

**Present: Smt. Suparna Ray (JO Code:WB00711)**

**Judge, Commercial Court at Alipore**

**Title Suit 04 of 2023**

**Renumbered as TS (Com) 48 of 2023**

**CNR No. WBSP18-000041-2023**

**Order No.79**

**Date: 28.10.2025**

**In the matter of:**

Suit for recovery of possession and mesne profit valued at Rs. 171,80,41,276/- and for injunction at Rs. 100/-.

**AND**

**In the matter of:**

Mani Square Limited.

**Vs.**

Shri Subhash Kumar and 04 Ors.

**Appearance:**

Mr. Rajashi Dutta...Ld. Advocate

Mr. Pranit Bag... Ld. Advocate

Ms. Sayantani Das...Ld. Advocate

Ms. Rituparna Chatterjee...Ld. Advocate

Ms. Megha Yadav...Ld. Advocate

**.....for the Plaintiff/Respondent.**

Mr. Shuvasish Sengupta... Ld. Adv.

Mr. Pushan Kar..Ld. Adv.

Mr. Souvik Majumdar...Ld. Adv.

Ms. AnnapurbaBanerjee..Ld. Adv.

Ms. Ajeya Chowdhury...Ld. Adv.

**.....for the Defendants/Petitioners.**

## **Order**

Today is fixed for passing the Order of I.A. No.28 of 2025.

Plaintiff and defendant nos. 2 to 6 file their respective haziras.

Ld. Joint Receivers are also present.

Now, the instant record is taken up for passing order.

### **I.A. No. 28 of 2025**

**1.** The instant application has been filed by the defendants for revocation of leave granted by this Court for dispensation of pre-suit mediation envisaged under Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as "CCA") to the plaintiff by an Order dated 1<sup>st</sup> April, 2023. It is pertinent

to mention here that beside the aforesaid leave under Section 12A of CCA by the said Order dated 1<sup>st</sup> April, 2023, this Court further passed an order of *ex parte* injunction restraining the defendants in the suit from dealing with and/or encumbering and/or creating third party interest in respect of the suit property.

**2.** Plaintiff has filed its affidavit in opposition to the instant application and further the defendants have also filed their reply thereto.

**3.** For the sake of brevity and also for discernments herein after the plaintiff is to be referred as “Mani Square” and the defendants be referred to as “Kumars” in the instant order.

**4.** Before delving into the contentions of Kumars as well as the counter contentions of the Mani Square, it is to be stated herein that the instant application has been filed by the Kumars on 23.05.2025 before this Court for revocation of such leave granted by this Court on 1<sup>st</sup> April, 2023. It is further noted that the said Order dated April 1, 2023 has never been challenged by the defendants i.e. Kumars and the instant application for revocation of leave granted under Section 12A of CCA has been filed only after almost two (02) years from the date of such order passed on April 1, 2023. Pertinently, it is stated that leave as granted by this Court has not been directly challenged and/or impugned by the Kumars before any higher forum. However, in so many times the test of granting the leave has been assailed

and/or tested and/or impugned by the Kumars before the Hon'ble Courts.

**5.** Firstly, by filing an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) before this Court for rejection of the plaint of the instant suit on 4<sup>th</sup> May, 2023, the Kumars by filing a supplementary affidavit therein took the non-compliance of the provisions of Section 12A of CCA as a ground for rejection of the plaint. However, this Court by an Order dated 6<sup>th</sup> March, 2024 has been pleased to dismiss the Kumars' Order VII Rule 11 application. Kumars then, assailed such Order of this Court in a Civil Revisional Application being registered as C.O. No. 954 of 2024 before the Hon'ble High Court at Calcutta wherein the Hon'ble High Court by an Order dated 21<sup>st</sup> May, 2024 has been pleased to dismiss the Kumars' application hereby noting that the Kumars had raised a question of maintainability of the suit on account of non-compliance of the provisions of Section 12A of the CCA. Thereafter, Kumars filed a Special Leave Petition being SLP(C) No. 15984 of 2024 wherein they once again sought the non-compliance of provisions of Section 12A of CCA a ground but, the Hon'ble Apex Court by an Order dated 10<sup>th</sup> September, 2024 also has been pleased to dismiss the said Special Leave Petition.

**6.** Furthermore, during the interregnum of hearing of the instant application, the Hon'ble High Court at Calcutta while sitting on an appeal (AO-COM 27 of 2025) filed by the Kumars

against an Order dated 22<sup>nd</sup> July, 2025 passed by this Court vastly observed the contention of non-compliance of provisions of Section 12A of CCA, as contended by the Kumars in the instant application, upon framing an issue “(d) Are the appellants right in contending that the learned Judge ought not to have passed the impugned order without first deciding the application of the appellants for revocation of leave granted to Mani Square under Section 12A of the CC Act?”.

