

12.11.2024 Present: Mr. Neeraj Gupta, Senior Advocate with Ms. Shradha Karol, Advocate, for the plaintiff.

M/s Rajeshwari H. and Garima Joshi, Advocates through VC and Mr. Jyotirmay Bhatt, Advocate for the defendants.

**OMP No. 67 of 2024**

Reply to this application has not been filed by the non-applicants. Learned Counsel appearing for the non-applicants submits that the application filed under Order VII Rule XI of the Code of Civil Procedure be treated as reply to this application. Her statement is taken on record.

By way of this application filed under Section 12-A of the Commercial Courts Act, 2015, the applicant/plaintiff is seeking exemption from conducting pre-litigation mediation in the light of urgent relief sought in the suit.

Having heard learned Senior Counsel appearing for the applicant as also learned Counsel for the non-applicants, this Court is of the considered view that this application is not maintainable. Section 12-A of the Commercial Courts Act *inter alia* envisages that a suit which does not contemplate any urgent interim relief under the Commercial Courts Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central

Government. Meaning thereby that until and unless, there is an interim relief sought and made out while filing a Civil Suit under the Commercial Courts Act, the suit is not maintainable and it mandatorily has to go through the process of pre-institution mediation and settlement.

That being the case, this Court is of the considered view that a plaintiff cannot approach the Court and file an application under Section 12-A of the Commercial Courts Act, seeking exemption from conducting pre-litigation mediation. This is neither the letter nor the spirit of Section 12-A of the Commercial Courts Act. A plaintiff, who approaches the Court under the Commercial Courts Act without first resorting to the pre-institution mediation and settlement, has to demonstrate that there is an urgent interim relief being prayed for by the plaintiff to which the plaintiff is entitled to and if the plaintiff is able to convince the Court, then the Court shall not insist upon for pre-institution mediation and settlement.

In the present case, as an application under Order 39, Rules 1 and 2 of the Code of Civil Procedure has been filed and on the other hand, an application under Order VII, Rule XI of the Civil Procedure Code has been preferred by the defendants, seeking rejection of the plaint on the ground that the plaintiff is not entitled for any urgent interim relief, this Court is of the

considered view that the effect of Section 12-A of the Commercial Courts Act qua the institution of this civil suit shall be determined by this Court on the strength of the averments made in the plaint as well as in the application filed under Order 39, Rules 1 and 2 of the Code of Civil Procedure, as also the application filed under Order VII, Rule XI of the Civil Procedure Code by the defendants.

In the light of the above observations, this application is dismissed as not maintainable.

**OMPs No. 68 and 921 of 2024**

Heard for some time. List for continuation, as prayed for on 19.11.2024.

**(Ajay Mohan Goel)**  
**Judge**

November 12, 2024  
*(narender)*