



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION NO. 51 OF 2025

APPLICANT : M/s. Indo Engineering Project
Ori. defendant Corporation, Through its Proprietor,
Shri. Sushil R. Patil, Aged 52 years,
Occupation: Business, Office at Plot
No.3, 3rd Floor, Lusine Tower, Adjacent
to Trovotel Hotel, Wardha Road,
Nagpur-440025

..VERSUS..

NON-APPLICANT : M/s. Nithin Sai Constructions, Through
Ori. plaintiff its General Manager, Mr. S. Narasimha
Babu, Aged 53 years, Occupation:
Service, R/o. 12-3-912, Vidyuth Nagar,
Anantpur, Andhra Pradesh-515001.

Mr. P. J. Mehta, Advocate for Applicant.

Mr. Kaushik Sahu, Advocate a/w. Mr. P. D. Khedikar, Advocate for the Non-
applicant.

CORAM : **ROHIT W. JOSHI, J.**

DATE OF RESERVE : **18.09.2025**

DATE OF PRONOUNCEMENT : **22.09.2025**

1) Heard.

2) The present applicant is the original defendant.

The non-applicant/plaintiff has filed a suit against the

present applicant, being Commercial Suit No.10 of 2024 before the learned District Judge-9, Nagpur (Commercial Court) for recovery of amount of Rs.49,11,44,578/-.

3) It is not in dispute that the subject matter of the suit is governed by the provisions of the Commercial Courts Act, 2015 (for the sake of brevity, hereinafter referred as “the Act”). It is also not in dispute that the suit is filed without pre litigation mediation, as contemplated under Section 12-A of the Act.

4) In view of the above, the present applicant who is the original defendant, filed an application for rejection of plaint vide Exh.14. The said application came to be rejected by the learned Commercial Court vide order dated 01.04.2025 which is the subject matter of challenge in the present civil revision application. The learned Trial Court rejected the said application, observing that the non-applicant/plaintiff had filed an application for grant of temporary injunction, seeking restraining orders against the applicant from alienating his properties so as to secure the amount and had also prayed for appointment of receiver over

the same. The learned Trial Court has observed that the non-applicant/plaintiff had apprehended that the applicant will sell his properties and make it difficult for the non-applicant/plaintiff to recover the amount.

5) The learned Advocate for the applicant/defendant states that the impugned order is unsustainable, as the learned Commercial Court has not referred to the pleadings in the plaint as well as the application for interim relief properly. The learned Advocate contends that the plaint averments and averments in the application for grant of interim relief do not make out any case of urgent interim relief. He further contends that procedure of pre-litigation mediation as contemplated under Section 12-A of the Act is mandatory and unless case of urgent interim relief is made out, pre-litigation mediation cannot be dispensed with. In support of his contentions, the learned Advocate has placed reliance on judgment of Hon'ble Supreme Court in Yamini Manohar...Vs...T.K.D. KEERTHI, reported in (2024) 5 SCC 815, Dhanbad Fuels Private Limited...Vs...Union of India and Another, reported in 2025 SCC online SC 1129 and another

judgment dated 04.08.2025 passed by Delhi High Court in the matter of *M/s. Exclusive Capital Limited...Vs...Clover Media Private Limited and others* in *CS(COMM) 399/2025, I.A. 10950/2025, I.A. 10951/2025, I.A. 10952/2025 & I.A. 14993/2025*.

6) Per contra, the learned Advocate for the non-applicant/plaintiff states that the case warrants urgent interim relief and, therefore, pre-litigation mediation could not be availed before filing the suit. He states that in order to secure urgent interim orders, application for grant of temporary injunction restraining the defendant from creating third-party interest over his personal properties and appointment of receiver was filed. The learned Advocate further contends that the learned Commercial Court was satisfied that a case for urgent interim relief was made out and has therefore, rejected the application for rejection of plaint. The learned Advocate further contends that the impugned order does not demonstrate any jurisdictional error warranting interference in exercise of power under Section 115 of the Code of Civil Procedure.

