



**Commercial Suit No.41/2025
CNR No.MHPU01-013883-2025
Relation Realtech Private Limited
Through Madhusudan Dattatray Jadhav
Vs.
Mak Softbox Private Limited
Through Kailas Manjabhau Nimse**

ORDER BELOW EXH.15

This is an application filed by the defendant for rejection of
plaint under Order VII Rule 11 of the Code of Civil Procedure.

2. Plaintiff instituted present suit for damages to the sum of Rs.70,00,00,000/- and for ancillary relief in the nature of injunction. Plaintiff's company is engaged in business of providing innovative sales strategy and project marketing and its effective promotions. Defendant is a company engaged in providing software based operational support. The plaintiff availed the services of the defendant's product namely MdocBox for the purpose of plaintiff's business operations and usage. Pursuant to commercial agreement between Amazon Web Services India Pvt. Ltd. and defendant for Cloud based computing and storage infrastructure including hosting and data management solution has open cloud based platform known as AWS Cloud Infrastructure. As per the transaction between the plaintiff and defendant, the sensitive business data of above 55 projects were uploaded, stored and processed on the AWS Server which is operational through MDocBox system. Accordingly, the advanced payment of Rs.28,86,720/- was paid to the defendant. However, the defendant raised suspicion about copying platform of MDocBox by the plaintiff and thus, it has revoked the access of the

plaintiff. It is averred that due to arbitrary revocation of access and unauthorised seizure of the data of the plaintiff, the entire business operations of the plaintiff came to stand still. The plaintiff persuaded the defendant, but invain. Eventually, plaintiff filed the present suit for damages and for ancillary relief.

3. On issuance of notice, defendant lodged his appearance and filed present application for rejection of the plaint on the count that plaintiff has not exhausted the remedy of the pre-institution mediation as contemplated under Section 12A of Amendment Commercial Court Act, 2015 (for short 'CCA'). It is further contended that the plaintiff without complying with the provisions of Section 12A of the CCA has preferred the suit which is require to be rejected under Order VII Rule 11 of the CPC.

4. Plaintiff resisted the application by filing say vide Exh.23 and inter-alia contended that the defendant without any prior notice, on 27/07/2025 has revoked the plaintiff's access to the software and seized all the proprietary data. The arbitrary act of the defendant paralysed plaintiff's business operations like marketing, accounting, sell and CRM. Sudden revocation also disrupted the plaintiff's project which was scheduled on 26/07/2025. On the count of misuse of data by the defendant and the business tech of the plaintiff constrained him to file the instant suit along with urgent relief and thus, pre-institution mediation process contemplated under Section 12A of CCA is not availed and requested for rejection of the application.

5. Heard both the side, perused the record.

6. The Points arises for consideration alongwith my findings thereon are as under :

POINTS

FINDINGS

- | | |
|--|-----------------------------|
| 1. Whether the plaint is liable to be rejected under Order VII Rule 11 of CPC as plaintiffs .. have not exhausted the remedy of the pre-institution mediation as prescribed under Section 12A of C.C.A. and Rules thereunder ? | No. |
| 2. What order ? | .. Application is Rejected. |

REASONS

AS TO POINT NO.1 :

7. The Ld. Advocate for defendant urged that plaintiff has not exhausted the remedy of the pre-institution mediation as prescribed under Section 12A of C.C.A. and Rules thereunder. Thus, the instant plaint is liable to be rejected under Order VII Rule 11 of CPC. It is further urged that there is no precise statement in the plaint about non-availing the mandatory requirement under the CCA. He, therefore, prayed for rejection of the plaint under Order VII Rule 11 of CPC for non compliance of Section 12(A) of C.C.A. In support of his submissions, he relied on the following Citations :

- i. **Asma Lateef & Anr. Vs. Shabbir Ahmad & Ors. - Civil Appeal No.9695 of 2013.**
- ii. **R. K. Roja Vs. U. S. Rayudu and Another - Civil Appeal No.5540 of 2016 Arising out of S.L.P.(C) No.15474 of 2016.**
- iii. **Deoraj Vs. State of Maharashtra & Ors. - Appeal (Civil) 2084 of 2004.**

