





the said Court, whereby the application filed by the Petitioner under Order VII Rule 11 of CPC, seeking rejection of the plaint on the ground of non-compliance with the mandatory requirement of pre-institution mediation under Section 12-A of the Commercial Courts Act, 2015 was rejected. Further, the rejection of application filed by the petitioner vide order dated 19.05.2025 and to recall the order dated 19.09.2025 are also impugned herein.

2. The facts, briefly stated are that the Opposite Party, as Plaintiff, instituted Civil Suit No. 228 of 2025 on 13.05.2025 seeking, inter alia, a decree of permanent and mandatory injunction alleging infringement of its copyright in respect of certain artistic works relating to the depiction of 'Lord Jagannath' and a character described as 'Jagan.' Along with the plaint, the Plaintiff filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure seeking ad interim injunction, as well as an application seeking exemption from compliance with the requirement of pre-institution mediation under Section 12-A of the Commercial Courts Act, 2015 on the ground of urgency.



By order dated 19.05.2025, the Commercial Court granted exemption from pre-institution mediation. The Petitioner, upon entering appearance, filed an application under Order VII Rule 11 CPC contending that the suit was not maintainable for want of compliance with Section 12-A of the Act, as no genuine urgency was disclosed in the plaint or the interlocutory application. It was further stated that the cause of action was stated to have arisen in May 2024, whereas the suit was instituted only in May 2025, stating absence of plea of urgency.

The Commercial Court, upon consideration, rejected the said application by the impugned order holding that the suit contained urgent interim relief and therefore, would fall within the exception under Section 12-A of the Act. Being aggrieved, the present revision has been filed.

3. Heard Mr. S. Routray, learned counsel for the Petitioner-Defendant No.1 and Ms. Pami Rath, learned Senior Counsel with Ms. S. Gumansingh learned counsel for the Opposite party-plaintiff.



4. Mr. Routray would argue that that the Court below committed illegality in rejecting the application under Order VII Rule 11 CPC by failing to appreciate that compliance with Section 12-A of the Commercial Courts Act is mandatory in nature, as held by the Supreme Court in several judgments. He submits that the exemption from pre-institution mediation can be granted only where the plaintiff genuinely seeks urgent interim relief, and not where such urgency is illusory or created merely to evade the statute. It is his submission that a bare reading of the plaint would show that the plaintiff has himself pleaded that the alleged cause of action arose in May 2024 and continued till February, 2025, yet the suit was instituted only on 13.05.2025, i.e., after a considerable lapse of time. According to him, such delay is inconsistent with any plea of urgency and clearly demonstrates that the exemption sought was a mere device to bypass the mandatory requirement of pre-institution mediation.

He further submits that the conduct of the plaintiff also fails to justify the plea of urgency inasmuch as the application for injunction was served upon the petitioner only



on 27.08.2025, i.e., after more than three months from the date of service of the plaint. This, according to him, indicates that no immediate relief was required. He also argues that the order dated 19.05.2025 granting exemption from pre-institution mediation is a non-speaking order passed in absence of any reason as to urgency and therefore, suffers from non-application of mind.

5. Per contra, Ms. Rath would argue that the suit pertains to continuing infringement of copyright, thereby giving rise to a recurring cause of action. She submits that the Plaintiff has specifically sought urgent interim relief under Order XXXIX Rules 1 and 2 of CPC to restrain ongoing violation of its rights, and therefore, the case squarely falls within the exception under the proviso to Section 12-A of the Commercial Courts Act.

She further submits that at the stage of considering an application under Order VII Rule 11 of CPC, the Court is required to confine its examination to the averments made in the plaint and cannot enter into a detailed examination of the defence raised by the Defendant. The plea of urgency is to be



assessed on the basis of the pleadings at the time of institution, and not on subsequent procedural aspects such as the timing of service of interlocutory applications. She also argues that delay in instituting the suit does not by itself defy urgency in cases involving continuing infringement, where the cause of action is recurring in nature.

6. This Court has heard learned counsel for the parties at length and carefully considered their respective submissions on the core issue involved, i.e., whether compliance with Section 12-A of the Commercial Courts Act was mandatory in the facts of the present case or whether the Court below was justified in entertaining the suit by granting exemption on the ground of urgency as made out in the plaint.

