



\$~56

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 26th March, 2025***

+ **CM(M) 426/2023**

SHASMITH TECHNOLOGIES PRIVATE LIMITEDPetitioner

Through: **Mr. M. Shaz Khan & Mr. Talha Abdul
Rahman, Advocates**

versus

MAX HEALTHCARE INSTITUTE LIMITEDRespondent

Through: **Mr. Siddharth Varshney and Mr. Yash
Raj, Advocates**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 17459/2025

Exemption allowed, subject to all just exceptions.

CM(M) 426/2023 & CM APPL. 17458/2025

1. Petitioner seeks stay of the proceedings pending before the learned Trial Court.
2. According to him, matter is fixed for arguments on application moved under Order XIII-A CPC for deciding whether the plaintiff is entitled to *summary judgment* or not and, in case such application is decided in favour of the plaintiff, the present petition would become infructuous.
3. The matter is reportedly coming up for further hearing before the learned Trial Court on 29th instant.
4. Since learned counsel for respondent is also present, with the consent of the learned counsel for the parties, the main petition as such has been taken up for consideration.



5. Petitioner, who is defending a commercial suit, is aggrieved by order dated 15.02.2023 passed by the learned Trial Court whereby his application moved under Order VII Rule 11 CPC has been dismissed.
6. The prime grievance raised by the petitioner/defendant is to the effect that there is no compliance of mandatory provision of Section 12A of Commercial Courts Act and, therefore, suit could not have been instituted, without exhausting the remedy of pre-institution mediation.
7. Copy of the suit has also been annexed with the petition and a bare perusal of the aforesaid suit would indicate that the plaintiff i.e. *Max Healthcare Institute Limited*, has filed a suit for permanent injunction restraining infringement of their trademark and passing off, damages etc.
8. Along with the suit, the plaintiff also filed an application under Order XXXIX Rules 1 & 2 r/w Section 151 CPC.
9. Suit was instituted on 19.09.2022 and was taken up for hearing for the first time by the learned Commercial Court on 21.09.2022 and while issuing summons of the aforesaid suit and notice of the application moved under Order XXXIX Rules 1 & 2 r/w Section 151 CPC, learned Trial Court, even, passed an interim restraint order against the defendants and, simultaneously, plaintiff was also directed to comply with provisions of Order XXXIX Rule 3 CPC.
10. Evidently, the suit was not only contemplating but was also seeking urgent relief.
11. In the aforesaid peculiar matrix, it is beyond my comprehension to understand as to on what basis, the defendant claims that there was no compliance of mandatory provision of Section 12 Commercial Courts Act. The aforesaid mandatory requirement would kick in only where the suit does



not contemplate any urgent relief.

12. As already noted above, the suit was seeking permanent injunction and the plaintiff had even filed an application seeking interim relief and interim injunction was even granted to the plaintiff.

13. Learned counsel for petitioner/defendant submits that parties were already under mediation before *Delhi High Court Mediation & Conciliation Centre* and invocation of such centre is not in consonance with the provisions of the Act and Rules made thereunder.

14. However, even such argument is fallacious in nature.

15. According to learned counsel for plaintiff/respondent herein, the plaintiff had received a legal notice from the defendant and it was in the aforesaid backdrop that they had invoked mediation.

16. According to learned counsel for defendant, since the suit was, eventually, filed before the District Court, the pre-institution mediation should have also been invoked before the *Delhi Legal Service Authority*. However, even such argument does not cut any ice as the plaintiff had invoked mediation on the basis of legal notice sent by their adversary. Moreover, It is also admitted case of the parties that there was no settlement arrived at between them and mediation, therefore, stood closed on 16.09.2022 and the suit was filed only thereafter i.e. 19.09.2022.

17. Viewed thus, even otherwise, even if the invocation of mediation was before a different centre, the same would not come to the rescue of petitioner herein.

18. Be that as it may, fact remains that the suit, which has, eventually, been filed, contemplated an urgent relief, the fact whether the invocation of pre-institution mediation before *Delhi High Court Mediation & Conciliation*



Centre was in terms of the relevant Rules or not, would pale into insignificance.

19. This Court, therefore, does not find any illegality or perversity in the impugned order to the aforesaid extent.

20. As regards the fact whether suit has been instituted by a duly authorized person, it can appropriately be gone into only during the trial and such aspect cannot be decided under Order VII Rule 11 CPC, as while deciding any such request made under Order VII Rule 11 CPC, the Court is merely required to confine itself to the averments made in the plaint.

21. In view of the above, this Court does not find any merit in the main petition. Same is accordingly dismissed.

22. Application seeking stay also stands dismissed.

23. Next fixed date before this Court i.e. date of 07.05.2025 is cancelled.

(MANOJ JAIN)
JUDGE

MARCH 26, 2025/dr/pb