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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 7592 OF 2025
IN
COMMERCIAL SUIT NO. 116 OF 2025

Catalyst Trusteeship Limited ... Applicant

Having its registered office at

GDS House, First Floor, Plot No. 85,

S.Nos. 94 and 95, Bhusari Colony (Right)

Kothrud, Pune, Maharashtra-411 038

AND
INTERIM APPLICATION (L) NO. 31712 OF 2024
IN
COMMERCIAL SUIT NO. 116 OF 2025

1. India Credit Investment Fund-I
C/o. Edelweiss Alternative Solution
Trust, Edelweiss House, Off. C.S.T. Road,
Kalina, Santacruz East, Mumbai-400 098
2. Edelweiss Alternate Solution Trust
Edelweiss House, Off C.S.T.Road
Kalina, Santacruz East
Mumbai – 400 098 ... Applicants

In the matter between

Ecstasy Realty Private Limited

Having its registered office at

2nd Floor, Solitaire, 80 S V Road

Santacruz West, Mumbai-400 054 ... Plaintiff

vs.

Digitally
signed by
RAJESHWARI
RAMESH
PILLAI
Date:
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RAJESHWARI
RAMESH
PILLAI

1. Catalyst Trusteeship Limited
Having its registered office at
GDS House, First Floor, Plot No. 85,
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3. Edelweiss Alternate Solution Trust
Edelweiss House, Off C.S.T.Road
Kalina, Santacruz East
Mumbai – 400 098

Mr. Janak Dwarkadas, Senior Advocate a/w. Mr. Sharan Jagtiani, Senior Advocate Ms. Namdrata Vinod, Mr. Aman Kacheria, Mr. Rishabh Dhanuika, Mr. Murtuza Bohra, Mr. Zaki Anari, Ms. Khushi Nandu, Mr. Krupanshu Nandu i/b. Agarwal and Dhanuka Legal, for Plaintiff.

Mr. Naushad Engineer, Senior Advocate, Ms. Shreya Jha
a/w. Mr. Vivek Shetty Nooruddin Dhilla, Ms. Mrudula Dixit
and Mr. Aksh Jain i/b. AZB and Partners for the Applicant/
Defendant No.1.

Shabad Jan a/w. Ms. Dhrishti Bhindora i/b. Manilal Kher
Ambalal and Co. for Defendant Nos. 2 and 3.

CORAM : GAURI GODSE, J.

RESERVED ON : 15th DECEMBER 2025

PRONOUNCED ON : 27th APRIL 2026

JUDGMENT:

BASIC FACTS:

1. These applications are filed by the defendants under Order VII Rule 11 of the Code of Civil Procedure 1908 (“CPC”) for rejection of the plaint on the ground that it is barred due to non-compliance with the mandatory requirement of Section 12-A of the Commercial Courts Act (“said Act”).

2. The plaintiff is a company engaged in the business of real estate construction and development. Defendant no. 1 is the Debenture Trustee for non-convertible debentures (“NCD”) issued by the plaintiff on the terms and conditions as set out in the Debenture Trust Deed (“DTD”). Defendant no. 2 is a scheme of defendant no. 3, which is registered with SEBI as a CAT-II registered Alternative Investment Fund. Defendant no. 3 is engaged in the asset management business.

3. This suit is filed seeking redemption of the mortgage and consequent release of the flats mortgaged to the defendant no. 1, and for damages. According to the plaintiff, the amount has been repaid in full in accordance with the terms of the DTD-II, pursuant to which defendant no. 1 ought to have issued a no dues letter and released the subject flats mortgaged with the defendant no.1. It is pleaded in the plaint that the disputes between the plaintiff and defendant no. 1 regarding DTD-I are pending adjudication before this Court in Commercial Suit No. 200 of 2022 filed by the plaintiff. The plaintiff contends that all payments have been made under DTD-II and is entitled to a release, unto itself, of the properties, including the subject flats, provided as security. According to the plaintiff, despite having paid all outstanding dues, the defendants are wrongfully and with malafide intention refusing to release the plaintiff's property, thereby causing severe loss and damage to the plaintiff; hence, the plaintiff is constrained to file this suit. The plaintiff is seeking urgent interim reliefs, mainly restraining defendant no. 1 from transferring the subject flats to a third party by acting in

furtherance of the DTD-II.