7) Perusal of Section 12-A of the Act will demonstrate that the provision is couched in negative terms. It is well settled that when a provision is couched negative terms, it is mandatory. It provides that a suit which does not contemplate any urgent interim relief shall not be instituted unless the plaintiff exhausts the remedy of pre-litigation mediation. The bar is mandatory, as is apparent from reading of the Section. The only exception is that, in case where a plaintiff seeks any urgent interim relief, recourse to pre-litigation mediation may not be taken before filing of the suit. It must also be mentioned that the provision does not contemplate interim relief, but 'urgent' interim relief. The Hon'ble Supreme Court has held in the aforesaid judgments of Yamini Manohar and Dhanbad Fuels Pvt., Ltd, that the said provision is mandatory and a suit instituted without pre-litigation mediation will not be maintainable. It is also held that if pre-litigation mediation is not followed, the plaint will be be liable to be rejected under Order VII, Rule 11 of the Code of Civil Procedure. It is also held that prayer for urgent interim relief should not be a disguise to get over the bar

incorporated under Section 12-A of the Act.

8) The Hon'ble Supreme Court has further held that while dealing with issue as to whether suit is maintainable without undergoing pre-litigation mediation, the Court must examine the material on record to ascertain as to whether plaintiff is justified in doing away with the mandatory requirement of pre-litigation mediation. It must also be stated that, the Supreme Court has also held that a separate application for waiving pre-litigation mediation is not required and appropriate pleadings in that regard will also suffice. The judgment of the Delhi High Court which considers both these judgments reiterates the said legal position.

9) In this context, when the plaint in the present suit is perused, it is found that there is no averment in the plaint with respect to any urgency warranting waiver of pre-litigation mediation. The suit is filed on 02.11.2024. It is stated in Paragraph 44 of the plaint that 'the cause of action for filing the suit arose on 23.08.2024, when the applicant realized that it was defrauded by the non-applicant and

thereafter on 25.10.2024, when the bank guarantee offered by the plaintiff to NHIDCL was invoked.’

10) Likewise, perusal of the application for interim relief also does not disclose any such pressing urgency. It will be pertinent to mention that in paragraph 45 of the application the plaintiff has stated that there was an apprehension that the defendant will alienate or create third party interest over his properties in order to frustrate the decree to be passed in the suit. However, the averments in paragraph 45 do not indicate any need or necessity for urgent interim relief. There is no averment regarding immediate likelihood of creation of third party interest. The statement in paragraph 45 is a general statement which is normally made in applications for grant of temporary injunction. It must be reiterated that the provision under Section 12 of the Act does not speak out interim relief, but ‘urgent’ interim relief.

11) In view of the aforesaid, in the considered opinion of this Court, the pleadings in the plaint, as also the application for grant of interim relief, do not make out a case of need of any urgent interim relief so as to dispense with

pre-litigation mediation, which is a mandatory pre-requisite for filing commercial suit under Section 12-A of the Act. The case of the applicant is squarely covered by the aforesaid judgments of the Hon'ble Supreme Court and the Delhi High Court.

12) The learned Advocate for the applicant is right in his contention that the learned Commercial Court has committed a jurisdictional error in rejecting the application by merely observing that the non-applicant had made out a case for filing the suit without pre-litigation mediation. Since an application for interim injunction was filed which demonstrate apprehension regarding alienation of personal properties of defendant/applicant in order to avoid the decree. However, the learned Commercial Court has not adverted to the pleadings and also failed to appreciate that no material is placed on record to demonstrate any need for urgent interim relief.

13) The learned Advocate for the non-applicant has placed reliance on judgment of the Hon'ble Supreme Court in the matter of **Shiv Shakti Co-operative Housing Society**

Nagpur...Vs...Swaraj Developers and others, reported in *(2003) 6 SCC 659*, to canvass that scope for interference under Section 115 of the Code of Civil Procedure is limited and the remedy of revision under the said provision is not a substantive right, but a source of power vested in the High Court to exercise supervisory control over the Courts subordinate to it. There cannot be any quarrel with the said proposition. However, in the present case, in the considered opinion of this Court, the impugned order demonstrates a jurisdictional error on the part of the learned Trial Court, which needs to be corrected by this Court in exercise of its revisional jurisdiction under Section 115 of the Code of Civil Procedure. Therefore, the Civil Revision Application deserves to be allowed, hence following order is passed:-

O R D E R

- i. The application is allowed.
- ii. The order dated 01.04.2025, passed by the learned District Judge-09, Nagpur on the application at Exh. 14 in Commercial Suit No.10 of 2024, is hereby quashed and set aside.

iii. Application for rejection of plaint filed at Exh.14 in Commercial Suit No. 10 of 2024 is allowed and the plaint in the said Commercial Suit No. 10 of 2024 is rejected.

iv. Interim order dated 10.06.2025, passed by the learned District Judge-09, Nagpur, on application at Exh.5, shall continue to operate for a period of eight weeks i.e. up to **17.11.2025**.

(ROHIT W. JOSHI, J.)

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