251 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

Date of decision : 06.02.2026

CR-7506-2024 (O&M)
CR-4135-2024 (O&M)

RANA POLYCOT LIMITED ....Petitioner

Versus

M/S AMIT AND COMPANY ...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rahul Sharma, Senior Advocate with
Mr. Ayush Lamba, Advocate
for the petitioner.

Mr. Rana Gurtej Singh, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

By way of present judgment, I intend to dispose off two revision petitions preferred by the defendant.

2. Civil Revision No.7506 of 2024 is directed against order 07.12.2024 whereby application filed by the defendant seeking rejection of plaint under Order VII Rule 11 CPC for want of pre-litigation mediation as mandated under Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as '2015 Act'), has been dismissed.

2. Civil Revision No. 4135 of 2024 is directed against order dated 01.07.2024 whereby application filed by the plaintiff under Order XXXVIII Rule 5 CPC, has been allowed.

3. Plaintiff filed suit seeking recovery of Rs.2,08,63,870/- as dues for the material supplied. Along with the plaint, plaintiff preferred an application under Order XXXVIII Rule 5 CPC seeking attachment before the judgment.

4. The Commercial Court vide order dated 01.07.2024 allowed application under Order XXXVIII Rule 5 CPC and has put on hold a sum of Rs.2,00,00,000/- belonging to the defendant/petitioner lying deposited in the bank account.

5. Defendant appeared and filed application under Order VII Rule 11 CPC seeking rejection of the plaint, claiming that the same was filed by-passing the pre-litigation mediation as per the mandate of Section 12A of 2015 Act.

6. The issue w.r.t. compliance of Section 12A of 2015 Act and the necessity for pre-litigation mediation is no more *res integra.* The same has been held to be mandatory by Supreme Court in the case of **'M/s Dhanbad Fuels Private Limited vs. Union of India and another', 2025 SCC OnLine SC 1129**, observing as under:

> "xxx xxxx xxx
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> 62. In light of the aforesaid discussion, we summarise our findings as under:

a. The decision of this Court in *Patil Automation* (supra) lays down the correct position of law as regards Section 12A of the 2015 Act by holding it to be mandatory in nature.

b. As held in paragraph 104 of the decision in Patil Automation (supra), the declaration of the mandatory nature of Section 12A of the 2015 Act relates back to the date of the Amending Act.

c. As held in paragraph 113.1 of the decision in Patil Automation (supra), any suit which is instituted under the 2015 Act without complying with Section 12A is liable to be rejected under Order VII Rule 11. However, this declaration applies prospectively to suits instituted on or after 20.08.2022.

d. A suit which contemplates an urgent interim relief may be filed under the 2015 Act without first resorting to mediation as prescribed under Section 12A of the 2015 Act.

e. Unlike section 80(2) of the CPC, leave of the court is not required to be obtained before filing a suit without complying with Section 12A of the 2015 Act.

f. The test for "urgent interim relief" is if on an examination of the nature and the subject-matter of the suit and the cause of action, the prayer of urgent interim relief by the plaintiff could be said to be contemplable when the matter is seen from the standpoint of the plaintiff.

g. Courts must also be wary of the fact that the urgent interim relief must not be merely an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12A of the 2015 Act.

h. Even if the urgent interim relief ultimately comes to be denied, the suit of the plaintiff may be proceeded with without compliance with Section 12A if the test for "urgent interim relief" is satisfied notwithstanding the actual outcome on merits.

i. Suits instituted without complying with Section 12A of the 2015 Act prior to 20.08.2022 cannot be rejected under Order VII Rule 11 on the ground of non-compliance with Section 12A unless they fall within the exceptions stipulated in paragraph 113.2 and 113.3 of the decision in Patil Automation (supra).

j. In suits instituted without complying with Section 12A of the 2015 Act prior to 20.08.2022 which are pending adjudication before the trial court, the court shall keep the suit in abeyance and refer the parties to time-bound mediation in accordance with Section 12A of the 2015 Act if an objection is raised by the defendant by filing an application under Order VII Rule 11, or in cases where any of the parties expresses an intent to resolve the dispute by mediation.