7. It is deemed that for adjudication of the instant application, the solemn observation of the Hon’ble High Court made in the Order dated 11<sup>th</sup> September, 2025 in connection with AO-COM 27 of 2025 is required to set out hereunder in *verbatim*:

*“59. Only the issue pertaining to Section 12A of the CC Act remains to be discussed. Mr. Mitra, learned Senior Counsel representing the appellants, submitted that prior to passing any order in the suit of Mani Square, the application of the present appellants for revocation of leave granted under Section 12A of the CC Act should have been disposed of one way or the other. If the application was allowed, there would have been no scope for passing any interlocutory order in the suit since the suit would have stood dismissed.*

**(emphasis supplied)**

*60. Ordinarily I would have agreed with the contention of Mr. Mitra. However, in the facts of the present case, Mr. Mitra’s argument may not hold ground.*

**(emphasis supplied)**

*61. By an order dated April 1, 2023, the learned Commercial Court at Alipore granted dispensation of pre-suit mediation envisaged under Section 12A of the CC Act, to Mani Square for filing its suit being TS 4 of 2023 (later renumbered as TS (COM) 48 of 2023). This the learned Court did, being satisfied that urgent relief was required in the suit.*

An order of injunction was passed restraining the defendants in the suit being the Kumars from dealing with and/or encumbering and/or creating third party interest in respect of the suit property.

**(emphasis supplied)**

**62.** On or about May 4, 2023, the Kumars filed an application under Order VII Rule 11 of the CPC for rejection of the plaint of the suit filed by Mani Square. Although initially the Kumars in their said application did not run the case of revocation of the leave granted under Section 12A of the CC Act and consequent rejection of the plaint, by filing a supplementary affidavit, that ground was brought on record for rejection of the plaint. By an order dated March 6, 2024, learned Trial Court dismissed the application for rejection of the plaint of the suit filed by Mani Square.

**(emphasis supplied)**

**63.** Assailing such order, the Kumars filed a Civil Revisional Application being CO No. 954 of 2024. In the order dated May 21, 2024, whereby the civil revisional application was dismissed by a learned Single Judge of this Court, it was noted that the petitioners had raised a question of maintainability of the suit on account of non-compliance of the provisions of Section 12A of the CC Act.

**(emphasis supplied)**

**64.** From the order of dismissal of the Civil Revisional application, the Kumars preferred a Special Leave Petition being SLP(C) No. 15984 of 2024. The synopsis of the Special Leave Petition included a ground that “the learned trial Court ex-parte granted leave to the plaintiff under Section 12A of the Commercial Courts Act which is de hors of the provisions of Section 12A of the Commercial Courts Act, 2015, and there was no emergency as contemplated in Section 12A in the matter of suit for eviction”. The questions of law formulated in the Special Leave Petition included “whether leave could be granted under Section 12A of the Commercial Courts Act, 2015, in a suit for eviction when there is no urgency?” The grounds enumerated in the special leave petition included:- “For that the High Court failed to appreciate the provisions of the Commercial Courts Act, 2015, specially Section 2 and Section 12A of the said Act.”

**(emphasis supplied)**

**65.** The Special Leave Petition was dismissed by the Hon’ble Supreme Court by an order dated September 10, 2024.

**66.** *We, therefore, see that the issue of revocation of leave granted to Mani Square under Section 12A of the CC Act was there before the learned Trial Court, before the High Court in the civil revisional application and also before the Hon'ble Supreme Court. However, the Kumars' argument on such issue was not accepted by any of the said three fora. Hence, the point must be deemed to have been rejected right up to the Hon'ble Supreme Court. Had the point appealed to the learned Trial Court or the High Court or the Hon'ble Supreme Court, the order granting dispensation of the requirement of pre-suit litigation would have been revoked and as a necessary corollary, the suit would have stood dismissed.*

**(emphasis supplied)**

**67.** *In this connection Section 11 of the CPC may be noticed along with explanation V thereunder which read as follows:-*

**“Section 11. Res judicata-**

*No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

**Explanation V.-** *Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.”*

**68.** *Referring to Section 11 of CPC and Explanation V thereunder, in the case of **Yashwant Sinha & Ors. (Supra)**, at paragraphs 85 and 86 of the judgment, the Hon'ble Supreme Court observed as follows:-*

**“85.** *Where a party institutes a proceeding, if the proceeding is of a civil nature, there would be a cause of action. There would be reliefs sought on the basis of the cause of action. Materials are produced both in support and against the claim. The court thereafter renders a judgment either accepting the case or rejecting the case. When the court rejects the case, it necessarily involves refusing to grant the relief sought for by the plaintiff/petitioner. It may transpire that the petitioner may not press for certain reliefs. The court may, after applying its mind to the case, find that the petitioner is not entitled to the relief and decline the prayers sought. It may also happen that the*

court does refer to the reliefs sought but thereafter does not undertake any discussion regarding the case for the relief sought and proceeds to non-suit the party. It is clear that in this case, it is the last aspect which is revealed by the judgment sought to be reviewed.

