal principles summarised in the decision of ***Patil Automation Private Limited***. He submits that the provisions of Section 12A are held to be mandatory and the suit instituted

¹ (2022) 10 SCC 1

² (2024) 5 SCC 815

violating the mandate under Section 12A would call for rejection of the plaint if, from the averment in the plaint, any urgent interim relief is not contemplated.

11. Learned counsel for defendant no. 13 relied upon the legal principles settled by the Hon'ble Apex Court in the case of *Dhanbad Fuels Private Limited vs. Union of India and Another*³. He submits that as per the legal principles summarised in the said decision, the Hon'ble Apex Court held that the urgent interim relief must not be merely an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12A of the said Act and the suit need not proceed if the test for 'urgent interim relief' is not satisfied in the facts and circumstances pleaded by the plaintiff for not complying with the mandatory requirement of Section 12A.

12. Learned counsel for the plaintiff submits that the substantive pleadings in the plaint would show that urgent interim relief is contemplated from the standpoint of the plaintiff. He refers to the various averments in paragraph nos. 3 and 13 of the plaint. According to the plaintiff, the society building required extensive repairs since 2012, and to avoid the expenditure for extensive repairs, the society decided for

3 2025 SCC OnLine SC 1129

the redevelopment of the building. Accordingly, in the Special General Body meetings, the decision was taken after following the due process of law as contemplated under the provisions of the Maharashtra Co-operative Societies Act 1961, and accordingly, the redevelopment agreements as pleaded in the plaint were executed. As per the plaint pleadings, some of the members were not cooperating, and hence the society was unable to hand over possession of the building for the purpose of redevelopment in terms of the agreements executed by the society.

13. Learned counsel for the plaintiff points out the pleadings in the plaint that out of 158 members, 134 members handed over possession to the society, and accordingly, the same was handed over to the plaintiff. The plaintiff has accordingly made payment towards hardship compensation. After the IOD was received, the plaintiff called upon the society to comply with its obligation under the redevelopment agreements to hand over possession of the society building, enabling the plaintiff to undertake the redevelopment process. Learned counsel for the plaintiff further points out the relevant pleadings in the plaint

regarding the non-cooperation of some members, which has stalled the further process of redevelopment.

14. The relevant pleadings regarding the general body resolution approving the terms and conditions, as well as the redevelopment agreements, are relied upon by the learned counsel for the plaintiff. He relies on the relevant pleadings in paragraph 3.55 to support his submissions that the plaintiff has issued cheques for hardship compensation, monthly displacement compensation, brokerage charges, and shifting charges from 1st July 2025 to the members who have handed over possession of their respective premises. In paragraph 3.56, the plaintiff has pleaded that, due to the conduct of defendants nos. 2 to 37 in failing to hand over possession of their respective premises, the redevelopment process is delayed. In paragraph 4.3, the plaintiff has pleaded that it has spent a huge amount towards the consideration of the redevelopment documents and incurred other incidental expenses to effectuate the redevelopment documents, in addition to the recurring costs of monthly rent and interest for 134 members who have already shifted to transit accommodation.

15. Learned counsel for the plaintiff also referred to the various clauses in the redevelopment agreement and, in particular, clause 21.5 of the redevelopment agreement and clause (e), (l) and (m) of the supplementary redevelopment agreement to support his submissions that the society had taken responsibility to hand over possession of the society building for the purpose of redevelopment. The society further agreed that if any of the members failed to hand over possession, the society would be mandated to fully authorise the plaintiff to initiate and pursue appropriate legal proceedings on behalf of the society to ensure the vacant possession of the flats to the plaintiff from such members who refused to vacate the respective premises and hand over possession.

16. Learned counsel for the plaintiff thus referred to paragraph 4.5 of the plaint to show that the plaintiff had incurred huge expenditure of approximately Rs.35,79,62,313/- in taking steps in furtherance of the terms and conditions of the redevelopment agreement. Hence, learned counsel for the plaintiff submitted that based on the various pleadings in the plaint, the urgent interim relief is

contemplated from the standpoint of the plaintiff that urgent ad-interim relief against defendant nos. 2 to 37 would be necessary to enable the plaintiff to start the process of redevelopment as 134 members out of 158 members have already vacated and handed over possession to the plaintiff for the purpose of completing construction of the new building.

