IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 6995 OF 2025

IN

COMM. SUIT NO. 109 OF 2023

Oberoi Realty Limited **.... *Applicant***

IN THE MATTERS BETWEEN

Exquisite Co-operative Housing

Society Ltd. and Ors. **..... *Plaintiffs***

: Versus :

Oberoi Realty Limited and Ors. **.... *Defendants***

Mr. Aspi Chinoy, Senior Advocate with Mr. Zal Andhyarujina, Senior Advocate *with Mr. Rohaan Cama, Mr. Karan Bhide, Mr. Pheroze Mehta, Mr. Krishna Moorthy, Ms. Bhakti Mehta, Ms. Shubadha Khandekar and Ms. Sarrah Darugar i/b. Wadia Ghandy & Co., for Defendant No.1 and for the Applicant in IA No. 6995 of 2025.*

Dr. Birendra Saraf, Senior Advocate *with Mr. Aman Saraf, Mr. Tushar Gujjar, Mr. Deepak Singh and Ms. Krina Kothari i/b. S.L. Partners, for the Plaintiff.*

Mr. Sunil C. Khandagale *i/b. Ms. Komal Punjabi, for MCGM-Defendant Nos.2 to 5.*

CORAM : SANDEEP V. MARNE, J.

Reserved On : 11 August 2026.

Pronounced On: 21 August 2026.

ORDER:

1) This Interim Application is filed by Defendant No.1 seeking rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 **(the Code)** read with Section 151 of the Code on account of failure on the part of the Plaintiff to exhaust mandatory pre-litigation mediation under Section 12A of the Commercial Courts Act, 2015 **(CC Act).**

2) Plaintiff No.1 is a co-operative housing society registered under the provisions of Maharashtra Cooperative Societies Act, 1960 **(MCS Act)**. It comprises of 801 members, who are flat occupiers. Plaintiff Nos. 2 to 4 are the flat purchasers and members of Plaintiff No.1. The first Defendant is a developer and a promoter within the meaning of Section 2(c) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**). Defendant Nos.2 to 5 are the statutory authorities under the Mumbai Municipal Corporation Act, 1888 **(MMC Act)**.

3) The subject matter of the present suit is that a residential project known as Exquisite comprising of Towers A-4 and 5 was constructed by Defendant No.1. The suit is filed by the Plaintiffs seeking a declaration that Plaintiff No.1-society is entitled to undivided right, title and interest to the extent of 25.33% in respect of Plot No. B/larger layout, as well as pro-rata share of FSI, TDR and all other benefits arising out of the same. Plaintiffs have also sought injunction against Defendant No.1 from reducing Plaintiffs' share of 25.33% of the undivided right in Plot No.B/larger layout property. Plaintiffs have also sought a declaration that Plaintiff No.1-society is entitled for an area of 44905.25 sq.mts of undivided share in Plot No.B/larger layout property. Plaintiffs have also sought injunction against Defendant No.1 from carrying out any construction and/or utilizing FSI of Plaintiff No.1 to the extent of 44,905.25 sq.mts or any other additional FSI arising out of the same due to change in the FSI regime. Plaintiffs have also sought injunction against Defendant Nos. 2 to 5 from granting any permissions/approvals in respect of the application of Defendant No. 1 for carrying out any construction utilizing the FSI of Plaintiff No. 1 to the extent of 44,905.25 sq. mtrs. Plaintiffs have also sought conveyance of their share in the land and the FSI. Plaintiffs have also challenged certain clauses of the Purchase Agreements as being violative of the provisions of MOFA. This is the broad framework of the suit. Alternatively, Plaintiffs have also sought a decree for compensation and damages for the utilization of FSI of Plaintiff No.1 in the sum of Rs.500 crores.

4) Defendant No.1 has appeared in the suit and has filed Written Statement. The Interim Application has been filed seeking rejection of plaint on the ground that the Plaintiff has not exhausted the remedy of pre-litigation mediation available under Section 12A of the CC Act and that therefore the suit is not maintainable. Plaintiffs have filed affidavit-in-reply opposing the Application. Accordingly, the Application is taken up for hearing and final disposal.

