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

Date of decision: 03rd APRIL, 2025

IN THE MATTER OF:

+ **RFA(COMM) 189/2025**

G.D.BUILDTECH PVT. LTD.

.....Appellant

Through: Mr. Naveen K Sharma, Advocate

versus

M/S B.K ASSOCIATES & ORS.Respondents

Through: Mr. Rohit Labh and Ms. Anjali Labh,
Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

JUDGMENT (ORAL)

SUBRAMONIUM PRASAD, J.

CM APPL. 19306/2025 (Exemption)

Allowed, subject to all just exceptions.

RFA(COMM) 189/2025, CM APPL. 19305/2025

1. Challenge in the present Appeal is to a Judgment and Decree dated 08.10.2024, passed by the learned District Judge, North West, Rohini Courts, in CS No.384/2022. By the said Order, the learned District Judge has decreed the suit, which was filed by the Respondent herein for recovery of Rs.5,80,855/- along with pendente lite and future interest, in favour of the Respondent herein.
2. Material on record discloses that the Defendant/Appellant herein, even after getting summons, failed to appear before the District Judge on



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11.05.2022 and have been proceeded ex-parte. Material on record further discloses that an application under Order IX Rule 7 of the CPC was filed on behalf of the Appellant herein and the same was dismissed *vide* Order dated 17.07.2023 and the Defence of the Appellant herein was also struck off.

3. The short ground on which the Appellant herein has challenged the Order dated 08.10.2024 is that the learned District Judge has proceeded ahead with the case without following the mandate of Section 12A of the Commercial Courts Act, 2015. Section 12A of the Commercial Courts Act mandates that a suit, which does not contemplate any urgent interim relief under, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government. Material on record indicates that on 05.11.2018 the requirement of pre-institution mediation under the Commercial Courts Act, 2015 was waived of only on the ground that there is no mechanism in place for entertaining any pre-institution mediation and on the basis of urgency shown by the Plaintiff/Respondent herein in filing a claim within one year. Order dated 05.11.2018 reads as under:

“The counsel for the plaintiff has orally prayed for waiving off the requirement of pre-institution mediation and settlement under the Commercial Courts Act, 2015.

It is further stated that as per the best information given by the DLSA (North- west) , they are not entertaining any Pre-institution Mediation because rules regarding deposit of the fees could not be framed and no account has been created wherein such fees can be deposited. He submits that the DLSA office is not prepared to accept any Mediation and one year period



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available with the plaintiff is going to expire very soon. Further more the filing of claim within one year is a pre- condition for filing claim with CGTMSE .

Keeping in view that there is no mechanism in place for entertaining any Pre -institution Mediation and further keeping the urgency shown by the plaintiff in filing a claim within one year, I find it a fit case to dispense with the requirement u/s 12 A of the Commercial Courts Act .

The statement of truth be filed alongwith the PF as per the prescribed performa.

Issue fresh summons to the defendants on filing PF/RC and approved courier returnable on 18.02.2019.”

4. The Suit filed by the Respondent herein was for recovery of money and material on record does not indicate any urgent relief sought for by the Respondent herein/Plaintiff.
5. The Apex Court in Yamini Manohar v. T.K.D. Keerthi, (2024) 5 SCC 815, has held that Section 12A of the Commercial Courts Act is mandatory. Entire Judgment of the Apex Court in Yamini Manohar (supra) is reproduced as under:

“1. Delay condoned. The application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short “the Code”), filed by the petitioner—Yamini Manohar, defendant in CS (Comm.) No. 205 of 2022, has been rightly dismissed.

2. Section 12-A of the Commercial Courts Act, 2015 (for short “the CC Act”) reads:

“12-A. Pre-litigation Mediation and Settlement.—(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the



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plaintiff exhausts the remedy of pre-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) For the purposes of pre-litigation mediation, the Central Government may, by notification, authorise—

(i) the Authority, constituted under the Legal Services Authorities Act, 1987 (39 of 1987); or

(ii) a mediation service provider as defined under clause (m) of Section 3 of the Mediation Act, 2023.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority or mediation service provider authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of one hundred and twenty days from the date of application made by the plaintiff under sub-section (1): Provided that the period of mediation may be extended for a further period of sixty days with the consent of the parties:

Provided further that, the period during which the parties spent for pre-litigation mediation shall not be computed for the purposes 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 and the mediator.

(5) The mediated settlement agreement arrived at under this section shall be dealt with in accordance with the provisions of Sections 27 and 28 of the Mediation Act, 2023.”