- iv. **Union of India and Others Vs. Modiluft Ltd. - (2003) 6 SCC 65.**
- v. **Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi & Others – Civil Appeal No.13001 of 2024 – Special Leave Petition (Civil) No.252 of 2023.**
- vi. **Yamini Manohar Vs. T K D Keerthi – Special Leave Petition (Civil) Diary No(s).32275/2023 – Arising out of impugned judgment and order dated 08-05-2023 in CRP-IPD No.4/2023 passed by the High Court of Delhi at New Delhi.**
- vii. **M/s. Patil Automation Private Limited and Ors. Vs. Rakheja Engineers Private Limited – Civil Appeal No. of 2022 – Arising out of SLP (C) No.14697 of 2021.**

8. Per contra, the Ld. Advocate for the plaintiff encounter the submissions advanced by the defendant on the precinct that they have availed the services of the defendant's software hosted on server to store and manage its proprietary and confidential data relating to their over 55 projects. The data includes plaintiff's digital marketing leads, customers data, inventory details, booking entries, payment receipts and all the project related information. The defendant has abruptly revoked their access which constrained them to file instant suit with an application for urgent relief to protect their business information. According to him, the pre-institution mediation is not essential when any urgent relief under the CCA has been claimed. He, therefore, submitted that the application is misconceived and liable to be rejected. In support of his submissions, he relied on the following Citations :

- i. **Yamini Manohar Vs. T K D Keerthi – (2024) 5 SCC 815.**

ii. **Deoraj Vs. State of Maharashtra & Ors. - (2004) 4 SCC 697.**

9. For ready reference, Section 12A of the Act and Rule 3 under the Act reads :

“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.

(2) For the purposes of pre-litigation mediation, the Central Government may, by notification, authorise - (i) The authority, constituted under the Legal Services Authorities Act, 1987 or (ii) a mediation service provider as defined under clause (m) of Section 3 of the Mediation Act, 2023.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority or mediation service provider authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of one hundred and twenty days from the date of application made by the plaintiff under sub-section(1) :

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties :

Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The mediated settlement agreement arrived at under this section shall be dealt with in accordance with the provisions of Section 27 and 28 of the Mediation Act, 2023.]

Rule 3 – Initiation of mediation process – *(1) A party to a commercial dispute may make an application to the Authority as per Form-1 specified in Schedule-I, either online or by post or by hand, for initiation of mediation process under the Act along with a fee of one thousand rupees payable to the Authority either by way of demand draft or through online;*

(2) The Authority shall, having regard to the territorial and pecuniary jurisdiction and the nature of commercial dispute, issue a notice, as per Form-2 specified in Schedule-I through a

registered or speed post and electronic means including e-mail and the like to the opposite party to appear and give consent to participate in the mediation process on such date not beyond a period of ten days from the date of issue of the said notice.

(3) Where no response is received from the opposite party either by post or by e-mail, the Authority shall issue a final notice to it in the manner as specified in sub-rule(2).

(4) Where the notice issued under sub-rule(3) remains unacknowledged or where the opposite party refuses to participate in the mediation process, the Authority shall treat the mediation process to be a non-starter and make a report as per Form 3 specified in the Schedule-I and endorse the same to the applicant and the opposite party.

(5) Where the opposite party, after receiving the notice under sub-rule (2) or (3) seeks further time for his appearance, the Authority may, if it thinks fit, fix an alternate date not later than ten days from the date of receipt of such request from the opposite party.

(6) Where the opposite party fails to appear on the date fixed under sub-rule(5), the Authority shall treat the mediation process to be a non-starter and make a report in this behalf as per

Form 3 specified in Schedule-I and endorse the same to the applicant and the opposite party.

(7) Where both the parties to the commercial dispute appear before the Authority and give consent to participate in the mediation process, the Authority shall assign the commercial dispute to a Mediator and fix a date for their appearance before the said Mediator.

(8) The Authority shall ensure that the mediation process is completed within a period of three months from the date of receipt of application for pre-institution mediation unless the period is extended for further two months with the consent of the applicant and the opposite party.”