**86.** A judgment may be silent in regard to a relief which is sought by a party. It is apposite, in this regard, to notice Section 11 CPC. If a decree is silent, as regards any relief which is claimed by the plaintiff, Explanation V to Section 11 declares that the relief must be treated as declined. The Explanation reads as follows:

**69.** It is established law that although Section 11 of the CPC refers to suits - a former suit and a later suit -, the principle of res judicata applies to different stages of the same suit. In this connection one may refer to the decision of the Hon'ble Supreme Court in the case of **Arjun Singh v. Mohindra Kumar and Ors reported at AIR 1964 SC 993**. In paragraph 10 of the reported judgment it was observed as follows:-

**“10.** That the question of fact which arose in the two proceedings was identical would not be in doubt. Of course, they were not in successive suits so as to make the provisions of s. 11 of the Civil Procedure Code applicable in terms. That the scope of the principle of res judicata is not confined to what is contained in s. 11 but is of more general application is also not indispute. Again, res judicata could be as much applicable to different stages of the same suit as to findings on issues in different suits. In this connection we were referred to what this Court said in *Satyadhyan Ghosal v. Sm. Deorajin Debi*, AIR 1960 SC 941 where Das Gupta, J. speaking for the Court expressed himself thus:

*“The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter - whether on a question of fact or on a question of law has been decided between two parties in one suit or proceeding and the decision is final either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding*

*between the same parties to canvass the matter again..... The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings.”*

**70.** *In my prima facie opinion, therefore, the issue of revocation of the leave granted to Mani Square for institution of its suit without holding pre-suit mediation, is res judicata. The learned Trial Court, therefore, committed no major error in passing the impugned order without first disposing of the application filed by the Kumars for revocation of leave under Section 12A of the CC Act granted by the Trial Court to Mani Square for institution of its suit and the Kumars have not suffered any prejudice on that score.*

**(emphasis supplied)**

**71.** *In fine, all the issues framed above, are answered in favour of the respondent/plaintiff and against the appellants. I find no reason to interfere with the order under appeal. The appeal and the connected application stand dismissed. There will be no order as to costs.*

**(emphasis supplied)**

**8.** It is also to be stated that parties herein have sought twice to transfer the instant suit being registered as T.S. Com No. 48 of 2023 by filing ALP No. 2 of 2025 (filed by the Mani Square) and further, by filing another ALP No. 10 of 2025 (filed by Kumars) before the Hon’ble High Court at Calcutta. However, in both the ALPs’, the Hon’ble High Court has been pleased to direct this Court to hear and dispose of the instant case along with the suit filed by Kumars being registered as Title Suit No. 469 of 2023 (renumbered as T.S. (Com) of 04 of 2025) before the Court of learned 4<sup>th</sup> Civil Judge (Senior Division) at Alipore.

9. Besides the aforesaid, this Court is now delving into the contentions of the Kumars as delineated in the instant application.

- a. As per Kumars' contention, there was no contemplation of any urgent interim relief in the instant suit and also there are no pleadings for urgency in the application filed by the Mani Square under Section 12A of the CCA. More so, if any such pleadings are there, such pleadings are artificial and false and the said facts have been pleaded in order to wriggle out the rigors of Section 12A of the CCA.
- b. During the course of hearing of the instant application, Mr. Sengupta, Ld. Advocate appearing for the Kumars has referred to the judgments of ***Yamini Monohar vs. TKD Keerthi*** reported in ***(2024) 5 SCC 815, Dhanbad Fuels Pvt. Ltd. vs. Union of India & Anr.*** reported in ***(2025) SCC Online SC 1129*** and ***Patil Automation Pvt. Ltd. & Ors. vs. Rakheja Engineers Pvt. Ltd.*** reported in ***(2022) 10 SCC 1*** passed by the Hon'ble Supreme Court of India.
- c. In view of the Mr. Sengupta, the judgement of *Yamini Monohar (supra)* has opened the window for the courts to examine whether the contemplation of "urgent interim relief" was genuine or not. Mr. Sengupta has submitted that the Hon'ble Supreme Court of India held that the prayer for "urgent interim relief" should not be a disguise or mask to wriggle out of and get over Section 12A of the

Commercial Courts Act. As regards, Mr. Sengupta has referred to the paragraph nos. 11 and 12 of the said judgment. After that, Mr. Sengupta has drawn the attention of this Court to judgment of *Dhanbad Fuels (supra)* particularly on sub-paragraph nos. (f), (g) and (h) of the paragraph no. 62 of the said judgment. Furthermore, he has heavily relied on the paragraph nos. 54, 55 and 113 of the judgment of the *Patil Automation (supra)* whereby the Hon'ble Apex Court held that the pre-instituted mediation is mandatory for commercial suits and in non-compliance, the plaint would be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908.

d. Relying on the aforesaid, Mr. Sengupta has submitted that at the time of *ex parte* hearing of the instant application filed by Mani Square under section 12A of CCA, a document dated 21<sup>st</sup> March, 2023 was relied on for substantiating its purported urgency but the said document has not be annexed with the application as it is evident from the court records. Moreover, the plaint does not have any reflection of such document.

e. As per Mr. Sengupta, at the time of granting the leave under Section 12A of the CCA, this Court found that an application under Order XXXIX Rule 1 and 2 filed and for the purpose of mere filing of such application, this Court granted the leave under Section 12A of the CCA. The same

is not permissible unless the Court is satisfied with the grounds of urgency and the same are expected to be genuine and not false or artificial with an intention to avoid pre-institution mediation.

f. In view of Mr. Sengupta, for due purpose of the disposal of the present application, this Court is only required to examine the urgency from the cause of action in the plaint, documents and the application under Section 12A of the Commercial Courts Act, 2015. In the instant case, according to Mr. Sengupta, the cause of action as pleaded in the plaint arose on 27<sup>th</sup> July, 2022 and thereafter, the present suit has been filed on 30<sup>th</sup> March, 2023 after expiry of around eight (08) months without any explanation. *Ergo*, the plaintiff i.e. Mani Square cannot avoid pre-institution mediation before approaching this Court, as per the provisions of law. On this score, Mr. Sengupta has referred to the following judgments:

- i. APD No. 15 of 2023 with C.S. No. 197 of 2022 [**Pranoy Kumar Saha vs. Rabindra Narayan Das**].
- ii. 2024 SCC Online Cal 1838 [**Proactive Ship Management Pvt. Ltd. vs. The Owners and Parties Interested in the Vessel Green Ocean**].
- iii. 2025 SCC Online Cal 4520 [**Pankaj Plastic Industries Pvt. Ltd. vs. Anita Anu**].

