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C.R.P (PD) No.1544 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2025

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THE HONOURABLE MS. JUSTICE P.T. ASHA.J

C.R.P (PD) No. 1544 of 2025

M/s.Evershine Enterprises
29/9, Thandavaraya Street, 2nd Floor,
Old Washermenpet, Chennai- 600 021,
a Sole proprietorship concern represented
herein by its sole proprietress Mrs. Vimala Joseph ... Petitioner

VS.

N.Devendheran Civil and Mechanical
Contractor
No.410, Rajapalayam Village,
Mangavaram Post,
Natham, Gummidipoondi Taluk,
Thiruvallur District, Pin 601 201 ... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the
Constitution of India against the order dated 14.03.2025 made in
C.O.S.Sr.No.213 of 2025 by the Principal Commercial Court, Chennai
at Egmore.



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C.R.P (PD) No.1544 of 2025

For Petitioner : Mr. S.Chandra Bose

ORDER

Challenging the return of the plaint by the Principal Commercial Court, Egmore, Chennai, for compliance of the provisions of Section 12 A of the Commercial Courts Act, the plaintiff is before this Court. The short facts which are relevant for disposing of the above revision is as follows.

2. The plaintiff has come forward with the commercial suit in COS.Sr.No.213 of 2025 on the file of the Principal Commercial Court, Egmore, Chennai, for recovery of Rs.15,21,958/- with interest at 21% per annum on Rs.12,19,481/-. The aforesaid sum was payable by the defendant for the supply of paint related materials by the plaintiff to the defendant.



WEB COPY 3. The plaintiff would submit that despite several demands the amount had not been paid and there was no response from the defendant. On the contrary a cheque dated 10.09.2024 which was issued by the defendant to the plaintiff had been returned with reason "*Insufficient Funds*". Therefore, the plaintiff had filed a suit as a summary suit.

4. The plaintiff in his plaint has stated that since the defendant was taking steps to dispose of the property there is urgency to invoke the jurisdiction of the Commercial Court without going through pre institution mediation.

5. However, the learned Principal Judge, Principal Commercial Court, Egmore, Chennai, had returned the plaint by relying upon the Judgement reported in **2023 Livelaw (SC) 906 - Yamini Manohar Vs TKD Keethi.**



WEB COPY 6. Section 12 A of the Act, is extracted herein below:

“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 preinstitution 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 (39 of 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):



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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



C.R.P (PD) No.1544 of 2025

Arbitration and Conciliation Act, 1996 (26 of 1996).

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7. A reading of the above clearly indicates that where an urgent order is sought for, the parties should not be compelled to undertake pre mediation as it would render the very filing of the suit ineffective.

8. In the case on hand it is seen that along with plaint the plaintiff has produced the confirmation of balance given by the defendant and in the course of the representation before the learned Principal Judge, Commercial Court, the plaintiff has highlighted the fact that the cheque which has been presented had been returned with an endorsement “*insufficient funds*”.

9. That apart, it is seen that the GST registration of the defendant's company has been canceled and the amounts due to the defendant's customers have also not been paid. Therefore, the reason for filing the suit without invoking the provisions of Section 12 A of



C.R.P (PD) No.1544 of 2025

the Act has been reiterated in the affidavit filed in support of the attachment before Judgement application.

10. The Court below has totally overlooked these facts. Therefore, the order passed is set aside and the learned Principal Judge, Principal Commercial Court, Egmore, Chennai is directed to number the plaint. The Civil Revision Petition is allowed. No costs.

09.04.2025

Index: Yes/No
Internet: yes/No

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C.R.P (PD) No.1544 of 2025

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To

The Principal Judge,
Principal Commercial Court,
Egmore,
Chennai.



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C.R.P (PD) No.1544 of 2025

P.T. ASHA.J

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C.R.P (PD) No.1544 of 2025

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