* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on : 10 October 2026
Judgment pronounced on : 17 November 2026

\# **CNR No. DLHC010456132026**

\+ FAO(OS) (COMM) 259/2026, CAV 464/2026 & CM APPL. 65749/2026

VISA WORLDWIDE PTE LIMITED .....Appellant

Through: Mr. Akhil Sibal, Sr. Adv., Ms. Binsy Susan, Mr. Akshay Sharma, Ms. Pavitra Singh, Ms. Palak Kaushal, Ms. Ayushi Jain, Mr. Krishnesh Bapat, Mr. Mridul Tiwari, Advs.

versus

PAYU PAYMENTS PRIVATE LIMITED AND ORS .....Respondents

Through: Mr. Sandeep Sethi and Mr. Rajeeve Mehra, Sr. Advs. with Mr. V. Anush Raajan, Mr. Ayush Singh Dhami, Ms. Meghna Tandon, Ms. Palak Bhargava, Ms Shreya Sethi, Mr. Krisna Gambhir, Mr. Ritwik Sarma, Advs. for R-1/PPPL
Mr. Karthik Somasundaram, Ms. Sonam Gupta, Mr. Mathew Chacko, Ms. Ankita Hariramani, Ms. Anandita Rajesh, Mr. Saumay Kapoor, Mr. Shiva Pande, Ms. Ritvika Poswal, Advs. for R-2
Ms. Varuna Bharale, Mr. Vivek Krishnani, Ms. Tanya Hasija, Advs. for R-3
Mr. Sidhant Kumar and Ms. Lahar Jain, Advs. for R-5
Ms. Neelam Rathore, Adv with Mr. Umang Saini, Adv. for R-6/IndusInd Bank

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CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MS. JUSTICE NIVEDITA ANIL SHARMA

JUDGMENT

% 17.11.2026

C. HARI SHANKAR, J.

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A. The *lis*

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1. Under challenge in the present appeal, filed under Section 13 of the Commercial Courts Act, 2015 read with Order XLIII Rule 1 of the Code of Civil Procedure, 1908, is an order passed by a learned Single Judge of this Court on 14 September 2026 in CS (Comm) 974/2026[1], to the extent of para 26 thereof, which reads as under:

> "26. Since the RBI has been requested to find out a solution within thirty days, the parties are requested to maintain status quo in respect of claims arising out of past transactions already made by Defendant No. 2 before Defendant No. 6, Defendant No. 6 shall not issue or pass any final IRF determination in respect of the pending IRF Claims arising out of past transactions against the Defendant No. 1,3,4 and 5 and consequently, Defendant Nos. 1, 3, 4 and 5 shall not make any deductions / debits / netting from the Plaintiff, while the mediation process is ongoing; and Defendant No. 2 or any other Issuing Bank which is a party to these proceedings will not make any further claims for interchange income loss due to MCC misclassification in respect of transactions involving the Plaintiff prior to the date of the Plaint while the mediation process is ongoing."

2. By order dated 23 September 2026, this Court, after hearing Mr. Akhil Sibal for the appellant, restricted its examination of the merits of the appeal to two contentions advanced by Mr. Sibal which, as this Court felt, merited consideration. The first was that the learned Single Judge erred in entertaining the suit without the respondent, as the plaintiff in the suit, first complying with Section 12A[2] of the Commercial Courts Act, which required pre-institution mediation to be attempted before the suit was filed. The second was that the learned Single Judge could not have issued the interlocutory directions

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[1] **PayU Payments Pvt Ltd v. Yes Bank Ltd & others**

[2] **12A. Pre-Institution Mediation and Settlement. –**
(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.
(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987, for the purposes of pre-institution mediation.

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contained in para 26 of the impugned judgment without returning findings regarding existence of a *prima facie* case, balance of convenience and the likelihood of irreparable loss to the respondent, were such interim directions not to be passed.

3. We have, therefore, heard learned Senior Counsel on both sides on the above aspects. Detailed written submissions have also been filed.

B. Facts

4. We may briefly advert to the facts, to the extent they are relevant to address the limited issues arising for consideration.

5. The appellant Visa Worldwide Pte Ltd[3] is Defendant 6 in CS (Comm) 974/2026[4], and is the system provider which operates the Visa card payment system in India. Respondent 2 Yes Bank Ltd, Respondent 3 ICICI Bank Ltd[5], Respondent 4 Axis Bank Ltd[6], Respondent 5 Airtel Payments Bank Ltd[7] and Respondent 6 IndusInd Bank Ltd[8] were Defendants 1 to 5 in the suit.

6. Respondent 1 PayU Payments Pvt Ltd[9] was the plaintiff in the suit. PayU claimed to be a payment aggregator, facilitating online payment transactions throughout India. It claimed to provide an

[3] "Visa" hereinafter, for ease of reference
[4] also referred to, hereinafter, as "the suit"
[5] "ICICI" hereinafter, for ease of reference
[6] "Axis" hereinafter
[7] "Airtel" hereinafter
[8] "IndusInd" hereinafter
[9] "PayU" hereinafter, for ease of reference

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integrated platform over which customers could make payments to merchants (the clients of PayU) using credit cards, debit cards, UPI, wallets or other payment instruments. Such transactions were processed, authenticated and settled by Respondents 2, 4, 5 and 6 (Yes Bank, Axis, Airtel and IndusInd) as the Acquiring Banks who, thereafter, remitted the net settled amounts to the Escrow Accounts of PayU.

7. When a customer makes a payment through an issuing bank on a website or App maintained by the merchant to whom the payment is being made, the instruction for payment is rooted through the platform of PayU to the relevant Acquiring Bank through the card network which is maintained and operated by the appellant. The Acquiring Bank raises an Interchange Fee from ICICI, as the Issuing Bank, on the basis of a Merchant Category Code[10], assigned to the merchants serviced by Visa. The MCC, which is a 4-digit code, identifies the principal line of business of a merchant, and is relevant for determination of the applicable Interchange Fee, payable by the Acquiring Bank to ICICI. After the customer has made the payment on the merchant's website or App, and the payment instruction is rooted through the platform of PayU to the relevant Acquiring Bank through the card network and the transacted amount is transferred by the Acquiring Bank into the Escrow Account of PayU after charging the IRF. PayU thereafter pays the settled amount to the concerned merchant.

[10] "MCC" hereinafter

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8. The dispute forming subject matter of conflict in the suit arises out of certain claims of Interchange Reimbursement Fee[11] raised by ICICI Bank before Visa, alleging that incorrect MCCs had been assigned to certain merchants whose transactions had been processed through the Acquiring Banks Respondents 2, 4, 5 and 6, resulting in shortfall in the Interchange Fee received by ICICI.

9. Visa took up these complaints under its private IRF Compliance Process.

10. PayU, which was not a party to the IRF Compliance Process of Visa, apprehended that, on the basis of the findings and determination arrived at consequent to the said IRF Compliance Process, deductions would be made from its Escrow Account. PayU has, therefore, instituted the suit, presently pending before the learned Single Judge, alleging that Visa's IRF Compliance Process did not satisfy the mandatory requirements of Section 24[12] of the Payment and Settlement Systems Act, 2007[13] and that determination of IRF through the said process had no jurisdiction or legal effect, on the basis of

---

[11] "IRF" hereinafter

[12] **24. Settlement of disputes.** –
(1) The system provider shall make provision in its rules or regulations for creation of panel consisting of not less than three system participants other than the system participants who are parties to the dispute to decide the disputes between system participants in respect of any matter connected with the operation of the payment system.
(2) Where any dispute in respect of any matter connected with the operation of the payment system arises between two or more system participants, the system provider shall refer the dispute to the panel referred to in sub-section (1).
(3) Where any dispute arises between any system participant and the system provider or between system providers or where any of the system participants is not satisfied with the decision of the panel referred to in sub-section (1), the dispute shall be referred to the Reserve Bank.
(4) The dispute referred to the Reserve Bank for adjudication under sub-section (3) shall be disposed of by an officer of the Reserve Bank generally or specially authorised in this behalf and the decision of the Reserve Bank shall be final and binding.
(5) Where a dispute arises between the Reserve Bank, while acting in its capacity as system provider or as system participant, and another system provider or system participant, the matter shall be referred to the Central Government which may authorise an officer not below the rank of Joint Secretary for settlement of the dispute and the decision of such officer shall be final.

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which any deductions could be made from the Escrow Account of PayU. The suit, therefore, contained the following prayer clause:

> "In the premises, there Plaintiff praise that this Hon'ble Court be pleased to pass a judgement and Decree in favour of the Plaintiff and to:
>
> a. Declare that Defendant No. 6's IRF Compliance Process, as applied in respect of the present dispute, does not satisfy the mandatory requirements of Section 24 of the Payment and Settlement Systems Act, 2007 and that any IRF determination issued through the said process accordingly has no jurisdiction or legal effect, and cannot constitute a lawfully issued determination capable of founding any deduction from the Plaintiffs ongoing settlements/Escrow Account;
>
> b. Grant permanent injunction restraining Defendant No. 1, 3, 4 and 5 whether by themselves, their officers, servants, agents or otherwise, from making any deduction(s) or recovery of any amounts representing IRF claims from the Plaintiffs ongoing settlements/ Escrow Account, until such time as the said claims are finally resolved either through the appeal/cure mechanism undertaken by Defendant No. 6 or under Section 24 of the PSS Act.
>
> c. Grant permanent injunction restraining Defendant No. 6, whether by itself, its officers, servants, agents or affiliates, from (i) issuing any instruction, direction, communication, or automated debit command to Defendant Nos. 1, 3, 4 and 5 (or to any other acquiring bank processing the Plaintiffs merchants' transactions) directing, authorising or facilitating any deduction, set-off, or withholding from the settlement remittances due to the Plaintiff on account of any IRF claim or IRF determination, whether interim or final, under Defendant No. 6's IRF Compliance Process; and (ii) issuing any final IRF determination in respect of the pending IRF claims against Defendant Nos. 1, 3, 4 and 5, without first constituting a panel satisfying the requirements of Section 24(1) of the Payment and Settlement Systems Act, 2007 and without affording the Plaintiff a fair and full opportunity to present its contentions before the said panel;

[13] "the PSSA" hereinafter

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> d. Grant Mandatory Injunction and/or a Judgment and Decree of recovery directing Defendant No. 1 to forthwith return all amounts in the sum of INR 6,88,18,850/- unlawfully deducted from the subsequent settlement payable by Defendant No. 1to the Escrow Accounts of the Plaintiffs on account of the IRF claims of Defendant No. 2 together with interest thereon at 18% per annum from the date of deduction;
>
> e. Such further and other relief(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and as also would be warranted in equity in favour of the Plaintiff and against the Defendants jointly and/or severally."

11. PayU claimed, before the learned Single Judge, not to play any role in the assignment of the MCCs, and that its role was limited to collecting and verifying the business information of the merchant and forwarding the information to the Acquiring Bank, which independently assessed the nature of the merchant's business and assigned the appropriate MCC, before the merchant could process the transaction. Incorrect assignment of MCCs, therefore, according to PayU, was attributable to the Acquiring Banks, and not to PayU.

12. PayU submitted that Yes Bank had already deducted amounts from the ongoing settlement amounts of PayU towards IRF liability and that, though, subsequently, Yes Bank had reversed an amount of over ₹ 5.95 crores, it continued to retain ₹ 68,818,850. IRF claims raised by ICICI against Axis, Airtel and IndusInd were approximately ₹ 5.26 crores, ₹ 27.3 crores and ₹ 8.82 crores respectively and, submitted PayU, if these claims were determined or acted upon in a manner adverse to Axis, Airtel or IndusInd, they, like Yes Bank, could seek to recover the amounts from PayU by making deductions from its

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Escrow Account. This would result in substantial financial liability to PayU, despite its not being responsible, in any way, for assignment of the MCCs, and also not being a party to the IRF proceedings being conducted by Visa.