7. Before advertng to the facts of the present case, it would be apposite to refer to the decision of the Supreme Court in ***Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.***<sup>1</sup>, wherein it was held that Section 12-A mandates pre-institution mediation in commercial disputes which do not contemplate urgent interim relief. At the same time, the Supreme Court recognized that where the suit contemplates urgent interim

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<sup>1</sup>(2022) 10 SCC 1



relief, the requirement of pre-institution mediation stands exempted.

Thus, the legal position is no longer *res integra* that although Section 12-A is mandatory in nature, the proviso permits institution of a suit without resorting to pre-institution mediation, provided the Court is satisfied that the suit involves urgent interim relief. The satisfaction as to urgency is required to be arrived at on the basis of the pleadings and the nature of reliefs sought by the plaintiff.

8. In view of the above position of law, this Court shall now proceed to examine the averments made in the plaint and the interlocutory application filed before the learned Court below to ascertain whether the Court below was justified in entertaining the suit by exempting the plaintiff from complying with the requirement of pre-institution mediation or not.

9. A careful reading of the plaint reveals that the Plaintiff has alleged infringement of its copyright in respect of certain artistic works relating to the depiction of 'Lord Jagannath' and the character 'Jagan' and has further asserted that such infringement is continuing in nature. The plaint



(which seeks the relief of permanent injunction), read along with the application under Order XXXIX Rules 1 and 2 CPC, indicates that the Plaintiff has sought immediate injunctive relief to restrain the alleged on-going acts of infringement.

10. The principal contention of the Petitioner is that the Plaintiff himself pleaded that the cause of action arose in May 2024, whereas the suit was instituted only on 13.05.2025, thereby negating any claim of urgency. The said submission of Mr. Routray is not tenable for the reason that in cases involving continuing or recurring causes of action, particularly in matters of alleged infringement, mere delay in instituting the suit does not, by itself, extinguish the element of urgency. So long as the alleged infringement continues, the necessity for interim protection may still subsist. Judgment of the Supreme Court in this regard may be had to the case of ***Novenco Building & Industry v. Xero Energy Engineering Solutions (P) Ltd.***<sup>2</sup>

*20. The legal test distilled from the aforesaid decisions for the purposes of rejection of the plaint and for adjudication of interim relief can be culled out as follows:*

- (i) Section 12A mandatorily requires pre-institution mediation for commercial suits, non-compliance of which would ordinarily render the plaint institutionally defective.*

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<sup>2</sup>2025 INSC 1256 : 2025 SCC OnLine SC 2278



- (ii) A plaintiff can be exempted from the requirement of Section 12A only when the plaint and the documents attached with it clearly show a real need for urgent interim intervention. A wholesome reading of the plaint and the material annexed to the plaint ought to disclose the need for urgent relief.*
- (iii) The court must look at the plaint, pleadings and supporting documents to decide whether urgent interim relief is genuinely contemplated. The court may also look for immediacy of the peril, irreparable harm, risk of losing rights/assets, statutory timelines, perishable subject-matter, or where delay would render eventual relief ineffective.*
- (iv) A proforma or anticipatory prayer for urgent relief used as a device to skip mediation will be ignored and the court can require the parties to comply with Section 12A of the Act.*
- (v) The court is not concerned with the merits of the urgent relief, but if the relief sought seems to be plausibly urgent from the standpoint of the plaintiff the court can dispense with the requirement under Section 12A of the Act.*

### **ANALYSIS**

21. Thus, the question whether a suit 'contemplates any urgent interim relief' needs to be examined on the touchstone of the aforementioned criteria. The issue which arises for consideration in this appeal is whether a suit alleging continuing infringement of patent and design rights, accompanied by a prayer for interim injunction, can be said to contemplate urgent relief within the meaning of Section 12A of the Act, notwithstanding certain delay in its institution.

