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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-11-2026

CORAM

THE HON'BLE MR.JUSTICE P.B. BALAJI

A No. 3836 of 2026
in
C.S(COMM DIV) No. 225 of 2026

Aurea Aviation Private Limited
49 kalpataru avenue opposite esis hospital akuril
raod kandivali east mumbai - 400101 represented
by its Managing Director and CEO
Mr.Rajesh Sahu

..Applicant(s)

Vs

Express infrastructure private limited
No 2 Club House Road Mount Road Chennai
600002 Represented herein by its Authorized
Signatory Mr.Dinesh Kumar Jain

..Respondent(s)

PRAYER: This Application is filed to reject the Plaint in C.S. Comm. Div. No.225 of 2026.

For Applicant(s): Mr.Thriyambak J Kannan
For Respondent(s): Mr.P.Giridharan

ORDER

This Application has been taken out by the defendant in the suit, seeking rejection of the plaint on the ground that it is an abuse of process of law and that the mandate of Section 12 A of the Commercial Courts Act has not been complied with, which entails dismissal of the suit/rejection of the plaint.

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2. I have heard Mr.Thriyambak J. Kannan, learned counsel for the applicant/defendant and Mr.P.Giridharan, learned counsel for the respondent/ plaint.

3. The learned counsel for the applicant, Mr.Thriyambak J. Kannan would contend that even though this Court has granted an interim injunction by order dated 04.08.2026, it would not automatically result in dispensing with the mandate of Section 12-A of Commercial Courts Act. It is his submission that exceptions have to be carved out on given facts and circumstances and in the present case, the respondent/plaintiff, according to the applicant/defendant, has obtained an ex-parte interim order, by suppression of material facts, viz, the factum of a reply notice sent by the applicant. As a consequence, Mr.Thriyambak J. Kannan, learned counsel contends that the respondent/plaintiff has obtained an interim order on the strength of false statements made on oath and the mere fact that an interim order was obtained should not come in the way or provide an escape route for the respondent/plaintiff to not comply with the requirement under Section 12-A of the Commercial Courts Act. He would further contend that the consequence of the misdirection/misstatement of facts should be borne in mind by the Court while deciding whether the pre-institution mediation contemplated Section 12-A of the Commercial Courts Act has been compiled with or not. The learned counsel therefore prays for the plaint to be rejected.

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4. Per Contra, Mr.P.Giridharan, learned counsel for the respondent/plaintiff, contends that there is no suppression of any material facts and would invite my attention to Paragraph No.37 of the plaint, where admittedly the plaintiff has referred to the reply notice sent by the applicant/defendant. He would therefore state that the plaint has to be read as a whole, holistically and should not be loosely interpreted, to reject the plaint *in toto*. He would further state that this Court has accepted the case of the respondent/plaintiff that urgent interim relief is required to be granted and having granted such order, it is not open to the defendant to seek for rejection of plaint on the ground of the non-compliance of the mandate of Section 12-A of the Commercial Courts Act. The learned counsel therefore prays for the dismissal of application.

5. I have carefully considered the submissions advanced on either side and have also gone through the plaint and plaint documents.

6. Though as contended by Mr. Thriyambak J. Kannan, at paragraph 48 of the plaint, while making out a case for urgent interim relief and seeking dispensing with the mandate of pre-institution mediation under Section 12-A of the Commercial Courts Act, the plaintiff has stated "*defendant has already unequivocally failed and neglected to respond even to the formal legal notice issued by the plaintiff*". I am of the considered opinion that the plaint has to be

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read as a whole not in piecemeal. As has been rightly pointed out by Mr.P.Giridharan, learned counsel appearing for the respondent/plaintiff, at paragraph 37 of the plaint the respondent has stated as follows - "*despite receipt of the aforesaid legal notice, the defendant has failed and neglected to comply the demands made therein. On 08.06.2026, the defendant, through its lawyers, issued its response to the legal notice*...." And again, at paragraph 46 as well, the plaintiff has stated as follows "*despite the receipt said legal notice dated 11.05.2026, the defendant has failed and neglected to comply with the demands made therein and has made frivolous and untenable contentions in its response to the legal notice to justify the wrongful contention of the Charter Amount*...".

7. Further, said reply notice dated 08.06.2026, has in fact, been filed as suit Document No. 8 as well. In such circumstances, I am unable to accept the arguments of the Mr.Thriyambak J. Kanna, that the respondent/plaintiff has suppressed material facts with regard to the reply notice sent by the applicant/defendant, to the pre-suit notice. In any event, this Court has found a prima facie case for grant of an interim order and in fact, granted an interim order as early as on 04.08.2026. An interim order has also been granted and the same not being on any reference to paragraph No.48 of the plaint, where there is an incorrect averment that the defendant has unequivocally failed and neglected to respond even to the formal legal notice issued by the Plaintiff, I do no see that there has been any misdirection or the interim order being obtained on the

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basis of such incorrect averments in paragraph No. 48.

8. At the risk of repetition, the plaint has to be read as a whole, while considering an application for rejection of the plaintiff itself. In view of the aforesaid discussion, I do not find any material suppression or misdirection as alleged by the applicant /defendant, warranting rejection of the plaintiff under the Order VII Rule 11 of CPC.

9. As regards to the pre-institution mediation under Section 12-A of the Commercial Courts Act, there has been exchange of notices prior to the filing of the suit and when the applicant/defendant has denied *in toto* the claim of the respondent/plaintiff, there was no real scope for compelling the parties to undergo mediation in the first place. In any event, by granting an Interim Order on 04.08.2026, this Court has found that urgent interim relief was in fact necessary to protect the interest of the respondent/plaintiff.

10. In view of the above, even on this ground, I do not see the plaint being rejected. For all the above reasons, Application No. 3836 of 2026, seeking rejection of plaint is ***dismissed,*** however, there shall be no order to costs.

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P.B.BALAJI J.

RKP

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