SUBMISSIONS OF DEFENDANT NO. 1

4. The suit is liable to be dismissed under Order VII Rule 11 of the CPC in view of the settled law that a suit instituted without complying with the mandatory requirement under Section 12-A of the said Act is barred. The Hon'ble Apex Court in *Patil Automation Private Limited vs. Rakheja Engineers Private Limited*¹ has held that Section 12-A of the said Act is mandatory, and the court is empowered to reject the plaint for its non-compliance. It is held that while considering an application for rejection of a plaint for non-compliance with Section 12-A of the Act, the Court can ascertain whether the prayer for urgent interim relief is a disguise or a mask to wriggle out of and get over Section 12-A of the said Act.

5. Learned senior counsel for defendant no. 1 relied upon the decision of this Court in *Image Developer v. Kamla Landmarc Real Estate Holding (P) Ltd*². In the said case, a

¹ (2022) 10 SCC 1

² 2025 SCC OnLine Bom 3284

period of more than 10 months had lapsed between the date the cause of action arose and the date the suit was filed. This Court held that the plaintiff therein had made bald statements about the purported apprehension of the creation of third-party rights, which showed that urgent interim relief was sought by the plaintiff therein only to obviate the need for pre-institution mediation. Hence, the plaint was rejected. Learned senior counsel for defendant no. 1 also relied upon the decision of this Court, in *Indo Engineering Project Corpn. v. Nithin Sai Constructions*³. He submits that in the said decision, it is held that in view of the settled principles, Section 12-A necessarily contemplates seeking "urgent" interim relief and not merely interim relief.

6. The present plaintiff has not pleaded any case for urgent interim relief that would entitle the plaintiff to obviate pre-institution mediation. The plaintiff has averred that defendant no. 1 responded to the revised deed of reconveyance with its own changes, specifically stating that defendant no. 1 agrees to reconveyance, subject to

³ 2025 SCC OnLine Bom 3319

defendant no. 1's right under the proceedings pending before DRT Mumbai. The plaintiff has made a bald statement that, "in order to spite the plaintiff, defendant no. 1 will transfer/assign the mortgage and/or create third party rights in respect of the property". Thus, admittedly, the plaintiff was aware that defendant no. 1 was ready and willing to execute the reconveyance deed. There is no genuine case of "urgency" made out by the plaintiff, as the cause of action for filing the suit arose more than 6 months before the suit was filed, when defendant no. 1 was ready and willing to execute the revised draft of the deed of reconveyance, as shared on 7th August 2024. Defendant no. 1 has not sent any notice of default. No action is initiated in respect of the 18 Flats under the SARFAESI Act. Under Clause 10 of DTD-II, a notice of three months is required to be given for invoking the mortgage on account of default in repayment, and admittedly, no such notice has been issued by defendant no. 1.

7. Learned senior counsel for defendant no. 1 relied upon the Apex Court's decision in *Yamini Manohar v. T.K.D.*

*Keerthi*⁴. He submits that the Apex Court clarified that the limited exercise to be undertaken by commercial courts is to examine whether camouflage and guise to bypass the statutory mandate of pre-litigation mandate is apparent or established to ensure that the legislative object behind the enactment of Section 12-A of the said Act is not defeated. This view has been adopted by the Apex Court in *Dhanbad Fuels (P) Ltd. v. Union of India*⁵, wherein it is held that the courts have to keep in mind that the urgent interim relief must not be merely an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12-A of the said Act.

8. Therefore, in the present case, the suit filed without first pursuing pre-litigation mediation as per Section 12-A of the said Act, without a genuine case of pressing urgency made out, the plaint is liable to be rejected under Order VII, Rule 11(d) of the CPC.

SUBMISSIONS OF DEFENDANT NOS. 2 AND 3:

9. The final reliefs in this suit do not countenance any

⁴ (2024) 5 SCC 815

⁵ 2025 SCC OnLine SC 1129

urgency. Admittedly, the mortgage over the subject flats has been subsisting since 11th September 2018, and as regards the prayer for damages, no interim relief can be granted with respect to an uncrystallised claim that is not in the nature of a debt. The Hon'ble Apex Court in *Patil Automation Private Limited* has held that the mechanism of pre-institution mediation contemplated under Section 12-A of the said Act is mandatory, and courts do not have any power to grant exemption from the rigours of such mandatory provision of law unless a commercial suit "contemplates urgent reliefs".

