

**IN THE COURT OF JUDGE, COMMERCIAL COURT  
(DISTRICT JUDGE CADRE), COIMBATORE**

**Present:** **Thiru. A.S.Ravi, B.Sc., M.L.,**  
Judge,  
Commercial Court (District Judge Cadre),  
Coimbatore

Tuesday, the 12<sup>th</sup> day of September, 2023

**I.A.No.2 of 2023**  
**in**  
**C.O.S.No.59 of 2023**  
[Coimbatore, P.D.J, Court Old C.O.S.No.11 of 2021]  
(CNR No.TNCB01-000626-2021)

1. M/s.Hethaiamman Charitable Trust,  
rep. by its Chairman/Managing Trustee, Hallan.

2. Hallan, Chairman/Managing Trustee,  
M/s.Hethaiamman Charitable Trust, ... Petitioners/defendants  
Vs

M/s. Dimensions, rep. by its Partner  
Dr.A.Sudhahar ... Respondent/plaintiff

This petition came up for final hearing before me on 30.08.2023 in the presence of Thiru. R.Balasubramanian, Advocate for the petitioners/defendants and Thiru. C.P.Prem Anand, Advocate for the respondent/plaintiff and upon perusing the records and having stood over for consideration till this date, this court doth passed the following:-

**ORDER**

This petitioners/defendants filed this application under Order 7 Rule 11 of CPC r/w Section 12A(1) of the Commercial Courts Act to reject the plaint.

2. It is the case of the petitioners/defendants that the 1<sup>st</sup> petitioner is the Trust and the 2<sup>nd</sup> petitioner is the Chairman of the 1<sup>st</sup> petitioner. The commercial suit instituted by the respondent/plaintiff is an abuse of process of law. The claim is also vexatious. The commercial act mandates pre-institution mediation. Violation of mandate merits rejection of the suit. Unless the commercial suit is rejected, the petitioners/defendants will be put to much loss and hardship. Hence, this petition.

3. The respondent/plaintiff contended that the petitioners/defendants have been trying to evade the liability of the respondent/plaintiff and hence the respondent/plaintiff filed a petition in I.A.No.1 of 2021 for attachment of property along with main application. Therefore, there does require any pre-institution mediation as contemplated under the said Act. The petitioners also filed their counter statement in I.A.No.1 of 2021 on 02.11.2021 and also filed the written statement. Hence the commercial suit filed by this respondent is in order and the same is sustainable. Knowing fully well about the said facts, the petitioners have come forward with this application. This petition is an abuse of process of law. This petition lacks bonafide and devoid of merits. Hence, this petition has to be dismissed.

4. Whether the petition under Order 7 Rule 11 C.P.C. r/w section 12A(1) of the Commercial Courts Act, has to be allowed or not?

5. Admittedly, the respondent/plaintiff has filed the above suit for recovery of Rs.59,93,644/- with interest and cost against the petitioner/defendant in respect of construction agreement dated 27.09.2016. According to the petitioner/defendant that the respondent/plaintiff has not complied with the mandatory provision of Section 12A of the Commercial Courts Act and as such, the plaint has to be rejected. The respondent/plaintiff contended that as per Section 12A of the Commercial Courts Act, expressly and inherently contains a proviso that a suit which does contemplate an “urgent interim relief” may be instituted without exhausting the remedy of pre-institution mediation and they have also filed an application for attachment in I.A.No.1 of 2023 under Order 38 Rule 5 of C.P.C.

6. At this juncture, it is proper to refer the following Judgements regarding compliance and non compliance of Sec.12A:-

(i) **M/s. Patil Automation Private Ltd and others Vs Rakheja Engineers Private Ltd., (indian kanoon)** wherein it has held that;-

“84. Having regard to all these circumstances, we would dispose of the matters in the following manner. We declare that [Section 12A](#) of the Act is mandatory and hold that any suit instituted violating the mandate of [Section 12A](#) must be visited with rejection of the plaint under Order VII Rule 11. This power can be exercised even suo moto by the court as explained earlier in the judgment. We, however, make this declaration effective from 20.08.2022 so that concerned stakeholders become sufficiently informed. Still further, we however direct that

in case complaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the complaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff. Finally, if the complaint is filed violating [Section 12A](#) after the jurisdictional High Court has declared [Section 12A](#) mandatory also, the plaintiff will not be entitled to the relief.”

“63. .... In Section 12A also, the bar of institution of the suit is applicable only in a case in which the plaintiff does not contemplate urgent interim relief.....”

