

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 470 OF 2025

M/s. Pyromaitre Thermal India Pvt. Ltd.
Represented by its Director,
Mr. Vishnu Gangadhar Godse,

...Applicant
(Ori.Deft.3)

Versus

1. Pyromaitre INC., (A Company
incorporated under the Canada Business
Incorporations Act) through its authorized
representative Ms. Arunadevi Vinay
Nayarankar

2. Vishnu Gangadhar Godse

3. M/s. R. V. Industries,

Proprietor, Mr. Vishnu Gangadhar Godse

4. Radha Vishnu Godse

...Respondents

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SUBHASH
KULKARNI

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Mr. S. S. Patwardhan, i/b M. A. Shelar, for the Applicant.
Mr. Jai Chhabria, a/w Shashwat Rai, Mrinali Dave, i/b
Keystone Partners, for Respondent No.1.

CORAM:	N. J. JAMADAR, J.
Reserved On:	6th JANUARY, 2026
Pronounced On:	20th JANUARY, 2026

ORDER:-

1. This revision application is directed against the order dated 24th June, 2025 passed by the learned District Judge, Pune, in Commercial Suit No.14 of 2022, whereby an application preferred by the applicant – original defendant No.3 for rejection of the plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (“the Code”), came to be rejected.

2. In fact this is the second round of proceedings before this Court. By an order dated 23rd October, 2023, the learned District Judge had initially rejected the said application for rejection of plaint (Exhibit-28). The said order was assailed in revision before this Court in CRA/702/2023. By an order dated 4th March, 2025, this Court was persuaded to partly allow the revision application and remit the same for afresh decision on the point: whether the suit is barred by the provisions contained in Section 12A of the Commercial Courts Act, 2015 ('the Act, 2015') for not resorting to pre-institution mediation?

3. The petitioner carried the matter before the Supreme Court in SLP(C) No.13532/2025. By an order dated 23rd May, 2025, the Supreme Court disposed of the said SLP observing that when the Commercial Court at Pune hears the matter afresh in pursuance of the remand order passed by this Court, it shall keep in mind the dictum as laid down by the Supreme Court in one of the recent pronouncements in *M/s. Dhanbad Fuels Pvt. Limited vs. Union of India and another*¹. All other contentions were kept open for the parties to be canvassed before the Commercial Court.

¹ (2025) INSC 696.

4. By the impugned order, the learned Judge, Commercial Court, was again persuaded to reject the application holding, *inter alia*, that the suit does contemplate an urgent interim relief and, therefore, the omission to resort to pre-institution mediation under Section 12A of the Act, 2015 did not entail the consequence of the rejection of the plaint, the plaint does disclose a cause of action and the plaint was not liable to be rejected on the ground that Arunadevi Vinay Nayarankar, who has signed and verified the plaint, was not authorized to institute the suit against the applicant – defendant No.3.

5. Being aggrieved the applicant has again invoked the revisional jurisdiction.

6. An elaborate reference to the facts may not be warranted as in the order passed in CRA/702/2023 dated 4th March, 2025, this Court had adverted to the facts in a little detail.

6.1 Suffice to note that, the applicant is a company incorporated under the Canada Business Incorporations Act. It is engaged in the business of manufacture and sell of the industrial ovens and complex heat transfer machinery. The plaintiff claims, its brand has earned an enviable reputation in the industry. A Licence Agreement, dated 5th December, 2013, was executed between the plaintiff and Pyromaitre Terminal

India Pvt. Ltd. (D3), a Company incorporated to manufacture, use and sell the plaintiff's product using the technical and engineering knowledge and know how developed by the plaintiff. Alleging breach on the part of the defendants, the said Licence Agreement came to be terminated with effect from 30th October, 2015.

