

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE AT TIRUVALLUR**  
**PRESENT: Tmt.J. JULIET PUSHPA, B.Sc., M.L.,**  
Principal District Judge, Tiruvallur

**Monday, the 19<sup>th</sup> day of August, 2024**

**I.A.6/2023 in Commercial OS.53/2023**  
(CNR No.TNTR010008672023)

M/s Pioneer Coldstore & Cladding Pvt Ltd.  
Represented by its Group General Manager, Mr. S.T. Thendral,

....Petitioner/ defendant

/Vs/

Tako Mega Constructions Private Limited,  
Represented by its Managing Director Mr. Kim Yong Cheorl,

... Respondent/plaintiff

This petition coming on 31.07.2024 before me for final hearing in the presence of M/s S. Muthukumaravel, A. Preetha, M. Vijitha, learned counsels for the Petitioner and M/s A.R. Poovannan, learned counsel for the Respondent and upon perusing the records and having stood over for consideration till this date, this Court delivered the following:-

**ORDER**

This Petition is filed by the petitioner / defendant under Order VII Rule 11 of C.P.C. to reject the plaint in Commercial OS.53/2023 for non-compliance of section 12A of commercial Courts Act.

**2. The averments in the petition in brief :**

According to the petitioner, the respondent/plaintiff has filed the original suit under commercial Courts Act. Before filing of the suit, the plaintiff ought to have exhausted the pre-mediation as contemplated under the said Act, without doing the

sale, the plaintiff has filed this suit which is not maintainable in law. The plaintiff has filed two interim applications one relating to assess the value of the materials along with the surveyor and another petition for mandatory injunction to take back the materials, both the interim petitions are not maintainable in law, even if the same is allowed, the plaintiff will not get any interim relief from the plaintiff's prayers. It is a settled position of law that the commercial suit is not maintainable without exhausting the remedy u/s 12A of the Commercial Courts Act, which is mandatory in nature. Hence, the suit has to be rejected.

**3. The averments in the Counter filed on behalf of the respondent/plaintiff in brief :**

The respondent resisted the petition denying all the averments in the petition. The respondent /plaintiff contends that they have filed the suit under commercial division of this Court and before filing of the suit, the plaintiff ought to have exhausted the premeditation as contemplated under the Act. Due to urgency, the respondent filed an application u/s 12A of commercial Courts Act r/w 151 of CPC in I.A.3/2023 and the same was permitted by this Court on 07.02.2023. Hence, the averments in the petition is incorrect and numbering of the petition is erroneous. The respondent filed two interim applications to assess the value of the materials along with the surveyor in I.A.5/2023 and another for mandatory injunction to return back the materials in I.A.4/2023 and the said applications are pending for counter by the petitioner. Both the interim applications are not maintainable. Even it is not necessary

to seek interim relief and if the court is satisfied that it is necessary to grant interim relief the suit is well maintainable without exhausting the remedy under section 12-A of the Act. The plea taken by the defendant are irrelevant and not material and the application by the petitioner is legally and factually incorrect. The petitioner without filing counter in the interim applications has filed this vexatious application, which is devoid of merits. Hence, prayed to dismiss the application.

4. No oral or documentary side adduced on both side.

5. Now, the point for consideration is

1. **Whether the petitioner has made out case to reject the  
plaint under Order 7 Rule 11 of C.P.C ?**

2. **Whether this petition is to be allowed?**

#### **6. POINTS:**

Heard both sides.

This petition is filed by the petitioner/defendant under Order 7 Rule 11 of Civil Procedure Code to reject the plaint on the ground that the respondent without exhausting the remedy under section 12-A of the Commercial Courts Act has filed the suit, hence, the plaint has to be rejected.

7. The respondent has filed counter by contesting the same on the ground that already I.A. 3/2023 seeking permission to file the suit as emergent which was permitted on 07.02.2023. Hence, this petition is not maintainable.

8. On invoking the provisions under Order 7 Rule 11 of Civil procedure Code, it is clearly expressed that the plaint can be rejected on the grounds under

Order 7 Rule 11, which is reproduced hereunder :

***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 returned 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***

So, considering the ground for rejection of the plaint in this petition is concerned, it has been made under Order VII Rule 7 (d) of C.P.C., this Court has to find out whether this suit is barred by the Commercial Courts Act for non-compliance of exhausting the remedy contemplated u/s 12-A of the said Act.

9. On perusal of records and points put forth by both counsels, it is learnt that this suit is filed by the respondent/plaintiff for recovery of money, Rs.26,92,961/- with interest at 18% per annum for the commercial transaction held between the petitioner and respondent in the year 2022. The petitioner/defendant contends that the suit was filed without exhausting the remedy u/s 12A of the

commercial Courts Act. On the other hand, the respondent contends that already application to file the suit on urgent was permitted by this Court and also the petitioner has filed a petition under Order XXVI Rule 9 and 10 of Civil Procedure code for appointment of the advocate commissioner to value the subject materials with licensed surveyor and to file his report, thus the suit is maintainable.