13. PayU contended that the IRF Compliance Process of Visa was illegal, and that Visa was required, by law, to follow the statutory dispute resolution mechanism envisaged by Section 24 of the PSSA.

14. Based on these submissions, PayU pressed the reliefs sought in the suit.

15. PayU also filed, with the suit, IA 24414/2026, seeking exemption from the requirement of pre-litigation mediation as envisaged by Section 12A of the Commercial Courts Act.

16. Visa contended, *per contra*, before the learned Single Judge, that it had nothing to do with PayU, and that PayU could not seek any injunction interdicting Visa from carrying out its functions under its IRF Compliance Process. Visa pointed out that it was not debiting the Settlement Account of PayU, but was only determining liability against the Acquiring Banks, with whom PayU had its own Master Service Agreements. Visa claimed to have nothing to do with any such deductions, even if they were effected. These deductions were, if at all they were effected, in terms of the Master Service Agreements between PayU and the Acquiring Banks, to which Visa was not privy.

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17. Having recorded the rival contentions, the learned Single Judge has, in the impugned order, recorded thus, in para 16:

> "16. The crux of the issue is wrong MCCs given to various merchants on- boarded by the Plaintiff. It is not clear as to who has given the wrong MCCs which has resulted in determination of the IRF and subsequent deductions by Defendant No.2 as Issuer Bank or Defendants No.3, 4 & 5 as Acquiring Banks."

18. Though it might result in the present judgment becoming somewhat prolix, we have no option, given the nature of the rival contentions advanced before us, but to reproduce paras 17 to 27 of the impugned judgment of the learned Single Judge *in extenso*:

> "17. Admittedly, the present Suit is a commercial Suit. The Plaintiff has to first comply with the mandate of Section 12A of the Commercial Courts Act, 2015. Unless urgent interim measures are required to be granted for which the Plaintiff cannot await pre-litigation mediation process, the Plaintiff cannot seek exemption from pre-litigation mediation process. The importance of institution of pre-litigation mediation process under Section 12A of the Commercial Courts Act, 2015 has been aptly stated by the Apex Court in ***Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.***[14], wherein the Apex Court, after tracing the history and importance of mediation, insisted that the parties must undergo the process of pre-litigation mediation process and only in rare circumstances can this process be given a go-by. In the said Judgment, the Apex Court has observed as under:
>
> > "99. We may sum-up our reasoning as follows:
> >
> > 99.1. The Act did not originally contain Section 12-A. It is by amendment in the year 2018 that Section 12-A was inserted. The Statement of Objects and Reasons are explicit that Section 12-A was contemplated as compulsory. *The object of the Act and the Amending Act of 2018, unerringly point to at least partly foisting compulsory mediation on a plaintiff who does not contemplate urgent interim relief.* The provision has been contemplated only with reference to plaintiffs who do not contemplate urgent interim relief. The

[14] **(2022) 10 SCC 1**

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legislature has taken care to expressly exclude the period undergone during mediation for reckoning limitation under the Limitation Act, 1963. The object is clear.

99.2. It is an undeniable reality that courts in India are reeling under an extraordinary docket explosion. Mediation, as an alternative dispute mechanism, has been identified as a workable solution in commercial matters. *In other words, the cases under the Act lend themselves to be resolved through mediation. Nobody has an absolute right to file a civil suit. A civil suit can be barred absolutely or the bar may operate unless certain conditions are fulfilled*. Cases in point, which amply illustrate this principle, are Section 80CPC and Section 69 of the Partnership Act.

99.3. The language used in Section 12-A, which includes the word 'shall", certainly, goes a long way to assist the Court to hold that the provision is mandatory. The entire procedure for carrying out the mediation, has been spelt out in the Rules. The parties are free to engage counsel during mediation. The expenses, as far as the fee payable to the mediator, is concerned, is limited to a one-time fee, which appears to be reasonable, particularly, having regard to the fact that it is to be shared equally. A trained mediator can work wonders.

99.4. Mediation must be perceived as a new mechanism of access to justice. We have already highlighted its benefits. Any reluctance on the part of the Court to give Section 12-A, a mandatory interpretation, would result in defeating the object and intention of Parliament. The fact that the mediation can become a non-starter, cannot be a reason to hold the provision not mandatory. Apparently, the value judgment of the lawgiver is to give the provision, a modicum of voluntariness for the defendant, whereas, the plaintiff, who approaches the court, must, necessarily, resort to it. Section 12-A elevates the settlement under the Act and the Rules to an award within the meaning of Section 30(4) of the Arbitration Act, giving it meaningful enforceability. The period spent in mediation is excluded for the purpose of limitation. The Act confers power to order costs based on conduct of the parties.

100. In the cases before us, the suits do not contemplate urgent interim relief. As to what should happen in suits which do contemplate urgent interim relief or rather the meaning of the word "contemplate" or urgent interim relief, we need not dwell upon it. The other aspect raised about

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the word "contemplate" is that there can be attempts to bypass the statutory mediation under Section 12-A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis. Section 80(2)CPC permits the suit to be filed where urgent interim relief is sought by seeking the leave of the court. The proviso to Section 80(2) contemplates that the court shall, if, after hearing the parties, is satisfied that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to the court after compliance. Our attention is drawn to the fact that Section 12-A does not contemplate such a procedure. This is a matter which may engage attention of the lawmaker. Again, we reiterate that these are not issues which arise for our consideration. In the fact of the cases admittedly there is no urgent interim relief contemplated in the plaints in question.

Some concerns

101. *Mediation can become a potent alternate dispute resolution device. There are, however, a few indispensable requirements. The first requirement is the existence of adequate infrastructural facilities and, what is more important, availability of trained and skilled mediators. The role of the mediator, as per Rule 5 of the Rules, is to facilitate the voluntary resolution of a commercial dispute and assist the parties in this regard. How can a mediator, who is not properly trained, fulfil his responsibility under Rule 5? Another area of concern is the availability in the number of mediators in the country, particularly, in the light of lowering of the monetary valuation from Rs 1 crore to Rs 3 lakhs.*

102. It is all well to pass a law with sublime objects as in this case. However, the goal will not be realised unless the State Governments and all other relevant authorities bestow their attention in the matter of providing adequate facilities. Knowledge of the laws, which are the subject-matter of the suits under the Act, is indispensable for a mediator to effectively discharge his duties. His role is supreme and it is largely shaped by his own knowledge of the law that governs commercial cases. There must be training by experts, including at the State Judicial Academies. This must be undertaken on a regular and urgent basis, particularly keeping in mind when there is a dearth of trained mediators. There is a need to have a dedicated Bar for mediation. The effective participation of the Bar which must be adequately remunerated for its service will assist in

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mediation evolving. The High Court concerned may also undertake periodic exercise to establish a panel of trained mediators in District and Taluka levels as per need."

(Emphasis supplied)

18. In the abovementioned Judgment, the Apex Court has held that a Suit can be dismissed for not complying with the mandate of Section 12A of the Commercial Courts Act. Though the pre-litigation mediation process under Section 12A of the Commercial Courts Act, 2015 is to be resorted to before filing of the Suit and the Suit can be rejected under Order VII Rule 11 CPC if not complied with the said provision, however, this does not bar the Court from referring the parties to mediation even after institution of the Suit. In ***Novenco Building & Industry A/S v. Xero Energy Engg. Solutions (P) Ltd.***[15], the Apex Court has resorted to the same process.

19. At this juncture, this Court also does not want to brush away the concern of the Plaintiff that the Plaintiffs are obliged to maintain a certain amount in the escrow account and if the escrow account goes below that minimum amount, the Plaintiffs may be exposed to civil and criminal liability. However, this Court is not dwelling further on this argument as other arguments on the maintainability of the suit have been raised by all the Defendants.

20. In the opinion of this Court, since the entire regime is being operated under the certificates granted by the RBI and under the supervision of the RBI, instead of sending the parties for pre-litigation mediation process, it would be more appropriate to request the RBI to act as a mediator, even though it is not an authority names under the Legal Services Authorities Act, 1987 for the purpose of pre-litigation mediation process. The endeavour is to find out a solution to the problem of grant of wrong MCCs (if any) and to find a solution to the problem which has arisen under the regime.

21. This Court can take aid of Section 24 of the PSS Act which establishes a framework for resolving disputes related to the operation of payment systems in India. Section 24 of the PSS Act reads as under:

"24. **Settlement of disputes**. –

(1) The system provider shall make provision in its rules or regulations for creation of panel consisting of not less than three system participants other than the system

[15] **(2026) 4 SCC 815**

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participants who are parties to the dispute to decide the disputes between system participants in respect of any matter connected with the operation of the payment system.

(2) Where any dispute in respect of any matter connected with the operation of the payment system arises between two or more system participants, the system provider shall refer the dispute to the panel referred to in sub-section (1).

(3) Where any dispute arises between any system participant and the system provider or between system providers or where any of the system participants is not satisfied with the decision of the panel referred to in sub-section (1), the dispute shall be referred to the Reserve Bank.

(4) The dispute referred to the Reserve Bank for adjudication under sub-section (3) shall be disposed of by an officer of the Reserve Bank generally or specially authorised in this behalf and the decision of the Reserve Bank shall be final and binding.

(5) Where a dispute arises between the Reserve Bank, while acting in its capacity as system provider or as system participant, and another system provider or system participant, the matter shall be referred to the Central Government which may authorise an officer not below the rank of Joint Secretary for settlement of the dispute and the decision of such officer shall be final."

22. Though, learned Senior Counsel appearing for the Plaintiff has argued that referring the matter to RBI would deny an appeal to the Plaintiff, this Court makes it clear that the matter is being referred to RBI only as an effort to find out a solution regarding creation and allocation of wrong MCCs and as to how the past transactions can be settled and to make sure that the transactions between the parties go smoothly under the system operated by Defendant No.6 till the adjudication of disputes either by this Court or by any other forum. It is made clear that RBI will only act as a mediator and facilitator and not as a dispute resolution body as contemplated under Section 24 of the PSS Act.

23. Viewed in this light and without making observation even assuming that this Court comes to a conclusion that the present Suit is not maintainable and that the Plaintiff would have to take recourse to other modes of adjudication, the Appellate right of the Plaintiff is not taken away.

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24. Accordingly, the RBI is requested to depute a senior officer well- versed with the branch to make an endeavour to bring out a solution within thirty days from today.

25. In the opinion of this Court, adopting this process will ensure that the future transactions by the parties in the scheduled course are not hampered pending mediation and in the opinion of this Court, the senior officer of the RBI would be the most competent person to assist the parties to come to a solution pending the mediation process.

26. Since the RBI has been requested to find out a solution within thirty days, the parties are requested to maintain status quo in respect of claims arising out of past transactions already made by Defendant No. 2 before Defendant No. 6, Defendant No. 6 shall not issue or pass any final IRF determination in respect of the pending IRF Claims arising out of past transactions against the Defendant No. 1,3,4 and 5 and consequently, Defendant Nos. 1, 3, 4 and 5 shall not make any deductions / debits / netting from the Plaintiff, while the mediation process is ongoing; and Defendant No. 2 or any other Issuing Bank which is a party to these proceedings will not make any further claims for interchange income loss due to MCC misclassification in respect of transactions involving the Plaintiff prior to the date of the Plaint while the mediation process is ongoing.

27. It is made clear that this order shall not impact or obstruct or modify the transactions between the parties in the ordinary and usual course. This order will not affect their existing or future contractual or legal rights, all questions in that regard being expressly left open and will apply only to the transactions in which the parties claim that wrong MCCs have been assigned to merchants."

