

COMMERCIAL COURT AT ASANSOL
(FOR THE DISTRICTS OF MURSHIDABAD, BIRBHUM, PURBA
BARDHAMAN, PASCHIM BARDHAMAN, PURULIA AND BANKURA)

Present :- Sri Anjan Kumar Sengupta.
 Judge, Commercial Court at Asansol.

JO Code :- WB00795.

Title Suit (Commercial) No.: 02/2025

CNR No. : WBBD17-000019-2025

Plaintiff(s) :- Saibal Kumar Guin.

V/s

Defendant(s) :- Trendy Bazaar.
 Represented by its partners :-
 (1) Mr. Binay Chaudhary.
 (2) Mr. Sanjay Gunecha.

Order No. - 18

Dated - 15/07/2026

- (1) Today stands fixed for passing order.
- (2) Parties file their haziras through their respective Ld. Advocates.
- (3) Accordingly, the case record is taken up for passing order.
- (4) Respondent has filed an application under Order VII Rule 11 r/w Section 9 & 151 of the C.P.C and under Section 12A of the Commercial Courts Act, 2015 praying for necessary order for rejection of the plaint filed in the instant suit revoking the ex-parte order No.1, dated 21/03/2025 granting leave to dispense with mandatory provision of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015. Respondent also filed an application under Section 151 of the C.P.C with a prayer to hear the application for rejection of plaint first by keeping the prescribed period of limitation for filing the written statement by the defendants in abeyance till disposal of the application filed for rejection of plaint.

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- (5) The factual matrix of the case of the plaintiff in brief is as follows :-
- (i) The plaintiff is the absolute owner of the suit property measuring about 7266 sq. ft. and in order to exploit the premises, the plaintiff entered into a MOU dated 20/08/2018 with the defendants and agreed to put the premises on lease for a period of 12 years at a monthly rent of Rs.40/- per sq. ft.
 - (ii) In view of such agreement, defendants were given possession of the said premises in ready to operate condition on 22/08/2018 and thereupon after expiry of schedule rent free period of 60 days from the date of handing over the possession, the defendants started making payment of monthly rent on and from 23/10/2018.
 - (iii) It is stated that the defendants being the tenant of the suit premises had stopped making payment of rent since January, 2020 without any reason and accordingly, the plaintiff served a demand notice dated 23/07/2021 through his Ld. Advocate upon the defendants invoking arbitration clause No.24 of the MOU and thereafter on 09/09/2021 has filed an application under Section 9 of the A & C Act, 1996 along with injunction application before the Ld. District Judge at Suri, Birbhum, wherein the plaintiff was granted an *ad-interim* order restraining the defendants from dismantling their movable and immovable properties from the premises in question.
 - (iv) In the mean time, the defendants intimated the plaintiff about the appointment of Mr. Sushil Kumar Jain, FCA as the sole arbitrator. However, inspite of passing of considerable period and ten (10) scheduled dates, the Ld. Arbitrator did not proceed with the arbitral proceedings.
 - (v) On an application filed by the plaintiff before the Hon'ble Court for appointment of a fit and competent arbitrator in terms of

Section 11 r/w Section 14 of the Arbitration and Conciliation Act, 1996, the Hon'ble High Court has been pleased to observe that the appointment of the arbitrator by the defendants were completely against the statutory provision and accordingly, dismissed the application of the plaintiff.

- (vi) The plaintiff thereafter, through his Ld. Advocate made a further demand notice dated 19/04/2024 upon the defendants asking the defendants' company for making payment of outstanding occupation charges and / or rent including interest amounting to Rs.1,50,01,435/- but the defendants did not pay any heed.
- (vii) It is stated further that on receipt of the notices, the defendants assured the plaintiff that they would pay the outstanding amount within 2024 positively but lastly on 05/12/2024, the defendants have refused to pay the amount and therefore, cause of action of the instant suit arose on 19/04/2024 for the first time and thereafter on 05/12/2024 and the same is still continuing. Accordingly, the plaintiff was compelled to file the instant suit with a prayer for *ad-interim* prayer of injunction as urgent interim relief under Order XXXIX Rule 1 & 2 r/w Section 151 of the C.P.C and an application under Section 12A of the Commercial Courts Act, 2015 praying for leave to proceed with the instant suit without exhausting the provision of pre-institution mediation.
- (6) E-filing was made on 03/03/2025 and the plaint accompanied with photocopy of the same has been filed on 21/03/2025 with the application under Order XXXIX Rule 1 and 2r/w Section 151 of C.P.C and application under Section 12A of the Commercial Courts Act, 2015 praying for leave to file the instant suit without resorting to pre-institution mediation and by an order No.1, dated 21/03/2025, this court granted the prayer for leave to file the suit without resorting the pre-institution