5) Mr. Chinoy, the learned Senior Advocate appearing for Defendant No.1/Applicant submits that the suit is not maintainable in view of provisions of Section 12A of the CC Act as Plaintiffs have failed to exhaust the mandatory pre-litigation mediation before instituting the suit. He submits that the provisions of Section 12A mandating compulsory exhaustion of the remedy of pre-litigation mediation is not an empty formality but has been held to be compulsory and mandatory, and failure to comply with the same renders the suit not maintainable. He relies on judgment of the Apex Court in ***Yamini Manohar Versus. T.K.D. Keerthi*** [1] in support of his contention that mere inclusion of prayer for urgent interim relief cannot be a reason for giving a go-bye to the provisions of Section 12A of the CC Act. That prayer for urgent interim relief cannot be a disguise or a mask to wriggle out or get over Section 12A of the CC Act. That in the present case, camouflage and guise to bypass the statutory mandate of pre-litigation mediation is more than apparent and can easily be established. That the words 'contemplate any urgent relief' used in Section 12A of the CC Act means that the Suit must 'contemplate' the need for urgent interim relief meaning thereby that the plaint, documents and facts must show and indicate such a need. Mr. Chinoy further submits that the words 'urgent relief' must necessarily mean such critical urgency or immediacy that the Plaintiff cannot wait for statutory pre-institution mediation period of 3 months. He relies on judgment of this Court in ***Image Developer & Anr. Versus. Kamla***

1 (2024) 5 SCC 815

Landmarc Real Estate Holding Private Limited & Ors. [2]. He also relies on judgment of the Delhi High Court in ***Exclusive Capital Limited Versus. Clover Media Private Limited and others*** [3] in which it is held that provisions of Section 12A can be given a go-bye where the Plaintiff is genuinely precluded from awaiting the outcome of the mediation mechanism due to impending risk of irretrievable harm. The fact that the Interim Application was not moved/circulated for interim reliefs for 2 and 1/2 years after filing of the suit, demonstrates that there was, in fact, no real need for urgent interim relief. In support, he relies on judgment of this Court in ***Ekta Housing Private Limited Versus. Shraddha Shelters Private Ltd and others*** [4] and ***Kamla Landmarc*** (supra) and ***Tech Data Advanced Solutions (India) Ltd. Versus. National Thermal Power Corporation Limited*** [5].

6) Mr. Chinoy further submits that Plaintiffs' plaint and their conduct post institution of the suit establishes that they did not genuinely contemplate urgent interim relief and that the Plaintiffs' prayer for interim reliefs was only a guise to get over the statutory mandated pre-litigation mediation under Section 12A. That Plaintiffs filed their suit in March 2023 although they were aware that from December 2021, that Defendant No.1 had commenced construction of the additional buildings. That after filing of the suit in March 2023, the Plaintiff did not move the same for interim reliefs for next 2 and 1/2 years which establishes that their plaint does not genuinely contemplate urgent interim relief within

2 2025 SCC Online Bom 3284

3 2025 SCC Online Del 5221

4 IA No. 920 of 2024 decided on 11.11.2024

5 IA(L)No. 33574 of 2022 in Com.Suit No. 153 of 2022 decided on 10.09.2025

the meaning of Section 12A of the CC Act. That the fact that construction of additional buildings by Defendant No. 1 has been ongoing since March 2023 does not alter or detract from the position stated above, and the said fact does not demonstrate any genuine contemplation of urgent interim relief. That Plaintiffs have waited much beyond the 3 months' timeframe required for mandatory pre-litigation statutory mediation. He therefore submits that the Suit is not maintainable in view of non-compliance with the provisions of Section 12A of the CC Act and that therefore the plaint deserves to be rejected and the Suit deserves to be dismissed.

