

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.3459 OF 2025
WITH
INTERIM APPLICATION NO.2248 OF 2025
IN
COMMERCIAL SUIT NO.72 OF 2023**

M/s Vijay Suraksha	Applicant
<u>IN THE MATTER</u>	
Mr. Shrihari s/o. Shesherao Nagargoje	Plaintiff
Versus	
M/s. Vijay Suraksha & Ors.	Defendants

Mr. Aditya Udeshi *a/w. Rahul Sanghvi i/b. Ms sanjay Udeshi & Co., for Applicants/Original Defendants.*

Mr. Ashok M. Saraoji *a/w. Amit Dubey, Adv. Shaikh & K.B. Munde, for Original Plaintiff.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : FEBRUARY 6, 2026

ORDER :

Context and Background:

1. Interim Application No.3459 of 2025 is an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("**CPC**") seeking rejection of the Plaint on the following three grounds :-

(A) The cause of action entirely lies outside the territorial jurisdiction of this Court and pertains to Thane;

(B) The suit is not maintainable as a commercial suit since the dispute is essentially one of employment, which cannot be regarded as a commercial dispute; and

(C) The mandatory pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 (“*the Act*”) has not been complied with.

2. I have heard Learned Counsel for the parties at some length and with their assistance examined the pleadings in the plaint considering the nature of the jurisdiction under Order VII Rule 11.

Thane vs. Mumbai:

3. The core contention of Mr. Udeshi, Learned Counsel on behalf of Applicant i.e. the original Defendants, is that the bundle of rights that represents the cause of action, would lie entirely in Thane, outside the territorial original jurisdiction of this Court. He would submit that the Plaintiff had been engaged as an employee in the role of Technical Director, Projects and the projects that he was associated with are all located in Thane. He would submit that the Defendants have a subordinate office in Thane and the interaction between the parties would fall entirely in Thane. Merely because the Defendants reside in Mumbai and Defendant No.1 being incorporated in Mumbai, it could not confer the territorial jurisdiction for filing the Suit in this Court.

4. Upon examining the record, it is apparent that the Defendants had filed a complaint against the Plaintiff with Azad Maidan Police Station, Mumbai, which was then transferred to the Economic Offences Wing, Mumbai. Since the scope of examining Order VII Rule 11 is summary in nature, by examining purely the contents of the Plaint and the annexures thereto, it is evident that the Defendants' own case was that the police authorities in Mumbai had jurisdiction over the allegations of their dealings with the Plaintiff. Therefore, the Applicants had themselves located the jurisdiction of the underlying bundle of facts in Mumbai.

5. At this stage, without anything more to show, it would be difficult to conclude that the territorial jurisdiction of this Court is just not attracted. Therefore, it is apparent that one would need to examine a lot more before concluding that the contentions about the location of all the facts the proving of which would lead to grant or denial of relief in the Suit, lie exclusively in Thane. Unless it is apparent on the face of the pleadings and the annexures to the Plaint that no part of the cause of action at all arose in Mumbai, it would not be possible to accept this ground in the Interim Application. The Defendants themselves having moved the police authorities in Mumbai and the Plaintiff having been engaged in multiple proceedings ranging from anticipatory bail hearings to attending the police authorities, all in Mumbai, it would not

be possible to conclude at this stage that, at the threshold, the territorial jurisdiction of this Court is not at all attracted.

Commercial Suit:

6. The second contention is that the suit is not a commercial suit at all, inasmuch as it relates to an employment agreement.

7. A bare reading of the definition of the term commercial dispute in Section 2(1)(c) of the Act would point to agreements for *provision of services* being one of the type of agreements relating to which, commercial disputes may emerge and be covered by the Act. The Plaintiff would indicate that the relationship between the Plaintiff and the Defendants is spread across multiple entities on both sides. The Plaintiff was being paid certain salary/retainer sum by Defendant No.1, but the Plaintiff's Partnership Firm Apex Project Management Services, was also being paid a consultancy retainer fee by two other group enterprises, namely, Vijay Citispace Pvt. Ltd. and Vijay Group Housing Pvt. Ltd., which are entities under common control with Defendant No. 1 and under the control of Defendant Nos.2 to 4.

8. On the face of it, in the absence of any exclusionary provision in the definition of commercial disputes, it cannot be said that a dispute of the nature covered by the suit would never be a commercial suit.

9. Mr. Udeshi relies upon a judgement by Learned Single Judge of the Delhi High Court in *Ekanek Networks*¹ to contend that service disputes between parties would be governed by service jurisprudence and common law and cannot be brought into the framework of the Act. In the facts of that case, the District Court had refused to treat the dispute as a commercial dispute and dismissing an appeal, the Delhi High Court, held thus:-