63. Thus, the answer to the question formulated by us whether a suit filed without complying with Section 12A of the 2015 Act must be dismissed or be kept in abeyance with a direction to the parties to explore mediation is as follows: a. If the suit is instituted on or after the date of the decision in *Patil Automation (supra)*, i.e., 20.08.2022, without complying with Section 12A of the 2015 Act, then it must meet with rejection under Order VII Rule 11, either on an application by the defendant or suo motu by the court. b. If the suit was instituted prior to 20.08.2022 without complying with Section 12A of the 2015 Act, and the same does not fall within one of the exceptional categories as explained in paragraph 47 of this judgment, then it would be open to the court to keep the suit in

abeyance and direct the parties to explore the possibility of mediation in accordance with the 2015 Act, the PIMS Rules and the 2020 SOP.

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7. The same view has been reiterated with approval by later judgment in the case of **'Novenco Building and Industry A/S vs. Xero Energy Engineering Solutions Private Limited and another', 2025 SCC OnLine SC 2278**, observing as under:

"xxx xxxx xxx

19. ***In Dhanbad Fuels (P) Ltd. v. UOI, (2025) SCC Online SC 1129***, another two-Judge Bench of this Court held 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. It has been further held that the interim relief must not merely be an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12A of the Act.

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.

[(5) Midas Hygiene Industries Private Ltd. & Anr. (supra)]

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, 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.
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> **Conclusion**
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> 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.
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> xxx xxxx xxx”

8. While Mr. Sharma relying upon the aforesaid precedents urge that the mediation being mandatory the plaint having been filed without resorting to Section 12A, needs to be rejected Mr. Rana on the other hand relies upon exception carved out by Apex Court holding that where urgent interim relief is contemplated by the plaintiff, Section 12A may not be necessarily resorted to. He submits that this view is in consonance with the bare provisions itself.

9. I have heard counsel for the parties and have carefully gone through records of the case.

10. In the considered opinion of this Court, the language of Section 12A is couched in a way that where there is a pressing need for urgent interim relief, pre-litigation mediation may not be resorted to. However, as held by the Supreme Court in the case of ***Dhanbad Fuels Private Limited*** (supra), it is not in every case that the mandate of Section 12A of 2015 Act can be ignored raising boggy of urgent interim relief. The Court needs to ascertain as to whether the interim relief urgently claimed by the plaintiff, is well founded or is merely a moonshine.

11. In view of above, the issue in the present *lis* boils down to the urgency contemplated by the plaintiff in an application filed under Order XXXVIII Rule 5 CPC wherein he sought attachment of property of defendant before judgment as urgent interim relief.

12. Mr. Rana is right in contending that the Court at this stage is not required to go into the merits of the case, but the test is '*whether the application discloses prima facie case in favour of the applicant?'*

13. In application filed under Order XXXVIII Rule 5 CPC, plaintiff pleaded as under:

> "4. That the defendants with malafide intention wants to alienate his above said land/Factory to defeat the right of applicant, for this illegal purpose he is wandering in the village to sale the aforesaid land to some other persons.
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> 5. That if the defendant succeed in his above said evil design the recovery of the decreetal amount which is likely to be passed against him will be defeated obstructed or delayed."

14. This Court in the case of '**Onkar Mal Mittal vs. State Bank of Patiala', 1992 AIR (Punjab) 104** after discussing series of judgment on Order XXXVIII Rule 5 CPC, culled out the following guiding principles:

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> 6. It is now well settled that the order of attachment before judgment cannot be made on the mere asking of the plaintiff. Before making the order, the court must be satisfied not only that the defendant is really about to dispose of his property or about to remove it from its jurisdiction, but also that the disposal or removal is with intent to obstruct or delay the execution of any decree that may be passed. The satisfaction must be of the Court as regards these matters and it must be based on some material derived either from the affidavit of party applying under Order 38, Rule 5 or there must be some material on record to indicate that the satisfaction was not illusory. The necessity for orders under Order 38 Rule 5, of the Code, arises almost daily among the litigants. This Court as well as the other Courts have interpreted the provisions of Order 38 Rule 5 and 6 of the Code, in a series of judgments. From a perusal of all the authorities the following guiding principles can be deduced :
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> (1) <u>That an Order under Order 38 Rule 5 and 6 can only be issued, if circumstances exist to the satisfaction of the Court.</u>
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> (2) Whether such circumstances exist is a question of fact that must be proved to satisfaction of the court.
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> (3) That the Court would not be justified in issuing an order for attachment before judgment, or for security, merely because it thinks that no harm would be done thereby or that the defendants, would not be prejudiced.