22. The subject matter of the present action is continuing infringement of intellectual property. Each act of manufacture, sale, or offer for sale of the infringing product constitutes a fresh wrong and recurring cause of action. It is well settled in law that mere delay in bringing an action does not legalise an infringement and the same cannot defeat the right of the proprietor to seek injunctive relief against the dishonest user<sup>5</sup>. The appellant has pleaded that Xero Energy, its former distributor, has dishonestly appropriated its proprietary designs and patents to manufacture and market identical fans under deceptively similar name. The accompanying material demonstrates that such infringing activity is continuing and causing



*immediate and irreparable harm to the appellant's business reputation, goodwill and proprietary rights.*

*23. From the standpoint of the appellant, each day of continuing infringement aggravates injury to its intellectual property and erodes its market standing. The urgency, therefore, is inherent in the nature of the wrong and does not lie in the age of the cause but in the persistence of the peril. The court cannot be unmindful of the fact that intellectual property disputes are not confined to the private realm. When imitation masquerades as innovation, it sows confusion among consumers, taints the market place and diminishes faith in the sanctity of the trade. The public interest, therefore, becomes the moral axis upon which the urgency turns. Therefore, the public interest element, need to prevent confusion in the market and to protect consumers from deception further imparts a colour of immediacy to the reliefs sought.*

*24. The appellant's prayer for injunction cannot be characterised as mere camouflage to evade mediation. It is a real grievance founded on the continuing nature of infringement and irreparable prejudice likely to be caused by the delay. The court must look beyond time lag and evaluate the substance of the plea for interim protection. The insistence of pre-institution mediation in a situation of ongoing infringement, in effect, would render the plaintiff remediless allowing the infringer to continue to profit under the protection of procedural formality. Section 12A of the Act was not intended to achieve such kind of anomalous result.*

11. In the present case, the pleadings disclose that the alleged acts of infringement are continuing in nature. Therefore, at this stage, it cannot be conclusively held that the plea of urgency is illusory merely on account of delay in approaching the Court.

12. Even otherwise, this Court observes that in disputes relating to intellectual property rights, where



allegations of infringement are raised, the nature of injury complained of is often continuing and capable of causing irreparable harm to the rights holder. In such cases, if the pleadings disclose a *prima facie* case of on-going violation, the requirement of pre-institution mediation, though ordinarily mandatory, cannot be applied in a manner so as to defeat the very purpose of granting timely and effective relief. The object of Section 12-A is to encourage settlement in commercial disputes, however, the said provision itself recognizes, by way of proviso, that in cases involving urgent interim relief, recourse to mediation may be dispensed with.

13. As regards the contention relating to delayed service of the interim injunction application is concerned, the same pertains to post-institution conduct. While such delay may reflect procedural lapse, the same cannot be determinative of the existence or otherwise of urgency at the time of institution of the suit. The test under Section 12-A is to be applied with reference to the pleadings at the threshold, and not on the basis of subsequent events alone.



14. The further contention raised by the Petitioner that the order dated 19.05.2025 granting exemption from pre-institution mediation is a non-speaking order is not acceptable. It is true that recording of reasons is an essential facet of judicial orders, however, the exemption was granted at the initial stage upon consideration of the pleadings. The order dated 19.05.2025 itself shows that the Court below applied its mind taking into account facts of the case and has taken a view that the suit contained urgent interim relief. Such a view, in the facts of the case being a plausible one, does not call for interference in revisional jurisdiction, particularly when it has not been demonstrated as to how such finding is wrong.

For better appreciation, the order dated 19.05.2025 is reproduced below-

*“Heard from the plaintiff. In this suit, the plaintiff has filed injunction regarding his infringement of copy right in the art work of lord Jagannath relating to the character 'Jagan'. In my opinion, the above interim relief is urgent in nature. Accordingly, taking into account the above facts of this case, the petition is allowed. Accordingly, the suit is admitted. Issue summons to the defendants in both the ways. Put up on 07-07-2025 for awaiting S.R. & P.A.”*

It is well settled that the scope of interference under Section 115 of the Code of Civil Procedure is limited and



supervisory in nature. Unless the order impugned suffers from jurisdictional error, perversity, or material irregularity, this Court would not be justified in interfering with the same. In the present case, no such infirmity has been demonstrated. The Court below being subjectively satisfied, this Court exercising revisional jurisdiction is not persuaded to embark upon the exercise to substitute its view for that of the Court below.

15. For the foregoing reason therefore, the application filed by defendant No. 1 for rejection of the plaint cannot be allowed. The order refusing to recall the order dated 19.09.2025 also does not warrant interference.

16. In the result, the Civil Revision being devoid of merit, is dismissed.

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**Sashikanta Mishra,**  
**Judge**

**Orissa High Court, Cuttack**  
**The 31<sup>st</sup> March, 2026/ A.K. Rana, P.A.**