19. The afore-extracted paras from the impugned order speak for themselves, and it is not necessary for us, therefore, to paraphrase them. They, however, constitute subject matter of challenge by Visa, through Mr. Sibal.

C. Rival Contentions

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C.I Submissions of Mr. Akhil Sibal for Visa

20. Mr. Sibal first submits that the impugned order breaches Section 12A of the Commercial Courts Act. He rationalizes this argument thus:

(i) Pre-institution mediation is mandatory under Section 12A, as held by paras 87, 88 and 99 of ***Patil Automation***. The Supreme Court has held that any suit, instituted without pre-institution mediation as required by Section 12A, must be rejected under Order VII Rule 11[16] of the Code of Civil Procedure, 1908[17].

(ii) ***Patil Automation*** further holds that, where no urgent interim reliefs are contemplated, there can be no question of substantial compliance with Section 12A by post-institution reference to mediation.

(iii) That Section 12A does not envisage post-institution mediation was expressly stated in paras 67 and 72 of ***Dhanbad***

[16] **11.** **Rejection of plaint**.—
The plaint shall be rejected in the following cases:—
(a) where it does not disclose a cause of action;
(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
(d) where the suit appears from the statement in the plaint to be barred by any law;
(e) where it is not filed in duplicate;
(f) where the plaintiff fails to comply with the provisions of Rule 9;
Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

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Fuels (P) Ltd v. Union of India[18], which further clarified that the power to refer parties to mediation post-institution of the suit, keeping the suit in abeyance, applied only to suits instituted prior to 20 August 2022. The present suit was instituted in 2026.

(iv) The reference of the parties to post-institution mediation, by the impugned order, therefore, is in contravention of settled law. The learned Single Judge had, before him, only two options, in view of Section 12A. The first was to allow exemption from complying with Section 12A, after due application of mind and for reasons to be stated, as held in paras 10 to 12 of ***Yamini Manohar v. T.K.D. Keerthi***[19], which also clarified that the existence of a prayer for interim relief does not, *ipso facto*, mean that urgent interim relief was contemplated for the purposes of Section 12A. The second was to reject the suit for failing to comply with Section 12A. There was no third option available to him.

(v) No summons have, as yet, been issued in the suit. ***Patil Automation*** holds that summons could be issued only in a validly instituted suit. The fact that the learned Single Judge has not issued summons indicates that he was not satisfied that the suit was validly instituted. In such circumstances, the learned Single Judge could not have proceeded to grant interim relief. This is an inherent inconsistency, which vitiates the impugned

[17] CPC
[18] **(2025) 9 SCC 424**

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order. In this context, Mr. Siddhant Kumar, who supplements the submissions of Mr. Sibal, also draws our attention to Section 89(1)[20] of the CPC.

(vi) The learned Single Judge erred in relying on ***Novenco*** to justify his decision to refer the suit to post-institution mediation. In ***Novenco***, the Supreme Court, in its initial order dated 7 February 2025, framed the question as to whether non-compliance with Section 12A merited dismissal of the suit under Order VII Rule 11 or whether the suit could be kept in abeyance while the parties explored the possibility of settlement through mediation. The Supreme Court only directed ***Novenco*** to approach the Mediation Centre attached to the High Court for appointment of a mediator and requested participation by the opposite side. This was a mere procedural direction, and no interim protection was granted in the meanwhile. The final judgment in ***Novenco*** did not adjudicate the issue raised in the initial order dated 7 February 2025, or endorse post-institution mediation. It held that Section 12A mandatorily required pre-institution mediation, and that exception from this requirement was available only where the plaint, read with the documents filed there with, disclosed a real need for urgent interim relief.

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[19] **(2024) 5 SCC 815**

[20] **89. Settlement of disputes outside the Court.—**

(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:—

(a) arbitration;
(b) conciliation;
(c) judicial settlement including settlement through Lok Adalat; or
(d) mediation.

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(vii) The impugned judgment is, therefore, internally irreconcilable. If the nature of the suit required pre-institution mediation as envisaged by Section 12A, and did not disclose any urgency as would justify exception from this requirement, no interim relief could have been granted, pending such mediation. If, on the other hand, urgent interim relief was sought in the suit, justifying exception from the requirement of compliance with Section 12A, the learned Single Judge ought to have allowed the application for exemption, in which event there would be no occasion to refer the matter to mediation. The impugned judgment, therefore, suffers from a patent jurisdictional error.

(viii) Moreover, the learned Single Judge could not have appointed a senior official of the Reserve Bank of India[21] as the mediator, as Section 12A(2) requires mediation to be only through authorities constituted under the Legal Services Authorities Act, 1987, and RBI is not one such authority in terms of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018[22]. This statutory position, in fact, stands acknowledged in para 20 of the impugned judgment; nonetheless, the learned Single Judge goes on to direct mediation by the RBI, which is impermissible.

21. Mr. Sibal's second objection to the impugned order is that it grants interim relief without recording any finding regarding the

[21] RBI
[22] "the 2018 Rules" hereinafter

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existence of a *prima facie* case, balance of convenience or irreparable loss, which are the inalienable prerequisites before any interim protection can be granted. He cites, in this context, para 4 of ***Dalpat Kumar v. Prahlad Singh***[23], as well as a host of decisions of this Court. *Ad interim* injunction, submits Mr. Sibal, cannot be granted as a holding arrangement, insulated from the settled principles governing grant of injunctive relief. The learned Single Judge has not considered any of the submissions advanced by Visa on the aspects of *prima facie* case, balance of convenience or irreparable loss, even though they were reiterated in the written submissions filed before him. Mr. Sibal submits that, in this context, Visa had contended that

(i) there was no privity of contract between Visa and PayU,

(ii) PayU had, therefore, no cause of action against Visa,

(iii) IRF determination was by the Acquiring Bank, towards the Issuing Bank and PayU would, if at all, be affected only if the Acquiring Bank chose to pass on that liability to PayU under the Master Service Agreement between them,

(iv) each such Master Service Agreement contained an arbitration clause, and the suit was, therefore, also barred by Section 8[24] of the Arbitration and Conciliation Act, 1996,

(v) Section 24 of the PSSA vested the RBI, and not civil courts, with jurisdiction over disputes between system providers, thereby implicitly barring a suit, for which purpose Mr. Sibal places reliance on paras 15, 16 and 65 to 69 of the

[23] **(1992) 1 SCC 719**

[24] **8. Power to refer parties to arbitration where there is an arbitration agreement.**
(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court

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judgment of the High Court of Madras in ***Info Edge (India) Ltd v. Google India (P) Ltd***[25],

(vi) mere financial loss, capable of computation and recovery by way of damages, did not constitute irreparable harm,

(vii) no urgency, justifying grant of *ad interim* relief, could be said to exist, having regard to the delay between April 2026, when PayU acquired knowledge of the IRF process and the institution of the suit in late August 2026 and

(viii) the balance of convenience was also against grant of any such interim relief, as the impugned judgment restrains Visa from completing its IRF Compliance Process, which would cause it direct operational prejudice.

22. The learned Single Judge, submits Mr. Sibal, has granted interim relief solely because he deemed it appropriate to refer the dispute to mediation by the RBI. There is no other ground for grant of interim relief. This is impermissible in law.

23. The third objection of Mr. Sibal, to the impugned order, is that, as Visa had questioned the maintainability of the suit, as noted in paras 12 to 19 of the impugned order, the learned Single Judge was required to address this issue, at least *prima facie*, before granting any interim protection. He cites, for this purpose, para 50 of ***Asma Lateef v. Shabbir Ahmad***[26].

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or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

[25] **2024 SCC OnLine Mad 150**

[26] **(2024) 4 SCC 696**

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24. Ms. Varuna Bhandare, appearing for the ICICI Bank, adopted Mr. Sibal's submissions. Mr. Kartik Somasundaram, for Yes Bank, also did so, and further submitted that the learned Single Judge has devised a workable solution, with which no interference would be justified.

C.II Submissions of Mr. Sandeep Sethi

25. Responding to the submissions of Mr. Sibal, Mr. Sandeep Sethi relies on an e-mail dated 9 September 2026 addressed by Yes Bank to Visa, enclosing draft Minutes of an Order, pursuant to the directions issued by the learned Single Judge, and Visa's response thereto. He submits that Visa's response, as well as the responses of other parties in the suit, made it clear that everyone was agreeable to submission of the dispute to RBI, even though Visa was objecting to any restraint on its network's operation. He submits that Visa cannot be allowed to approbate and reprobate. The impugned order was passed by the learned Single Judge, referring the dispute to the RBI, on the basis of consent by all parties.

26. Without prejudice, Mr. Sethi submits that the suit was not barred by Section 12A of the Commercial Courts Act. He has drawn our attention to the submissions of Visa, as recorded in para 13 of the impugned order, and points out that no submission related to Section 12A, or its compliance, was advanced. He disputes Mr. Sibal's submission that the impugned order is non-reasoned, and submits that para 19 of the order records *prima facie* reasons for directing maintenance of *status quo*. He submits that the Supreme Court has, in

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Novenco, clarified that the enquiry, for the purposes of Section 12A, has to be from the standpoint of the plaintiff, based on the averments in the plaint along with contemporaneous documents. The learned Single Judge, he submits, has noted the immediacy of the peril facing PayU, the irreparable harm which would ensue, the risk of losing further rights or assets, the statutory timelines involved and the fact that any delay would render eventual relief ineffective. Relying on the decision in ***Yamini Manohar***, Mr. Sethi submits that, at the Section 12A stage, the Court is not to weigh the merits of the interim relief sought, and is only to satisfy itself that the prayer for interim relief is not a camouflage to bypass mediation.

27. Mr. Sethi further submits that IA 24414/2026, seeking exemption from applicability of Section 12A, was filed only by way of abundant caution. Relying on para 42 of ***Dhanbad Fuels***, Mr. Sethi submits that a plaintiff need only pray for urgent interim relief, and becomes *ipso facto* entitled to institute the suit without pre-institution mediation, unless the Court finds to the contrary. He submits that, in para 19 of the impugned judgment, the learned Single Judge has noticed the fact that PayU had prayed for interim relief in the suit, and had further observed that the prayer could not be brushed aside. This, by itself, was sufficient to justify permitting the suit to continue without pre-institution mediation. He further cites, in this context, paras 5 to 12 of ***Yamini Manohar*** and paras 2, 49, 50, 52 and 53 of ***Dhanbad Fuels***. In ***Patil Automation***, submits Mr. Sethi, there was no prayer for interim relief.

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28. Mr. Sethi points out that, consequent on the enquiry conducted by the IRF Compliance Process of Visa, ₹ 6.88 crores of PayU has been withheld and there is further threat of withholding of ₹ 41.38 crores on instructions of Visa. He reiterates that the IRF Compliance Process of Visa is not compliant with Sections 24(1) and (2) of the PSSA.

29. Mr. Sethi points out that the impugned order of the learned Single Judge, referring the parties to RBI for mediation, instead of a pre-institution mediation process, was within the power of the Court, in view of Section 89(b) read with Order X Rules 1-A to 1-C and Section 151 of the CPC. He relies, for this purpose, on paras 53 to 55 of ***Salem Advocates Bar Association v. Union of India***[27], para 36 of ***Afcons Infrastructure Ltd v. Cherian Varkey Construction Company Pvt Ltd***[28] and para 3 of ***B.S. Krishnamoorthy v. B.S. Nagaraj***[29]. Paras 20 to 29 of the impugned order, submits Mr. Sethi, make it clear that the reference to mediation, by the learned Single Judge, is not in terms of Section 12A of the Commercial Courts Act, and the interim stay granted in the meanwhile is only intended to ensure that the mediation is not frustrated. A similar procedure, he submits, was adopted by the Supreme Court in its order dated 7 February 2025 in ***Novenco***.

