

OCD-2

**IN THE HIGH COURT AT CALCUTTA
INTELLECTUAL PROPERTY RIGHTS APPELLATE DIVISION
COMMERCIAL DIVISION
[IN APPEAL FROM ITS INTELLECTUAL PROPERTY RIGHTS DIVISION]**

**APDT/13/2025
With IP-COM/31/2024
IA No. GA-COM/1/2025**

**UNIQUE ENTERPRENUERS AND FINANCE LIMITED AND ANR
-Vs-
REALLY AGRITECH PRIVATE LIMITED AND ANR**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant	:	Mr. Ranjan Bachawat, Sr. Adv. Mr. Subhasis Sengupta, Adv. Mr. Sagnik Basu, Adv. Mr. Bhavesh Garodia, Adv. Mr. Soupayan S. Roy, Adv.
For the Respondent	:	Mr. Surajit Nath Mitra, Sr. Adv. Mr. Debnath Ghosh, Sr. Adv. Mr. Pawan Kumar Maheswari, Adv. Mrs. Nabanita De, Adv. Mr. Biswarup Mukherjee, Adv. Mrs. Kiran Kumari Mahato, Adv.

HEARD ON : 07.04.2026

DELIVERED ON : 07.04.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against judgment and order dated March 20, 2025 passed in an application for revocation of leave granted under Section 12A of the Commercial Courts Act, 2015.
2. By the impugned judgment and order, learned Single Judge disposed of three interlocutory applications. Learned Single Judge, allowed the application for revocation, vacated subsisting interim order and dismissed the injunction petition.
3. Learned Senior Advocate appearing for the appellant submits that, the suit is for infringement and passing off. He refers to the pleadings in the plaint as well as the injunction petition. He submits that, infringement is continuing and that, wrong is continuing day to day. Therefore, the appellant as the plaintiff is entitled to urgent interim relief.
4. Learned Senior Advocate appearing for the appellant relies upon **2025 SCC OnLine SC 2278 (Novenco Building and Industry A/S Vs. Xero Energy Engineering Solutions Private Ltd. And Another)** and submits that, the test laid down therein, for consideration of Section 12A of the Act of 2015 was misapplied by the learned Single Judge. He submits that, the Court is not

concerned with the merits of the urgent relief. The Court ought to consider whether, the relief sought for is plausibly urgent from the stand point of the appellant as the plaintiff. He submits that, the continuing wrong for infringement and passing off requires intervention on an urgent basis.

5. Learned Senior Advocate appearing for the appellant relies upon **(2024) 5 Supreme Court Cases 815 (Yamini Manohar Vs. T. K. D. Keerthi)** and submits that, the words “contemplate any urgent interim relief” used in Section 12A of the Act of 2015 were explained. He submits that, the case made out by the appellant as the plaintiff is one which establishes a need of urgent interim relief in favour of the appellant.
6. Referring to the merits of the matter, learned Senior Advocate appearing for the appellant submits that, the appellant was manufacturing and marketing certain goods under the name and style of “RALLI”. While, the defendant sought to introduce a similar product under the name and style of “Really”. He submits that, the case made out in the application for vacating the subsisting injunction as well as application for revocation of leave granted under Section 12A of the Act of 2015 are unsustainable. He claims that, there was a fair held in Pune in 2018 in which, the appellant and the defendant participated is of no consequence. In any event, the contesting defendant came into being in 2019 much after the fair of 2018.

7. Relying upon **(2017) 242 DLT 488 (Apollo tyres Ltd. Vs. Pioneer Trading Corporation & Anr.)**, learned Senior Advocate appearing for the appellant submits that, the so called knowledge of a technical manager of the appellant is of no consequence. He submits that, such personnel did not belong to the marketing team of the appellant and, in any event, did not form the management of the appellant so as to warrant an imputation of knowledge of the product of the defendant to the appellant.
8. Learned Senior Advocate appearing for the appellant submits that learned Trial Judge proceeded on the basis of deemed knowledge of the appellant which is impermissible. He submits that, the defendant never established that the appellant possessed requisite knowledge of user of the trade mark, as claimed.
9. Learned Senior Advocate appearing for the respondent submits that, initially, the respondent No. 2 was marketing the product under the name and style of “Really”. He points out that respondent No. 2 participated in a fair, in which, the appellant also participated. Such fair was held in Pune in 2018. He submits that, the products of both the parties were displayed in such fair. Therefore, the appellant was aware of the product of the respondent.