10. Bare perusal of Section 12A of the Act contemplates that the suit shall not be instituted by plaintiffs without exhausting remedy of Pre-institution Mediation where the suit does not disclose any urgent interim relief under the Act.

11. On going through the plaint and its annexures duly suggests the business transaction between the parties, wherein the plaintiff is permitted to have access to their data on the software of the defendant. It appears that the marketing business of the plaintiff company is sheerly rest upon a digital avenue provided by the defendant. The urgency expressed by the plaintiff is of revocation of their access to the defendant's software and leakage of their data to their rival. It appears that a criminal case is filed by the defendant

against the plaintiff for misusing their software and their copyright. Notably, on presentation of the suit, the plaintiff's access to their data and their subscription with defendant is protected by way of ad-interim relief vide order dated 22/09/2025.

12. In the case of ***Patil Automotive*** (Cited Supra), it has been held that pre-litigation mediation under Section 12 of the CC Act is mandatory unless the suit contemplates urgent interim relief. In ***Ramakant Choksy*** (Cited Supra), it is held that the prayer for urgent interim relief should not be disguised or masked to wriggle out of and get over Section 12A of the Act. The fact and circumstances of the case has to be considered holistically from the stand point of the plaintiff. In case of ***Yamini Manohar*** (Cited Supra) relied by plaintiff, it is observed that Section 12A of the CC Act does not contemplate leave of the Court or any provision for filing application seeking exemption. Pleadings on record and oral submissions would be suffice.

13. At this juncture, it is necessary to take recourse of the verdict of the Hon'ble Apex Court in the case of "***Novenco Building and Industry A/S Vs. Xero Energy Engineering Solutions Private Ltd. & Anr. - S.L.P.(C) No.2753 of 2025 – Dated 27/10/2025***, wherein, *legal test for adjudication of interim relief and the rejection of the plaint has been laid down as follows :*

(I) Section 12A mandatorily requires pre-institution mediation for commercial suits, non-compliance of which would ordinarily render the plaint institutionally defective.

(ii) A plaintiff can be exempted from the requirement of Section 12A only when the plaint and the documents attached with it clearly show a real need for urgent interim intervention. A wholesome reading of the plaint and the material annexed to the plaint ought to disclose the need for urgent relief.

(iii) The court must look at the plaint, pleadings and supporting documents to decide whether urgent interim relief is genuinely contemplated. The court may also look for immediacy of the peril, irreparable harm, risk of losing rights/assets, statutory timelines, perishable subject-matter, or where delay would render eventual relief ineffective.

(iv) A proforma or anticipatory prayer for urgent relief used as a device to skip mediation will be ignored and the court can require the parties to comply with Section 12A of the Act.

(v) The court is not concerned with the merits of the urgent relief, but if the relief sought seems to be plausibly urgent from the standpoint of the plaintiff the court can dispense with the requirement under Section 12A of the Act.”

14. In view of above, this Court finds from the averments in the

plaint, annexures thereof and submissions advanced by the plaintiff, it appears that the revocation of the access and seizure of the data of the plaintiff by the defendant is recurring cause of action. Delay in bringing an action would defeat the right of the plaintiff. If plaintiff waste its valuable time in exhausting the pre-litigation mediation, then its access to its data would be at stake. Thus, the plaintiff's suit sheerly comes with the domain of urgent interim relief category. Defendant failed to demonstrates that the suit does not contemplates any urgent relief under the Act. Eventually, the application filed by the defendant is turned down. Ergo, the following order :

ORDER

1. The application (Exh.15) stands rejected.
2. Cost in cause.

(Dictated and pronounced in Open Court).

Pune.
Date : 03/11/2025

(B. V. Wagh)
District Judge-2 and
Commercial Court, Pune.

CERTIFICATE

I affirms that the contents of this P.D.F. file Order are same word for word as per original Order.

Court Name	:	B. V. Wagh, District Judge – 2 and Commercial Court, Pune.
Name of Steno	:	Abhishek Arun Gite (Stenographer Grade - I)
Date of Order	:	03/11/2025
Order signed by Presiding Officer on	:	04/11/2025
Order PDF and Uploaded on	:	04/11/2025