30. Mr. Sethi submits that para 19 of the impugned order, with which Visa claims to be aggrieved, merely contains a 30-day mediation linked case management direction, expressly without prejudice to the rights and contentions of the parties. No issue is

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[27] **(2005) 6 SCC 344**
[28] **(2010) 8 SCC 24**
[29] **(2011) 15 SCC 464**

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decided by the impugned order, even *prima facie*. The Order XXXIX application filed by PayU is still pending.

31. Mr. Sethi refutes Mr. Sibal's contention that the impugned order does not reflect consideration of the ingredients of *prima facie* case, balance of convenience and irreparable loss, which form the basis of any injunctive order. He submits that para 16 of the impugned order deals with the existence of a *prima facie* case, para 19 deals with irreparable loss and paras 25, 27 and 30 deal with balance of convenience. All these ingredients, therefore, are taken into account by the impugned order. He submits that there is no requirement, in law, for a Court to expressly employ the expressions "*prima facie* case", "balance of convenience" or "irreparable loss", before granting interim injunction, and it is sufficient if the Court is alive to these requirements, as is discernible from the tenor of the order. He relies, for this purpose, on para 14 of the judgment of the Supreme Court in ***High Court Bar Association v. State of UP***[30].

32. Equally, submits Mr. Sethi, there is no cast-iron requirement, in law, for a Court to pronounce on the maintainability of the suit before granting interim relief. In an appropriate case, he submits that interim relief can be granted even pending decision on maintainability and cites, for this purpose, para 50 of ***Asma Lateef***.

C.III Submissions of Mr. Rajeeve Mehra

[30] **2024 SCC OnLine SC 207**

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33. Mr. Rajeeve Mehra, appearing for Yes Bank, largely adopts the submissions of Mr. Sethi. He has also sought to submit that, inasmuch as Section 12A of the Commercial Courts Act envisages pre-institution mediation, the reference of the dispute to mediation by the RBI, by the impugned order, cannot be treated as an exercise relatable to Section 12A. This, however, does not render the impugned order illegal or unsustainable. Mr. Mehra further submits that, as the issue involved in the suit requires understanding of circulars issued by the RBI for payment aggregation arrangements and a keen understanding of the card payment ecosystem, the expertise of a senior RBI officer, well-versed with this branch, would be helpful in facilitating an effective mediation. He, therefore, submits that the impugned order deserves to be sustained, subject to the clarification that the RBI officer would act only as a mediator in a post-institution, non-adjudicatory process.

C.IV Submissions of Mr. Akhil Sibal in rejoinder

34. In rejoinder, Mr. Sibal contests Mr. Sethi's submission that there was any consent, by the parties, to refer the dispute to mediation by the RBI. He submits that the impugned order does not even purport to be a consent order. The e-mails to which Mr. Sethi refers, he submits, were without prejudice communications. He further points out that the said e-mails envisage reference of the dispute to RBI in terms of Section 24(3) of the PSSA, which envisages adjudication, and not mediation.

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35. Mr. Sibal further seeks to submit that the impugned order does not purport to have been passed in exercise of the powers vested by Section 89 of the CPC, but expressly purports to have been issued under Section 12A of the Commercial Courts Act. He refers, in this context, to paras 11, 12, 17, 18, 20 and 23 of the impugned order.

36. Mr. Sibal further disputes Mr. Sethi's contention that Section 151 of the CPC empowers the Court to refer the matter to mediation. Mediation, he submits, has to be either relatable to Section 12A of the Commercial Courts Act or to Section 89 of the CPC. Unlike Section 89, he points out that, under Section 12A, the Court does not direct mediation of the dispute. He further submits that, where the Court refers to a particular provision to draw power for its order, the principle of availability of power elsewhere would not apply. In support of his submissions, Mr. Sibal relies on paras 92, 94.1 and 94.3 of ***Patil Automation***. For the proposition that the impugned directions could not be said to have been issued under Section 89, Mr. Sibal cites paras 8, 24, 30, 41 and 43 of ***Afcons Infrastructure***.

37. Mr. Sibal disputes Mr. Sethi's contention that the impugned order reflects consideration of the elements of *prima facie* case, balance of convenience and irreparable loss. He submits that there is no such consideration, either in form or in substance. Any consideration of the existence, or otherwise, of a *prima facie* case, he submits, should reflect at least tentative findings on the arguments advanced by the parties, which are absent. Though Visa's contentions are recorded in para 13 of the impugned order, Mr. Sibal submits that the order does not deal with them before granting injunction.

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38. Mr. Sibal places further reliance on Section 38 of the Specific Relief Act, 1973, to submit that, if perpetual injunction cannot be granted, neither can temporary injunction be granted.

39. Apropos the judgments cited by Mr. Sethi, Mr. Sibal cites paras 16, 17, 22, 24 and 25 of ***Natco***, paras 48, 49 and 51 of ***Newgen*** and para 6 of ***High Court Bar Association***.

C.V Submissions in surrejoinder

40. Mr. Sethi, in a brief surrejoinder, sought to submit that Section 89 of the CPC had been amended. Mr. Sibal submits, in this regard, that the amendment had not been notified, whereas Mr. Sethi submits that it was notified on 3 November 2025, and was effected because of the anomalies noted in para 7, 11, 15, 19, 25, 36 and 45 of ***Afcons Infrastructure***. Mr. Sibal submits that, in any case, Section 59 of the Mediation Act has not been notified.

D. Analysis

D.I Re. Section 12A of the Commercial Courts Act

41. We first proceed to examine the rival contentions with respect to whether the impugned order infracts Section 12A of the Commercial Courts Act.

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42. On its plain terms, Section 12A(1) proscribes the institution of a suit, which does not contemplate any urgent interim relief, without exhausting pre-institution mediation, as prescribed by the rules. In order to effectuate Section 12A(1), the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018[31] were notified on 3 July 2018.

43. The law relating to Section 12A, its application and applicability, and the consequences of failure to comply with the provision, are no longer *res integra*, in view of the judgments of the Supreme Court in ***Patil Automation***, ***Yamini Manohar***, ***Dhanbad Fuels*** and ***Novenco*** to which, therefore, we may immediately allude.

44. ***Patil Automation***

44.1 It is necessary to bear in mind, as Mr. Sethi has pointed out, the fact that ***Patil Automation*** was a case in which *no interim relief had been sought in the suit*. Needless to say, however, the judgment remains binding on all hierarchically lower judicial authorities, including us, and we would be loath to discount its precedential value merely for this reason. The fact, however, assumes importance in view of para 100 of the report, which read thus:

> "100. In the cases before us, the suits do not contemplate urgent interim relief. *As to what should happen in suits which do contemplate urgent interim relief or rather the meaning of the word "contemplate" or urgent interim relief, we need not dwell upon it.* The other aspect raised about the word "contemplate" is that there can be attempts to bypass the statutory mediation under Section 12-A by contending that the plaintiff is contemplating

[31] "the Rules" hereinafter

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> urgent interim relief, which in reality, it is found to be without any basis. Section 80(2) CPC permits the suit to be filed where urgent interim relief is sought by seeking the leave of the court. The proviso to Section 80(2) contemplates that the court shall, if, after hearing the parties, is satisfied that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to the court after compliance. Our attention is drawn to the fact that Section 12-A does not contemplate such a procedure. *This is a matter which may engage attention of the lawmaker. Again, we reiterate that these are not issues which arise for our consideration. In the fact of the cases admittedly there is no urgent interim relief contemplated in the plaints in question.*"
>
> (Emphasis supplied)

44.2 That, despite the constitutional imperative contained in Article 141[32] , judgments of the Supreme Court – and, indeed, of all courts – have to be understood in the light of the facts which were before the Court, and not analogised to theorems of Euclid is, again, no longer *res integra*. In ***Union of India v. Bharat Forge Ltd***[33], the Supreme Court observed that it was "elementary that principles enunciated in the facts are not to be likened to Euclid's Theorem, having an inexorable operation divorced from the facts which arise for consideration". In almost identical terms, ***Vinay Prakash Singh v. Sameer Gehlaut***[34] observes thus:

> "11. We must bear in mind as has been laid down by this Court in an unbroken catena of decisions that a judgment of a Court is not to be read as the Euclid's Theorem shorn of the facts and the context in which the law has been declared."

To the same effect are the decisions in ***C. Ronald v. State***[35]**,** ***Gauhati High Court v. Gogo Ete***[36] and ***Manoj Sharma v. State***[37]**.** In ***Deepak***

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[32] 141. The law declared by the Supreme Court shall be binding on all courts within the territory of India.
[33] **(2022) 17 SCC 188**
[34] **2022 SCC OnLine SC 1595**
[35] **(2011) 12 SCC 428**
[36] **(2018) 16 SCC 51**
[37] **(2008) 16 SCC 1**

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Bajaj v. State of Maharashtra[38], the Supreme Court, to support this principle, approvingly placed reliance on the dictum of Lord Halsbury in ***Quinn v. Leathem***[39]:

> "7. It is well settled that a judgment of a Court is not to be read mechanically as a Euclid's theorem nor as if it was a statute.
>
> 8. On the subject of precedents Lord Halsbury, L.C., said in ***Quinn v. Leathem***:
>
> > "Now before discussing the case of ***Allen v. Flood***[40] and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."
>
> We entirely agree with the above observations."

44.3 In view of para 100 of ***Patil Automation*** and the afore-cited decisions, we cannot, therefore, be oblivious to the fact that, in that case, no interim relief was sought at all in the suit.

44.4 ***Patil Automation***[41] was the defendant in the suit from which the appeal travelled to the Supreme Court. Rakheja Engineers (P) Ltd[42] , which instituted the suit, did not seek any interim relief at all.

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[38] **(2008) 16 SCC 14**
[39] **1901 AC 495**
[40] **(1898) AC 1**
[41] "Patil" hereinafter
[42] "Rakheja" hereinafter

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The suit was instituted without pre-institution mediation. Patil moved an application, before the learned trial court, under Order VII Rule 11 of the CPC, praying for dismissal of the suit as it was not maintainable on account of failure to comply with Section 12A of the Commercial Courts Act. The application was dismissed by the learned trial court, and that decision was affirmed by the High Court in appeal. Patil, therefore, approached the Supreme Court.

44.5 The Supreme Court, in clear and unequivocal terms, held that, in a case of a suit which did not contemplate any interim relief, the requirement of pre-institution mediation, as envisaged by Section 12A, was mandatory and imperative. The suit was, in the absence of such attempt at pre-institution mediation, not maintainable, and was liable to be dismissed under Order VII Rule 11 of the CPC. The Supreme Court, therefore, reversed the decision of the High Court.

44.6 We may reproduce, for ready reference, the following extracts from the judgment of the Supreme Court, which emphasize the mandatory nature of Section 12A:

> "62. Since, Section 12-A also contemplated the making of Rules to give effect to the scheme of pre-litigation mediation. The Rules were promptly made and published on 3-7-2018. Rule 3 elaborately provides for the manner in which the mediation process is initiated. It contemplates that a party, to a commercial dispute, may make an application to the Authority. This Rule speaks about a party. Section 12-A declares that the plaintiff must exhaust the remedy of pre-litigation mediation. *What, apparently is required is that the suit cannot be filed except after the remedy of pre-litigation mediation, contemplated under the Act and the Rules, is attempted and exhausted. What Rule 3(1) provides is the form in which the application is to be made viz. Form I, as specified in Schedule I.* The making of the Form can be by online transmission or by post or by hand.