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mediation considering that the suit is accompanied with urgent interim relief.

- (7) Ld. Advocate for the defendants contended that '*pleading*' means plaint and written statement but the plaintiff has failed to state in the plaint about the facts, which lead him to pray urgent interim relief. Ld. Advocate for the respondent further contended that Section 12A declares that the plaintiff must exhaust the remedy of pre-litigation mediation and the provision is mandatory in nature, since, the plaintiff did not raise anything in the plaint regarding the urgency of the relief as stated. In the prayer of the plaint also no interim relief has sought for and in fact there is no urgent interim relief contemplated in the present plaint. According to the Ld. Advocate for the defendants, the plaint which does not contemplate urgent interim relief may be rejected, since, the mandatory provision of Section 12A of the Commercial Courts Act, 2015 has not been complied with. In support of his contention Ld. Advocate for the defendants relied on the decision of the Hon'ble Supreme Court in the matter of **M/s. Patil Automation Private Limited and others V/s. Rakheja Engineers Private Limited** reported in **2022 10 SCC 1**. decision in the matter of **Yamini Manohar V/s. TKD Keerthi** reported in **2024 5 SCC 815**, decision in the matter of **M/s. Dhanbad Fuels Private Limited V/s. Union of India and Another** reported in **2025 0 INSC 696**, unreported order of the Hon'ble Court in the matter of **Pranoy Kumar Saha V/s. Rabindra Narayan Das** in **APD/15/2023** with **CS/197/2022** and a decision of the Hon'ble Calcutta High Court in the matter of **Sanjay Kumar Mishra V/s. Godavari Commodities Limited and Others** reported in **2023 0 Supreme (Cal) 718**. Ld. Advocate for the defendants also relied on two decisions of

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the Hon'ble Supreme Court reported in **2003 1 SCC 557** and **2016 14 SCC 275** in support of his contention that the court has to dispose off an application under Order VII Rule 11 of the C.P.C before proceeding with the trial.

- (8) Ld. Advocate for the plaintiff on the other hand contended that the plaintiff in paragraph No.21 of the plaint has categorically stated that there is extreme urgency in the matter with a prayer for permanent injunction restraining the defendants and their agent and representatives from transferring and / or otherwise disposing off and / or creating any right title and / or interest in favour of anybody by way of sale or otherwise amongst other prayers. According to the Ld. Advocate for the plaintiff, the plaintiff along with the plaint has filed several documents, an application under Order XXXIX Rule 1 & 2 r/w Section 151 of the C.P.C and an application under Section 12A of the Commercial Courts Act, 2015, with prayer for *ad-interim* order of injunction and leave to move the *ad-interim* injunction without resorting the pre-institution mediation. Ld. Advocate for the plaintiff further contended that suit must contemplate meaning thereby the plaint, document and facts to show and indicate the need for an urgent interim relief. It is contended that the facts, which lead to move urgent interim relief has been specifically stated in the application under Order XXXIX Rule 1 & 2 r/w Section 151 of the C.P.C and as such the application under Order VII Rule 11 r/w Section 151 of the C.P.C is liable to be rejected with exemplary cost.

- (9) Ld. Advocate for the plaintiff further contended that it is the specific case of the plaintiff that though the affirmation was made on 10.12.2024, the suit could not be filed prior to 21.03.2025 as the plaintiff could not file the E-Court fees of Rs.50,000/- due to technical problem and after perusal of all the

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facts and circumstances, this Court has disposed off the petition under Section 12A of Commercial Court Act 2015 and allowed the plaintiff to file the instant suit without exhausting the procedure of pre-mediation.