10. The learned counsel for the petitioner/defendant argued that mere filing of the application for appointment of the Advocate Commissioner by itself does not mean any urgency in the matter and the respondent/plaintiff cannot plead urgent interim relief, as the mandatory requirement under section 12-A of the Commercial Court Act is not followed and the plaintiff cannot be exempted from coming to Court without complying such mandatory requirement and relied on the authority of the Hon'ble High Court, Madras reported in **2023(1) CTC 180** (*Mohamed Aboobacker Chank Lungi Pvt. Ltd. Vs. Revathy Textiles*), wherein our Hon'ble High Court held that pre-institution mediation has been mandated by the Hon'ble Apex Court from 20.08.2022, therefore, the plaint in this suit instituted in the year 2023 is liable to be rejected. Further, he relied on the authority of the Hon'ble Apex Court reported in **(2022) 10 SCC 1** (*Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*), by which the Hon'ble Supreme Court observed that the design and scope of the CCA, as amended in 2018, to insert Section 12A, makes it clear that the Parliament intended to give it a mandatory, thus argued that plaintiff cannot evade the compliance under 12-A, which they deliberately did, thus, the plaint must be rejected.

11. On perusal of the records , it is seen that this suit was filed along with the petition I.A.3 /2023 to treat the suit as emergent suit by exempting from section 12A of the Act since urgent interim relief petition under Order XXXIX Rule 1 and 2 filed and the said application was allowed on 07.02.2023, thereby permitting the respondent/plaintiff without opting for section 12-A of the Act. Hence, the suit was numbered without insisting for compliance of provision u/s 12-A of the Act.

12. The learned counsel for the respondent/plaintiff has relied upon the authority of the Hon'ble Supreme Court reported in **2023(6) CTC 302** (*Yamini Manohar Vs. TKD Keerthi*), wherein it has been held that

***“Plaint documents and facts must disclose need for urgent interim relief.....***

***The use of words “contemplate any urgent interim relief” as used in section 12(1) of the Commercial Courts Act, 2015 are used to qualify the category of a suit. This is determined solely on the frame of the plaint and the relief sought. The plaintiff is the sole determinant of the pleadings in the suit and the relief sought”.***

The Hon'ble Supreme Court further held that,

***“If the plaintiff seeks any urgent interim relief, the suit cannot be dismissed on the ground that the plaintiff has not exhausted the pre-institution remedy of mediation as contemplated under Section 12-A(1) of the Commercial Courts Act, 2015.”***

Therefore, it is clear from the above dictum of the Hon'ble Apex Court, the compliance by exhausting the pre-institution as contemplated u/s 12-A of the Commercial Courts Act 2015 may be exempted in cases where the plaintiff has made out the case of urgent interim relief.

13. As discussed above, the contemplation of the urgent interim should be read as conferring power on the Court to be satisfied with the plaint documents and facts to show and indicate the need for an urgent interim relief. Therefore, it is the duty of the Court, when a plaint is filed under the Commercial Courts Act with a request for urgent interim relief, the court should consider the nature and subject matter of the suit, the cause of action, and the request for interim relief. In order to bypass the statutory mandate of pre-litigation mediation should be checked to ascertain that plaint documents and facts must disclose need for urgent interim relief. Further, 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 and the courts may subject applications under Order VII, Rule 11 of the C.P.C. on the basis of non-compliance with Section 12A of the said Act to a case-by-case enquiry.

14. In this suit, this Court by the order in I.A.3/2023 dated 07.02.2023 has permitted the plaintiff to file the suit under the Commercial Courts Act 2015, granting exemption from the compliance of the section 12-A of the Act, by accepting the fact that an urgent interim relief has been prayed for and the condition that the plaint contemplates an urgent interim relief is satisfied. The plaintiff has filed

I.A.4/2023 under Order XXXIX Rule 1 and 2 of C.P.C., praying interim order directing the respondent to immediately remove their materials from the plaintiff's site since they are defective materials supplied by the defendant, which could be easily stained for non-usage. Therefore, there appears urgency in the matter, which has to be considered holistically from the standpoint of the plaintiff.

15. It is an accepted fact that urgent interim relief has been prayed in I.A. 4/2023 under Order XXXIX Rule 1 and 2, which is pending. Thus, the condition that the plaint contemplates an urgent relief is satisfied. As laid down by the Hon'ble Apex Court in the above authority, if the suit involved urgent interim relief, section 12-A of the Commercial Courts Act 2015 is inapplicable and it is not necessary for the plaintiff to enter into pre-institution mediation. Therefore, for the above reasons mere non-compliance of section 12-A of Commercial Courts Act, the plaint cannot be rejected under Order VII Rule 11 of the Civil Procedure Code since plaintiff made prima-facie to show the urgent interim relief, which is yet to be decided. The plaintiff succeeds in showing the urgent interim relief by filing necessary applications for such interim relief, irrespective of the fact as to whether the plaintiff eventually succeeds in getting the interim relief or not. When this Court issued notice for the interim stay, it indicates that this Court is inclined to entertain the plaint.

16. Therefore, since the plaintiff seeks urgent relief by way of interim injunction as well as appointment of Advocate Commissioner, which was already entertained and still pending, the suit cannot be dismissed on the ground that the plaintiff has not exhausted the pre-institution mediation as contemplated u/s 12-A(1)

of the Act. So, this court cannot reject the plaint solely on this ground. Accordingly, these points are answered as against the petitioner/defendant. Thus, this petition lacks merits.

**In the result, this petition is dismissed. No costs.**

Dictated to Steno-typist, transcribed and typed by him, corrected and pronounced by me in Open Court, this 19<sup>th</sup> day of August, 2024.

**PRINCIPAL DISTRICT JUDGE,  
TIRUVALLUR**

Witness & Documents on the side of petitioner  
And respondent side : NIL

**PRINCIPAL DISTRICT JUDGE,  
TIRUVALLUR**