- iv. A.P.D.T. No. 16 of 2025 [***Pankaj Plastic Industries Pvt. Ltd. vs. Anita Anu***].
- v. 2025 SCC Online Cal 2426 [***Unique Entrepreneurs Pvt. Ltd. &Anr. vs. Really Agritech Pvt. Ltd. &Anr.***].
- vi. I.P. Com No. 5 of 2025 [***Inreco Entertainment Pvt. Ltd. vs. M/s. Nav Records Pvt. Ltd. (Nupur Audio) &Anr.***].
- vii. 2023 SCC Online Cal 6669 [***SRMB Srijan Private Ltd. vs. B.S. Sponge Pvt. Ltd.***].
- viii. C.S. No. 109 of 2023 [***Mr. Rohit Kumar Jha vs. Mr. Manish Daga.***].
- g. In respect of the point of *res judicata*, Mr. Sengupta has submitted that the reliefs in the applications under Order VII Rule 11 and under Order VII Rule 10 of the CPC are different from the present application for revocation of Section 12A leave. None of the fora have decided whether there was any contemplation of urgent relief in the suit. As per Mr. Sengupta, none of the earlier applications was for the revocation of leave under Section 12A of the CCA, then the provisions of Section 11 Explanation V of the CPC have no application and the same cannot be termed as a deemed refusal of the prayers.
- h. Mr. Sengupta has further submitted that mere dismissal of the Special Leave Petition without assigning any reasons

cannot be treated as a precedent and/or having any binding effect. As regards, he has sought for reliance on the judgment reported in **(2006) 3 SCC 359** [***Kunhayammed & Ors. vs. State of Kerala and Anr.***].

- i. Mr. Sengupta has further submitted that in both the proceedings being AO-COM 27 of 2025 as well as ALP 10 of 2025, the Kumars' contentions were that this Court had erred in hearing the I.A. No. 13 of 2023 (application for occupational charges) before disposing of the instant application i.e. I.A. No. 28 of 2025.
- j. In respect of the ratio of the judgment passed by the Hon'ble High Court at Calcutta in AO-COM 27 of 2025 (*supra*), Mr. Sengupta has contended that the Hon'ble Court has made a "*prima facie opinion*" in respect of *res judicata* and therefore, the same cannot be *ratio decidendi*. In view of Mr. Sengupta, the appeal had been preferred before the Hon'ble Division Bench against an interim order for occupational charges passed by this Court in an application under Order XXXIX Rule 1 and 2 read with Section 151 of the CPC. It is well settled that an opinion of Court and decision of Court is completely different as the former is a statement given by the Court for its conclusion whereas the later is a judgment and conclusion of the Court. In any event, a *prima facie* view is tentative and does not decide any facts or question of law in entirety. As

regards, Mr. Sengupta has relied on the judgment of the Hon'ble Supreme Court of India reported in **(2009) 5 SCC 694** [**State of Assam vs. Barak Upatyaka D.U. Karmachari Sanstha**].

**10.** In its counter-contention, Ld. Advocates appearing for the Mani Square has contended as follows:

- a. Mr. Dutta, Ld. Advocate appearing for the Mani Square has submitted that the plaintiff i.e. Mani Square had filed the instant application being I.A. No. 01 of 2023 alongwith the suit for dispensation of compliance with the pre-institution mediation under Section 12A of CCA wherein the plaintiff/petitioner had relied on a letter dated March 21, 2023 being the Annexure A therein, while contending the urgency in the matter and the same was taken cognizance by this Court while granting such leave and granting the order of injunction upon the passing the Orders dated 01.04.2023 and the said fact would highlight the urgency wherein the plaintiff/petitioner was constrained to approach this Court within a span of 10 days to seek appropriate reliefs in the matter. The defendants i.e. Kumars had let out the suit property to WB State Beverages Corporation Limited in the past and was again trying to lease out the suit property, which information was received by the plaintiff through a broker and thus, there was sufficient ground for urgency to file

the instant suit and seek leave under Section 12A for grant of urgent interim prayers.