- 10.** Learned Senior Advocate appearing for the respondent draws the attention of the Court to the WhatsApp messages exchanged between the two officials of the parties. He submits that, the ratio of the ***Apollo tyres Ltd. (Supra)*** is not attracted to the facts and circumstances of the present case as the employees of the two parties were discussing the specifics of the two products. The appellant was, therefore, well aware of the product of the respondent at least in the year 2022 when the WhatsApp messages were exchanged.
- 11.** Learned Senior Advocate appearing for the respondent draws the attention of the Court to the averments made in the application for revocation of leave as also to the affidavit in opposition used by the appellant therein. He submits that, the claim that, there was a fair in 2018 with the appellant and the respondent participating therein was not denied by the appellant.
- 12.** Relying upon ***Yamini Manohar (Supra)***, learned Senior Advocate appearing for the respondent submits that, the requirement of consideration of leave under Section 12A of the Act of 2015 was not fulfilled. He submits, leave under Section 12A of the Act of 2015 is granted ex parte. He points out that, leave under Clause 12 of the Letters Patent, 1865, is also granted ex parte. In a situation when leave under Clause 12 of the Letters Patent, 1865 is granted, the defendant can apply for revocation of such leave. If the facts and circumstances warrant

revocation, the Court can revoke the leave granted under Clause 12 of the Letters Patent, 1865. The same principles applicable to leave under Clause 12 of the Letters Patent, 1865, leave granted under Section 12A of the Act of 2015 should also be applied and considered. He submits that, the prayer for urgent interim relief should not also be a disguise to wriggle out the mandatory provisions of Section 12A of the Act of 2015.

- 13.** Appellant as the plaintiff filed a suit for infringement and passing off. In such suit, plaintiff applied for and obtained leave under Section 12A of the Act of 2015. Plaintiff applied for urgent interim relief by way of GA-COM/1/2024.
- 14.** By an order dated September 30, 2024, learned Single Judge, granted leave under Section 12A of the Act of 2015. Interim order was also granted.
- 15.** The respondent thereafter, applied by way of GA-COM/2/2024 for vacating the interim order. Respondent also applied for recalling the order granting leave under Section 12A of the Act of 2015 on September 30, 2024 by way of GA-COM/3/2024.
- 16.** By the impugned judgment and order, learned Single Judge dismissed GA-COM/1/2024, vacated the subsisting interim order and allowed GA-COM/2/2024. Learned Trial Judge also revoked leave granted under Section 12A of the Act of 2015 on September 30, 2024 and allowed GA-COM/3/2024.

17. Yamini Manohar (Supra) considered Section 12A of the Act of 2015. It held as follows:

“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.

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.”

- 18. Yamini Manohar (Supra)** was considered in **Novenco Building & Industry A/S (Supra)**. It also considered other authorities of the Supreme Court on the scope and ambit of Section 12A of the Act of 2015. It laid down the legal tests for the purpose of rejection of the plaint and adjudication of interim relief. It held as follows:

“20. The legal test distilled from the aforesaid decisions for the purposes of rejection of the plaint and for adjudication of interim relief can be culled out as follows:

(i) Section 12A mandatorily requires pre-institution mediation for commercial suits, non-compliance of which would ordinarily render the plaint institutionally defective.

(ii) A plaintiff can be exempted from the requirement of Section 12A only when the plaint and the documents attached with it clearly show a real need for urgent interim intervention. A wholesome reading of the plaint and the material annexed to the plaint ought to disclose the need for urgent relief.

(iii) The court must look at the plaint, pleadings and supporting documents to decide whether urgent interim relief is genuinely contemplated. The court may also look for immediacy of the peril, irreparable harm, risk of losing rights/assets, statutory timelines, perishable subject-matter, or where delay would render eventual relief ineffective.

(iv) A proforma or anticipatory prayer for urgent relief used as a device to skip mediation will be ignored and the court can require the parties to comply with Section 12A of the Act.