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63. *The view expressed by the High Court of Madras that the use of the word "may", detracts from the mandatory flavour of Section 12-A is clearly untenable*. Section 12-A is part of the parent enactment. Rule 3, being a subordinate legislation, must be interpreted harmoniously, in the first place, with the parent enactment. That apart, on a proper understanding of Rule 3, there is really no conflict between Section 12-A and Rule 3. Rule 3 only gives a discretion to the applicant, in regard to the mode of making the application. *So understood, we are of the clear view that, if Section 12-A is otherwise mandatory, Rule 3(1) can only be understood as providing three different modes for making the application, contemplated in Section 12-A(1).*

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67. A mediation settlement arrived at under Section 89CPC must be scrutinised by the court and only on its imprimatur being given it is effective [*see* para 40 of ***Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.***]. *Since a settlement under Section 12-A of the Act is accorded the status of an award under the Arbitration and Conciliation Act, it unerringly points to the object of the legislature to make pre-litigation mediation compulsory.* We again underscore the vital role, the lawyers engaged can and must discharge in arriving at a just and valid settlement translating into an effective award and therefore, a decree.

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71. It does not require much debate to conclude that there is a direct relationship between ease of doing business and an early and expeditious termination of disputes, which may arise in commercial matters. The speed with which the justice delivery system in any country responds to the problem of docket explosion, particularly in the realm of commercial disputes can be regarded as a very safe index of the ease of doing business in that country. The Act, therefore, is, in the said sense, a unique experiment to push the pace of disposal of commercial disputes. It is in this background that the Court must approach the issue of whether Section 12-A has been perceived as being a mandatory provision. We say this for the reason that the decisive element in the search for the answer, in the interpretation of such a statute, must be to ascertain the intention of the legislature. *The first principle, of course, must be the golden rule of interpretation, which means, the interpretation in conformity with the plain language, which is used. There cannot even be a shadow of a doubt that the language used in Section 12-A is plainly imperative*

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in nature. However, we will not be led by the mere use of the word "shall".

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74. It is noteworthy that Section 12-A provides for a bypass and a fast-track route without for a moment taking the precious time of a court. At this juncture, it must be immediately noticed that *the lawgiver has, in Section 12-A, provided for pre-institution mediation only in suits, which do not contemplate any urgent interim relief. Therefore, pre-institution mediation has been mandated only in a class of suits. We say this for the reason that in suits which contemplate urgent interim relief, the lawgiver has carefully vouchsafed immediate access to justice as contemplated ordinarily through the courts.* The carving out of a class of suits and selecting them for compulsory mediation, harmonises with the attainment of the object of the law. The load on the Judges is lightened. They can concentrate on matters where urgent interim relief is contemplated and, on other matters, which already crowd their dockets.

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88. We may immediately draw a parallel between Sections 80(1)CPC and 12-A of the Act. *In Section 12-A also, the bar of institution of the suit is applicable only in a case in which plaintiff does not contemplate urgent interim relief. The situation is akin to what is contemplated in Section 80(1)CPC. In other words, the suit under the Act which does not contemplate urgent interim relief is like a suit covered by Section 80(1)CPC which does not project the need for any urgent or interim relief. In regard to a suit covered under Section 12-A of the Commercial Courts Act, namely, in a suit where interim relief is not contemplated, there can be no substantial compliance by way of post institution reference to mediation.* The argument of the plaintiff overlooks the object apart from the language used besides the design and scheme of the law. It will, if accepted, lead to courts also spending their invaluable time on such matters which follow from adjournments, objections and hearings. There is no need to adopt such a course.

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91. Section 12-A of the Commercial Courts Act provides for mediation. This is a provision, which was inserted as per the Amending Act (Act 28 of 2018) enacted in the year 2018 and it came into force with effect from 3-5-2018. By the said amendment, in fact, Chapter III-A was inserted and Section 12-A

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is the sole section in the said chapter. *A plain reading of Section 12-A makes the following position clear:*

91.1. *The lawgiver has declared that if a suit under the Act does not "contemplate" any urgent interim relief, then, it cannot be instituted unless the plaintiff seeks pre-litigation mediation.* The pre-institution mediation is to be done in the manner, procedure, which is to be prescribed by the Central Government. The pre-litigation mediation is to be completed within a period of three months from the date of the application made by the plaintiff under sub-section (1) [see Section 12-A sub-section (3)].

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91.4. *Spread over five sub-sections, this standalone section in Chapter III-A, no doubt, supported by the Rules, in our view, substantially manifests a definite scheme to effectively deal with the perceived urgent problem of acute clogging of the justice delivery system, which had to be de-congested*. Section 12-A cannot be perceived as merely intended to reach quicker justice, and what is more, on terms, which are mutually acceptable to the parties concerned. Even, more importantly, it was to produce a vital and significant effect on the very interest of the nation. We have perused the Statement of Objects and Reasons. To attract foreign capital by enhancing its rather low standard in the ease of doing business, it was and is still necessary to showcase an efficient and quick justice delivery system in commercial matters. In fact, India, which was ranked at 142 out of 189 countries, in the Ease of Doing Business Index, in 2015, climbed up to only 130 in the year 2016. By 2020, India stood at the 63rd position.

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94.3. *Order 7 Rule 11 does not provide that the court is to discharge its duty of rejecting the plaint only on an application.* Order 7 Rule 11 is, in fact, silent about any such requirement. *Since summon is to be issued in a duly instituted suit, in a case where the plaint is barred under Order 7 Rule 11(d), the stage begins at that time when the court can reject the plaint under Order 7 Rule 11*. No doubt it would take a clear case where the court is satisfied. The Court has to hear the plaintiff before it invokes its power besides giving reasons under Order 7 Rule 12. In a clear case, where on allegations in the suit, it is found that the suit is barred by *any law, as would be the case, where the plaintiff in a suit under the Act does not plead circumstances to take his case out of the requirement of Section 12-A, the plaint should be rejected without issuing summons. Undoubtedly, on issuing summons it will be always open to the defendant to make an*

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application as well under Order 7 Rule 11. In other words, the power under Order 7 Rule 11 is available to the court to be exercised suo motu. (See in this regard, the judgment of this Court in ***Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy***[43].)

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99. We may sum-up our reasoning as follows:

99.1. The Act did not originally contain Section 12-A. It is by amendment in the year 2018 that Section 12-A was inserted. The Statement of Objects and Reasons are explicit that Section 12-A was contemplated as compulsory. *The object of the Act and the Amending Act of 2018, unerringly point to at least partly foisting compulsory mediation on a plaintiff who does not contemplate urgent interim relief. The provision has been contemplated only with reference to plaintiffs who do not contemplate urgent interim relief. The legislature has taken care to expressly exclude the period undergone during mediation for reckoning limitation under the Limitation Act, 1963. The object is clear*.

99.2. It is an undeniable reality that courts in India are reeling under an extraordinary docket explosion. Mediation, as an alternative dispute mechanism, has been identified as a workable solution in commercial matters. In other words, the cases under the Act lend themselves to be resolved through mediation. *Nobody has an absolute right to file a civil suit.* A civil suit can be barred absolutely or the bar may operate unless certain conditions are fulfilled. Cases in point, which amply illustrate this principle, are Section 80CPC and Section 69 of the Partnership Act.

99.3. *The language used in Section 12-A, which includes the word "shall", certainly, goes a long way to assist the Court to hold that the provision is mandatory*. The entire procedure for carrying out the mediation, has been spelt out in the Rules. The parties are free to engage counsel during mediation. The expenses, as far as the fee payable to the mediator, is concerned, is limited to a one-time fee, which appears to be reasonable, particularly, having regard to the fact that it is to be shared equally. A trained mediator can work wonders.

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100. *In the cases before us, the suits do not contemplate urgent interim relief. As to what should happen in suits which do*

[43] **(2018) 14 SCC 1**

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> *contemplate urgent interim relief or rather the meaning of the word "contemplate" or urgent interim relief, we need not dwell upon it. The other aspect raised about the word "contemplate" is that there can be attempts to bypass the statutory mediation under Section 12-A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis.* Section 80(2)CPC permits the suit to be filed where urgent interim relief is sought by seeking the leave of the court. The proviso to Section 80(2) contemplates that the court shall, if, after hearing the parties, is satisfied that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to the court after compliance. *Our attention is drawn to the fact that Section 12-A does not contemplate such a procedure. This is a matter which may engage attention of the lawmaker. Again, we reiterate that these are not issues which arise for our consideration. In the fact of the cases admittedly there is no urgent interim relief contemplated in the plaints in question.*
>
> *****
>
> ***The relief***
>
> 104. *On the findings we have entered, the impugned orders must be set aside and the applications under Order 7 Rule 11 allowed.* This would mean that the plaints must be rejected. Necessarily, this would involve the loss of the court fee paid by the plaintiffs in these cases. They would have to bring a fresh suit, no doubt after complying with Section 12-A, as permitted under Order 7 Rule 13. Moreover, the declaration of law by this Court would relate back to the date of the Amending Act of 2018."
>
> (Emphasis supplied)

44.7 It is clear, therefore, that the requirement of attempting pre-institution mediation, in the case of a suit which does not contemplate urgent interim relief, is irreconcilable and mandatory. Such a suit, if instituted, is liable to be thrown out at the threshold under Order VII Rule 11 of the CPC.

44.8 At the same time, the Supreme Court also clarified that it was not entering into the semantics of the expression "contemplate", as contained in Section 12A, and as to whether, if a prayer for urgent

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interim relief was contained in the suit, the Court could go behind the prayer and examine whether the "contemplation" was, or was not, genuine. On this aspect, therefore, ***Patil Automation*** may not be an authoritative precedent, and we agree with Mr Sethi in this regard.

45. ***Yamini Manohar***

45.1 This decision, though brief, has examined, in some detail, the contours of "contemplation" as envisaged in Section 12A of the Commercial Courts Act. After noting that ***Patil Automation*** had held that the requirement of attempting pre-institution mediation, in a suit which does not contemplate urgent interim relief, is mandatory, the Supreme Court extracted para 100 from ***Patil Automation,*** already reproduced *supra.* Thereafter, the Supreme Court proceeded to observe and hold as under:

> "5. *Section 12-A of the CC Act does not contemplate leave of the court, as is clear from the language and words used therein. Nor does the provision necessarily require an application seeking exemption.* An application seeking waiver on account of urgent interim relief setting out grounds and reasons may allay a challenge and assist the court, but in the absence of any statutory mandate or rules made by the Central Government, an application per se is not a condition under Section 12-A of the CC Act; pleadings on record and oral submissions would be sufficient.
>
> 6. The words used in Section 12-A of the CC Act are — "*A suit which does not contemplate any urgent interim relief*", wherein the word "contemplate" connotes to deliberate and consider. Further, the legal position that the plaint can be rejected and not entertained reflects application of mind by the court viz. the requirement of "urgent interim relief".
>
> 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

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impugned judgment/order of the Delhi High Court dated 8-5-2023, 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.

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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 7 Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order 7 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 paralyse 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***.

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*

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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."

45.2 The Court is, therefore, required to satisfy itself that the urgent interim relief sought in the suit is not a mere camouflage to escape Section 12-A. Several important markers, in this regard, are to be found in paras 10 to 12 of ***Yamini Manohar***, and it would be useful to enumerate them, thus:

(i) In ascertaining whether the suit in fact contemplates urgent interim relief, the Court should examine

(a) the nature and subject matter of the suit,

(b) the cause of action, and

(c) the prayer for interim relief.

The plaint, documents and facts should show and indicate the need for urgent interim relief.

(ii) The prayer for urgent interim relief should not be a disguise or mask to wriggle out of Section 12A of the Commercial Courts Act. A mere prayer, absent any actual urgent interim relief as sought, would not justify bypassing the requirement of pre-institution mediation.

(iii) The facts of the case have to be considered holistically *from the standpoint of the plaintiff*.

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(iv) At the same time, the plaintiff cannot be the absolute arbiter of the issue of whether the suit contemplates any urgent interim relief; else, by making a mere prayer, it would be possible, in every case, to escape Section 12A.