(10) Section 12A of the Commercial Court Act 2015, runs as :-

(1) A suit, which does not contemplate any urgent interim relief under this Act shall not be instituted unless the plaintiff exhaust the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(11) Therefore, the only question to be dealt with is whether the instant suit contemplates any urgent interim relief under this Act. According to the plaintiff, in order to meet with the urgent relief, the plaintiff has filed a separate petition U/o XXXIX R 1 and 2 r/w Section 151 of C.P.C. along with the instant suit and the copy has been supplied to the defendants.

(12) The Ld. Advocate for the defendants contended that urgent interim relief is to be determined solely on the basis of pleadings and relief(s) sought by the plaintiff. Pleadings means plaint and written statement. The plaintiff in the plaint did not state about the need of any urgent interim relief.

(13) It appears that the plaintiff in the plaint in para 21 has stated that there is extreme urgency in the matter and in the application under Order XXXIX R 1 and 2 r/w Section 151 of C.P.C. filed with the suit has stated that the plaintiff very recently on 10.12.2024 came to know from reliable sources that the defendants are trying to create third party interest in respect of the suit property by way of taking advantage of his possession over the suit property and being informed about the said matter, the plaintiff rushed to the suit property immediately and with the help of local people could somehow able to resist the defendants from doing such illegal act but still apprehends

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that he may be dispossessed from the suit property at any point of time and hence, the suit.

(14) According to the plaintiff, in consonance with an agreement entered into with the plaintiff, the defendants took handover of the vacant premises in ready to operate condition on the 22nd August 2018 and started making payment of rent on 23.10.2018 i.e. after 60 days from the date of handing over the possession as per the agreement but after discharging the liability of making payment of rent for around 15 months, the said tenant being the defendants stopped making payment of rent since January 2020, without any right or reason in an unprecedented and abrupt manner, although, the defendants continued their business activities under the name and style M/s. Trendy Bazzar in a full fledged manner. The further case of the plaintiff is that being highly prejudiced, the plaintiff regularly approached and requested the defendants to clear the outstanding occupational charge as well as to make regular payment of occupational charge but the defendants neither took initiative to clear the outstanding occupational charges nor had shown any endeavor to continue making regular monthly payment and as such the plaintiff has suffered loss towards non receipt of gross arrear rent along with interest amounting to Rs.1,50,01,435/- accrued for the period January, 2020 till February, 2024.

(15) It appears from the plaint that since, the illegal act of forceful occupation of the plaintiff's suit property continued without paying the rent, the plaintiff has filed an application under Section 9 of the Arbitration and Conciliation Act along with an application under Order XXXIX Rule 1 and 2 of the C.P.C before the Ld. District Judge Suri, Birbhum and Ld. District Judge was pleased to pass an *ad-interim* order restraining the defendants and their men and agents from dismantling the movable and immovable properties including furnitures and

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fixture at the premises in question as well as changing their nature and character of such movable and immovable assets at the premises in question till disposal of the application for injunction. It is stated that in the midst of pendency of the application under Section 9 of the Arbitration and Conciliation Act the defendants' company intimated the plaintiff about the appointment of one Mr. Sushil Kumar Jain, FCA as the sole Arbitrator. Since, the Ld. Arbitrator did not proceed with the arbitral proceeding for a considerable period, the plaintiff approached the Hon'ble High Court with a prayer for appointment of a fit and competent person as substituted Arbitrator but the Hon'ble Court has been pleased to dismiss the application specifically observing that the defendants' appointment of arbitrator was completely against the statutory provision. According to the plaintiff, even after the order passed by the Hon'ble High Court, the defendants did not care to clear outstanding due amount and also did not show any intention either to pay the outstanding amount or to handover possession of the premises but remain forcefully holding and / or encroaching the premises till date and the plaintiff, thus, sent a demand notice to the defendants through his Ld. Advocate on 19.04.2024 and on receipt of the notice, the defendants have assured the plaintiff that they would pay the outstanding amount within 2024 positively but the defendants even after expiry of the November, 2024 did not fulfill the assurance and lastly on 05.12.2024 refused to pay the amount.