6.3 In the month of April, 2019, the plaintiff learnt that, one of the prospective purchaser of the plaintiff was in possession of an industrial oven that was a replica of P-4412E Oven designed by the plaintiff. Further enquiries revealed that, the infringing oven was identical in its design and make as the plaintiff's oven. The infringing oven was manufactured by illegally using the plaintiff's proprietary information. Thus, the suit came to be instituted for injunction, damages and consequential reliefs.

7. In the wake of the averments in the plaint and the documents annexed with it, I have heard Mr. Patwardhan, the learned Counsel for the applicant – defendant, and Mr. Chhabria, the learned Counsel for the respondents – plaintiffs, at some length.

8. Mr. Patwardhan, the learned Counsel for the applicant, submitted that despite directions by the Supreme Court and this Court to apply the correct principles in the matter of

rejection of the plaint for not-resorting to pre-institution mediation as mandated by Section 12A of the Act, 2015, the learned Judge, Commercial Court, approached the controversy from an incorrect perspective. Amplifying the submission Mr. Patwardhan submitted that, the incorrect approach becomes evident from the fact that the learned Judge posed a wrong question namely, “whether the suit can be protected from the rejection of the plaint” (paragraph 14 of the impugned order). According to Mr. Patwardhan, the wrong question led to wrong answer. Instead, the learned Judge ought to have posed upto himself the question as to whether the plaint was liable to be rejected for not resorting to mandatory pre-institution mediation.

9. In view of the decision of the Supreme Court in the case of *Patil Automation Pvt. Ltd. V/s. Rakheja Engineers Pvt. Ltd.*², that Section 12A of the Ac, 2015 is mandatory and that, any suit instituted violating mandate of Section 12A must be visited with rejection of plaint under Order VII Rule 11 CPC, even *suo motu* by the Commercial Court, in the instant case, the learned Judge misdirected himself in examining his issue with a view to

protect the suit from the rejection of the plaint, submitted Mr. Patwardhan.

10. On the merits of the matter, Mr. Patwardhan would urge that, a bare perusal of the averments in paragraphs 41 and 42 of the plaint would indicate that there was no semblance of immediacy in seeking the interim relief. The plaintiff allegedly learned about the alleged infringement of its intellectual property rights in the month of April, 2019. Yet, the suit came to be instituted in the month of March, 2022. From the own showing of the plaintiff, the plaint did not contemplate any urgent interim relief.

11. Mr. Patwardhan would urge the learned Judge was swayed by the alleged intellectual property rights violation, and, in the process, lost sight of the fact that, there was no case for urgent interim relief. Mr. Patwardhan submitted that, in fact, the instant suit does not, strictly speaking involve infringement of the rights and obligations in relation to intellectual property. At any rate, the timelag between the accrual of the cause of action and the institution of the suit was such that, by no stretch of imagination, could it be said that the suit contemplates urgent interim relief.

12. Lastly, Mr. Patwardhan would urge, if the expression “contemplates any urgent interim relief” is construed so loosely, as has been construed in the impugned order, the very object of peremptory pre-institution mediation under Section 12A of the Act, 2015 would be defeated. To lend support to this submission, Mr. Patwardhan placed reliance on the decision of the Supreme Court in the case of *Patil Automation* (supra) and the judgment of this Court in the cases of *Chemco Plast V/s. Chemco Plastic Industries Ltd.*³ and *Y-Not Films LLP and another vs. Ultra Media and Entertainment Private Limited*⁴.

13. Per contra, Mr. Chhabria, the learned Counsel for the respondents, submitted that the endeavour of the defendants has been to keep the plaintiff away from interim reliefs, on one or the other pretext. Despite a period of more than three years having been elapsed since the institution of the suit, the application for interim reliefs has not been effectively heard. Mr. Chhabria would urge, the controversy sought to be raised by the petitioner has been settled by the decisions of the Supreme Court and this Court, especially, in the context of a suit where the plaintiff alleges infringement of intellectual property rights. In the case at hand, the plaint contains clear and explicit

3 2024 SCC OnLine Bom 1607.