- b. It is further submitted by Mr. Dutta that the said Order dated April 1, 2023 has never been challenged by the defendants and the instant application for revocation of leave granted under Section 12A of the CCA has been filed only after two (02) years from the date of such order passed on 01.04.2023.
- c. In view of Mr. Dutta, the issue of revocation of leave granted under Section 12A of CCA is not alien to the instant proceeding since the issue has been raised more than once and has been decided by all the Hon'ble Courts and as such, there remains nothing further to be adjudicated on the same issue which has travelled up to the Hon'ble Supreme Court and has also finally attained crystallization by an order passed by the Hon'ble Division Bench of the Hon'ble High Court at Calcutta on 11.09.2025 while deciding an appeal from the order passed in respect of occupancy charges.
- d. It has further been submitted by Mr. Dutta, Ld. Advocate for the Mani Square that the issue of 12A was first raised by the Kumars in the supplementary affidavit filed to the application under Order VII Rule 11. This Court rejected such application on contested hearing. In the Civil Revision Application being C.O. No. 954 of 2024 filed

against the said Order of rejection of the Order VII Rule 11, vide Order dated May 21, 2024, the Hon'ble Court had taken cognizance of the issue. The same issue was further raised by Kumars in their S.L.P. before the Hon'ble Apex Court and a bare perusal of the grounds and the questions of law would reveal that the point was raised before the Hon'ble Supreme Court. Kumars specifically formulated in the S.L.P. Question No. 5 under the heading Questions of Law and Ground nos. 5B and 5E. It is submitted by Mr. Dutta, Ld. Advocate for the Mani Square the Hon'ble Supreme Court of India in the Order dated 10<sup>th</sup> September, 2024 dismissed the said S.L.P. and the same is a speaking order, having perused all pleadings in the plaint and reasons for filing the application under Order VII Rule 11. As regards, Mr. Dutta has referred to paragraph nos. 85 to 87 of the judgment of the Hon'ble Supreme Court of India reported in **(2020) 2 SCC 338 [Yashwant Sinha & Ors. vs. Central Bureau of Investigation &Anr.]** and submitted that in terms of the said judgment, the issue could not be raised any further by the defendants as the same would tantamount to constructive *res judicata* and/or principles analogous thereto.

e. Mr. Dutta has further submitted that Kumars in AO-COM 27 of 2025 (*supra*) has further sought to raise the same issue before the Hon'ble High Court at Calcutta. But, the

Hon'ble High Court in its Order dated 11.09.2025 decided the said issue specifically in paragraph nos. 59 to 71 holding in favour of the plaintiff i.e. Mani Square herein that this Court had granted the leave under Section 12A upon being satisfied that urgent interim relief was required in the suit. As regards, Mr. Dutta has specifically referred to the paragraph no. 66 of the Order dated 11.09.2025. *Ergo*, as per Mr. Dutta, there can remain no iota of doubt with regard to the said issue nor can the issue be raised before this Court any further, under any circumstances as the same is barred by *res judicata* and/or *constructive res judicata*.

f. In respect of revelation of the letter dated 21<sup>st</sup> March, 2023, Mr. Bag, Ld. Advocate appearing for the plaintiff i.e. Mani Square has submitted that the contention of the defendants i.e. Kumars that the said letter was not the part of the plaint, is *mala fide* and is bereft of any factual or legal basis since the said letter is annexed to the application under Section 12A and also to the injunction application and the same was duly taken note of and considered by this Court during the injunction hearing on April 1, 2023.

g. In respect of Kumars' contention i.e. since the cause of action for the suit arose on July 27, 2022 and the plaint was filed in March, 2023, there was no urgency, Mr. Bag

has submitted that such contention of Kumars is baseless inasmuch as the Mani Square has shown that although the cause of action (for the purpose of limitation) to institute the instant suit arose on July 27, 2022, the urgency for filing of the plaint and for obtaining leave under Section 12A and injunction arose on March 21, 2023.

h. *Postremo*, the Ld. Advocates appearing for the plaintiff i.e. Mani Square have submitted that the judgments referred to by Mr. Sengupta, Ld. Advocate appearing for Kumars are clearly distinguishable on facts since none of the said judgments deal with a situation where the instant issue has been raised and already answered by the several Courts. There can be no scope of applying the *ratio decidendi* of such judgments to the instant facts and circumstances. More so, during the course of argument, Ld. Advocates appearing for the plaintiff/Mani Square have distinguished the said judgments.

**11.** Therefore, from the aforesaid contention of both sides, it is found that the Kumars are hammering on the issue that without considering the urgency delineated in the instant suit, this Court passed the Order dated 1<sup>st</sup> April, 2023 granting leave to the Mani Square. In this respect, it is thought to refer to the certain portions of the Order dated 1<sup>st</sup> April, 2023 passed by

this Court and the same is referred to the following of this instant order.

**12.** As such, whether this Court considered the urgency delineated in the instant case or not, is clear from above. More so, in this score, this Court is further sought reliance on the observation of the Hon'ble High Court in the Order dated 11<sup>th</sup> September, 2025 in connection with AO-COM 27 of 2025 wherein the Hon'ble Court held that "This the learned Court did being satisfied that urgent relief was required in the suit. An order of injunction was passed restraining the defendants in the suit being the Kumars from dealing with and/or encumbering and/or creating third party interest in respect of the suit property."

