

In the High Court at Calcutta
Commercial Division
Original Side

Judgment (2)

PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY

IA NO. GA-COM/1/2026
In CS-COM/51/2026

RAMJI LAL AGARWAL
Vs
SOURAV AGARWAL

For the plaintiff	: Mr. Rajarshi Dutta, Adv. Mr. V.V.V. Sastry, Adv. Ms. Rahul Poddar, Adv.
For the defendant	: Mr. Anuj Singh. Adv. Mr. Sourojit Dasgupta, Adv. Ms. Niharika Singh, Adv. Ms. Trinisha De, Adv. Ms. Rupal Singh, Adv. Ms. Anukriti Poddar, Adv. Mr. Ashok Kumar Singh, Adv.

Heard on : June 24, 2026

Judgment on : June 24, 2026
[In Court]

ANIRUDDHA ROY, J :

FACTS:

1. This is an interlocutory application filed by the plaintiff, *inter alia*, praying for injunction against the defendant.

2. In effect, the plaint case is that plaintiff seeks to enforce a negative covenant of a family agreement dated **June 13, 2017** at **page 24** to the petition. Though the agreement was amongst various parties but the plaintiff has sued the defendant herein only and seeks to enforce negative covenant only against the defendant. The rest of the parties to such agreement are not impleaded.
3. The instant suit has been filed before the Commercial Division of this Court.
4. Plaintiff had filed a previous suit also, which was registered as **CS/126/2023** before the Regular Division. Parties to the said previous suit (hereinafter, the **previous suit**) were all same as that of the instant suit.
5. The said previous suit by a judgment and order of a Co-ordinate Bench dated **March 12, 2025** at **page 557 (Volume 4)** to the petition, was dismissed summarily without holding any trial on the issue of demurrer, *inter alia*, holding that the said previous suit was not maintainable before the Regular Division.
6. Parties to the suit preferred their respective appeals before the Hon'ble Division Bench. While the appeal was pending, Hon'ble Division Bench by its order dated **June 19, 2025** at **page 627** to the petition relegated the parties for mediation. The mediation report dated **September 12, 2025** at **page 626**

of the petition shows that the mediation between the parties failed.

7. The appeals were finally heard by the Hon'ble Division Bench when by a judgment dated **November 14, 2025** at **page 594** to the petition, the Hon'ble Division Bench dismissed the appeals and upheld the view of the Co-ordinate Bench.
8. Being aggrieved by the decision of the Hon'ble Division Bench, the plaintiff carried special leave petition being **Special Leave to appeal (C) No. 5558 of 2026**. By an order dated **February 20, 2026 Annexure "K"** at **page 621** to the petition, the special leave petition was dismissed.
9. At this stage, the instant suit had been filed before the **Commercial Division** of this Court and had been registered as a Commercial Suit in which the plaintiff/ petitioner had applied for injunction through the instant petition.

SUBMISSIONS:

10. At the threshold, while the instant petition has been moved, Mr. Anuj Singh, learned advocate appearing for the defendant has raised the point of maintainability on the following scores:-

- (a) *The mandatory requirement of pre litigation mediation as provided under **Section 12A** of the **Commercial Courts***

Act, 2015 (for short, CC Act.) has not been complied with;

- (b) *The plaint should have been presented before the Intellectual Property Division and*
- (c) *The third issue was raised by this Court whether the suit is maintainable in absence of all the parties to the family settlement who have not been impleaded.*

11. Mr. Rajarshi Dutta, learned advocate appearing for the plaintiff to sustain the plaint and the interlocutory application has, at the threshold, submitted on the issue of **Section 12A of the CC Act.**
12. Mr. Rajashri Dutta, learned advocate for the plaintiff submits that the previous suit was dismissed and/or rejected but before that mediation was availed of pursuant to the direction of the Hon'ble Division Bench dated **June 19, 2025.** The mediation failed. The previous suit was thereafter dismissed by the Hon'ble Division Bench, which was upheld by the Hon'ble Supreme Court.
13. After dismissal and/or rejection of the previous suit, the instant suit had been filed and the mediation since had already failed, according to him, it was substantive compliance of the requirement for pre-litigation mediation under **Section 12A of the CC Act.**