7) Dr. Saraf, the learned Senior Advocate appearing for the Plaintiffs opposes the Interim Application submitting that under Section 12A of the CC Act only a Suit which does not contemplate any urgent interim relief cannot be instituted without exhausting the remedy of pre-litigation mediation. That urgent interim reliefs ought to be contemplable from the standpoint of the Plaintiff as held by the Apex Court in ***Dhanbad Fuels Private Limited Versus. Union of India And another***[6]. That the facts and circumstances of the case have to be considered holistically from the standpoint of the Plaintiff. That the Court must examine the nature and subject matter of the suit, the cause of action and the prayer for interim relief. The word 'contemplate' appearing in Section 12A means that the plaint, documents and facts should show and indicate the need for an urgent interim relief from the stand point of the Plaintiff as held by the Apex Court in ***Yamini Manohar*** (supra). That the plaint needs to be read holistically and mere absence of specific words is not insufficient to justify rejection. That the pleading of urgency in the suit

6 2025 SCC Online SC 1129

coupled with prayers for interim relief and a separate Interim Application for interim reliefs make out a case for urgency from the Plaintiffs standpoint. That mere delay in filing suit does not mean that there was no urgency as held by this Court in ***Buildcon Sethia Construction Versus. Dipti Co-op Housing Society Limited***[7]**.** Dr. Saraf further submits that mere non grant of interim relief at the ad-interim stage does not justify rejection of the plaint. That the Court is not concerned with the merits of urgent interim reliefs at this stage as held in ***Novenco Building & Industry A/s Versus. Xero Energy Engineering Solutions Private Ltd. & Anr.***[8]. That mere delay in institution of the suit does not by itself negate the urgency when infringement is continuing and where there is a continuous cause of action. He submits that breach of MOFA obligations gives rise to continuous cause of action and a continuous wrong as held by this Court in ***Sushama Tulsidas Adhav Versus. Pradeep D. Shah Builder and Developer and others***[9]**.**

8) Dr. Saraf further submits that post filing conduct and stages of a suit, after institution thereof is irrelevant for considering whether the application for rejection of plaint under Order 7 Rule 11(d) and that the enquiry needs to be restricted only to the averments in the plaint. In support, he relies on judgments in ***IIFL Finance Ltd. Versus. Gundecha Estates Pvt. Ltd.***[10]***,*** ***Warna Sugar Ltd Versus. IL&FS Financial Servises Limited***[11] and ***Gavrill Metal Pvt. Ltd. Versus. Maira Fabricators Pvt.***

7 IA (L) No. 28008 of 2025 decided on 17.11.2025
8 2026 4 SCC Online SC 815
9 2024 SCC Online Bom 4325
10 Commercial Suit (L)-8617 of 2025 dated 17.7.2025
11 IA No. 5723 of 2025 decided on 04.03.2026

Ltd.[12]. In ***IIFL Finance Ltd.***, this Court has clarified that the observations made in ***Kamla Landmarc Real Estate Holding Private Limited*** about post filing conduct are not binding precedent. Dr. Saraf submits that applying the above principles to the present suit, it can be said that the averments in the plaint demonstrate as to how the Defendant No.1-developer has committed a mischief and is attempting to grab the FSI and land entitlement of Plaintiff No.1-society. That the Interim Application was filed along with the plaint itself and urgency of interim reliefs is pleaded in detail in the plaint. That the plaint clearly points out that Defendant No.1 had actually commenced construction of Towers-A and B by utilizing Plaintiff's share of FSI. That since construction activity was in full swing and since FSI of Plaintiff is being consumed, interim/ad-interim reliefs were necessary to ensure that Plaintiff's ultimate reliefs are not rendered infructuous. That Plaintiffs have sought prayers for restraining Defendant No.1 from continuing the construction and from creating any rights and from modifying the plans. That the very nature of the suit alleged breach of provisions of Sections 7 and 7A of MOFA by consuming Plaintiff's FSI and that urgency in such case is in built and need not be separately demonstrated. That the mere fact that Plaintiff's Interim Application for interim reliefs has not been circulated by the Plaintiff is not a ground for rejection of plaint. On above broad submissions, Dr. Saraf prays for dismissal of the application.

9) Rival contentions urged on behalf of the parties now fall for my consideration.