**(ii) Mohamed Aboobacker Chank Lungi Pvt Ltd Vs Revathy Textiles [2023 (1) CTC 180]**, wherein it has held that

“Commercial Courts Act, 2015 (4 of 2016), Section 12A – Suit for injunction on account of alleged infringement of Trade Mark – Cause of action for filing suit arose in July 2022 as per admission of complaint – Neither Cease and Desist Notice no Mediation Notice issued by plaintiff – Cut off date prescribed by Apex Court in Patil Automation case mandating pre-institution mediation as 20.08.2022 – Complaint in instant case presented on 14.09.2022 – Urgent interim relief as contemplated under provision not established by plaintiff – Mere filing of application for appointment of advocate commissioner, held, by itself does not demonstrate urgency – Plaintiff, who filed suit two months after cause of action arose, held, cannot plead urgent interim relief – Complaint rejected as mandatory requirement under Section 12A not followed – Plaintiff not precluded from coming to Court again after adhering to requirement of Section 12A – Trade Mark Act, 1999 (47 of 1999), Section 135 – Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11”

**(iii) K.Varathan, Proprietor, Cinetekk Vs Prakash Babu Nakundhi Reddy**

**[2023 (1) CTC 201]**, wherein it has held that

“Commercial Courts Act, 2015 (4 of 2016), Section 12-A – Recovery suit – Pre-suit Medication not resorted to – Case for urgent interim relief – Whether made out – Suit for recovery of money – Last demand notice issued by plaintiff on 14.03.2022 – LTS application along with intended plaint filed only on 12.08.2022 – No explanation for slumber of plaintiff for 5 months – No development post 14.03.2022 qualifying application for attachment as “Urgent Interim Relief” - No urgent Interim Relief, held, contemplated in suit enabling plaintiff to over come Pre-institution Medication as mandated in Section 12A – Manner and procedure for mediation clear and set vide Notification, dated 03.07.2018 – Instant suit filed much after said Notification, held, not maintainable – Plaint rejected – Right of plaintiff, however, preserved for approaching commercial division after exhausting pre-institution mediation and settlement under Section 12A – Code of Civil Procedure, 1908, Order 7, Rule 11.

**(iv) Junior Kuppanna Kitchens Private Limited Vs Kuppanna Foods and Others (MANU/TN/9919/2022)**, wherein it has held that

“8. The suit filed by the plaintiff is not barred. If a suit is filed with an application for urgent interim relief, then, the question of relegating the plaintiff to exhaust the remedy of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 cannot be contemplated. Whether the plaintiff is indeed entitled for equitable relief under Order XXXIX Rule 1 of the Code of Civil Procedure r/w Rule 3 is another matter, which would be required to be decided at the time of consideration of the application filed under Order XXXIX Rule 1 of Code of Civil Procedure. Rule 12A of the Commercial Courts Act,

2015 will apply only where in a suit filed under Order VII Rule 1 of the Code of Civil Procedure, the plaintiff has not filed any application for any urgent interim relief.

9. In paragraph 71, the Hon'ble Supreme Court has categorically stated that the bar under Section 12A of the Commercial Courts Act, 2015 will apply only where the plaintiff does not contemplate urgent interim relief. The Court, in paragraph 62, held that "it must be immediately noticed that the law giver has, in Section 12A, provided for pre-institution medication only in suits, which do not contemplate any urgent interim relief.

As admittedly in this case the plaintiff has filed application under Order XXXIX Rule 1 of Code of Civil Procedure, it cannot be said that the plaintiff did not contemplate urgent relief. Therefore, it also cannot be said that the suit is not maintainable."

(v) **Micro Labs Ltd., Vs A.Santhosh dated 14.09.2022**, in which the plaintiff issued notice on 28.04.2022, but filed the suit on 22.08.2022. Thus, the Hon'ble High Court rejected the plaint with a mandate that it is well open to plaintiff to resort to Sec.12A of the said Act and then come to this Commercial Division if so advised and if so desired.