10. In the case of *Kaulchand Jogani vs Shree Vardhan Investment & Others*⁶, this Court, while expounding on the meaning of the phrase "contemplation of urgent reliefs" as appearing in Section 12-A, has laid down that courts must embark upon an enquiry to ascertain whether there is an element of justifiable claim for urgent reliefs and ascertain as to whether prayer for urgent interim reliefs are not mere subterfuge to overcome the bar under Section 12-A. The Apex Court in *Yamini Manohar* has held that a prayer for

⁶ (2022) SCC OnLine Bom 4752

urgent interim relief should not be in disguise or masked to wriggle out of Section 12-A of the said Act. It is held that the plaintiff does not have the absolute choice to paralyse the prelitigation mechanism by making a mere prayer for interim relief.

11. In the present case, the plaintiff has attempted to bypass the bar imposed under Section 12-A of the said Act by seeking interim relief against the defendants in a perfunctory manner. The nature of the interim reliefs sought by the plaintiff and a perusal of the plaint would reveal that the plaintiff has not made out any case of urgency. The plaintiff has merely set out stereotypical and bald pleadings to create an illusion of urgency. The purported cause of action had occurred almost 10 months prior to the institution of the suit, and admittedly, disputes with respect to the alleged premature appropriations had arisen on 23rd November 2023, and the demand for reconveyance and release of charge was made by the plaintiff on 22nd April 2024. The latest demand made by the plaintiff was on 5th June 2024, i.e. almost 3 months prior to the institution of the

suit. Therefore, it is evident that the suit does not contemplate urgent interim reliefs, and the interim reliefs sought in the accompanying interim application, as well as the plaint, are nothing but mere camouflage to overcome the bar under Section 12-A.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF:

12. Learned senior counsel for the plaintiff submits that the plaintiff is developing a parcel of land belonging to itself. As part of Phase I, the plaintiff had constructed the 18 Flats, forming the subject matter of the present suit. In order to fund the project, the DTD-I was entered into between the plaintiff and defendant no. 1 as Debenture Trustee with the Edelweiss Group of Companies, comprising ECL Finance Limited, Edelweiss Investment Adviser Limited and Edelweiss Rural and Corporate Services Limited. Under the DTD-I, Non-Convertible Debentures of the value of Rs. 600 Crores came to be issued to the Edelweiss Group of Companies. Under DTD-I, security was created over the entire project, including its receivables. Defendant no. 1 was appointed as trustee under the DTD-I by way of an Indenture

of Mortgage dated 11th September 2018. By way of the said Indenture, the plaintiff had mortgaged its own right, title and interest in the project immovable properties, both present and future, and in one Bandra plot owned by the plaintiff's sister concern.

13. To comply with Edelweiss Group's condition that certain prior dues be cleared before restructuring could be granted, the plaintiff was compelled to avail of further funding, which required additional security, but the plaintiff had no unencumbered assets, as all its assets had been wound up under DTD-1. It was agreed that the Edelweiss Group would first, forthwith, release the subject flats from security provided under DTD-I, and these subject flats would be offered as security against a second lending under the DTD-II and on availing the lending, the dues demanded by Edelweiss Group, in terms of which restructuring was to be granted under DTD-I, would be paid by the plaintiff.

14. Accordingly, a no-objection certificate was issued by defendant no. 1 for the issuance of redeemable NCDS of an aggregate amount of Rs. 152 crores by the plaintiff, and for

the creation of a mortgage and charge over the security described, namely the unsold units as on 28th February 2022, in the letter dated 23rd March 2022. i.e., the subject 18 Flats. The charge over the subject 18 Flats was formally released as a mortgaged security under DTD-I, so that the same could be offered as security for creation a mortgage under DTD - (II). In addition to subject 18 flats, a plot in Bandra also formed part of the mortgaged security under DTD-I. In keeping with DTD-II, a Memorandum of Satisfaction of Charge was filed with the Registrar of Companies, Mumbai, thereby releasing the said Bandra plot as security under DTD-I.

15. Consequent to the above, on 24th March 2022, the plaintiff and defendant no. 1 executed DTD-II, pursuant to which India Credit Fund (defendant no. 2) subscribed to 1,520 secured, redeemable NCDs aggregating to Rs. 152 Crores, on the terms and conditions set out therein. Accordingly, securities were furnished by the plaintiff under DTD-II, i.e. a first mortgage and creation of a charge over unsold units admeasuring 93,477 sq. ft., being the subject 18

Flats, an irrevocable and personal guarantee dated 24th March 2022, furnished by the Managing Director of the plaintiff. Defendant no. 1 was the mortgagee under both DTD-1 and DTD-II and therefore had full knowledge of the security status of the subject 18 Flats. DTD-II expressly records that the plaintiff was absolutely entitled to these subject 18 flats, which necessarily implies that the flats had been released from the security created under DTD-I and were thereafter furnished as security under DTD-II.