**13.** In respect of contention of Kumars that during consideration with regard to dispensation of leave, this Court did not consider the letter dated 21.03.2023 as the same is not in Court's record. But, such contention is not at all tenable. In the Order dated 1<sup>st</sup> April, 2023 it is clearly stated that "I have heard the submission as made by the Ld. Counsel in respect of this present application being no. I.A. No. 01 of 2022 on great length and perused and considered." and, further stated that "On prima facie contemplation, it appears that the suit contemplates an urgent relief by filing necessary application under Order XXXIX Rule 1 and 2 read with Section 151 of CPC. Therefore, the leave as sought for by the Plaintiff in this instant interlocutory application is granted". Therefore, it is to be stated that during passing and/or considering the leave under Section 12A of CCA and/or passing order in respect of I.A. No. 01 of 2023 this Court considered and/or taken into account of

the injunction application being registered as I.A. No. 02 of 2023. And, in the ordering portion in respect of I.A. No. 02 of 2023, it is recorded and/or noted the submission of the Ld. Counsel appearing on behalf of the Mani Square, which is as follows:

“Mr. Banerjee further claims that in respect of a letter dated 15<sup>th</sup> September, 2022 written by the West Bengal Beverage Corporation Limited in response to an application dated 12<sup>th</sup> September, 2022 under the RTI Act, 2005 has come to know that Defendants on and from 10<sup>th</sup> January, 2018 let out the said impugned property to the said West Bengal State Beverage Corporation Limited at a monthly rent of Rs. 18,30,224/-. The said step clearly signs the wrongful act of the Defendants. Then, Plaintiff has been able to ascertain that West Bengal State Beverage Corporation Limited after termination of the arrangement between the itself and the Defendants, has since vacated the suit property. As such the Defendants are unauthorized and wrongful and illegal occupation of the suit property and are trespasser thereon.

Mr. Banerjee further submits that Plaintiff has come to learn that the Defendants are seeking to create further third-party interest and/or alienate and/or encumber the remaining portion of the suit property in favour of the third party. The same is also exposted from the letter dated 21<sup>st</sup> March, 2023 received by the Plaintiff on 23<sup>rd</sup> March, 2023 that the Defendants are seeking to alienate and/or encumber and/or create third party interest or dealing with the suit property in favour of the third party. This is grossly prejudicial to the right, title and interest of the Plaintiff in respect of the suit property.”

**14.** This Court in the Order dated 1<sup>st</sup> April, 2023 further noted that “I have heard Ld. Counsel on behalf of the Plaintiff as well as perused all relevant documents as annexed with the plaint and with the instant application.” More so, after taking into consideration of the aforesaid submission and on perusal of the materials on record, this Court in the said Order held as “It is also prima facie proved that there is extreme urgency in the matter inasmuch as the Plaintiff unable to get some reliefs if may create a serious threat to it to oust the third party from the impugned suit property. As such, it is evident to grant some reliefs by way of ad interim injunction to the Plaintiff for the ultimatum of justice.”

**15.** Therefore, in view of above, the contention as advanced by Mr. Sengupta on behalf of Kumars becomes blur and nothing but an objection against the impugned Order dated 1<sup>st</sup> April, 2023 without filing any appeal to that effect. Mani Square being the plaintiff in the instant suit had filed the I.A. No. 01 of 2023 along with the instant suit for dispensation of compliance with the pre-institution mediation under Section 12A of the said Act wherein the Mani Square relied on the letter dated 21<sup>st</sup> March, 2023 while contending the urgency in the matter, and the same was taken cognizance by this Court while granting such leave and granting the order of injunction, which is more-fully averred hereinabove, and the said fact would highlight the urgency wherein the Mani Square being the plaintiff herein was constrained to approach before this Court.

**16.** However, in this respect, at the cost of repetition, it is further stated that the test of dispensation of leave under Section 12A of CCA has already been tested several times by the Hon'ble High Court even by the Hon'ble Supreme Court and lastly, in the Order dated 11.09.2025 the Hon'ble High Court conspicuously held the said issue as "*res judicata*". Even if the Order dated 11.09.2025 passed by the Hon'ble High Court is shelved aside, in spite of that the issue regarding dispensation of Section 12A leave has already become *res judicata* prior to passing of the said Order dated 11.09.2025 and such position has already been viewed by the Hon'ble High Court in the Order dated 11.09.2025. Therefore, after the aforesaid, the submission as advanced by Mr. Sengupta on behalf of Kumars cannot get any force. The facts of the instant case are unique and have been visited, re-visited and analyzed by this Court, the Hon'ble High Court at Calcutta and also by the Hon'ble Supreme Court of India and the issue of grant of leave under Section 12A of the said CCA no longer remains open to be analyzed or re-analyzed at the instance of the defendants i.e. Kumars.

**17.** Mr. Sengupta has contended that the Kumars did not file the instant application as the right to file the instant application arose after the Judgment of ***Dhanbad Fuels Private Limited vs. Union of India and Anr*** reported in **(2025) SCC Online SC 1129** by the Hon'ble Supreme Court. In that respect, it is stated that the fact of the *Dhanbad Fuel's* case (*supra*) is far different

with the instant case. In the instant case the issue embedded herein has already been tested up to the Hon'ble Apex Court. For the sake of argument, if the ratios of the aforesaid Judgments of the Hon'ble Apex Court in ***Yamini Manohar vs. T.K.D. Keerthi*** reported in **(2024) 5 SCC 815** as well as *Dhanbad Fuel's* case (*supra*) are applied in the instant case, then it can be said that this Court considered the urgency as contemplated by the plaintiff being the Mani Square herein at the time of dispensation of leave under Section 12A of CCA as regards, this Court relies on the ratio of the *Yamini Manohar's* case (*supra*) wherein the Hon'ble Apex Court held that the words 'contemplate urgent interim relief' in Section 12-A(1) of the CCA, with reference to the suit, should be read as conferring power on the court to be satisfied. It is appropriate to reproduce the view of the Hon'ble Apex Court in *Yamini Manohar* case (*supra*) in *verbatim* as under:

*“10. We are of the opinion that 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. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad-interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order VII, Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order VII, Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely, (i) prima facie case, (ii)*

*irreparable harm and injury, and (iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.*

*11. 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 CC 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 up to the plaintiff alone to decide whether to resort to the procedure under Section 12A of the CC Act. An 'absolute and unfettered right' approach is not justified if the pre-institution mediation under Section 12A of the CC Act is mandatory, as held by this Court in Patil Automation Private Limited (supra).*

*12. The words 'contemplate any urgent interim relief' in Section 12A(1) of the CC 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 the legislative object/intent behind the enactment of section 12A of the CC Act is not defeated. The commercial court should examine the nature and the subject matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff.*

From the above, it is to be stated that the decision of *Yamini Monohar (supra)* has been rendered in a completely different sets of facts by the Hon'ble Supreme Court of India holding that the interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of CCA. In the said decision, the

Hon'ble Apex Court also laid down the law stating that the facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff and that the Court should examine the nature and subject matter of the suit, the cause of action and the prayer for urgent relief. In the instant case, while considering the leave under Section 12A of CCA, this Court considered the issue from the standpoint of the plaintiff i.e. Mani Square by granting leave while passing order of injunction in favour of the plaintiff/Mani Square by the Order dated 1<sup>st</sup> April, 2023.

Besides above, this Court also relies on the ratio of the decision *Dhanbad Fuels* case (*supra*) wherein the Hon'ble Apex Court upon considering *Yamini Monohar* case (*supra*) along with others, held that Section 12A is mandatory, but its mandatory rejection consequence was not applicable to suits filed prior to 20.08.2022. Infrastructural delay in implementing mediation rules and SOPs further excuse non-compliance. The concluding portion of the Hon'ble Apex Court in *Dhanbad Fuels* (*supra*) case is reproduced hereunder:

*"In light of the aforesaid discussion, we summarise our findings as under:*

- a. The decision of this Court in Patil Automation (supra) lays down the correct position of law as regards Section 12A of the 2015 Act by holding it to be mandatory in nature.*
- b. As held in paragraph 104 of the decision in Patil Automation (supra), the declaration of the mandatory nature of Section 12A of the 2015 Act relates back to the date of the Amending Act.*
- c. As held in paragraph 113.1 of the decision in Patil Automation (supra), any suit which is instituted under the 2015 Act*

*without complying with Section 12A is liable to be rejected under Order VII Rule 11. However, this declaration applies prospectively to suits instituted on or after 20.08.2022.*

*d. A suit which contemplates an urgent interim relief may be filed under the 2015 Act without first resorting to mediation as prescribed under Section 12A of the 2015 Act.*

*e. Unlike Section 80(2) of the CPC, leave of the court is not required to be obtained before filing a suit without complying with Section 12A of the 2015 Act.*

*f. The test for “urgent interim relief” is if on an examination of the nature and the subject matter of the suit and the cause of action, the prayer of urgent interim relief by the plaintiff could be said to be contemplated when the matter is seen from the standpoint of the plaintiff.*

*g. Courts must also be wary of the fact that the urgent interim relief must not be merely an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12A of the 2015 Act.*

*h. 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 test for “urgent interim relief” is satisfied notwithstanding the actual outcome on merits.*

*i. Suits instituted without complying with Section 12A of the 2015 Act prior to 20.08.2022 cannot be rejected under Order VII Rule 11 on the ground of non-compliance with Section 12A unless they fall within the exceptions stipulated in paragraph 113.2 and 113.3 of the decision in Patil Automation (supra).*

*j. In suits instituted without complying with Section 12A of the 2015 Act prior to 20.08.2022 which are pending adjudication before the trial court, the court shall keep the suit in abeyance and refer the parties to time bound mediation in accordance with Section 12A of the 2015 Act if an objection is raised by the defendant by filing an application under Order VII Rule 11, or in cases where any of the parties expresses an intent to resolve the dispute by mediation.”*

From the aforesaid ratio, it is also to be stated that the Hon’ble Supreme Court in the said decision laid down that the test for urgent interim relief should be seen from the standpoint

of the plaintiff which has been laid down in *Yamini Monohar case (supra)*.

**18.** In respect of judgments as well as the decisions as referred to and/or relied upon by Mr. Sengupta during the course of hearing of the instant application are clearly distinguishable on facts inasmuch as none of the said decisions and/or judgments deals with a situation where the instant issue has been raised and already answered by several Hon'ble Courts. Therefore, it is opined that there can be no scope of applying the *ratio decidendi* of such judgments to the instant facts and circumstances as the same are not tallying with the factual matrix of the instant case.