4 2024 SCC OnLine Bom 3085.

averments to demonstrate that the plaintiff alleges infringement of the intellectual property rights and has, in fact, pleaded that the alleged infringement furnishes a continuing cause of action. In the backdrop of the nature of the suit and a very strong *prima facie* case of infringement of the plaintiff's intellectual property rights, the learned Judge, Commercial Court, was fully justified in declining to reject the plaint as the suit does contemplate an urgent interim relief.

14. Mr. Chhabria laid emphasis on the judgment of the Supreme Court in the case of *Dhanbad Fuels Private Limited vs. Union of India and another*⁵ and a recent pronouncement in the case of *Novenco Building and Industry A/S vs. Xero Energy Engineering Solutions Private Ltd. and another*⁶, wherein the Supreme Court has expounded the import of the expression, “contemplates any urgent interim relief” under Section 12A of the Act, 2015, in its application to an action for infringement of intellectual property rights.

15. In the light of the facts of the case, adverted to above, the moot question that wrenches to the fore is, whether the purported delay in seeking the interim reliefs in relation to the infringement of the intellectual property rights, from the date of

5 2025 SCC OnLine SC 1129.

6 2025 SCC OnLine SC 2278.

the accrual of the cause of action, justifies an inference that the suit does not contemplate an urgent interim relief?

16. With the pronouncement of the Supreme Court in the case of *Patil Automation* (supra), there can be no duality of opinion that the pre-institution mediation, envisaged by Section 12A of the Act, 2015, is mandatory. In a commercial suit, the Court is enjoined to examine whether the institution of the suit without resorting to pre-institution mediation was justifiable on the touchstone of contemplation of an urgent interim relief, even *suo motu*. The only outlet to claim exemption from the peremptory pre-institution mediation is, the contemplation of an urgent interim relief in such suit.

17. Thus, when confronted with the question, as to whether the plaint is liable to be rejected for not exploring pre-institution mediation, the approach to be adopted by the Court would be one of striking a balance. At the one end of the spectrum is, the necessity to adopt an approach which does not defeat the object of mandatory pre-institution mediation. At the other end of the spectrum is, the compulsion to not shut doors on a party which requires an urgent interim relief in a commercial suit. A too rigid construction of the expression, “contemplates an urgent interim relief”, would deprive a party of the hearing, at the

threshold, where urgent interim relief is necessary to protect its interest.

18. In the suits involving assertions of infringement of intellectual property rights, the construction of the expression, “contemplates any urgent interim relief”, is informed by two critical factors. One, often than not, an infringement of intellectual property rights affords a continuing cause of action as the injury is caused at the every moment of infringement. Two, in the matter of infringement of intellectual property rights there is an element of public interest as well.

19. In the case of *Yamini Manohar vs. T.K.D. Keerthi*⁷, the Supreme Court expounded the import of the expression, “a suit which does not contemplate any urgent interim relief”, from the point of view of the party; whose contemplation matters, the test to be applied to judge the existence of contemplation of urgent interim relief and the possibility of urgent interim relief being prayed for to circumvent the mandate of pre-institution mediation. The observations of the Supreme Court in paragraphs 10 to 12 read as under:

“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 VII, Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order VII, 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 paralyze 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 Pvt. Ltd. (supra).

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.”

(emphasis supplied)

20. In the case of *Dhanbad Fuels* (supra), after adverting to the aforesaid pronouncement in the case of *Yamini Manohar* (supra), the Supreme Court enunciated that the test under Section 12A is not whether the prayer for urgent interim relief actually comes to be allowed or not, but whether on examination of the nature and the subject-matter of the suit and the cause of action, the prayer for urgent interim relief by the plaintiff could be said to be contemplable when the matter is seen from the standpoint of the plaintiff. However, what also be kept in mind by the Court is that the urgent interim relief must not be merely on unfounded cause of action by the plaintiff to bypass the mandatory requirement of Section 12A of the Act, 2015.