16. On 25th March 2022, pursuant to the execution of DTD-II and subscription of NCDs, an amount of Rs. 152 Crores was disbursed by defendant no. 2 in favour of plaintiff into the escrow account, and defendant no. 1 immediately transferred Rs. 5 Crores to the plaintiff, towards expenses, and Rs. 147 Crores, being the balance facility amount, to the DTD-I escrow account. On 24th August 2023, pursuant to a request by the plaintiff vide letter dated 23rd August 2023, towards release of mortgaged security under DTD-II, defendant no. 1 issued a conditional no-objection certificate in favour of the plaintiff for release of mortgaged security

(subject 18 flats), subject to receipt of Rs. 38,27,08,151/-, which amount was outstanding as on 15th September 2023 under DTD-II. Out of the amount outstanding under DTD-II, defendant no. 1 made appropriations without giving notice to the plaintiff. On several occasions, including on 23rd November 2023, 15th January 2024 and 30th January 2024, the plaintiff raised concerns regarding the unwarranted, unilateral and dishonest withdrawal of money from the DTD-II Escrow Account. On 15th January 2024, the plaintiff also informed defendant no. 1 that, after the arbitrary transfers, the principal loan amount, which remained payable, was not due as on that date.

17. In the meantime, vide the email dated 2nd February 2024, defendant no. 1 forwarded a draft Deed of Reconveyance to the plaintiff for review. The draft was shared in order to effect the release of the subject 18 Flats, which had been furnished security under DTD-II, in light of the fact that the plaintiff had been making all payments under DTD-II in a timely manner, informing that the offices of the defendant no. 1 will remain closed from 3rd to 5th February

2024. According to the plaintiff, the said email demonstrates that, at that stage, i.e., 2nd February 2024, defendant no. 1 was ready to execute the Deed of Reconveyance to return the mortgage security. There was no question of reconveyance being made subject to the issuance of a recovery certificate for a sum of Rs. 1319 Crores due under DTD-I and/or an injunction restraining the plaintiff from dealing with or disposing of the subject 18 Flats.

18. On 6th February 2024, defendant no. 1 again sent an email to the plaintiff notifying that Rs. 7,76,04,257/- was allegedly outstanding, including an interest component of approx. Rs. 19,20,000/-. It is pertinent to note that there was no justification or explanation towards the computation of interest. However, without asking for a break-up of the pending amount, the plaintiff repaid the amount of Rs. 7,76,04,257/- on a single instruction, keen to close the account under DTD-II and execute the reconveyance deed. The plaintiff has pleaded the details of the payments made to defendant no. 1 under DTD-II, demonstrating that all dues were paid within the timelines specified under DTD-II. To

support the pleadings, the plaintiff has annexed the bank statements, reflecting the payments.

19. However, on 24th August 2023, i.e. much after the execution of DTD-II, defendant no. 1 instituted proceedings in the DRT under the Recovery of Debts and Bankruptcy Act, 1993, for the issuance of a recovery certificate in respect of the amounts due under DTD-I. In the schedule of mortgaged assets in the DRT application, the subject 18 Flats are not included as mortgaged security. On 28th August 2023, defendant no. 1 filed an application before the DRT, expressly admitting that the subject 18 Flats were released from DTD-1. Defendant no. 1, however, sought an injunction in respect of subject 18 Flats, by way of Attachment before Judgement in their recovery proceedings filed before the DRT in respect of DTD-1. On 2nd April 2024, DRT rejected the prayer; hence, they moved to DRAT. On 7th June 2024, the DRAT refused to grant any interim urgent relief in the Appeal filed by defendant no. 1. During the pendency of the appeal before the DRAT, defendant no. 1 on 7th August 2024, forwarded a revised draft of the reconveyance deed to the

plaintiff in which it attempted to make the release of the subject 18 flats subject to the outcome of the aforesaid DRT proceedings by adding new recitals.