(4) That the affidavits in support of the contentions of the applicant, must not be vague, and must be properly verified. Where it is affirmed true to knowledge or information or belief, it must be stated as to which portion is true to knowledge, the source of information should be disclosed, and the ground for belief should be stated.

(5) <u>That a mere allegation that the defendant, was selling off his properties is not sufficient, particulars must be stated.</u>

(6) There is no rule that transactions before suit cannot be taken into consideration, but the object of attachment before judgment must be to prevent future transfer of alienation.

(7) Where only a small portion of the property belonging to the defendants, is being disposed of no inference can be drawn in the absence of other circumstances that the alienation is necessarily to defraud or delay the plaintiff's claim.

(8) <u>That the mere fact of transfer is not enough, since nobody can be prevented from dealing with his properties simply because a suit has been filed. There must be additional circumstances to show that the transfer is with an intention to delay or defeat the plaintiff's claim. It is open to the Court to look to the conduct of the parties immediately before suit, and to examine the surrounding circumstances, and to draw an inference as to whether the defendant is about to dispose of the property, and if so, with what intention. The Court in entitled to consider the nature of the claim and the defence put forward</u>.

(9) The fact that the defendant is in insolvent circumstances or in acute financial embarrassment, is a relevant circumstance, but not by itself sufficient.

(10) That in the case of running businesses the strictest caution is necessary and the mere fact that a business has been closed or that its turnover has diminished, is not enough.

(11) Where however the defendant starts disposing of his properties one by one, immediately upon getting a notice of the plaintiff's claim and/or where he had transferred the major portion of his properties shortly prior to the institution of the suit and was in embarrassed financial condition, these were grounds from which an inference could be legitimately drawn that the object of the defendant was to delay and defeat the plaintiff's claim.

(12) Mere removal of properties outside jurisdiction is not enough, but where the defendant with notice of the plaintiff's claim suddenly begins removal of his properties outside the jurisdiction of the appropriate Court, and without any other satisfactory reason, an adverse inference may be drawn against the defendant. Where the removal is to a foreign country, the inference is greatly strengthened.

(13) The defendant in a suit is under no liability to take any special care in administering his affairs, simply because there is a claim pending against him. Mere neglect, or suffering execution by other creditors, is not a sufficient reason for an order under Order 38 of the Code.

(14) The sale of properties at a gross under value, or benami transfers, are always good indications or all intention to defeat the plaintiff's claim. The Court must however be very cautious about the evidence on these points and not rely on vague allegations.

Now, under sub-rule (4) inserted by section 85(1), of 1976 Amendment Act, if the order of attachment is made without complying with the provisions of sub-rule (1) of Rule 5 Order 38, of the Code, such an attachment shall be void.

xxx xxxx xxx"

(emphasis supplied)

15. In view of aforesaid parameters laid down by this Court, the averments made in the application should not be vague. Mere allegation that the defendant was selling off the property is not sufficient. Applicant must plead particulars that can satisfy the conscience of Court *qua* intention of non-applicant/defendant to act with an intent to obstruct the apprehended decree.

16. In the considered opinion of this Court, mere assertion that the defendant was seen roaming in the village is too discrepant to gather intent of defendant which calls for adjudication of application under Order XXXVIII Rule 5 CPC.

17. Further, Mr. Sharma on instructions submits that the defendant has no intention to transfer the property as alleged by the plaintiff in an application filed under Order XXXVIII Rule 5 CPC.

18. In view of above, this Court finds that the case of the plaintiff contemplating urgent interim relief, does not fall within the exception as carved out under Section 12A of 2015 Act as enumerated by Supreme Court in the case of ***Dhanbad Fuels Private Limited*** (supra). The urgent interim relief claimed by the plaintiff is too discrepant and is an unfounded excuse to

by-pass the mandatory requirement of Section 12A of 2015 Act. The same would fall within Conclusion (g). and not (f) as claimed by Mr. Rana.

19. In view of above, this Court finds merit in the present revision petitions. Resultantly, the same are allowed. The plaint is ordered to be rejected.

20. However, since the plaint is being rejected merely for non-compliance of Section 12A of the 2015 Act, the plaintiff shall be at liberty to file plaint afresh, in accordance with law.

21. Pending application, if any, shall also stand disposed off.

22. A copy of this order be kept on the file of other connected case.

February 06, 2026 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes

Whether reportable : Yes