The Hon'ble Supreme Court in **Patil Automation Pvt. Ltd & Ors vs. Rakeja Engineers Pvt. Ltd.** reported in (2020 SCC online SC 1024) has been pleased to hold that Section 12A of the Commercial Court Act is mandatory. Pre-litigation Mediation is necessary, unless the suit contemplates urgent interim relief. The Hon'ble Supreme Court has been pleased to

observe in paragraph 72 that the statement of objects and reasons are explicit that Section 12A was contemplated as compulsory. The object of the Act and the Amending Act of 2018, unerringly point to atleast partly foisting compulsory mediation on a plaintiff who does not contemplate urgent interim relief. The provision has been contemplated only with reference to plaintiff who does not contemplate urgent interim relief.

- (16) The Hon'ble Supreme Court in the matter **Yamani Manohar vs. T.K.D.Keerthi** has been pleased to observe "*Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyze Section 12A of the Commercial Court 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 upto the plaintiff alone to decide whether to resort to the procedure under Section 12A of the Commercial Court Act. An 'absolute and unfettered right' approach is not justified if the pre-institution mediation under Section 12A of the Commercial Court Act is mandatory, as held by this Court in **Patil Automation Pvt. Ltd. (Supra)**. The words 'contemplate any urgent interim relief' in Section 12A (1) of the Commercial Court 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 to keep in check and*

ensure that legislative object / intent behind the enactment of Section 12A of the Commercial Court Act is not defeated”.

- (17) The Hon’ble Supreme Court in **M/s Dhanbad Fuels Pvt. Ltd. V/s. Union of India and Anr.** on the aspect how the expression “*urgent interim relief*” is to be construed, has been pleased to observe that 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 the any statutory mandate or rules made by the Central Government, an application *per se* is not a condition under Section 12A of the 2015 ACT. Pleadings on record and oral submissions would be sufficient in ordinary course. The Hon’ble Supreme Court has been further pleased to observe that the words “*contemplate any urgent interim relief*” in Section 12A (1) of the Commercial Court 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).
- (18) On apparent reading of the plaint, it appears that the plaintiff has stated in the plaint that the cause of action of the instant suit arose on 19.04.2024 when the plaintiff issued demand notice to the defendants, asking the defendants to make payment of arrear outstanding occupational charges and / or rent including interest and for handover the vacant possession of the suit premises and thereafter on 05.12.2024, when the defendants refused to pay the outstanding amount, which is still continuing. It transpires from the plaint that the plaintiff demanded the outstanding occupational charges even after the Hon’ble Court has been pleased to dismiss the application of the plaintiff

praying for appointment of a fit and competent person as substituted arbitrator observing that the defendants appointment of an arbitrator was completely against the statutory provision. The plaintiff in the plaint has stated specifically that there is extreme urgency in the matter. The plaintiff in the application under Order XXXIX Rule 1 and 2 r/w Section 151 of C.P.C filed with the plaint has stated that the plaintiff on 10.12.2024 came to know from the reliable sources that the defendants are trying to create third party interest in respect of the suit property by way of taking advantage of his possession over the suit property and being informed about the said matter, the plaintiff rushed to the suit property immediately and with the help of the local people somehow able to resist the defendants from doing such illegal act but still apprehends that he may be dispossessed from the suit property at any point of time. The plaintiff has also filed a petition under Section 12A of the Commercial Court Act 2015, wherein he has reiterated the aforesaid factum and has stated that if the defendants are summoned for pre-institution mediation as required under Section 12A of the Commercial Court Act, 2015 the very purpose of the institution of the suit may be frustrated as the defendants may alienate the suit property or creating third party interest or remove the movable property from the suit property.