In **Mohamed Aboobacker Chank Lungi Pvt. Ltd. Vs Revathy Textiles**, it is pertained to be noted that the expression used in sub section (1) of Section 12-A(1) is not merely 'interim relief', it is 'urgent interim relief'. The term 'contemplate' deployed in Section 12-A(1) has not been defined. It has not been defined in The General Clauses Act, 1897. In **K.Varathan Vs Prakash Babu**

**Nakundhi Reddy**, it is held that where urgency is of Plaintiff's own doing, Plaintiff cannot take advantage of its own doing. High standard is required to establish requirement of prompt action (urgency). The said Judgements in **Micro Labs Ltd., Vs A.Santhosh** and **Junior Kuppanna Kitchens Private Limited Vs Kuppanna Foods and Others** have been placed before the Full Bench of the Hon'ble High Court in Notification No.178 of 2023 relating to the maintainability of Commercial Suits without availing Pre-Litigation Mediation under Sec.12A of the said Act. Even though the full bench of the Hon'ble High Court ceased of the matter relating to the maintainability of Commercial Suits without availing Pre-Litigation Mediation under Sec.12A of the said Act, this court following the Hon'ble Supreme Court Judgement in **Patil Automation Private Ltd and others Vs Rakheja Engineers Private Ltd.**, which held that "it must be immediately noticed that the law giver has, in Section 12A, provided for per-institution medication only in suits, which **do not contemplate any urgent interim relief.**"

7. On perusal of records, the suit was filed on 21.01.2021. It was taken on file on 01.02.2021. Last cause of action for the suit arose on 01.02.2018, when the plaintiff sent a letter to the defendants to pay the amount; on 18.06.2020, the plaintiff issued a legal notice to the defendant; on 28.07.2020, the defendant sent a reply notice to the plaintiff; on 28.08.2020, the plaintiff sent

a rejoinder to the defendant; and on 29.08.2020, the defendant sent a reply to the rejoinder to the plaintiff. Thus, the plaintiff should have filed the suit for urgent relief in the month of August or September 2020 itself. Further, the plaint is silent with regard to subsequent cause of action in the months of September to January 2021. No evidence has been produced to show that the respondent was attempting to alienate the property. Thus, it is clear that no urgency is contemplated in the plaint and the application under Order 38 Rule 5 C.P.C. to file the suit urgently. No explanation is given in the plaint or application in respect of the said urgent interim relief. Even though an application under Order 38 Rule 5 C.P.C. had been filed along with the suit on 21.01.2021, the petitioner has not pressed for any urgent relief for the past 2 years and 8 months. When the present application was filed by the petitioner/defendant on 28.07.2023 and counter was filed by the petitioner on 02.11.2021; and it has been posted for enquiry, the respondent/plaintiff was not pressing for any orders under Order 38 Rule 5 C.P.C. application, which shows that even after filing of the suit also, there was no urgency. Considering all these aspects, this court is of the view that the petitioner has failed to comply with Section 12A of Commercial Courts Act and the plaint is liable for rejection owing to non-compliance of Section 12A of said Act.

8. To be noted, in Patil Automation case law, Section 12A of said Act being mandatory is held to be prospective. In the case on hand, there is clear non compliance of Sec.12A. The reason is, the legal notice is dated 28.07.2020 and it was replied by the defendant on 28.08.2020 itself. Thereafter, the plaintiff had all the time in the world to take recourse to section 12A but from the plaint averment and plaint documents, it is clear that plaintiff did not move its little finger in this direction. On the contrary, the plaintiff has allowed the matter to go into slumber, i.e., a lull. After a lull and after going into slumber without taking any effort to take recourse to section 12A, plaintiff has casually presented the plaint in this Court on 21.01.2021 after four and half months later. Therefore, there is no doubt in the mind of this court that it is a clear case of infraction of section 12A and if Patil Automation principle is applied, it calls for rejection of plaint. This also takes this court to the court fee that has been paid by the plaintiff. In Patil Automation, the Hon'ble Supreme Court addressed itself to this court fee issue also and has made it clear that the plaintiff has to forego the court fee paid and has to come up with a fresh suit. Be that as it may, it is well open to the plaintiff to resort to Section 12A of said Act and then come to this court if so advised and if so desired. In this regard, all the rights and contentions of the plaintiff are preserved. In this view of the matter, the plaint stands rejected albeit preserving all the rights and contentions of the plaintiff in the aforesaid manner. In other words, it is open to the plaintiff to come to this Court again on the same

cause of action after complying with the requirements under Section 12A of said Act.

**9. In the result, the Suit/Plaint is rejected in the aforesaid manner. Consequently, I.A.No.1 of 2023 filed under Order 38 Rule 5 of C.P.C. is also disposed of as closed. There shall be no order as to costs.**

Dictated to the Steno-Typist, directly Computerized by him, Corrected and Pronounced by me, on the 12<sup>th</sup> day of September, 2023.

Judge,  
Commercial Court,  
(District Judge Cadre)  
Coimbatore

**List of Witnesses and Documents:- Nil**

Judge,  
Commercial Court,  
(District Judge Cadre)  
Coimbatore