17. Learned counsel for the plaintiff thus submits that, based on these pleadings, contemplating urgent interim relief, the plaintiff has pleaded in paragraph 4.9 that the mandatory requirement of pre-institution mediation as prescribed under Section 12A of the said Act would not be necessary. To support his submissions, learned counsel for the plaintiff relied upon the decision of the division bench of this court in the case of *Chirag Infra Projects Pvt. Ltd. vs. Vijay Jwala Co-operative Housing Society Ltd. and Another*⁴. He submits that this court, after following the legal principles settled by the Apex Court in the decision of *Aditya Developers vs. Nirmal Anand Co-op Hsg. Soc. Ltd. And Others*⁵ held that a member of the society has no independent rights, and the decision taken by the co-

⁴ ARBPL-108-2021 dated 12th March 2021

⁵ 2016 SCC OnLine Bom 100

operative society would be binding upon the members unless objected to and challenged by adopting appropriate proceedings as permissible in law. For the purpose of individual rights, a member of society would not be entitled to obstruct the redevelopment of society based on the decisions taken by society.

18. For a similar proposition, learned counsel for the plaintiff also relied upon the decision of the Hon'ble Apex Court in the case of *Daman Singh and Others vs. State of Punjab and Others*⁶. He submits that the Apex Court held that once a person becomes a member of the co-operative society, he loses his individuality qua the society, and he has no independent right except those given to him by the statute and the by-laws. Learned counsel for the plaintiff, therefore, submits that the defendant nos. 2 to 37 are under an obligation to comply with the terms and conditions of the redevelopment agreements and thus the plaintiff would be entitled to seek urgent interim relief for taking over the society building for the purpose of completing the development process.

19. Regarding the objections raised on non-compliance

⁶ (1985) 2 SCC 670

with the mandatory provisions under Section 12A of the said Act, learned counsel for the plaintiff relies upon the decision of this court in the case of *Westin Infra World Private Ltd. and Others and Vistra ITCL India Limited vs. Darvesh Properties Private Ltd and Others*⁷. He submits that after considering the relevant legal principles regarding the objection raised by the defendants for non-compliance with Section 12A of the said Act, this court held that Section 12A is not meant to be weaponised by a defendant to prevent the court from passing an order where the court believes an order is justified and necessary. He submits that in view of the well-settled legal principles regarding conditions to be applied for rejection of the plaint under Order VII Rule 11 of CPC, once urgent interim relief is contemplated from the standpoint of the plaintiff, the plaint cannot be rejected at the threshold. He therefore submits that in the facts and circumstances of the present case, the plaint cannot be rejected at the threshold for non-compliance of the mandatory provisions under Section 12A.

20. I have perused the papers of the plaint and the supporting documents. The suit is filed for specific

⁷ Interim Application (L) No. 22747 of 2025 in Commercial Suit (L) No. 13824 of 2025

performance of the redevelopment agreements, which are the subject matter of the suit. The plaintiff has pleaded all the particulars regarding the Special General Body meetings held by defendant no. 1 – society for approving the redevelopment agreement, including revised offers and supplementary redevelopment agreement, and the confirmation deeds executed on the terms and conditions of the redevelopment agreements. The plaintiff has pleaded the particulars regarding the power of attorney executed in favour of the plaintiff for the purpose of taking steps in furtherance of the terms and conditions of the redevelopment agreement. After the IOD dated 28th March 2025 was received, the plaintiff by letter dated 29th March 2025 informed defendant no. 1-society for compliance with further process. The plaintiff has further pleaded regarding approval of the draft PAAA by the General Body and the letters issued by the plaintiff calling upon the society to hand over possession as scheduled. The plaintiff has also further pleaded the extension of time granted to the society for the complete handing over of possession.