(v) Non-grant of interim relief at the *ad interim* stage would not justify dismissal of the suit under Order VII Rule 11 on the ground that it does not contemplate any urgent interim relief.

(vi) Dismissal of the suit would also not be justified merely on the ground that, even post arguments, interim relief, as sought, is denied on merits.

(vii) The fact that the Court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.

45.3 Para 5 of ***Yamini Manohar*** also confirms that Section 12A does not envisage seeking leave of the Court, or grant of leave by the Court. Nor does it require any application to be filed seeking exemption from Section 12A. All that the plaint is required to contain is a prayer for urgent interim relief. Once such a prayer is contained in the plaint, it is for the Court to satisfy itself that the prayer is not a camouflage, to fraudulently escape the rigour of Section 12A. The Court is not expected, however, to enter into the merits of the prayer.

45.4 No specific guidelines, on the basis of which the Court is to arrive at a conclusion as to whether the prayer for urgent interim relief

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is genuine, or a mere camouflage, are, however, to be found in the decision in ***Yamini Manohar***, and, therefore, it would ultimately be for the best judgment of the Court, in its wisdom, to arrive at a conclusion in that regard.

45.5 It is in the backdrop of this legal position that we have to examine the merits of Mr. Sethi's contention that, as

(i) the plaint, in the suit in the present case, claimed urgent interim relief, and as

(ii) the impugned order has observed, in para 19, that it did not "want to brush away the concern of the plaintiff that the plaintiffs are obliged to maintain a certain amount in the escrow account and that if the escrow account goes below that minimum amount, the plaintiff may be exposed to civil and criminal liability",

both the requisite ingredients for exempting PayU from the need to comply with Section 12A, i.e., (i) a prayer for urgent interim relief, and (ii) satisfaction, by the Court, that the prayer was not one which could be brushed aside, stand satisfied.

46. *Dhanbad Fuels*

46.1 This case, again, dealt with a money suit instituted by the Union of India against Dhanbad Fuels, with no prayer for interim relief. Dhanbad Fuels, in its written statement, disputed the maintainability of the suit, as it was instituted without complying with the requirement of pre-institution mediation envisaged by Section 12A of

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the Commercial Courts Act. This was followed by an application under Order VII Rule 11(d) of the CPC, seeking rejection of the plaint. The learned Commercial Court dismissed the application and appointed an advocate to mediate on the dispute. In appeal, the High Court reversed the decision of the learned Commercial Court only to the extent of the appointment of the advocate as mediator and, instead, directed the Union of India to approach the District Legal Services Authority to mediate on the dispute. Aggrieved thereby, Dhanbad Fuels appealed to the Supreme Court.

46.2 Thus, this case, too, like ***Patil Automation***, involved a suit without any prayer for urgent interim relief.

46.3 The Supreme Court, in paras 40 to 48 of the report, relied on ***Patil Automation*** to hold that Section 12A was mandatory and that, even if no objection to the plaint on that ground is taken by the defendant in the suit, the Court must *suo motu* take cognizance and reject the plaint, irrespective of the stage of the suit.

46.4 The Supreme Court, however, noted the fact that the judgment in ***Patil Automation*** itself made its application prospective from the date of rendition of the judgment, i.e. 20 August 2022.

46.5 The Supreme Court, thereafter, echoed the observations in ***Yamini Manohar***, to the effect that no application for waiver from complying with Section 12A was required to be filed and that it was for the Court to satisfy itself that the prayer for urgent interim relief was, if made, genuine. In other words, as expressed in para 52 of the

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report, "the test under Section 12A is not whether the prayer for the urgent interim relief actually comes to be allowed or not, but whether 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". The Court was also required to be satisfied that "the urgent interim relief must not be merely an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12A". Having noted this legal position, the Supreme Court, in para 53, observed that, in the case before it, no urgent interim relief was claimed in the suit.

46.6 The suit, in ***Dhanbad Fuels***, had been instituted much prior to 20 August 2022 and was not, therefore, hit by the law declared in ***Patil Automation***. The Supreme Court observed, in para 66, that a holistic reading of ***Patil Automation*** revealed that, "while Section 12A is held to be mandatory from the date of the inception of the provision itself, the consequence of rejection for non-compliance is only made applicable prospectively".

46.7 The Supreme Court, in para 65 of the report, observed that the question which for consideration before it was "whether the approach adopted by the trial court and approved by the High Court in the present case, in keeping the suit in abeyance, and sending the parties to mediation … was the correct approach". It proceeded to deal with and answer this issue thus:

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"66. The answer to the aforesaid question requires us to harmoniously construe the two observations made by this Court in ***Patil Automation***. The Court observed in para 104 of the said decision that the declaration of the law by the Court would relate back to the date of the amending Act. However, keeping in mind practical considerations, the Court in para 113.1 observed that the consequence of rejection of plaint under Order 7 Rule 11 for not complying with Section 12-A of the 2015 Act would only be operative prospectively with effect from 20-8-2022. Thus, *what is clear from a joint reading of both these observations is that while Section 12-A is held to be mandatory from the date of the inception of the provision itself, the consequence of rejection for non-compliance is only made applicable prospectively.*

67. *Thus, although suits which were instituted before the date of the decision in* ***Patil Automation*** *may not be rejected under Order 7 Rule 11 for not complying with Section 12-A of the 2015 Act, unless they fall within the exceptional categories described in the said decision itself, yet this would not obviate the requirement of giving the parties a chance to attempt to resolve the disputes through mediation as envisaged under Section 12-A of the 2015 Act. One of the ways by which this can be achieved is by keeping the suit in abeyance and referring the parties to a time-bound mediation and only proceeding with the suit once the report of the mediator is received. This approach would ensure that even if not pre-institution, the parties at the very least get an opportunity to resolve the disputes through mediation post the institution of the suit. This in no way means that Section 12-A envisages post-institution mediation. Post-institution mediation, while keeping the suit in abeyance, is only envisaged for the limited category of cases which are not covered by the prospective declaration made in* ***Patil Automation*** *as the rejection of plaints under Order 7 Rule 11 has been done away with in the interest of justice in such category of cases.* This approach also received the tacit approval of this Court in ***Patil Automation***, wherein while disapproving the reasoning adopted in the order impugned therein, the Court refused to interfere with the impugned order which had referred the parties to mediation while keeping the suit in abeyance.

68. However, it is also important to clarify that in cases where a suit instituted prior to 20-8-2022 has been decided, it would not be of any avail to the parties to revisit the same on the ground of mandatory compliance with Section 12-A of the 2015 Act. However, *wherever such a suit is pending before the trial court and an objection is raised by the defendant for non-compliance with Section 12-A of the 2015 Act, or any intent to settle the dispute by mediation is exhibited by the parties, then it would be permissible for the court to keep the suit in abeyance and refer the*

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parties to time-bound mediation in accordance with the 2015 Act, the PIMS Rules and the 2020 SOP.

69. Before we part with the matter, we also deem it appropriate to address one of the main contentions of the appellant that having regard to the fact that the suit is still at the nascent stage of filing of written statement and no substantial progress has been made therein, this Court must reject the plaint and direct the respondents to institute a fresh suit after complying with the mandatory requirement of Section 12-A. However, we do not find any force in the aforesaid submission. We do not see how directing the respondents to institute a fresh suit would be of any benefit to the appellant.

70. We have discussed in detail that this Court in ***Patil Automation*** made its decision prospectively applicable keeping in mind the predicament of suits like the one at hand wherein owing to a lack of clarity in law, Section 12-A of the 2015 Act could not be complied with in certain cases. Directing the institution of a fresh suit would only result into the forfeiture of the court fees deposited by the respondents, which would only be an unnecessary burden on the public exchequer. *The approach adopted by the trial court and the High Court in keeping the suit in abeyance and directing the parties to approach the competent authority for mediation commends more to us as it complies with a harmonious reading of the decision in* ***Patil Automation*** *and prevents unnecessary delays and burden on the public exchequer*."

(Emphasis supplied)

46.8 The Supreme Court proceeded, in conclusion, to summarise its findings thus:

"71. In light of the aforesaid discussion, we summarise our findings as under:

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

71.2. As held in para 104 of the decision in ***Patil Automation***, the declaration of the mandatory nature of Section 12-A of the 2015 Act relates back to the date of the amending Act.

71.3. As held in para 113.1 of the decision in ***Patil Automation***, any suit which is instituted under the 2015 Act without complying with Section 12-A is liable to be rejected under Order 7 Rule 11.

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However, this declaration applies prospectively to suits instituted on or after 20-8-2022.

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

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

71.6. 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.

71.7. The 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 12-A of the 2015 Act.

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

71.9. Suits instituted without complying with Section 12-A of the 2015 Act prior to 20-8-2022 cannot be rejected under Order 7 Rule 11 on the ground of non-compliance with Section 12-A unless they fall within the exceptions stipulated in paras 113.2 and 113.3 of the decision in ***Patil Automation***.

72. Thus, the answer to the question formulated by us whether a suit filed without complying with Section 12-A of the 2015 Act must be dismissed or be kept in abeyance with a direction to the parties to explore mediation is as follows:

72.1. If the suit is instituted on or after the date of the decision in ***Patil Automation*** i.e. 20-8-2022, without complying with Section 12-A of the 2015 Act, then it must meet with rejection under Order 7 Rule 11, either on an application by the defendant or *suo motu* by the court.

72.2. If the suit was instituted prior to 20-8-2022 without complying with Section 12-A of the 2015 Act, and the same does not fall within one of the exceptional categories as explained in para 55 of this judgment, then it would be open to the court to keep

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> 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."

46.9 ***Dhanbad Fuels*** thus reiterates many of the principles already enunciated in ***Patil Automation*** and ***Yamini Monohar***. Also, as we have already noticed, ***Dhanbad Fuels***, too, dealt with a situation in which no interim relief was sought in the suit. Moreover, the suit was instituted before 20 August 2022 and, therefore, even if there was no compliance with Section 12A of the Commercial Courts Act, the plaint could not have been rejected on that ground, as the consequence of failure to comply with Section 12A was made expressly prospective after 20 August 2022.

46.10 ***Dhanbad Fuels*** is, however, of significance, for us, for two important reasons.

46.11 Mr. Sibal placed extensive reliance on the following words, contained in para 67 of the report in ***Dhanbad Fuels***:

> "This in no way means that Section 12-A envisages post-institution mediation. Post-institution mediation, while keeping the suit in abeyance, is only envisaged for the limited category of cases which are not covered by the prospective declaration made in ***Patil Automation*** as the rejection of plaints under Order 7 Rule 11 has been done away with in the interest of justice in such category of cases."

Mr. Sibal's contention is that, as the present suit has been instituted after 20 August 2022, post-institution mediation was impermissible and that, therefore, in directing post-institution mediation, the

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impugned judgment of the learned Single Judge falls foul of ***Dhanbad Fuels***.

46.12 To employ a time-worn cliché, the argument is attractive, but at first blush. It is true that the suit, in the case before us, was instituted after 20th August 2022 and that, therefore, the plaint would be liable to be rejected if there is no compliance with Section 12A of the Commercial Courts Act. It is also true that, if the afore-extracted words from para 67 of ***Dhanbad Fuels*** are read in isolation, it would appear that post-institution mediation could not have been directed in the present suit, as it was instituted after 20 August 2022.