- (19) It appears that arbitral proceeding was initiated by the defendants herein pertaining to the dispute regarding immovable property and the payment of rent and subsequently, the Hon'ble Court has been pleased to observe that the defendants' appointment of Arbitrator was completely against the statutory provision.
- (20) The plaintiff has stated that the plaintiff apprehends that he may be dispossessed since, the defendants were trying to create third party interest in respect of the suit property by way of taking

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advantage of his possession over the suit property. The plaintiff in the plaint has prayed for permanent injunction restraining the defendants from transferring or otherwise dealing with disposing off and / or creating any right, title and / or interest in favour of anybody by way of sale or otherwise. By filing the petition under Order XXXIX Rule 1 and 2 r/w Section 151 of C.P.C the plaintiff has prayed that the defendants should be restrained by an order of *ad- interim* injunction from alienating the suit property and / or creating third party interest in respect of the suit property and / or from removing the immovable property of the plaintiff from the suit property.

- (21) The Hon'ble Supreme Court in **M/s Dhanbad Fuels Pvt. Ltd. (Supra)** has been pleased to observe that the taste for “*urgent interim relief*” is if on examination of the nature and the subject matter of the suit and the cause of action, the prayer for urgent interim relief by the plaintiff could be said to be contemplable when the matter is seen from the standpoint of the plaintiff. The Hon'ble Supreme Court has been further pleased to observe that even if the urgent interim relief ultimately comes to be denied, the suit of the plaintiff may be proceeded with, without compliance with section 12A if the taste for “*urgent interim relief*” is satisfied, notwithstanding the actual outcome on merits.
- (22) In the present case, having gone through the plaint, application under Order XXXIX Rule 1 and 2 of C.P.C and the application under Section 12A of the Commercial Court Act, it appears that the plaintiff has made out a *prima facie* case regarding necessity for seeking urgent interim relief so as to restrain the defendants creating any third party interest over the suit property alienating or transferring the said immovable property, which indicates the need for an urgent interim relief and such prayer for urgent interim relief does not seem to be disguise or masked to wriggle out and get over Section 12A of the Commercial Court Act,

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considering the facts and circumstances of the case holistically from the stand point of the plaintiff.

- (23) In the foresaid backdrop of the matter, I do not find any reason to revoke the order of this Court granting exemption to file the suit without resorting to pre-institution mediation. Consequently, I do not find any merit to pass any order for rejection of plaint filed in the instant suit.
- (24) The defendants have also filed an application under Section 151 of the C.P.C praying for an order keeping the prescribed period of limitation for filing the written statement for the defendants in abeyance till final disposal of the application filed for rejection of the plaint. The Ld. Advocate for the defendants contended that the Hon'ble Supreme Court has been pleased to hold that defendants are entitled to file an application for rejection of plaint under Order VII R 11 of the C.P.C, before filing the written statement. In case, the application is rejected the defendants are entitled to file their written statement thereafter. Ld. Advocate for the defendants relied on the decision of the Hon'ble Supreme Court reported in **2016 Supreme (SC)533** and the decision of the Hon'ble Delhi High Court in the matter of **IDBI Trusteeship Services Ltd. vs. Manish Jain and Ors.** in support of his contention.
- (25) Heard the Ld. Advocate for the plaintiff, who has submitted that the written statement, if filed by the defendants would be accepted in accordance with law.
- (26) Since, it appears that this Court has come to the conclusion that the application filed by the defendants under Order VII R 11 of C.P.C does not deserve any merit and the same is liable to be rejected, the defendants are entitled to file written statement and the period from filing the application under Order VII R 11 of C.P.C to rejection of the same will be deducted while calculating the period of limitation for filing written statement as per statutory provision.

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HENCE,

IT IS

ORDERED

that the application under Order VII Rule 11 r/w Section 9 and Section 151 of the C.P.C is rejected on contest but without cost.

The application being I.A. No. 5 of 2026 is thus disposed off.

The application under Section 151 of the C.P.C filed by the defendants praying for an order keeping the prescribed period of limitation for filing written statement is allowed and the acceptance of the same if filed, will be subject to statutory provision.

The application being I.A. No. 6 of 2026 is thus also disposed off.

Fix **03.08.2026** for **filing W/S by the defendants.**

D/C by me.

Judge, Commercial Court
Asansol

Judge, Commercial Court
Asansol