14. Mr. Dutta further submits that object and purpose of enactment of the **CC Act** was for speedy disposal of commercial dispute after complying of the relevant provisions under the **CC Act**. The previous suit was dismissed and/or rejected on the ground that the cause of action therein was of commercial nature and the suit should have been presented before the Commercial Division. The subsequent suit, being the instant one, had therefore been filed between the same parties with the same cause of action. Mediation had failed between the same parties on the self-same cause of action. Therefore, according to Mr. Dutta, substantive compliance of pre-litigation as provided under Section 12A of the CC Act had been complied with and the instant suit is maintainable. In support, he has placed reliance upon a decision of a Co-ordinate Bench of Hon'ble Delhi High Court ***In the matter of: AAONE DEVELOPERS PRIVATE LIMITED versus SABITA JHA AND ANOTHER reported at 2025 SCC OnLine Del 42;***
15. Mr. Dutta then submits that the said judgment of the Delhi High Court was tested before the Hon'ble Supreme Court in special leave to appeal (C) NO. 7470 of 2025 when the Honb'le Supreme Court by its order dated March 24, 2025 had dismissed the special leave petition. He has referred to the relevant report ***In the matter of: Sabita Jha and Another***

***versus Aaone Developers Pvt. Ltd. reported at 2025 SCC
OnLine SC 1822;***

16. In the light of the above, Mr. Rajarshi Dutta submits that the plaint is maintainable and he prays for orders of injunction, as prayed for.
17. Mr. Anuj Singh, learned advocate appearing for the defendant submits that the provision under **Section 12A of the CC Act** is a mandatory provision. Unless such provision is complied with, the suit is not maintainable. The provision also provides that the plaintiff may proceed with the suit without availing of the requirement of pre-litigation mediation, subject to leave being granted by the Court. Mr. Singh then refers to the plaint and submits that in **paragraph 33** of the plaint, the plaintiff has pleaded for dispensation of the requirement under **Section 12A of the CC Act** but in the prayer such leave has not been prayed for. The plaint was presented before the learned Master and was admitted.
18. Mr. Anuj Singh, learned advocate appearing for the defendant submits that admittedly no leave had been obtained for dispensation of requirement of the provision under **Section 12A of the CC Act**. This is a mandatory requirement and in absence of the same, the plaint suffers from inherent defect and should be rejected and the parties should be relegated to

mediation. Therefore, there is no question of passing of any **interim order** in aid of the plaint, at this stage.

19. Referring to the provision under **Section 12A of the CC Act**, Mr. Anuj Singh submits that the Section prescribes that the mediation has to be made in a particular statutory form being **no. I in schedule-I** appended to the **Commercial Courts (Pre-institution Mediation and Settlement) Rules, 2018 (hereinafter, 2018 Rules)**. But the mediation had taken place in terms of **2006 Rules**, which was framed in exercise of power under Section 89 of CPC. Therefore, in any event, the mediation that had already taken place, is not in terms of the **CC Act**.
20. While distinguishing the judgment of the Hon'ble Delhi High Court, ***In the matter of: AAONE DEVELOPERS PRIVATE LIMITED(supra)***, Mr. Anuj Singh, learned advocate for the defendant submits that there was only one suit which was initially filed as a non-commercial suit but subsequently was converted into a commercial suit. Therefore, the mediation availed of by the parties, which had ultimately failed during the pendency of the suit before the Regular Division, was held to be justified and sufficient compliance after the suit was simply converted as a commercial suit. Therefore, the ratio of the said judgment would not apply in the facts of the instant case.
21. Defendant submits that the plaint should be rejected.