20. Learned senior counsel for the plaintiff, therefore, submitted that it is clear that there is absolutely no default by the plaintiff for recovery of any alleged dues. Defendant no. 1, by its own conduct, by addressing a copy of the Reconveyance to the plaintiff as on 2nd February 2024, and having admitted the maximum liability payable was Rs. 7,76.04,257/- as on 6th February 2024, it is an admitted position that the plaintiff has cleared all outstanding dues payable under DTD-II.

21. On 8th February 2024, the plaintiff sent an email to defendant no. 1 stating that there was a credit balance lying as credit in the DTD-II escrow account and requesting that the credit balance be transferred to the plaintiff's current account. This amount has been wrongfully withheld by defendant no. 1, and therefore, this amount has been sought to be transferred back to the plaintiff. The plaintiff addressed an email to defendant no. 1, attaching a revised draft of the

reconveyance deed, and fixed 12th February 2024 as the date of registration of the said deed of reconveyance. Even at this stage, there was no question of the deed of reconveyance being made subject to the issuance of a recovery certificate for a sum of Rs. 1319 Crores due under DTD-I and/or an injunction restraining the plaintiff from dealing with or disposing of the subject 18 Flats.

22. On 12th February 2024, 13th February 2024, and 15th February 2024, the plaintiff sent emails reminding defendant no. 1 to issue a No Dues Letter, to transfer the credit balance, and to register the Deed of Reconveyance at the earliest. However, defendant no. 1 failed to respond to any messages, emails, or intimation regarding the registration of the Deed of Reconveyance. On 16th February 2024, defendant no. 1 sent an email to the plaintiff reiterating its allegation that, without the approval of the bondholders, i.e., the Edelweiss Group of Companies, it would not be in a position to reconvey/release its charge over the subject flats.

23. On 20th February 2024, the plaintiff called upon defendant no. 1 to execute the Deed of Reconveyance, as

forwarded on 8th February 2024. On 22nd February 2024, defendant no. 1 belatedly, replied by email, stating that the draft reconveyance deed had been forwarded to the debenture holders for their approval, but no confirmation was received. The plaintiff addressed another email calling upon defendant no. 1's representatives to remain present for the registration of the Deed of Reconveyance on 23rd February 2024. On that day, defendant no. 1 replied, stating that they are still awaiting confirmation from the debenture holders regarding the issuance of the no dues certificate. On 18th March 2024 and 21st March 2024, the Punjab National Bank, a banker for one of the purchasers of 2 of the subject 18, addressed emails to defendant no. 1, requesting confirmation of any outstanding amounts in respect of a proposed sale of Flat Nos. 3003 and 3004 forming part of the subject flats. On 22nd March 2024, Edelweiss Asset Reconstruction Company Limited, being the purported assignee of certain NCDs issued under DTD-1, intimated Punjab National Bank that there was an Original Application No. 1659 of 2023 pending before DRT-I regarding the subject flats and that the same

was sub-judice.

24. On 22nd April 2024, the plaintiff, for the umpteenth time, requested defendant no. 1 to provide the no-dues letter and the release of charge and execute the reconveyance deed. It was expressly stated that more than 60 days had elapsed since the closure of the DTD-II/Sapphire Transaction, but for reasons best known, the same had not yet been executed and registered. On 7th May 2024, defendant no. 1's mala fide conduct is further highlighted, given that it has sought to address the plaintiff with an invoice for alleged services rendered, even though by such date, all payments due and payable by the plaintiff had been cleared, and there was no question of charging the plaintiff any further dues. On 5th June 2024, the plaintiff, vide its letter, called upon defendant no. 1 to issue a no Dues Letter towards the redemption of the debentures under DTD-II, as also to execute and register the Deed of Reconveyance, as forwarded on 8th February 2024. On 7th August 2024, defendant no. 1, for the first time, after a lapse of 6 months, and contrary to its earlier draft deed of reconveyance, forwarded an altered and revised draft of the

reconveyance deed to the plaintiff.

25. Hence, on 28th August 2024, the present suit is filed urgently, considering the defendants' obstinate refusal to grant a reconveyance of the subject flats, despite it being an admitted position that the plaintiff has repaid all dues under DTD-II. Moreover, defendant no. 1, in its reply, pleaded its case before this Court, stating that it is awaiting instructions from the 'highest authorities' of Edelweiss regarding the grant of a reconveyance.