21. In paragraph 3.27 of the plaint, the plaintiff has referred

to a letter dated 2nd June 2025 informing defendant no. 1 – society that the cheque towards hardship compensation, monthly displacement compensation, brokerage charges and shifting charges were handed over to the society. The plaintiff has also pleaded particulars regarding handing over bank guarantees. The letters issued by the plaintiff to the society, calling upon the society to comply with the terms and conditions of the redevelopment agreements to enable the plaintiff to start the process of redevelopment, are extensively pleaded in the plaint.

22. With reference to the non-cooperation of some of the members, the plaintiff has pleaded in paragraphs 3.35 and 3.36 that despite signing the redevelopment agreement and accepting 10% hardship compensation as payable under the redevelopment documents, defendant nos. 2, 9, 20 and 21 were not cooperating as they were influenced by the remaining non-cooperative members who have not signed redevelopment agreements. The plaintiff has therefore alleged breach of the obligations under clauses 6 and 21.5 of the development agreement, which, according to the plaintiff, has delayed the further process of redevelopment.

23. In paragraph 4.3 of the plaint, the plaintiff has pleaded the obstruction created by defendant nos. 2 to 37, which, according to the plaintiff, has added to the expenditure and has pleaded regarding non-cooperation by defendant nos. 2 to 37, which has caused hardship to the 134 members who have already shifted from the respective premises. The plaintiff has thus pleaded regarding the expenditure incurred by the plaintiff towards payment of hardship compensation to the members who have already vacated. In paragraph 4.5 of the plaint, the plaintiff has pleaded the particulars regarding actual expenditures. Hence, in paragraphs 4.6 to 4.9, the plaintiff has contended that the plaintiff is left with no other option but to seek relief from the court for the purpose of getting premises vacated from defendant nos. 2 to 37 to enable the plaintiff to start the redevelopment process.

24. A careful perusal of the pleadings and the supporting documents in the plaint reveals that, according to the plaintiff, there is an urgent need for interim relief or ad-interim relief to take over possession from defendant nos. 2 to 37 and commence the development process. The issue of whether the plaintiff would be entitled to any urgent ad-interim or

interim relief is not a question to be decided while examining whether the suit contemplates any urgent interim relief. What is required to be examined and considered is whether, based on the averments in the plaint and the supporting documents, urgent interim relief according to the plaintiff is contemplated.

25. The issue regarding what the words ‘contemplate urgent interim relief’ mean is discussed and decided by the Hon’ble Apex Court in the decision of *Yamini Manohar* and *Patil Automation Private Limited*. In the decision of *Patil Automation Private Limited*, the Hon’ble Apex Court, while deciding the issue whether Section 12A is mandatory, has discussed and explained the object of pre-institution mediation, which is granted the status of an award under the Arbitration and Conciliation Act, 1966. However, it is held that the provision of Section 12A has been contemplated only with reference to plaintiffs who do not contemplate urgent interim relief. While discussing the legal principles settled in the decision of *Patil Automation Private Limited*, the Hon’ble Apex Court, in the decision of *Yamini Manohar*, held that the words “contemplate urgent interim relief” suggest that the suit must contemplate, which means the plaint documents and

facts should show and indicate the need for urgent interim relief. The Hon'ble Apex Court further held that this is the process and limited exercise that commercial courts will undertake. It is further held that if any interim relief is contemplated, the commercial courts have to carry out a limited exercise in the facts and circumstances of the case to ascertain whether the prayer for interim relief is not made in a disguise only to wriggle out of the mandatory compliance under Section 12A of the said Act. It is thus held that the facts and circumstances have to be considered holistically from the standpoint of the plaintiff, as refusal to grant ad-interim or interim relief cannot be a ground to justify dismissal of the suit under Order VII Rule 11 of the CPC.