21. The recent pronouncement of the Supreme Court in the case of *Novenco Building* (supra) further illuminates the path,

especially in an action for infringement of intellectual property rights. The facts in the said case appear to have a resemblance to the facts of the case at hand. Novenco Building, the appellant therein, a Danish Company, initiated a patent and design infringement a suit before the Delhi High Court, alleging that the respondents were unlawfully manufacturing and selling products that violated its registered intellectual property rights. Xero Energy, the defendant therein, allegedly, in violation of the distribution agreement, incorporated Aeronaut Fans Industry Pvt. Ltd. (R2) for manufacture and sell of identical fans. Novenco Building discovered the said fact in the month of July, 2022. The Commercial Suit came to be instituted on 4th June, 2024.

22. In the backdrop of the delay, the Delhi High Court held that delay between inspection and filing of the commercial suit exhibits patent lack of urgency and exemption from requirement of compliance of the mandate contained in Section 12A of the Act could not be claimed merely because interim reliefs were sought.

23. The Supreme Court, in the light of the aforesaid facts, emphasized that, the insistence of pre-institution mediation in a situation of ongoing infringement would render the plaintiff remediless allowing the infringer to continue to profit under the

protection of procedural formality. The Supreme Court expounded the legal test distilled from the previous precedents, and enunciated the law as under:

“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.

ANALYSIS

21. Thus, the question whether a suit “contemplates any urgent interim relief” needs to be examined on the touchstone of the aforementioned criteria. The issue which arises for consideration in this appeal is whether a suit alleging continuing infringement of patent and design rights, accompanied by a prayer for interim injunction, can be said to contemplate urgent relief within the meaning of Section 12A of the Act, notwithstanding certain delay in its institution.

22. The subject matter of the present action is continuing infringement of intellectual property. Each act of manufacture, sale, or offer for sale of the infringing product constitutes a fresh wrong and recurring cause of action. It is well settled in law that mere delay in bringing an action does not legalise an infringement and the same cannot defeat the right of the proprietor to seek injunctive relief against the dishonest user. The appellant has pleaded that Xero Energy, its former distributor, has dishonestly appropriated its proprietary designs and patents to manufacture and market identical fans under deceptively similar name. The accompanying material demonstrates that such infringing activity is continuing and causing immediate and irreparable harm to the appellant's business reputation, goodwill and proprietary rights.

23. From the standpoint of the appellant, each day of continuing infringement aggravates injury to its intellectual property and erodes its market standing. The urgency, therefore, Midas Hygiene Industries Private Ltd. & Anr. (supra) is inherent in the nature of the wrong and does not lie in the age of the cause but in the persistence of the peril. The court cannot be unmindful of the fact that intellectual property disputes are not confined to the private realm. When imitation masquerades as innovation, it sows confusion among consumers, taints the market place and diminishes faith in the sanctity of the trade. The public interest, therefore, becomes the moral axis upon which the urgency turns. Therefore, the public interest element, need to prevent confusion in the market and to protect consumers from deception further imparts a colour of immediacy to the reliefs sought.

24. The appellant's prayer for injunction cannot be characterised as mere camouflage to evade mediation. It is a real grievance founded on the continuing nature of infringement and irreparable prejudice likely to be caused by the delay. The court must look beyond time lag and evaluate the substance of the plea for interim protection. The insistence of pre-institution mediation in a situation of ongoing infringement, in effect, would render the plaintiff remediless allowing the infringer to continue to profit under the protection of procedural formality. Section 12A of the Act was not intended to achieve such kind of anomalous result.

25. The learned Single Judge as well as the Division Bench of the High Court erred in construing the test for urgent relief enumerated in Section 12A of the Act, in as much as the courts have proceeded to examine the entitlement of the appellant to urgent relief based on the merits of the case rather than looking at the urgency as is evident from the plaint and the documents annexed thereto from the standpoint of the plaintiff. The High Court has proceeded on

the premise that lapse of time between the appellant's discovery of infringement and filing of suit negated the element of urgency. Such an approach, in our considered view, is contrary to the principles laid down by the decisions of this Court. The High Court has also failed to take into account that the present action is one of the continuous infringement of intellectual property.