26. Learned senior counsel for the plaintiff relies upon the decisions of this court in the case of *Westin Infra World Private Ltd. and Others and Vistra ITCL India Limited vs. Darvesh Properties Private Ltd and Others*⁷, *Shaikh Mohammed Rafique and Lakhani Realty LLP vs. Kalina Vihar Darshan Co-operative Housing Society*⁸ and *Dipti Co-operative Housing Society Ltd. and Buildcon Sethia Construction vs. Dipti Cooperative Housing Soc. Ltd.*,⁹. He submits that after considering the relevant legal principles

⁷ Interim Application (L) No. 22747 of 2025 in Commercial Suit (L) No. 13824 of 2025

⁸ IA no. 5492 of 2025 in COMSL no. 24873 of 2025

⁹ 2025 SCC Online BOM 4958

regarding the objection raised by the defendants for non-compliance with Section 12-A of the said Act, this court held that Section 12-A is not meant to be weaponised by a defendant to prevent the court from passing an order where the court believes an order is justified and necessary. He submits that in view of the well-settled legal principles regarding conditions to be applied for rejection of the plaint under Order VII Rule 11 of CPC, once urgent interim relief is contemplated from the standpoint of the plaintiff, the plaint cannot be rejected at the threshold.

ANALYSIS AND CONCLUSIONS:

27. I have carefully examined the plaintiff's pleadings. The relevant dates and events pointed out by learned counsel for the plaintiff and recorded in the above paragraphs are pleaded in the plaint. According to the plaintiff, the cause of action for urgent interim relief arose in light of the altered and revised draft deed of reconveyance shared by defendant no. 1 on 7th August 2024. Hence, the suit is filed on 28th August 2024. According to the defendants, the nature of the prayers in the suit for redemption of the mortgage would not warrant

any urgent interim relief. It is argued on behalf of the defendants that, in order to circumvent the mandatory requirement of pre-institution mediation, illusory interim relief is prayed. Therefore, at this stage, a limited exercise is necessary to ascertain whether the interim relief prayed by the plaintiff is genuine when viewed from the plaintiff's standpoint, or it is a camouflage merely to get over the mandatory requirement under Section 12-A.

28. To support the plaintiff's contentions that the suit contemplates urgent interim relief for instituting the suit without complying with the mandatory pre-institution mediation under Section 12-A of the said Act, the plaintiff has pleaded that, despite making payments of all the dues, defendant no. 1 is likely to transfer the mortgaged flats by acting in furtherance of the DTD-II. This apprehension is expressed based on defendant no. 1's conduct of sending an altered draft of the reconveyance deed on 7th August 2024 by adding a clause for an injunction in the DRT proceedings restraining the plaintiff from dealing with the and/or selling or transferring, disposing of or assigning or alienating or

encumbering or parting with possession or creating any third party rights or interest in respect of the flats that are subject matter of the reconveyance deed. By the added clause, defendant no. 1 seeks to make the release of the flats subject to the proceedings in DRT. This clause is sought to be added by referring to a statement made by the plaintiff in DRT, which, according to the plaintiff, was never made.

29. It is submitted on behalf of defendant no. 1 that a three-month notice is required to be given to invoke the mortgage in case of default. However, no such notice is given by defendant no. 1. Hence, there is no genuine urgency to seek the interim relief as prayed. According to the plaintiff, defendant no. 1's attempt to seek attachment before judgment in the DRT in respect of the 18 flats, despite the agreement to execute the reconveyance, is a major factor in seeking interim relief. This ground for seeking urgent interim relief is supported by the pleadings and documents showing that all dues under DTD-II have been paid, and defendant no. 1's conduct of inserting fresh recitals in the draft of reconveyance that the release of the flats would be subject to

the DRT proceedings. The dates regarding the cause of action for seeking redemption or interim relief arose six months or three months prior to the date of filing the suit, as relied upon by the defendants to argue that the plaint must be rejected, are irrelevant. At this stage, what is relevant is the plaintiff's pleadings as to why urgent interim relief was contemplated on the date of filing the suit, for not complying with the mandatory requirement under Section 12-A.

30. The plaintiff has prayed for urgent interim relief to secure the mortgaged flats, by substantially pleading their apprehension arising from defendant no. 1's conduct and supported by documents annexed to the plaint. It is the plaintiff's case that while executing DDT-II, defendant no. 1 created security interest over the only remaining realisable assets of the plaintiff, i.e. the subject flats by first having released them from the security interest under DDT-I. It is thus the plaintiff's submissions that despite having made complete payments defendant no. 1 is dishonestly refusing to release the plaintiff's security interest i.e. 18 subject flats. The merits of such apprehension cannot be decided at this

preliminary stage of deciding the objection for rejection of the plaint at the threshold under Order VII Rule 11 of the CPC. The law on the mandatory requirement under Section 12-A of the said Act and grounds available for the rejection of the plaint at the threshold for non-compliance with the said provision is no longer *res integra*.