46.13 The argument is attractive, however, only when the afore-extracted words are read in isolation, and without reference to the context in which they have been made. Reading words in a judgment in isolation, divorced from the context in which they are said, has been disapproved by the Supreme Court in a plethora of decisions. In ***Goan Real Estate & Construction Ltd v. Union of India***[44], this principle was thus stated:

> "31. It is well settled that an order of a court must be construed having regard to the text and context in which the same was passed. For the said purpose, the judgment of this Court is required to be read in its entirety. A judgment, it is well settled, cannot be read as a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein *and the context wherein the observations were made. Observation made in a judgment, it is trite, should not be read in isolation and out of context*."
>
> (Emphasis supplied)

[44] **(2010) 5 SCC 388**

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The Constitution Bench of the Supreme Court, in a similar vein, ruled thus, in ***P.S. Sathappan v. Andhra Bank Ltd***[45]:

> "***Precedent***
>
> 144. While analysing different decisions rendered by this Court, an attempt has been made to read the judgments as should be read under the rule of precedents. A decision, it is trite, should not be read as a statute.
>
> 145. A decision is an authority for the questions of law determined by it. *While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration*. A judgment, as is well known, must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it. [See ***Haryana Financial Corpn. v. Jagdamba Oil Mills***[46], ***Union of India v. Dhanwanti Devi***[47], ***Nalini Mahajan (Dr.) v. Director of Income Tax (Investigation)***[48], ***State of U.P. v. Synthetics and Chemicals Ltd.***[49], ***A-One Granites v. State of U.P.***[50] and ***Bhavnagar University v. Palitana Sugar Mill (P) Ltd.***[51]]
>
> 146. Although decisions are galore on this point, we may refer to a recent one in ***State of Gujarat v. Akhil Gujarat Pravasi V.S. Mahamandal***[52] wherein this Court held:
>
> > "It is trite that any observation made during the course of reasoning in a judgment should not be read divorced from the context in which it was used."
>
> 147. It is further well settled that a decision is not an authority for the proposition which did not fall for its consideration."

46.14 The words from para 67 of ***Dhanbad Fuels***, on which Mr. Sibal places reliance have, therefore, to be understood in context. Earlier in para 67, the Supreme Court observes that, in the case of suits

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[45] **(2004) 11 SCC 672**
[46] **(2002) 3 SCC 496**
[47] **(1996) 6 SCC 44**
[48] **(2002) 257 ITR 123 (Del)**
[49] **(1991) 4 SCC 139**
[50] **(2001) 3 SCC 537**
[51] **(2003) 2 SCC 111**
[52] **(2004) 5 SCC 155**

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instituted before 20 August 2022, the parties could be provided a chance to attempt to resolve their disputes through mediation, as envisaged by Section 12A of the Commercial Courts Act. *One of the ways of ensuring this, according to the Supreme Court, is by referring the parties to mediation and keeping the suit in abeyance till a report from mediation is obtained.* It is by way of clarification that the Supreme Court proceeds to observe that this course of action, as suggested by the Supreme Court, would not mean that Section 12A permits post-institution mediation. *In other words, in a case in which the ingredients of Section 12A are satisfied, i.e., in a case in which no urgent interim relief is sought, the mediation exercise has necessarily to precede, and not succeed, the institution of the suit. Post-institution mediation is, therefore, proscribed only where the suit attracts Section 12A, and is therefore necessarily required to be preceded, prior to its institution, by an attempt at pre-institution mediation.*

46.15 Mr. Sibal's reliance on the afore-extracted words from para 67 of ***Dhanbad Fuels***, to contend that there is an absolute proscription on post-institution mediation is, therefore, not acceptable, as it reads these words out of the context in which they were employed.

46.16 Which takes us to the second reason as to why the decision in ***Dhnabad Fuels*** is significant for us.

46.17 *As we have already understood, the proscription on post-institution mediation would not, therefore, apply in a case in which pre-institution mediation is not mandatory in the facts of the case, as urgent interim relief is contemplated. Such a case would be, legally,*

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on par with a case in which the suit itself was instituted prior to 20 August 2022 as, even in such a case, the suit would not be fatally imperilled for failure to comply with the requirement of pre-institution mediation.

46.18 *The Supreme Court has, in* ***Dhanbad Fuels****, approved the practice of referring the parties to mediation and keeping the progress of the suit in abeyance, pending the outcome of mediation, where failure to resort to pre-institution mediation does not defeat the suit, as it was instituted prior to 20 August 2022. By extrapolation, it would be equally permissible to refer the parties to mediation and keep the suit in abeyance in the interregnum, where urgent interim relief is sought in the suit, so that the requirement of pre-institution mediation, envisaged in Section 12A, is obviated. In either case, non-compliance with Section 12A is not fatal to the suit.*

46.19 ***Dhanbad Fuels*** is, therefore, to that extent dispositive not only of the objection of Mr. Sibal based on failure, on the part of PayU, to resort to pre-institution mediation, but also of the submission that the learned Single Judge could not have directed maintenance of *status quo* pending the outcome of mediation.

47. *Novenco*

47.1 This was a case involving intellectual property rights. Novenco Building and Industry A/S[53] , a manufacturer of industrial fans under the brand "Novenco ZerAx" alleged that the first respondent Xero

[53] "Novenco" hereinafter

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Energy Engineering Solutions Pvt Ltd[54] had incorporated the second respondent Aeronaut Fans Industry Pvt Ltd[55], for manufacture and sale of identical fans with deceptively similar name and appearance. Novenco, therefore, filed a suit before the High Court, alleging patent and design infringement by Xero and Aeronaut. An application under Order XXXIX Rules 1 and 2 of the CPC was also filed, seeking an interim injunction, along with a separate application under Section 151 of the CPC, seeking exemption from pre-institution mediation. Xero, in response, filed an application under Order VII Rule 11 of the CPC, seeking rejection of the plaint on the ground that no urgency was involved and that failure to resort to pre-institution mediation, as required by Section 12A of the Commercial Courts Act, was fatal to the suit. A learned Single Judge of the High Court allowed the application under Order VII Rule 11, *inter alia* agreeing with Xero that the failure to resort to pre-institution mediation was fatal to the suit. The Division Bench of the High Court agreed with the learned Single Judge. Novenco appealed to the Supreme Court.

47.2 The Supreme Court culled out, at the outset, the following principles as emanating from ***Patil Automation***, ***Yamini Monohar*** and ***Dhanbad Fuels***:

> "19.1. Section 12-A mandatorily requires pre-institution mediation for commercial suits, non-compliance of which would ordinarily render the plaint institutionally defective.
>
> 19.2. A plaintiff can be exempted from the requirement of Section 12-A only when the plaint and the documents attached with it clearly show a real need for urgent interim intervention. *A*

[54] "Xero" hereinafter
[55] "Aeronaut" hereinafter

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wholesome reading of the plaint and the material annexed to the plaint ought to disclose the need for urgent relief.

19.3. *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*.

19.4. *A pro forma 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 12-A of the Act.*

19.5. 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 12-A of the Act*."

(Emphasis supplied)

The standard, therefore, is one of *plausible urgency from the standpoint of the plaintiff*. The merits of the prayer for interim relief are irrelevant at this stage.

47.3 The Court then proceeded to apply the above principles, to the facts before it, thus:

"***Analysis***

20. 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 12-A of the Act, notwithstanding certain delay in its institution.

21. 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

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and the same cannot defeat the right of the proprietor to seek injunctive relief against the dishonest user ***Midas Hygiene Industries (P) Ltd. v. Sudhir Bhatia***[56]. 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.

22. 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 marketplace 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.

23. 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 12-A of the Act was not intended to achieve such kind of anomalous result.

24. 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 12-A of the Act, inasmuch 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

[56] **(2004) 3 SCC 90**

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> 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."

48. *On a conjoint appreciation of the law declared in these decisions, therefore, we are unable to sustain Mr. Sibal's contention that the impugned judgment falls foul of Section 12A of the Commercial Courts Act. The learned Single Judge has applied Section 12A. As has been correctly contended by Mr. Sethi, and as also flows from the decision in* ***Yamini Monohar****, a plaintiff facially satisfies Section 12A if the plaint seeks urgent interim relief. No doubt, the plaintiff cannot be permitted the last word in this regard, and the Court is required to satisfy itself that the plea for interim relief is not a mere façade or a sham, so as to evade the requirement of pre-institution mediation. In the present case, we are convinced that the impugned judgment satisfies this requirement as well, as the learned Single Judge has, in para 19, noted the ground on which the plaintiff has pleaded existence of urgent interim relief, and has categorically stated that it cannot be brushed aside.*

49. *Once urgent interim relief has been sought in the plaint, and the learned Single Judge has held that the prayer cannot be brushed aside, thereby indicating that it is not a façade or a camouflage to evade the requirement of pre-institution mediation, Section 12A stands worked out.*

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50. We, therefore, reject Mr. Sibal's contention that the impugned judgment violates the mandate of Section 12A of the Commercial Courts Act.

D.II Re. sustainability of interim direction in para 19 of impugned judgment vis-à-vis conditions for grant of interim injunction

51. This objection of Mr. Sibal, in fact, stands decided against him by the decision in ***Dhanbad Fuels***. In ***Dhanbad Fuels***, the Supreme Court held that the plaintiff Union of India was not required to attempt pre-institution mediation under Section 12A as the suit had been instituted prior to 20 April 2022. Having thus held that the requirement of pre-institution mediation would not apply, the Supreme Court endorsed – in fact, commended – the approach of the High Court in referring the dispute to mediation and keeping the suit in abeyance pending, till the outcome of mediation. Clearly, the reference to mediation would not be relatable, in such a case, to Section 12A of the Commercial Courts Act.

52. The situation before us is qualitatively the same. Before us, too, PayU is not required to attempt pre-institution mediation, as already held by us, as the suit prayed for urgent *ad interim* relief and the prayer was found, by the learned Single Judge in para 19 of the impugned judgment, to be deserving of consideration. Once the requirement of pre-institution mediation thus stood eschewed, the learned Single Judge has, in the present case, done precisely what the Supreme Court, in para 67 of ***Dhanbad Fuels***, advocated, by referring the issue to mediation by the RBI and directing *status quo*, with

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respect to any further deductions from the Escrow account of PayU, in the interregnum.

53. As in the case of ***Dhanbad Fuels***, the reference to mediation, in para 19 of the impugned order, cannot be said to be relatable to Section 12A of the Commercial Courts Act.

54. Ergo, the objection that the RBI is not one of the mediators envisaged by the 2018 Rules, which apply only to mediation under Section 12A of the Commercial Courts Act, is also not sustainable in law.

55. Nor has the direction for mediation, by the RBI been issued under Section 24 of the PSSA. Mr. Sibal's contention that the RBI, under Section 24, can only act as an adjudicator, and not as a mediator has, therefore, no substance. The learned Single Judge has merely taken the aid of Section 24, as is apparent from the opening words of para 21 of the impugned order, even while clarifying, towards the conclusion of para 22, that the RBI was only "to act as a mediator and facilitator *and not as a dispute resolution body as contemplated under Section 24 of the PSS Act*".

56. The impugned order cannot, therefore, be set to infract Section 24 of the PSSA, as it has not called upon the RBI to exercise any powers thereunder. The learned Single Judge was empowered, applying the law declared in ***Dhanbad Fuels***, to refer the dispute to mediation. The *inter se* communications between the parties, to which Mr. Sethi drew our attention, clearly evince consent, even if tacit, to

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reference of the dispute to the RBI. The RBI was not, therefore, an authority to the reference of the dispute to whom any of the parties had serious objection, as would have constrained the learned Single Judge in his view.

57. The mediation itself was not in terms of Section 12A of the Commercial Courts Act. This, again, is clear from the opening words of para 18 of the impugned order. The learned Single Judge has correctly observed, in para 18, that pre-institution mediation was required to be resorted to, prior to the institution of the suit, and that a suit instituted without complying therewith was liable to be dismissed under Order VII Rule 11 of the CPC. We have already held that, in the present case, the facts of the case, as well as the observations of the learned Single Judge in the impugned order themselves, made out a case for dispensing with the requirement of pre-institution mediation.