CONCLUSION

26. For the reasons stated above, we hold that (i) In actions alleging continuing infringement of intellectual property rights, urgency must be assessed in the context of the ongoing injury and the public interest in preventing deception, (ii) Mere delay in institution of a suit by itself, does not negate urgency when the infringement is continuing."

(emphasis supplied)

24. Mr. Patwardhan made a valiant effort to demonstrate that, the facts in the case at hand are such that the aforesaid pronouncement does not come to the rescue of the plaintiff. As noted above, laying emphasis on the date of the accrual of the cause of action, as articulated in paragraphs 41 and 42 of the plaint, and the date of the institution of the suit, Mr. Patwardhan would urge, even if maximum latitude is given to the plaintiff and some allowance is given for the time spent in ascertaining the facts and taking steps to institute the suit, the delay of almost three years under no circumstances can be said to be such as to still retain an element of urgency in seeking the interim relief.

25. I am afraid to accede to the aforesaid submissions of Mr. Patwardhan. The paragraphs 41 and 42 of the plaint cannot be

read in isolation and torn out of context. Indeed the plaintiff refers to the different dates at which the cause of action arose. However, the Court cannot lose sight of the fact that, in paragraph 41 itself, the plaintiff categorically asserted that the defendants were continuously making unauthorized use of the proprietary information and such infringement furnishes a continuing cause of action and the cause of action would continue to arise till such time as the defendants were restrained by the Court from committing the offending acts. In paragraph 42 an effort was made by the plaintiff to account for the delay. Eventually the Court may or may not find that the delay has been properly accounted for. The question as to whether the Court would ultimately grant the interim relief is not the barometer on which the contemplation of urgent interim relief is to be judged.

26. The submission of Mr. Patwardhan that the suit is not in effect an action for infringement of intellectual property rights is required to be stated to be repelled. If the plaint is read as whole, in a meaningful manner; that is what required to be done at the stage of consideration of the application under Order VII, Rule 11, it becomes abundantly clear that the plaintiff is asserting infringement of the intellectual property rights and

has specifically asserted that the defendants have manufactured the industrial oven by infringing the design of P-4412E Oven manufactured by the plaintiff. It has been categorically asserted that the infringing oven was identical in its design and make as the plaintiff's oven.

27. On a careful analysis of the facts of the case, this Court finds that the enunciation of law in the case of *Novenco Building* (supra) is on all four with the facts of the case at hand. If the urgency is assessed on the touchstone of continuous injury and public interest, as has been ordained in the said decision, the delay in the institution of the suit does not detract materially from the plaintiff's contemplation of an urgent interim relief especially when the plaintiff alleges that the infringement of its intellectual property rights is continuing.

28. The ground of absence of cause of action is clearly untenable. The contention that the plaint was liable to be rejected on the ground that Arunadevi Vinay Nayarankar was not authorized to institute the suit against the applicant – defendant No.3, also does not merit countenance. In the order passed by this Court in CRA/702/2003 dated 4th March, 2025, after adverting to the provisions of Order VI Rule 14 and Order XXIX Rule 1 of the Code and the judgment of the Supreme

Court in the case of *Union Bank of India vs. Naresh Kumar and others*⁸, this Court has already repelled the said challenge as the defect, if any, is plainly curable and, even otherwise, such defect in signing and verification of the plaint does not constitute a ground for rejection of the plaint under Order VII Rule 11 of the Code. Thus, it would be superfluous to further delve into this aspect of the matter.

29. For the foregoing reasons, I am inclined to hold that the learned Judge, Commercial Court, was justified in rejecting the application for rejection of the plaint. Revision application, therefore, deserves to be dismissed.

30. Hence, the revision application stands dismissed with costs.

[N. J. JAMADAR, J.]

8 (1996) 6 SCC 660.