24. *In view of the foregoing discussion, this Court finds that the impugned order dated 21.12.2023 passed by the learned Trial Court dismissing the application under Order VII Rule 11 of the CPC does not suffer from any illegality, perversity or incorrect approach in law. Much mileage was sought to be taken by the learned counsel for the petitioner to the high value attached to the contract between the parties in the instant matter. The said aspect does not cut any ice. Merely because a contract of personal service or employment may have some attributes of being high value or have high stakes therein, as in the instant case, that by itself would not be sufficient so as to bring any dispute arising out of such contract within the scope and ambit of a commercial dispute. Merely because a contract of service also involves payment, remuneration and several other service perks or peculiar benefits, that alone would not be a decisive factor in holding it to be a commercial dispute. Unhesitatingly, this Court finds that a contract of service that requires rendering of personal services by one of the parties to another, is purely and simply a service dispute governed by the Service Law jurisprudence and the Common Law, for which remedy lies elsewhere. There is no doubt in the mind of this Court that the legislature never intended to bring a contract for the purpose of rendering personal*

1 Ekanek Networks Pvt. Ltd. v. Aditya Mertia – 2024 SCC OnLine Del 8302

services of an executive or administrative nature within the scope and ambit of the CC Act. In essence, intra-departmental disputes between the employer and employee of an organization are outside the purview of the CC Act.

[Emphasis Supplied]

10. With the greatest respect to the analysis set out by the Learned Single Judge of the Delhi High Court in the aforesaid paragraph, I am unable to be persuaded that for purposes of an Order VII Rule 11 application, it can be sweepingly concluded on the basis of the analysis set out above that the nature of the cause of action and the disputes between the parties would at the threshold be held as never constituting a commercial dispute. The arrangements between the parties in the instant case, on the face of it, shows that the Plaintiff was being paid directly by Defendant No.1, and indirectly, through his firm, by group enterprises of the Defendants. This arrangement points to a wider engagement between the parties.

11. Purely at the threshold, it would be difficult to conclude that the analysis in the paragraph extracted above would apply to the facts of this case to lead to a conclusion that the dispute is not at all a commercial dispute. That apart, I am not persuaded that in the facts pleaded in the instant case, service law jurisprudence would have any decisive role in a dispute of this nature.

Pre-Institution Mediation:

12. The third contention is that assuming that this Suit were to be held to be commercial suit, it is ought to be rejected for the Plaintiff not having engaged in pre-institution mediation as required under Section 12A of the Act.

13. It is in this context, that the facts relevant to this case would become important. It is evident that a First Information Report had been filed by the Defendants with the police authorities in Mumbai on February 24, 2020. The first protective relief in the anticipatory bail proceedings was granted on March 6, 2020.

14. The suit was filed on October 30, 2021. Throughout this period, according to Mr. Saraogi, Learned Advocate for the Plaintiff, he was busy answering the police authorities and this was not an environment in which it is reasonable to expect an engagement in pre-institution mediation. The Plaintiff submits that he filed the suit contemplating urgent relief, an ingredient under Section 12A of the Act.

15. The judgment of the Supreme Court in ***Yamini Manohar***², cited by Mr. Udeshi, is instructive in his regard. The following extracts would be noteworthy:

² *Yamini Manohar v. T.K.D. Keerthi* – (2024) 5 SCC 815

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

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

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

16. The Supreme Court articulated the meaning of the words “contemplate any urgent relief” in Section 12A (1) of the Act as having to be read as a power conferred on the Court to be satisfied. The suit ought to *contemplate* urgent relief which would mean that the plaint,

the documents and the facts pleaded in the said suit should point to urgent relief being in contemplation.

17. In my opinion, considering the peculiar factual matrix in this case, namely, what was apparently a civil dispute having been taken to criminal proceedings, the contemplation of urgent interim relief is writ large in the material on record.

18. Mr. Udeshi points to the fact that eventually the suit was dismissed for non-removal of office objections and was then restored on March 16, 2023 leaving open, the question of objection under 12A. To my mind, this does not turn the needle in the Defendants' favour for purposes of Section 12A. As noticed above, the Supreme Court has endorsed the view that whether eventually urgent interim relief was granted is not determinative of whether a suit, when instituted, contemplated urgent interim relief. Likewise, whether the suit was dismissed for non-removal of objections and restored later, would not be determinative of whether urgent reliefs were in contemplation when filed.

19. Mr. Saraogi submits that the non-removal of office objections came about because of the Plaintiff having been kept occupied in attending to the police authorities, who eventually filed a detailed

closure report, indicating that the Plaintiff had been vexed with criminal process.

20. It is noteworthy that the Order VII Rule 11 application was filed on June 19, 2025, over two years after restoration of the suit. Just as a pretence at interim relief must not disguise the evasion of pre-institution mediation, resort to an application for rejection of the suit too must not become a norm for a dilatory hurdle in the path of a suit. It is noteworthy that the Order VII Rule 11 application has been filed two years after restoration and four years after the suit was instituted.

21. In any case, considering the nature of the engagement between the parties and the factual matrix involved, it cannot be said that the Plaintiff did not contemplate urgent interlocutory relief as evident from the facts discernible from the plaint and the documents exhibited with the plaint.

Conclusion:

22. In the aforesaid circumstances, in my opinion, the drastic measure rejecting a plaint at the threshold under Order VII Rule 11 of the CPC is not warranted.

23. In these circumstances, ***Interim Application No.3459 of 2025*** is ***dismissed***.

24. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]