3. This Court in Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd. [Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1 : (2023) 1 SCC (Civ) 545] has held that Section 12-A of the CC Act is mandatory. Pre-litigation mediation is necessary, unless the suit contemplates urgent interim



relief. At the same time, the judgment observes : (SCC pp. 45-46, para 100)

“100. In the cases before us, the suits do not contemplate urgent interim relief. As to what should happen in suits which do contemplate urgent interim relief or rather the meaning of the word “contemplate” or urgent interim relief, we need not dwell upon it. The other aspect raised about the word “contemplate” is that there can be attempts to bypass the statutory mediation under Section 12-A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis. Section 80(2)CPC permits the suit to be filed where urgent interim relief is sought by seeking the leave of the court. The proviso to Section 80(2) contemplates that the court shall, if, after hearing the parties, is satisfied that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to the court after compliance. Our attention is drawn to the fact that Section 12-A does not contemplate such a procedure. This is a matter which may engage attention of the lawmaker. Again, we reiterate that these are not issues which arise for our consideration. In the fact of the cases admittedly there is no urgent interim relief contemplated in the plaints in question.”

4. The aforesaid paragraph refers to Section 80(2) of the Code, which permits the suit, praying urgent interim relief, to be filed by seeking the leave of the court. The proviso to Section 80(2) of the Code states that, if, after hearing the parties, the court is satisfied that no urgent or immediate relief is required to be granted in the suit, the court may return the plaint for presentation to it after compliance with requirements of Section 80(1) of the Code.

5. Section 12-A of the CC Act does not contemplate leave of the court, as is clear from the language and words used therein. Nor does the provision necessarily



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require an application seeking exemption. An application seeking waiver on account of urgent interim relief setting out grounds and reasons may allay a challenge and assist the court, but in the absence of any statutory mandate or rules made by the Central Government, an application per se is not a condition under Section 12-A of the CC Act; pleadings on record and oral submissions would be sufficient.

6. *The words used in Section 12-A of the CC Act are — “A suit which does not contemplate any urgent interim relief”, wherein the word “contemplate” connotes to deliberate and consider. Further, the legal position that the plaint can be rejected and not entertained reflects application of mind by the court viz. the requirement of “urgent interim relief”.*

7. *In the present case, it is an accepted fact that an urgent interim relief has been prayed for and the condition that the plaint “contemplates” an urgent interim relief is satisfied. Therefore, the impugned judgment/order of the Delhi High Court dated 8-5-2023 [Yamini Manohar v. TKD Keerthi, 2023 SCC OnLine Del 2653] , which upholds the order of the District Judge (Commercial Court)-01, South District at Saket, New Delhi dated 6-2-2023, rejecting the application under Order 7 Rule 11 of the Code, is correct and in accordance with law.*

8. *Our attention is drawn to the judgment of the High Court of Judicature at Bombay in Kaulchand H. Jogani v. Shree Vardhan Investment [Kaulchand H. Jogani v. Shree Vardhan Investment, 2022 SCC OnLine Bom 4752] , wherein the following observations have been made : (SCC OnLine Bom para 31)*

“31. In my considered view, the proper course would be to assess whether there are elements which prima



facie indicate that the suit may contemplate an urgent interim relief irrespective of the fact as to whether the plaintiff eventually succeeds in getting the interim relief. In a worst case scenario, where an application for interim relief is presented without there being any justification whatsoever for the same, to simply overcome the bar under Section 12-A, the Court may be justified in recording a finding that the suit in effect does not contemplate any urgent interim relief and then the institution of the suit would be in teeth of Section 12-A notwithstanding a formal application.”

9. *The High Court of Delhi in Chandra Kishore Chaurasia v. R.A. Perfumery Works (P) Ltd. [Chandra Kishore Chaurasia v. R.A. Perfumery Works (P) Ltd., 2022 SCC OnLine Del 3529] observes : (SCC OnLine Del paras 30-35)*

“30. The contention that it would be necessary for the plaintiff to file an application seeking exemption from the provisions of Section 12-A of the Commercial Courts Act, 2015, is unmerited. This Court cannot accept the said contention for several reasons.

31. First of all, there is no provision under Section 12-A of the Commercial Courts Act, 2015 that requires the plaintiff to make any such application in a suit which involves urgent interim reliefs. As stated above, if the suit involves urgent interim relief, Section 12-A of the Commercial Courts Act, 2015 is inapplicable and it is not necessary for the plaintiff to enter into a pre-institution mediation.