**19.** Mr. Sengupta's next contention was that the Hon'ble High Court in its Order dated 11.09.2025 had *prima facie* "opined" that the issue of dispensation of Section 12A of CCA is *res judicata* but not "decided" and/or "held" that the said issue is *res judicata*. As regards, at the cost repetition, it is stated that in the Order dated 11.09.2025, the Hon'ble High Court framed a issue being "(d) Are the appellants right in contending that the learned Judge ought not to have passed the impugned order without first deciding the application of the appellants for revocation of leave granted to Mani Square under Section 12A of the CC Act?" as one of the issues and the Hon'ble High Court has been pleased to hold that "*..In fine, all the issues framed above, are answered in favour of the respondent/plaintiff and against the appellants. I find no reason to interfere with the order under appeal. The appeal and the connected application stand dismissed. There*

*will be no order as to costs.*” Therefore, it is seemed that the argument advanced by Mr. Sengupta in this regard may not hold ground. In this respect, this Court refers to the Section 11 of the Code of Civil Procedure, 1907 which read as follows:

*Section 11. Res judicata-*

*No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

*Explanation V.- Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.*

**20.** However, Mr. Sengupta during the course of hearing has referred to the Section 11 and submitted that the applicability of the Section 11 of CPC is limited to the suit. Issue arisen in an interlocutory application cannot be decided by the said Section 11 of CPC. However, as regards, this Court further relies on the observation made by the Hon’ble High Court in the Order dated 11.09.2025 which read as:

*“69.It is established law that although Section 11 of the CPC refers to suits - a former suit and a later suit -, the principle of res judicata applies to different stages of the same suit. In this connection one may refer to the decision of the Hon’ble Supreme Court in the case of Arjun Singh v. Mohindra Kumar and Ors reported at AIR 1964 SC 993.In paragraph 10 of the reported judgment it was observed as follows:-*

*“10. That the question of fact which arose in the two proceedings was identical would not be in doubt. Of course, they were not in successive suits so as to make the provisions of*

*s. 11 of the Civil Procedure Code applicable in terms. That the scope of the principle of res judicata is not confined to what is contained in s. 11 but is of more general application is also not in dispute. Again, res judicata could be as much applicable to different stages of the same suit as to findings on issues in different suits. In this connection we were referred to what this Court said in Satyadhyan Ghosal v. Sm. Deorajin Debi, AIR 1960 SC 941 where Das Gupta, J. speaking for the Court expressed himself thus:*

*“The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter - whether on a question of fact or on a question of law has been decided between two parties in one suit or proceeding and the decision is final either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again..... The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings.”*

**21.** Therefore, in view of above, this Court opines that the issue as raised by the defendants i.e. Kumars in the instant application being registered as I.A. No. 28 of 2025 has no merit to be considered by this Court. As such, the instant application deserves to be dismissed and accordingly, the same is dismissed.

Hence, the I.A. No. 28 of 2025 is hereby **disposed off**.

In compliance of the direction of the Hon’ble High Court at Calcutta by the Order dated 27.08.2025 passed in connection

with ALP 10 of 2025, following date is fixed for hearing of the applications being registered as I.A. No. 02 of 2023 and I.A. No. 03 of 2023 simultaneously inasmuch as the issues raised in the aforesaid applications are akin to be considered conjointly:

On **29.10.2025 from 2:45 p.m. to 3:30 p.m.** for hearing of the applications being registered as I.A. No. 02 of 2023 and I.A. No. 03 of 2023.

Both parties to come ready positively.

Parties to act on the basis of the downloaded copy of the order sheet from the website/E-court App.

Dictated and corrected by me,

Sd/-

Judge, Commercial Court at Alipore,  
for South 24 Parganas, Purba Midnapore,  
Paschim Midnapore & Jhargram

Sd/-

Judge, Commercial Court at Alipore,  
for South 24 Parganas, Purba Midnapore,  
Paschim Midnapore & Jhargram

**Later:**

One application has been filed by Mr. Jayanta Kumar Mukherjee being one of the Joint Receivers appointed in connection with the instant suit by the Order no. 62 dated 22.07.2025 whereby Mr. Mukherjee, Ld. Receiver has prayed for modification and/or correction the aforesaid Order no. 62 dated 22.07.2025 to the extent that the name of the said Joint Receiver “Mr. Jayanta Mukherjee” would be “Mr. Jayanta Kumar Mukherjee” and further mobile number of him would be “9674435170” instead of “7980406038” for carrying out fruitful compliance of the direction of this Court. Copy of the said

application has been duly received by both parties without raising any objection.

Heard the Ld. Receiver and also the Ld. Advocates appearing for both sides.

Considered.

As the prayer prayed for in the aforesaid application is formal in nature and further not being objected by any of the parties, therefore, the same is allowed.

Accordingly, the Order no. 62 dated 22.07.2025 is hereby corrected to the aforesaid effect averring that the name of Joint Receiver “Mr. Jayanta Mukherjee” would be “**Mr. Jayanta Kumar Mukherjee**” and the mobile number of him would be “**9674435170**” instead of “7980406038”.

Parties to act on the basis of the downloaded copy of the order sheet from the website/E-court App.

Dictated and corrected by me,

Sd/-

Judge, Commercial Court at Alipore,  
for South 24 Parganas, Purba Midnapore,  
Paschim Midnapore & Jhargram

Sd/-

Judge, Commercial Court at Alipore,  
for South 24 Parganas, Purba Midnapore,  
Paschim Midnapore & Jhargram