12 2023 SCC Online Cal 2443

10) Defendant No.1 has sought rejection of plaint in the suit on solitary ground of failure to comply with the provisions of Section 12A of CC Act. Under Section 12A, suit which does not contemplate any urgent interim relief under the CC Act cannot be instituted unless the Plaintiff exhausts the remedy of pre-litigation mediation in accordance with Section 12A of the CC Act. Section 12A of the CC Act provides thus :

> **12A. Pre-litigation Mediation and Settlement.**
>
> (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.
>
> (2) For the purposes of pre-litigation mediation, the Central Government may, by notification, authorise-
>
> > (i) the Authority, constituted under the Legal Services Authorities Act, 1987 (39 of 1987); or
> > (ii) a mediation service provider as defined under clause (m) of section 3 of the Mediation Act, 2023.
>
> (3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority or mediation service provider authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of one hundred and twenty days from the date of application made by the plaintiff under sub-section (1):
>
> Provided that the period of mediation may be extended for a further period of sixty days with the consent of the parties:
>
> Provided further that, the period during which the parties spent for pre-litigation mediation shall not be computed for the purposes of limitation under the Limitation Act, 1963 (36 of 1963).
>
> (4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties and the mediator.

(5) The mediated settlement agreement arrived at under this section shall be dealt with in accordance with the provisions of sections 27 and 28 of the Mediation Act, 2023."

11) In ***Patil Automation Private Limited & Ors. Versus. Rakheja Engineers Private Limited***[13] the Apex Court has held that Section 12A of CC Act is not an empty formality but the same is a mandatory provision. Therefore, the Suit which does not comply with the requirement under Section 12A(1) of the CC Act is incapable of being instituted and therefore the Court can reject the plaint by having recourse to Order 7 Rule 11 of the Code so that Plaintiff can comply with the mandatory requirement of exhausting remedy of pre-litigation mediation and then present a fresh suit as filing of a fresh suit on the same cause of action is permitted even after rejection of the plaint under the provisions of Order 7 Rule 13 of the Code. Thus, rejection of plaint under Order 7 Rule 11 of the Code for failure to comply with the mandatory provisions of Section 12A of the CC Act does not render the Plaintiff remediless considering the legal objective of exploring the possibility of settlement of the dispute before the same reaches the Court. Court can have recourse to Order 7 Rule 11 of the Code where it finds that Plaintiff has not met the mandatory requirement of exhausting the remedy of per-litigation mediation under Section 12A of the CC Act.

12) However, there is an exception where the suit can still be instituted under the CC Act without exhausting the remedy of pre-litigation mediation. The exception is recognized within sub-section (1) of Section 12A where the suit contemplates any urgent interim relief.

13 (2022) 10 SCC 1

Thus where a suit contemplates any urgent interim relief, Plaintiff cannot be forced to undertake the exercise of pre-litigation mediation and wait for a period of 3 months.

13) In the present case there is no denial to the fact that the Plaintiff has not exhausted the remedy of pre-litigation mediation before filing the present suit. It is Plaintiff's case that since the suit contemplates urgent interim relief, the requirement of exhausting the remedy of pre-litigation mediation cannot be insisted upon in the facts and circumstances of the present case. On the other hand, it is the case of Defendant No.1 that mere insertion of prayer for interim relief or filing of Interim Application seeking interim relief cannot by itself mean that the Suit contemplates an urgent interim relief within the meaning of Section 12A of the CC Act. It is the case of the Defendant that the prayer for urgent interim relief in the present case is a disguise and a mask to wriggle out of requirement under Section 12A of the CC Act.

14) By now, the law on interpretation of the words '*contemplate any urgent interim relief*' appearing in Section 12A of the CC Act is well settled. In ***Yamini Manohar*** (supra), the issue before the Apex Court was whether the Plaintiff has any absolute choice and right to bye-pass any mandatory provisions under Section 12A of the CC Act by making a prayer for urgent interim reliefs. The Apex Court has answered the issue in the negative and has held that when a plaint is filed under the CC Act with a prayer for urgent interim relief, the Court must examine the nature and subject matter of the suit, the cause of action and the prayer for interim relief. It has held that a prayer for urgent interim relief should not be disguised or masked to wriggle out of and get over the provisions of Section 12A the CC Act. It has held that the facts and circumstances of the case are to be considered holistically from the standpoint of the Plaintiff. The Court has accordingly held that the Plaintiff does not have the absolute choice and right to paralyze Section 12A by making a prayer for urgent interim reliefs. It has held that camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The Apex Court has held in paras-10 to 12 of the judgment 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.
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> 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.