32. Second, a suit, which does not contemplate urgent interim relief, cannot be instituted without exhaustion of pre-institution mediation, as required under Section 12-A(1) of the Commercial Courts Act, 2015. As noted above, the Supreme Court has held that the said provision is mandatory and it is compulsory for a plaintiff to exhaust the remedy of pre-institution mediation, in accordance with the rules before instituting a suit. The Court has no discretion to



exempt a plaintiff from the applicability of Section 12-A(1) of the Commercial Courts Act, 2015. It is not permissible for the court to pass an order contrary to law; therefore, an application seeking exemption from engaging in pre-institution mediation, in a suit that does not involve urgent interim reliefs, would not lie.

33. This Court also finds it difficult to accept that a commercial court is required to determine whether the urgent interim reliefs ought to have been claimed in a suit for determining whether the same is hit by the bar of Section 12-A(1) of the Commercial Courts Act, 2015. The question whether a plaintiff desires any urgent relief is to be decided solely by the plaintiff while instituting a suit. The court may or may not accede to such a request for an urgent interim relief. But that is not relevant to determine whether the plaintiff was required to exhaust the remedy of pre-institution mediation. The question whether a suit involves any urgent interim relief is not contingent on whether the court accedes to the plaintiff's request for interim relief.

34. The use of the words “contemplate any urgent interim relief” as used in Section 12(1) of the Commercial Courts Act, 2015 are used to qualify the category of a suit. This is determined solely on the frame of the plaint and the relief sought. The plaintiff is the sole determinant of the pleadings in the suit and the relief sought.

35. This Court is of the view that the question whether a suit involves any urgent interim relief is to be determined solely on the basis of the pleadings and the relief(s) sought by the plaintiff. If a plaintiff seeks any urgent interim relief, the suit cannot be dismissed on the ground that the plaintiff has not exhausted the pre-institution remedy of mediation as contemplated under Section 12-A(1) of the Commercial Courts Act, 2015.”

(emphasis in original)



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10. We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine the nature and the subject-matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12-A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order 7 Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order 7 Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely : (i) prima facie case, (ii) irreparable harm and injury, and (iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.

11. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyse Section 12-A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The proposition that the commercial courts do have a role, albeit a limited one, should be accepted, otherwise it would be up to the plaintiff alone to decide whether to resort to the procedure under Section 12-A of the CC Act. An “absolute and unfettered right” approach is not justified if the pre-institution mediation under Section 12-A of the CC Act is mandatory, as held by this Court in Patil Automation [Patil Automation (P)]



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Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1 : (2023) 1 SCC (Civ) 545].

12. The words “contemplate any urgent interim relief” in Section 12-A(1) of the CC Act, with reference to the suit, should be read as conferring power on the court to be satisfied. They suggest that the suit must “contemplate”, which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and ensure that the legislative object/intent behind the enactment of Section 12-A of the CC Act is not defeated.

13. Recording the aforesaid, the present special leave petition is dismissed.

14. Pending application(s), if any, shall stand disposed of.”

6. The procedure adopted by the Trial Court is, therefore, completely contradictory to the mandate of the Commercial Courts Act. Material on record also discloses that an earlier Suit has been filed in which the mandate had been followed but the said suit has been withdrawn.

7. The fact that the Appellant had followed the mandate under Section 12A of the Commercial Courts Act will not absolve the Appellant from following the procedure yet again. The earlier suit has been withdrawn and a fresh suit has been filed. In the opinion of this Court, the mandate of Section 12A of the Commercial Courts Act has to be followed for every fresh suit. The purpose of Section 12A is to avoid litigation. Section 12A, therefore, is not a mere formality to be followed as has been observed by the Apex Court



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in Yamini Manohar (supra). Section 12A can only be exempted when urgent reliefs are sought and following mandatory procedure can defeat the purpose of the suit.

8. In view of the fact that there is no urgency and in view of the fact that no valid reason has been given by the Court below in its Order dated 05.11.2018 proceeding further with the suit without following the mandate of Section 12A, this Court is inclined to set aside the Order dated 08.10.2024 and remand the matter back to the District Judge for passing a fresh order after following the mandate of Section 12A of the Commercial Courts Act which has come into force after institution of the Suit.

9. The Appeal is, therefore, allowed and the matter is remanded back to the Trial Court.

10. The Appeal is disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHAN SHANKAR, J

APRIL 03, 2025

Rahul