DECISION

22. After considering the rival contentions of the parties and on perusal of the materials on record, at the threshold, this Court finds that two separate suits had been filed by the plaintiff.
23. The previous suit was filed and presented before the Regular Division as a non-commercial suit. After the same being rejected by the co-ordinate bench having been upheld to the Hon'ble Supreme Court, the instant second suit had been filed before the Commercial Division, registered as commercial suit.
24. Once the instant suit has been registered as a Commercial Suit, the same is governed under the provision of the said **CC Act** and the relevant rules framed thereunder. The provisions laid down under the **CC Act** including **Section 12A** of the Act are mandatory in nature and in absence of compliance of any such provision including **12A of the Act**, the plaint should be rejected being barred by law.
25. The mediation that was availed by the parties here to pursuant to the direction of the Hon'ble Division Bench dated **June 19, 2025** was in connection with the previous suit and the mediation had held in exercise of the power under **Section 89 of CPC**, as the notices in connection with the said mediation process would make it evident. The mediation ultimately failed

during pendency of the appeal and thereafter the previous suit was finally dismissed, as the same was held to be not maintainable in the Regular Division and was held to be a commercial suit. At this juncture, after the previous suit was dismissed, the instant suit had been filed in commercial division and has been registered as commercial suit.

26. Once the instant suit has been registered as a commercial suit all the rigors including the mandate provided under **Section 12A of the Commercial Courts Act** are attracted and would apply. Admittedly, at the time of institution of this suit, no leave had been prayed for dispensation of the pre-litigation mediation as provided under Section 12A though paragraph 33 to the plaint would show that there has been an averment in the plaint for dispensation of such requirement.
27. In any event, the previous mediation process between the parties was not within the meaning of **Section 12A of the CC Act** in the facts and circumstances.
28. ***In the matter of: AAONE DEVELOPERS PRIVATE LIMITED(supra)***, there had been a single suit. The suit was initially filed as a non-commercial suit and then converted into a commercial suit and was allowed to continue on the basis of the mediation availed of by the parties during the stage when the suit was categorized as a non-commercial suit. In the facts of the instant case, the previous suit had been dismissed on the

point of demurrer and only thereafter the instant suit had been filed before the Commercial Division of this Court and registered as a Commercial Suit. When the previous suit was dismissed, it was removed from the board, which was a regular suit. The moment the instant commercial suit had been instituted, it automatically had attracted the rigors of **Section 12A of the CC Act**. Therefore, the instant suit being an independent subsequent commercial suit, the ratio decided by the Hon'ble Delhi High Court in the judgment would not apply in the facts and circumstances of this case.

29. The golden rule of law is that when a specific statutory provision to do certain act is codified under the statute, such an act must be and should be done in the same manner as codified under the statute or not at all. Any other mode is expressly forbidden in law. Therefore, when the instant suit has been instituted as a commercial suit, the same has to be maintained in strict compliance of the provisions laid down under the **CC Act** and non-compliance of any mandatory provision of the **CC Act** would render the suit bad and not tenable in law. Thus, non-compliance of the provision under section **12A of the CC Act** would render the suit bad being barred by law.

30. In view of the forgoing reasons and discussions, this Court holds that in absence of leave having prayed for and consequentially not being granted for dispensation of the

requirement under **Section 12A of the CC Act** and the parties having not availed of the mediation, the instant suit must fail.

31. Accordingly, the **plaint** filed in the instant suit being **CS-COM/51/2026** stands **rejected**.
32. Parties to the suit are relegated for mediation before the jurisdictional mediation centre in accordance with law and such mediation must conclude positively within **a period of one month** from the date of first sitting of the mediation.
33. The Court Fees attached with the plaint is directed to be returned to the learned advocate on record for the plaintiff and in the event, the plaintiff files any further suit on the self-same cause of action, such Court Fees can be utilised thereupon.
34. It is made clear that this Court has not gone into the other points of maintainability of the suit and rival contentions of the parties on the merit of the suit. This Court has also not expressed any opinion on the reliefs prayed for in the plaint.
35. The instant application being **IA GA-COM/1/2026** stands **dismissed**, without any order as to costs.

(ANIRUDDHA ROY, J.)

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