(v) The court is not concerned with the merits of the urgent relief, but if the relief sought seems to be plausibly urgent from the standpoint of the plaintiff the court can dispense with the requirement under Section 12A of the Act.”

19. Both the authorities recognize that Section 12A of the Act of 2015 is mandatory. Both also recognize that a plaintiff can be exempted from the requirement of Section 12A of the Act of 2015, only when plaintiff and the documents annexed with it clearly establish a real need for urgent interim intervention.
20. ***Yamini Manohar (Supra)*** laid down that, prayer for urgent interim relief should not be disguised or masked to wriggle out of the mandatory provision of Section 12A of the Act of 2015. The plaintiff does not possess an absolute right to paralyze Section 12A of the Act of 2015 by making a prayer for urgent interim relief. It held that camouflage and guise to bypass a statutory mandate for pre-litigation mediation should be checked when deception and falsities are apparent or established.
21. Therefore, when a Court is faced with an application for grant of leave under Section 12A of the Act of 2015, Court is required to consider the case made out in the plaint as also the documents attached to the plaint in order to arrive at a finding that there is a real need for urgent interim intervention by the Court for bypassing the mandatory provision of Section 12A of the Act of 2015. Once such leave is granted, the Court is not powerless so to re-visit such issue. In a given case, where, such leave was obtained by practising fraud, Court is not powerless in recalling the leave granted. In other cases, where the defendant made out a case that, leave was obtained through deception and falsity,

then again, the Court granting leave under Section 12A of the Act of 2015 is not powerless.

22. In the facts of the present case, the learned Single Judge found that, appellant as a plaintiff was guilty of suppression of fact that it knew about the user of the name “Really” by the defendant much prior in point of time than that pleaded in the plaint. Learned Single Judge held that, the appellant was deemed to know about the product of the defendant since 2018. Therefore, there was no need for grant of urgent interim relief in such circumstances.

23. We considered the materials placed on record before the learned Single Judge in this matter on the issue of Section 12A of the Act of 2015. We find from such materials on record that, there was a fair held in Pune with regard to the similar class of products marketed by both the parties to the suit. Parties to the suit apparently are competitors of the same product. There are materials on record to establish that, the defendants albeit, a different legal entity was marketing the product under the name and style of “Really” which, is now being claimed to be infringing the registered trade mark of the appellant and being deceptively similar to the mark used by the appellant sounding in passing off. Participation by the defendants albeit, through a different legal entity marketing the product under the name and style of “Really” in Pune in 2018 establishes that, the defendants were

marketing such brand name at least since 2018. Suit was filed in 2024.

24. Between such participation in the fair in 2018 and filing of the suit in 2024 there was exchange of WhatsApp messages between two employees of the two rival parties. Such two employees, shared details of the product of the defendant in 2022 along with price with the employee of the plaintiff.
25. Claim of the appellant in the plaint is that, they became aware of the user, infringement and passing off by the defendant in 2024, is unacceptable. The material on record establishes that the appellant was aware of the user of the word “Really” by the defendants at least since 2018.
26. The Single Judge of the Delhi High Court in ***Apollo Tyres Ltd. (Supra)*** in the facts of that case found that, the defendant in such suit was a distributor of the plaintiff till about May 2015. The particulars of the visit of the employee of the plaintiff to the distributorship outlet of the defendant were not established. Such visits were put forward to impute knowledge. At the stage of grant of injunction, the Court found that those were disputed question of facts and may be decided at the trial.
27. As rightly held by the learned Single Judge, facts obtaining in the present case are different than those of ***Apollo Tyres Ltd. (Supra)***. In the present case, details of the employees involved of the two parties are available on record. The exact time when

such conversation took place on social media is also available on record. Details of the product of the defendant were shared with a sufficiently high ranking official of the plaintiff so as to impute knowledge to the plaintiff, as to the user of the product and brand name by the defendant, if not from 2018 then at least from 2022.

- 28.** In such circumstances, we do not find any ground to interfere with the impugned judgment and order.
- 29.** APDT/13/2025 is dismissed along with connected applications, without any order as to costs.

(DEBANGSU BASAK, J.)

- 30.** I agree

(MD. SHABBAR RASHIDI, J.)