15) I accordingly proceed to examine whether the prayer for urgent interim relief raised in the present suit and the Interim Application is a disguise or a mask to wriggle out of and get over the requirement of Section 12A of the CC Act or whether the prayer for urgent interim relief is genuine. Before doing so, it must be borne in mind that while deciding the application under Order 7 Rule 11 of the Code, the Court must confine itself to the averments made in the plaint and the documents filed along with it. For deciding application under Order 7 Rule 11 of the Code the Court must undertake the exercise of holistic reading of the entire plaint and the documents filed along with it. Any material extraneous to the averments in the plaint and the documents filed therewith is irrelevant for deciding the issue of rejection of the plaint under Order 7 Rule 11 of the Code. In the present case, rejection of plaint is not sought for failure to disclose cause of action. It is therefore not necessary to reproduce the averments in the plaint disclosing the cause of action and the plaint needs be read only from the point of view of contemplation of urgent interim relief within the meaning of Section 12A of the CC Act.

16) The suit has been filed by the Plaintiffs on 9 March 2023. Plaintiff No.1 is a registered Cooperative Housing Society formed by the flat purchasers of the building known as Exquisite. Defendant No.1 is a promoter and developer and is developing a large township project known as Oberoi Garden City. Plaintiffs apprehend that by carrying out further development in the layout, Defendant No.1 is likely to consume share of the Plaintiff-society in the land and the FSI. The Plaintiffs believe that the Society is entitled to own undivided right, title and interest to the extent of 25.33% of Plot No.B/larger layout land, as well as, of additional FSI/TDR etc. flowing out of the same due to change in policies/regulations. They believe that by carrying out additional construction, Defendant No.1 is likely to consume entitlement of Plaintiff No.1 in the land and the FSI thereby reducing its entitlement in the layout land. They also believe that the Society is entitled to area of 44,905.25 sq.mts in the plot and wants to restrain Defendant No.1 from carrying out additional construction by utilising Plaintiffs' entitlement in the land and the FSI thereby reducing society's entitlement in the layout land. Plaintiffs are also aggrieved by certain clauses of flat purchase agreements executed by Defendant No.1 during 2017 to 2022 with its members. They believe that the flat purchase agreements executed prior to 2017, contemplated higher area of land for building of Plaintiff No.1 which is sought to be drastically reduced in the subsequent flat purchase agreements executed post 2017. Plaintiffs have also sought prayer for conveyance of land and building against Defendant No.1. In the alternative, Plaintiffs have also prayed for compensation in the sum of Rs.500 crores from Defendant No.1.

17) The Suit is thus filed for twin causes of violation of provisions of Section 7 and 7A of MOFA, as well as, for protecting and enforcing statutory right of Plaintiff No.1 under Section 11 of MOFA for securing conveyance of proportionate share in the land in the layout. The plaint contains averments of Defendant No.1 carrying out construction of further buildings in the layout. In the Interim Application for temporary injunction, the Plaintiff has sought following interim reliefs:

> I. Order, and direct the Defendant No. 1 and/or its Directors, servants, agents and/or any person claiming through and under them by way of an order of mandatory injunction to comply with the statutory obligations under MOFA and execute and register a Deed of Conveyance in favour of the Plaintiff No.1 Society;
>
> II. Restrain the Defendant No. 1 by way of an order of temporary injunction restraining from creating any third-party rights, sale, mortgage, and/or any other encumbrance in respect of the Impugned Project;
>
> III. Temporarily restrain the Defendant No. 1 and/or its Directors, servants, agents and/or any person claiming through and under them by way of a temporary injunction from modifying, altering, revising, amending and/or changing the sanctioned plan in respect of the Impugned Project without the consent of the Plaintiff No.1 Society;
>
> IV. