

MS (Com) – 35/2025

**Present: Ishani Chakravarty Banerjee (J.O Code.WB00890)
Judge, Commercial Court at Rajarhat,
North 24 Parganas**

CNR: WBNP19-000143-2025

Dilip Kumar Chatterjee

.... Plaintiff

vs.

State of West Bengal & Ors.

.... Defendants

**Later
18.11.2025**

1. The learned Advocate for the plaintiff/petitioner appears and files a petition under Section 80(2) of the CPC seeking leave to institute the suit without serving notice on the opposite party and also to move the case without complying with the mandatory requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015, and for consideration of the injunction application filed under Order XXXIX Rules 1 and 2 of the CPC.

2. Firstly, the learned Advocate moves the application under Section 80(2) of the CPC seeking leave to institute the suit without serving notice on the opposite party. Perusal of the case record shows that the plaintiff herein has already issued notice under Section 80 of the CPC to all the three defendants being (1) The Principal Secretary, PWD, Government of West Benbal, (2) The Superintendent Engineer, PWD, Purta Bhawan, Bandel, Hooghly (3) The Executive Engineer, PWD, Bishnupur, Bankura on 11.11.2025 and the postal receipts as well as the track reports have been filed, showing delivery on 14.11.2025. However, it is submitted by the learned Advocate that there is urgency in the matter as the petitioner being a contractor for the defendants, faces risk of immediate coercive action against him and waiting for the statutory period of two months would render the case infructuous. Taking into account such averments and submissions, this Court is inclined to infer that this case warrants leave under Section 80 of the CPC.

3. Thereafter, the learned Advocate for the Plaintiff prayed for a dispensation from the mandatory compliance of pre-institution mediation as contemplated under Section 12A of the Commercial Courts Act, 2015, for the purpose of seeking urgent interim relief by moving the application under Order XXXIX

Rule 1 and 2, read with Section 151 of the Code of Civil Procedure, 1908, praying for the grant of an ex-parte ad-interim order of injunction.

4. The record is taken up for hearing on the point of dispensation of leave under Section 12A of the Commercial Courts Act, 2015.

5. The present position of law as it emanates from the Judgement of the Hon'ble Apex Court in **Dhanbad Fuels Pvt. Ltd. vs. Union of India as reported in 2025 SCC OnLine SC 1129**, is that a suit which contemplates an urgent interim relief may be filed without first resorting to mediation as prescribed under Section 12A of the Act and no leave of Court is required to be obtained for filing a suit without complying with Section 12A of the Act. It has further been clarified in the said judgement by the Hon'ble Supreme Court, that the test for "urgent interim relief" is to be deduced / inferred from the stand point of the plaintiff upon examination of the nature and the subject-matter of the suit and the cause of action and the same must not merely be an unfounded excuse to by-pass the mandatory provision of Section 12A of the said Act.

6. It has now to be seen whether the instant suit contemplates an urgent interim relief without resorting to the mandatory provision of Section 12A of the said Act, as seen from the perspective of the plaintiff. The submissions of learned Advocate for the plaintiff has been heard.

7. The learned Advocate for the petitioner stated that the petitioner, an experienced PWD contractor with over five decades of expertise, was awarded the contract under e-Tender No. 26 of 2023-24 for strengthening Simlapal–Benagoria via Raipur Road (SH-9), valued at approximately Rs.73.83 crores. The petitioner duly commenced and completed the entire work within the extended period, i.e., by 31.03.2025, to the full satisfaction of the departmental authorities, as recorded during joint inspections by senior PWD officials and the Legislative Standing Committee. A completion certificate reflecting 96% completion of the work has already been issued, though the petitioner averred that the work was in fact fully completed.

8. Throughout the execution of the project, several design defects, drainage failures, waterlogging issues, and structural inadequacies were repeatedly brought to the respondents' notice. These failures pertained solely to the DPR and design, which were entirely within the respondents' domain, and

were not attributable to the petitioner. Despite this, the petitioner rectified multiple design-related failures under departmental directions.

9. After the full completion of work, the respondents unlawfully withheld legitimate payments, including the fifth R.A. bill and other dues, failed to supply test reports of R & BRI for reasons best known to them, issued baseless show-cause notices, and unilaterally granted illegal extensions beyond contractual timelines, seemingly with the object of shifting blame for their own design lapses. The respondents have repeatedly threatened coercive measures, including blacklisting, forfeiture of security deposits, and compelling the petitioner to redo the entire Rs.73-crore project at his own cost.

10. The petitioner, a 76-year-old contractor with ongoing projects statewide, is under serious apprehension that such coercive measures will jeopardize not only the present contract but all other ongoing works. An amount exceeding Rs.5.46 crore remains unpaid, causing extreme financial strain, particularly as the project was executed through bank credit. Immediate judicial intervention is, therefore, imperative to prevent irreparable loss.

11. The learned Advocate for the petitioner submitted that the matter involves issues of grave and immediate urgency, as the respondents have repeatedly threatened coercive and penal measures, including blacklisting, invocation of security deposits, and compelling the petitioner to redo the entire completed work at his own cost. It is averred that such actions, if taken, will irreparably harm the petitioner's business, reputation, and his ongoing projects throughout the State. It has also been submitted that the bills placed by the plaintiff have been returned with a request to redo the entire project and even on the last meeting held in between the parties on 10.11.2025, the plaintiff was verbally communicated to do the same. As such, it is submitted by the learned Advocate for the petitioner that after such repeated correspondence, both written and verbal, pre-institution mediation would be futile exercise and prayed for leave for dispensation of mandatory provision of Section 12A of the Commercial Courts Act, 2015.

12. When seen from the perspective of the plaintiff, it is apparent that the plaintiff has completed the contract work under e-Tender No. 26 of 2023-24 for strengthening Simlapal-Benagoria via Raipur Road (SH-9) in all re-

spects to the satisfaction of the departmental authorities, as recorded in the completion certificate dated 31.03.2025, reflecting 96% completion of the work. Thereafter, the plaintiff has averred that the entire project has been completed but despite such completion, it has been averred, that the plaintiff has been asked to redo the entire project and such request has been repeatedly made both in writing and verbally. The plaintiff has averred that such threats and coercive actions, particularly the show-cause notice dated 11.07.2025 and threats in the joint meeting on 10.11.2025, create an imminent risk of irreparable injury to the plaintiff's business, reputation, and ongoing projects statewide. The plaintiff, being of advanced age and engaged in multiple concurrent projects, is under immediate apprehension of grave prejudice if compelled to wait for the pre-institution mediation process as contemplated under Section 12A of the Commercial Courts Act, 2015. Considering the urgency of the situation, the prima facie entitlement of the plaintiff, and the likelihood of irreparable harm from any delay, the Court is satisfied that the requirement of pre-institution mediation is **dispensed with**.

13. Now the application under Order 39 Rule 1 & 2 read with Section 151 of the CPC filed on behalf of the plaintiff/petitioner is taken up for consideration.

14. Heard the learned Advocate for the plaintiff/petitioner.

15. Perused the plaint, injunction petition, annexures thereto, the materials on record.

16. It is observed from the cause title of the plaint that the defendants in the present suit are the Government of West Bengal. Section 80(2) of the CPC provides as follows :-

“Section 80(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit.

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).”

17. In view of the statutory provision as stated above, this Court is not inclined to grant ad-interim relief of injunction to the defendants at this stage without giving them a reasonable opportunity of showing cause in respect of the reliefs prayed.

18. Accordingly, issue notice upon the defendants/respondents directing them to show-cause within 10 days from receipt as to why temporary injunction order as prayed for shall not be granted.

19. To date.

Dictated & Corrected by me

Sd/- Ishani Chakravarty Banerjee
Judge
Commercial Court, Rajarhat
North 24 Parganas

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Judge
Commercial Court, Rajarhat,
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