Legal Position:

31. The Apex Court in ***Dhanbad Fuels Pvt. Ltd.*** observed that the aim and object of Section 12-A is to ensure that, before a commercial dispute is filed in court, alternative means of resolution are adopted, so that only genuine cases come before the courts. The said procedure has been introduced to decongest the regular courts. The Apex Court held that the settlement arrived at in the pre-institution mediation and settlement process under Section 12-A shall have the same status and effect as if it was an arbitral award on agreed terms by deeming the mediated settlement on a par with an arbitral award, providing strong legal backing to the mediation process and ensures that the enforceability of

the same is met with fewer hurdles, thereby increasing the attractiveness of mediation as an alternative to litigation.

32. The Apex Court referred to the legal principles settled in *Patil Automation* and also discussed the power of the Court to reject the plaint, which is held to be a drastic measure, as it terminates a civil action at the threshold, and therefore must be exercised strictly in accordance with the conditions enumerated under Order VII Rule 11 of the CPC. The Apex Court held that the use of the word “shall” in Order VII Rule 11 of the CPC denotes that the courts are under an obligation to reject the plaint if the conditions specified therein are satisfied. It is observed that the word “contemplate” connotes to deliberate and consider. Further, the legal position that the plaint can be rejected and not entertained reflects the application of mind by the court as regards the requirement of “urgent interim relief”. The Apex Court further observed that the prayer of urgent interim relief should not act as a disguise to get over the bar contemplated under Section 12-A. However, at the same time, the mere non-grant of the interim relief, when the plaint is taken up for

admission and examination, would not justify the rejection of the plaint under Order VII Rule 11 of CPC. Further, even if after the conclusion of arguments on the aspect of interim relief, the same is denied on merits, that would not by itself justify the rejection of the plaint under Order VII Rule 11. The Hon'ble Apex Court, in *Yamini Manohar* and *Dhanbad Fuels Private Limited*, held that the facts and circumstances should be considered holistically from the standpoint of the plaintiff.

33. This court, in the decision of *Kaulchand H.Jogani*, held that the proper course would be to assess whether there are elements which prima facie indicate that the suit may contemplate urgent interim relief, irrespective of the fact whether the plaintiff eventually succeeds in getting the interim relief. The Hon'ble Apex Court explained the applicability of the provisions of Section 12-A and its mandatory requirement in the case of *Dhanbad Fuels Private Limited*, by taking into consideration the legal principles settled in the decision of *Patil Automation*.

34. So far as the decision in *Kamla Landmarc Real Estate* relied upon by the learned counsel for defendant nos. 2 and

3 is concerned, the view taken by this court in the said decision regarding rejection of the plaint is on the facts of that case, and the test applied is for considering whether the urgent interim relief is contemplated from the standpoint of the plaintiff in the said case. In *Indo Engineering Project Corporation*, this court applied the well-settled legal principles to determine whether urgent interim relief or mere interim relief was sought and, in the facts of that case, held that no urgent interim relief was warranted for non-compliance with the mandatory requirement under Section 12-A. As held by the Hon'ble Apex Court in the decisions of *Yamini Manohar* and *Dhanbad Fuels Private Limited*, the facts and circumstances should be considered holistically from the standpoint of the plaintiff. Hence, the decisions in *Kamla Landmarc Real Estate* and *Indo Engineering Project Corporation* would not assist the arguments raised on behalf of the defendants.

35. This court, in *Westin Infra World, Lakhani Realty LLP* and *Dipti Co-operative Housing Society Ltd*, following the well-settled legal principles of the Apex Court, has taken the view that there cannot be a straitjacket formula when examining the justification for non-compliance with Section 12-A. After

reading the plaint as a whole, each suit has to be examined in the facts and circumstances of that case for ascertaining whether non-compliance with Section 12-A is justified on the ground that urgent interim relief is contemplated from the plaintiff's point of view. It is held that while deciding the application under Order VII Rule 11 of the CPC, it is also necessary to refer to the legal principles for applying the provisions of Order VII Rule 11 of the CPC for rejection of the plaint at the threshold. The relevant observations regarding the legal principles for applying Order VII Rule 11 of the CPC in the decision of ***Lakhani Realty LLP*** in paragraphs 28 to 30 read as under:

“28.It is necessary to note that the legislature has found it fit to amend some of the provisions of CPC for its application to the commercial division and commercial courts. In the amendments made applicable to the commercial division and commercial courts, the provisions of Order VII Rule 11 of the CPC are not amended, and thus the legal principles for rejection of the plaint in Order VII Rule 11 of the CPC would also apply to the suits filed in the commercial courts and commercial division.