26. The legal principles settled by the Hon'ble Apex Court in the case of *Patil Automation Private Limited* and *Yamini Manohar* are further explained in the decision of *Dhanbad Fuels Private Limited*. The Hon'ble Apex Court held that the courts must also be wary of the fact that the urgent interim relief must not be merely an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12A of the said Act. It is further held that even if the urgent interim

relief ultimately comes to be denied, the suit of the plaintiff may be proceeded with without compliance with section 12A, if the test for urgent interim relief is satisfied, notwithstanding the actual outcome on merits. It is held that the test for “urgent interim relief” is if, on the examination of the nature of and the subject matter of the suit and the cause of action, the plaintiff's prayer for urgent interim relief could be said to be contemplable when the matter is seen from the standpoint of the plaintiff. Thus, it is held that if the test for urgent interim relief is satisfied notwithstanding the actual outcome on merits, the suit can be proceeded with without compliance with Section 12A.

27. Following the aforesaid legal principles settled by the Hon'ble Apex Court and the observations of the Division Bench of this Court in the case of *Future Corporate Resources Pvt. Ltd. vs. Edelweiss Special Opportunities Fund and Another*⁸, this court in the decision of *Westin Infra World Private Ltd.* has taken a view that the relevant aspects to be considered are the averments in the plaint, and as held by the Hon'ble Apex court in the case of *Dhanbad Fuels Private Ltd.* the standpoint of the plaintiff is required to be

8 2022 SCC OnLine Bom 3744

examined while deciding the necessity of compliance with Section 12A of the said Act.

28. The view taken by this court in the decision of *Kaulchand H. Jogani vs. Shree Vardhan Investment and Others*⁹ is also considered in the decision of *Westin Infra World Private Ltd.* to hold that the proper course would be to assess whether there are elements which prima facie indicate that the suit may be maintained irrespective of the fact whether the plaintiff succeeds in getting the interim relief. It is necessary to note that the legislature has found it fit to amend some of the provisions of CPC for its application to the commercial division and commercial courts. In the amendments made applicable to the commercial division and commercial courts, the provisions of Order VII Rule 11 of the CPC are not amended, and thus the legal principles for rejection of the plaint in Order VII Rule 11 of the CPC would also apply to the suits filed in the commercial courts and commercial division.

29. Thus, considering the well-settled legal principles by the Hon'ble Apex Court in the case of *Dahiben vs. Arvinbhai*

9 2022 SCC OnLine Bom 4752

*Kalyanji Bhanushali*¹⁰ referred by this court in the decision of *Westin Infra World Private Ltd.*, it is held that the power conferred on the court to terminate a civil action is drastic one and thus conditions enumerated under Order VII Rule 11 of the CPC are required to be strictly adhered.

30. Considering the facts and circumstances of the present case, the plaintiff has made out a case for not complying with the mandatory provision of pre-institution mediation, as according to the plaintiff, urgent interim relief is contemplated in the suit. As held by the Hon'ble Apex Court in the decision of *Yamini Manohar* and *Dhanbad Fuels Private Limited*, the prayer for urgent interim relief by the plaintiff would be said to be contemplable, when the matter is seen from the standpoint of the plaintiff. Thus, in view of the pleadings in the plaint, coupled with the supporting documents as discussed in the above paragraphs, non-compliance with the mandatory requirement under Section 12A of the said Act would not warrant rejection of the plaint. The arguments made on behalf of the defendants that the cause of action pleaded in the suit and the requirement for a drastic mandatory injunction and appointment of Court Receiver are

¹⁰ (2020) 7 SCC 366

not made out by the plaintiff would be a question to be decided at the time of examining the prayer for interim relief.

31. As held by the Apex Court in the aforesaid decisions, refusal to grant ad-interim or interim relief cannot be a justification for rejection of the plaint at the threshold. Thus, what is seen from the averments in the plaint and the supporting documents is that, according to the plaintiff and as viewed from the standpoint of the plaintiff, urgent relief is contemplated in the suit. Hence, there would be no question of rejecting the plaint at the threshold on the ground of non-compliance with the mandatory provision of Section 12A of the said Act.

32. For the reasons recorded above, interim applications are rejected.

Interim Application (L) No. 24924 of 2025

33. List the application on 10th November 2025.

[GAURI GODSE, J.]