

**ORDER BELOW EXHIBIT 47 APPLICATION BELOW CIVIL
PROCEDURE CODE,1908 ORDER 7 RULE 11 (d):**

1. Heard the Learned advocate for parties. Read this application, reply filed by the plaintiff vide Exh:48. Perused other papers on record. The present order is passed below the same application therefore the facts of the application have not been narrated for cost of repetition.
2. The plaintiff has filed the present suit for recovery of money from defendant of Rs.18,25,000/- with interest and the transaction with defendant for profit from selling the land mentioned in para- 1 of the plaint. The defendants having served with the notice have appeared and the suit on stage of cross-examination of plaintiff and defendant filed present application to reject the present suit under Order 7 Rule 11 of the C. P. Code.
3. Learned advocate for the defendant in his oral arguments have submitted as per the averments of the present application. The main contention raised is that the suit of the plaintiff is for recovery of money and looking to the contention of plaint as well as chief-examination the money was given as partner and to earn profit from selling of land and plaintiff given money to defendant of Rs.18,25,000/- with interest and total Rs.25,00,000/-. So, the transaction of Rs.25,00,000/- it comes in to commercial transaction and as per section 12 of commercial suit the

procedure was that before filing suit mediation is compulsory and the plaintiff has not followed the procedure and for that reason suit is barred by Section 12 of commercial suit and the present suit was liable to be rejected under CPC order 7 Rule 11(d).

4. Learned advocate for the plaintiff in his oral arguments have submitted as per the averments of the reply vide Ex: 48. The main contention raised is that the defendant has filed reply Vide Ex: 15 dated: 08/07/2022 and then after vide Ex: 16 Hon'ble court has framed issue and the suit on evidence of plaintiff but one or other reason defendant was asking adjournment and lingering the matter and also there is no cause of action arise to file present application because plaintiff has led the evidence and the application filed after the lapse of two years after filing of chief-examination and before that the defendant did not raise the dispute for commercial transaction and did not file any application for transfer of present suit and also defendant did not raise any dispute regarding the said transaction in his reply. So the said application was filed only for lingering the matter. Looking to provision of The Commercial Court Act, 2015 and particular section 12 the present suit is not covered under section 12 and for that reason defendant did not produce any document with their reply and the said application. The defendant relies upon the citation of Hon'ble High Court and Hon'ble Supreme Court and prays to reject the said application with cost.

1. Special Leave Petition (Civil) Diary No (s).2986/2024.
2. 2019(0) AIJEL-SC-64989.
3. 2017(0) AIJEL-HC-237873.

5. Having heard the learned advocate for the plaintiff and defendant having considered the materials on record, it is very much clear that this application is filed mainly as the suit is commercial transaction and follow the procedure of Section 12 of The Commercial Court Act, hence is not maintainable and accordingly deserves to be rejected. The same will have to be now considered keeping in mind the facts of the case and position of law.

6. It is settled principle of law that while deciding application under Order 7 rule 11, the entire plaint has to be read as a whole to find out whether it is barred by law. The relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. For the purposes of deciding an application under Order 7 Rule 11 of CPC, the averments in the plaint are germane.

6.1. As per the provisions of the Commercial Courts Act, 2015, whenever the dispute pertains to an amount of Rs. 3,00,000/- or more, prior to filing a commercial suit, it is mandatory to comply with Sub-section (1) of Section 12A of the said Act. Before filing a commercial suit, pre-institution mediation proceedings are required to be conducted mandatorily. This provision is mandatory in nature, meaning it is compulsory. In such

circumstances, prior to filing a commercial suit, an application for pre-institution mediation has to be filed, following which a notice is issued to all disputing parties, and if no settlement is reached during the mediation proceedings, a nonstarter report is issued by the mediation center officer. Only on the basis of such a certificate can a commercial suit be filed. It is a fact that the procedure under Subsection (1) of Section 12A of the Commercial Courts Act is mandatory, and without following such procedure, no claim can be filed as per the provisions of the Commercial 2 of 24 Courts Act. The provisions of Sub-section (1) of Section 12A of the Commercial Courts Act is as follows: - "Section 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."

6.2. The Hon'ble Gujarat High Court in *Ashok Manjibhai Sankharva Trading as M/s Unilex Aquatech v. Trishul Pump* laid down parameters to assess whether a suit contemplates urgent relief. These 17 of 24 parameters are instrumental in assessing the applicability of Section 12A, particularly in cases where the plaintiff claims an exemption based on urgency. They include: (a) Whether the prayer for interim relief arises from a careful consideration of the possibility of harm—this emphasizes the need for specificity and substantiation of harm, rather than speculative or

generalized assertions. (b) Whether exhausting pre-institution mediation would result in irreversible harm—this parameter recognizes the potential delay that mediation might entail, which could render the relief sought ineffective. (c) Whether the urgency is self-created by the plaintiff—this ensures that plaintiffs do not manipulate timelines or create artificial scenarios to circumvent mandatory provisions. (d) Whether the plaintiff demonstrates a high standard to establish the need for prompt action—this requires plaintiffs to substantiate their claims with credible evidence and a cogent narrative that justifies bypassing mediation. (e) Whether the plea for urgency is bona fide—this safeguards against frivolous or contrived claims of urgency designed to exploit the exception under Section 12A. (f) Whether the injury is imminent and nonintervention would cause irreparable harm—this requires a demonstration of immediate and tangible consequences if relief is not granted.

(5.3) The court must ascertain whether the plaintiff's claim of urgency is genuine or merely a pretext to evade the mandatory requirements of Section 12A. In the Judgment of Yamini, the Hon'ble Supreme Court established that the case's facts and circumstances must be considered holistically from the plaintiff's perspective. Consequently, it is natural that the urgency should be decided case-by-case, and there is no rigid formula that can be applied universally.

6.3 In the present case, the plaintiff's file suit for recovery of money from defendant and the suit is for cross-examination of plaintiff and one or other reason defendant seeking time for cross-examination and looking to

fact and list of document of plaintiff the suit is not arise from commercial transaction and it is simple money recovery suit against the defendant and it's emphasizing that the suit for money recovery and the prays for recovery of outstanding amount form defendant with interest and the relief sought fall within the exception to Section 12A.

7. Considering above whole discussion and position of law, I am of the view that this application filed by the defendant is required to be dismissed. Hence, I pass the following order in the interest of justice.

ORDER

1. **This present application is rejected.**
2. **No order as to costs.**

Signed and pronounced in the open court on this 25th Day of February, 2025.

**Place: Bardoli.
Date: 25/02/2025.**

**Jayesh L. Parmar
Add. Civil Judge, Bardoli
Surat.
Judge Code-GJ-01441.**

\\ SELF\\