*29. Thus, considering the well-settled legal principles by the Hon'ble Apex Court in the case of ***Dahiben vs. Arvinbhai Kalyanji Bhanushali***¹⁰ referred by this court in the decision of ***Westin Infra World Private Ltd.***, it is held that the power conferred on the court to terminate a civil action is drastic one and thus conditions enumerated under Order VII Rule 11 of the CPC are required to be*

¹⁰ (2020) 7 SCC 366

strictly adhered.

*30. Considering the facts and circumstances of the present case, the plaintiff has made out a case for not complying with the mandatory provision of pre-institution mediation, as according to the plaintiff, urgent interim relief is contemplated in the suit. As held by the Hon'ble Apex Court in the decision of **Yamini Manohar and Dhanbad Fuels Private Limited**, the prayer for urgent interim relief by the plaintiff would be said to be contemplable, when the matter is seen from the standpoint of the plaintiff. Thus, in view of the pleadings in the plaint, coupled with the supporting documents as discussed in the above paragraphs, non-compliance with the mandatory requirement under Section 12A of the said Act would not warrant rejection of the plaint. The arguments made on behalf of the defendants that the cause of action pleaded in the suit and the requirement for a drastic mandatory injunction and appointment of Court Receiver are not made out by the plaintiff would be a question to be decided at the time of examining the prayer for interim relief."*

36. In a recent judgment of the Apex Court in **Novenco Building and Industry A/S. vs. Xero Energy Engineering Solutions Pvt. Ltd. and Another**¹¹, it is held that a plaintiff can be exempted from the requirement of Section 12-A only when the plaint and the documents attached to it clearly show a real need for urgent interim intervention and on a wholesome reading of the plaint and the material annexed to the plaint ought to disclose the need for urgent relief. It is held that the

¹¹ 2025 SCC Online SC 2278

court must look at the plaint, pleadings and supporting documents to decide whether urgent interim relief is genuinely contemplated, and 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.

37. ***Novenco Building and Industry***, the prayer for injunction was made in a suit alleging continuing infringement of patent and design rights. The Apex Court held that a prayer for an injunction cannot be characterised as mere camouflage to evade mediation when it was a real grievance founded on the continuing nature of infringement and irreparable prejudice likely to be caused. It was held that the court must look beyond the time lag and evaluate the substance of the plea for interim protection. The Apex Court held in paragraph 24 that ***“.....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.”

38. It is a well-settled legal principle that the test for “urgent interim relief” is if, on the examination of the nature of and the subject matter of the suit and the cause of action, the plaintiff's prayer for urgent interim relief could be said to be contemplable, when the matter is seen from the standpoint of the plaintiff. Thus, if the test for urgent interim relief is satisfied notwithstanding the actual outcome on merits, the suit can be proceeded with without compliance with Section 12-A.

39. The legal principles for rejection of the plaint under Order VII Rule 11 of the CPC are settled by the Hon'ble Apex Court in the decision of *Dahiben*. The Apex Court held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

40. When, on plain reading of the plaint and the supporting documents, it is indicated that urgent interim relief is

contemplated, an insistence to reject the plaint at the threshold would defeat the right given under Section 12-A to file a suit seeking urgent interim relief without exhausting the remedy of pre-institution, mediation, and settlement. Such attempts by a defendant to raise objections to apply the bar under Section 12-A of the said Act, with no substance on any of the grounds for rejection of the plaint at the threshold, defeat the very object of the Commercial Courts Act, namely, the speedy disposal of suits. In the present case, there is no ground to reject the plaint at the threshold under Order VII Rule 11 of the CPC. The bar under Section 12-A of the said Act shall not apply to the present suit.

41. For the reasons recorded above, the interim applications filed by the defendants under Order VII Rule 11 of the CPC are rejected.

[GAURI GODSE, J.]