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A.No.3323 of 2025

in C.S(Comm.Div)No.108 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2025

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

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in C.S(Comm.Div)No.108 of 2025

Creamline Dairy Products Ltd.,
Sy. No.9/1, Orakkadu Village,
Sholavaram PO, Ponneri TK, Chennai,
Thiruvallur, Tamil Nadu – 600 067.
Also at (Regd. Office):
H.No.6-3-1238/B/21,
Asif Avenue, Somajiguda,
Hyderabad, Telengana – 500 082.

... Applicant

vs.

1.M/s.RK Ganapathi Chettiar
rep. By its Partner M.Thirumoorthi
No.138, Muthur Road, S.F.No.199/2,
Veeranampalayam Village, Kangayam,
Tirupur District – 638 701,
Tamil Nadu, India.

2.Arihant Marketings,
47, Vardha Muthiyappan Street,
Chennai – 600 001.

.. Respondents

For Applicant : Mr.Thriyambak J.Kannan

For Respondents : Mr.Ramesh Ganapathy for R1



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A.No.3323 of 2025
in C.S(Comm.Div)No.108 of 2025

ORDER

The suit was filed seeking remedies in respect of alleged copyright infringement and passing off in relation to the sale of ghee. The first defendant has filed this application to reject the plaint. The said application is filed primarily on the ground that the plaintiff did not comply with Section 12A of the Commercial Courts Act, 2015.

2. Learned counsel for the applicant/first defendant referred to paragraph No.18 of the plaint to point out that the plaintiff became aware of the sale of the allegedly infringing product in November, 2024, whereas the suit was instituted in late February, 2025. He also submits that the suit was not preceded by cease and desist notice or by correspondence between the plaintiff and the first defendant. By referring to the recent judgment of the Hon'ble Supreme Court in *Novenco Building and Industry A/S vs. Xero Energy Engineering Solutions Private Limited and Another* (2025 SCC OnLine SC 2278) [Novenco], learned counsel submits that the said judgment is distinguishable on facts. By referring to paragraph Nos.5 to 8 of the judgment, learned counsel submits that the factual context therein was a relationship between the plaintiff and



A.No.3323 of 2025

in C.S(Comm.Div)No.108 of 2025

the defendants therein. He also points out that there were multiple

communications between the parties between July, 2022 and June, 2024. In those facts and circumstances, learned counsel submits that the Supreme Court concluded that pre-institution mediation would be a futile exercise.

3. Learned counsel for the plaintiff responded by submitting that the judgment in *Novenco* is authoritative for the proposition that suits relating to infringement of intellectual property rights deal with continuing acts of alleged infringement. Therefore, in such cases, it cannot be concluded that the suit does not contemplate urgent interim relief.

4. Section 12A of the Commercial Courts Act, makes it mandatory to resort to pre-institution mediation if the suit does not contemplate any urgent interim relief. In *Yamini Manohar vs. T.K.D.Keerthi* [(2024) 5 SCC 815], the Supreme Court concluded that the question whether the suit contemplates urgent interim relief should be decided by the Court, *albeit* by examining the issue from the perspective of the plaintiff. In *Novenco*, after taking stock of the preceding judgment on the issue, the Supreme Court raised the question whether the appellant's prayer for injunction can be characterised as mere camouflage to evade mediation. By taking



A.No.3323 of 2025

in C.S(Comm.Div)No.108 of 2025

into account the nature of an action for alleged infringement of

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intellectual property rights, the Supreme Court concluded that urgency in such context should be examined by also bearing in mind public interest.

5. Evidently, the present suit relates to alleged copyright infringement and passing off. The suit has been instituted within about four months from the date of alleged discovery of the acts of infringement and passing off by the plaintiff. On examining the plaint and documents filed along with such plaint, there is no basis to conclude that the interim application was filed with a view to circumvent Section 12A and not as a genuine endeavour to obtain such interim relief. Therefore, this application to reject the plaint cannot be sustained on the basis of Section 12A as interpreted in multiple judgments of the Hon'ble Supreme Court. Hence, this application is dismissed without any order as to costs.

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SENTHILKUMAR RAMAMOORTHY,J.

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A.No.3323 of 2025
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