58. Once pre-institution mediation was not required to be undertaken, the observation of the learned Single Judge, in para 18, that there was no bar to "the Court from referring the parties to mediation even after institution of the Suit" becomes unexceptionable, especially in view of para 67 of ***Dhanbad Fuels***.

59. In so far as the direction to maintain *status quo*, with respect to further debits from the Escrow account of PayU, pending mediation, is concerned, this direction has clearly been issued only so that the mediation proceedings are not prejudiced. This is nothing but a natural sequitur to the decision to refer the matter to mediation by the RBI.

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60. If *status quo* regarding the subject matter of mediation is not maintained while the mediation proceedings are underway, the entire reference to mediation may become futile. In such a case, the considerations of a *prima facie* case, balance of convenience and irreparable loss would have to be applied qua the decision to refer the dispute to mediation, and not with respect to the merits of the main *lis* between the parties.

61. In ***Novenco***, though this aspect did not arise for consideration at the stage of final hearing and does not, therefore, find elucidation in the final judgment rendered by the Supreme Court, it does find some reflection in the initial order passed by the Supreme Court on 7 February 2025, issuing notice, which read:

> "1. Issue notice, returnable in the week commencing 24.03.2025.
>
> 2. Notice will be served by all modes, including *dasti.*
>
> 3. The question that requires consideration by this Court is whether, due to non-compliance with Section 12A of the Commercial Courts Act, 2015, a suit should be dismissed under Order VII Rule 11 of the Civil Procedure Code, 1908, *or whether it should be kept in abeyance, directing the parties to first explore the possibility of settlement by instituting mediation.*
>
> 4. In the meanwhile, the petitioner, Novenco Building and Industry A/S, will move a letter before the Mediation Centre attached to the High Court of Himachal Pradesh, seeking appointment of a mediator, to explore the possibility of settlement and request the opposite side to join such mediation."
>
> (Emphasis supplied)

At the very least, it can be said that there is a tentative expression of opinion, even in para 3 of this order, that, where the parties are directed to explore resolution of the dispute by mediation, proceedings

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in the suit may have to be kept in abeyance. Of course, we are aware that this cannot constitute declaration of the law by the Supreme Court within the meaning of Article 141 of the Constitution of India.

62. We may also observe, in this context, that, at least in two orders passed by the Supreme Court in appeals arising out of orders passed by this Court in intellectual property matters, the Supreme Court has, while referring the dispute between the parties to mediation, stayed the operation of the orders passed by this Court.[57] In fact, it would almost appear to be axiomatic that *status quo* should be maintained by the parties when a dispute is referred to mediation, as any change in their *inter se* position has the propensity to derail the mediation itself. In an ecosystem in which the attempt, at every stage, is to foster and promote mediation as the most acceptable mode of dispute resolution, as it culminates in rapprochement rather than rancour, it becomes imperative to ensure that attempts at mediation are not frustrated or defeated by alteration of the *status quo* in the meanwhile.

63. Besides, even on merits, the learned Single Judge has observed, in para 19 of the impugned order, that, if the amount in the Escrow account of PayU were to fall below a certain limit, PayU would be exposed to civil and criminal liability. This satisfies the requirements of consideration of a *prima facie* case and irreparable loss, even regarding the substantive dispute between the parties. The learned Single Judge has also maintained the balance of convenience by clarifying, in paras 25, 27 and 30 of the impugned order, that the

[57] Order dated 25 March 2026 in **SLP (C) 9593/2026 [Thukral Mechanical Works v. P.M. Diesels Pvt Ltd]** and order dated 19 January 2026 in **SLP (C) 615/2026 [Karim Hotels Pvt Ltd v. Mohammad Talha]**

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course of action which he was adopting would ensure that future transactions by the parties were not hampered, as all questions in that regard were expressly left open.

64. The course of action adopted by the learned Single Judge is, in fact, eminently wholesome. Litigation, especially commercial litigation, tends to be red in tooth and claw[58]. Acrimony abounds. If, therefore, instead of setting in motion an expensive, adversarial and acrimonious litigation, the learned Single Judge decided it appropriate to attempt a resolution of the entire dispute through the good offices of the RBI, which was, after all, operating the entire regime in which the dispute had arisen, the attempt, we feel, deserves commendation, rather than condemnation.

65. We, therefore, are not inclined to countenance Mr. Sibal's contention that the direction to maintain *status quo* regarding the claims of the Acquiring Banks against PayU, pending mediation of the dispute, suffers from any such illegality or infirmity as would justify interference in appeal.

D.III Apropos other contentions advanced by Mr. Sibal

66. Summons, submits Mr. Sibal, are issued only in validly instituted suits. The learned Single Judge has yet to issue summons in the suit, thereby indicating that he was not *prima facie* satisfied that the suit was validly instituted. Without arriving at such a *prima facie*

[58] Refer Lord Alfred Tennyson's **In Memoriam A.H.H. (1856)**

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satisfaction, Mr. Sibal submits that the learned Single Judge could not have granted any interlocutory relief.

67. This submission clearly fails to understand what exactly the learned Single Judge has done, as he has merely attempted a resolution of the dispute through mediation by the RBI so that a quietus could be achieved to the controversy. Mediation can be resorted to at any stage, prior to or after the institution of the suit. There is no embargo to referring the dispute to mediation before issuing summons in the suit. The interim *status quo* that has been granted was merely a stepping aid of facilitating mediation, so that the mediation would not be rendered an empty exercise in futility. The submission of Mr. Sibal, though it is facially logical, would not, therefore, come to his aid in the present case.

68. On the aspect of whether, without pronouncing on maintainability, an interim direction such as that contained in para 26 of the impugned order, could have been passed, both sides rely on para 50 of ***Asma Lateef***, which reads thus:

> "50. Although not directly arising in the present case, we also wish to observe that the question of jurisdiction would assume importance even at the stage a court considers the question of grant of interim relief. Where interim relief is claimed in a suit before a civil court and the party to be affected by grant of such relief, or any other party to the suit, raises a point of maintainability thereof or that it is barred by law and also contends on that basis that interim relief should not be granted, grant of relief in whatever form, if at all, ought to be preceded by formation and recording of at least a prima facie satisfaction that the suit is maintainable or that it is not barred by law. Such a satisfaction resting on appreciation of the averments in the plaint, the application for interim relief and the written objection thereto, as well as the relevant law that is cited in support of the objection, would be a

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> part of the court's reasoning of a prima facie case having been set up for interim relief, that the balance of convenience is in favour of the grant and non-grant would cause irreparable harm and prejudice. It would be inappropriate for a court to abstain from recording its prima facie satisfaction on the question of maintainability, yet, proceed to grant protection pro tem on the assumption that the question of maintainability has to be decided as a preliminary issue under Order 14 Rule 2CPC. That could amount to an improper exercise of power. If the court is of the opinion at the stage of hearing the application for interim relief that the suit is barred by law or is otherwise not maintainable, it cannot dismiss it without framing a preliminary issue after the written statement is filed but can most certainly assign such opinion for refusing interim relief. However, if an extraordinary situation arises where it could take time to decide the point of maintainability of the suit and non-grant of protection pro tem pending such decision could lead to irreversible consequences, the court may proceed to make an appropriate order in the manner indicated above justifying the course of action it adopts. In other words, such an order may be passed, if at all required, to avoid irreparable harm or injury or undue hardship to the party claiming the relief and/or to ensure that the proceedings are not rendered infructuous by reason of non-interference by the court."

Mr. Sibal relies on the initial part of the afore-extracted para 50, submitting that the Supreme Court has disapproved granting interim or *pro tem* directions without adjudicating on the issue of maintainability. Mr. Sethi submits, on the other hand, that the concluding part of para 50 clarifies that, in an exceptional case, interim directions may be passed even before pronouncing on the aspect of maintainability.

69. This controversy is largely academic, in view of our finding that the learned Single Judge has effectively dealt with the aspect of Section 12A of the Commercial Courts Act, which is the main ground on which Visa contests the maintainability of the suit. We have observed that, once urgent interim relief purports to be sought in the

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plaint, the plaintiff has effectively discharged his duty under Section 12A, and would be entitled to maintain the suit without having to resort to pre-institution mediation, subject to the Court satisfying itself that the plea of urgent interim relief is not a mere camouflage or ruse to escape Section 12A. In the present case, PayU had sought interim relief. The learned Single Judge has recorded the reason for the interim relief having been claimed by PayU to be urgent and has further observed that the concern of PayU could not be brushed aside. That, as we have held, suffices to satisfy Section 12A, so that the aspect of whether the interlocutory direction contained in para 26 of the impugned order could have been issued without a positive decision on maintainability, becomes academic.

70. Mr. Sibal has further sought to contend that there is an inherent inconsistency in the impugned order. He submits that, if the case required pre-institution mediation to be undertaken, the learned Single Judge could not have granted any interim relief, pending such mediation. If, on the other hand, a case for urgent interim relief was found to exist, the learned Single Judge ought to have allowed the application seeking exemption from pre-institution mediation under Section 12A. In granting interim relief without adjudicating on the application, Mr. Sibal submits that the impugned order suffers from a serious jurisdictional flaw.

71. The basic fallacy in this argument, to our mind, is the presumption that an application for exemption from pre-institution mediation is required to be filed, and allowed, before a suit, instituted without pre-institution mediation, is allowed to proceed. That this is

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not the legal position has been conclusively held in ***Patil Automation*** as well as ***Yamini Manohar***. No such application is required to be filed. All that the plaintiff is to do is to plead and seek urgent interim relief in the plaint. It is for the Court, thereafter, to satisfy itself that the urgent interim relief is not a mere camouflage to avoid compliance with Section 12A. For this purpose, the Court has only to satisfy itself that a plausible case for seeking interim relief is made out. The merits of the prayer are irrelevant. By this standard, as we have already held, the impugned order has noted the prayer for interim relief contained in the plaint instituted by PayU, the ground on which it was pleaded as urgent, and has also observed that the prayer could not be brushed aside. These observations and findings, cumulatively, satisfy the standard required for permitting the suit to be instituted without requiring pre-institution mediation. There is, therefore, no such jurisdictional flaw, in the impugned order, as Mr. Sibal would seek to contend.

72. Inasmuch as the mediation has not been directed in terms of Section 12A of the Commercial Courts Act, the objection, of Mr. Sibal, to the RBI being asked to mediate on the issue, has necessarily to be rejected.

D.IV Scope of interference

73. Though we have found the order of the learned Single Judge to be legally sustainable, we deem it appropriate, before concluding this judgment, to add a postscript with respect to the scope of interference in the present appeal.

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74. Appeals against interlocutory orders in commercial matters are appeals on principle. The appellate Court does not substitute its own subjective view for the view of the learned Commercial Court. It is only if the learned Commercial Court is found to have seriously erred on principle that the Court would interfere. In all such cases, the Court has also to bear in mind the constitutional imperative to ensure that commercial disputes achieve a speedy resolution. The scope of interference has thus been classically delineated in ***Wander Ltd v. Antox (India) Pvt Ltd***:

> "14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, *the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle*. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. *If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion*. After referring to these principles Gajendragadkar, J. in ***Printers (Mysore) Private Ltd. v. Pothan Joseph***[59]:
>
> > "... These principles are well established, but as has been observed by Viscount Simon in ***Charles Osenton & Co. v. Jhanaton***[60] '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that

[59] **AIR 1960 SC 1156**
[60] **1942 AC 130**

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> arises is due only to the application of well settled principles in an individual case'."

75. Within these limited peripheries, we are not convinced that any case for interference with the impugned order of the learned Single Judge is made out.

E. Conclusion

76. The appeal is therefore dismissed with no orders as to costs.

C. HARI SHANKAR, J.

NIVEDITA ANIL SHARMA, J.

November 17, 2026/*dsn*

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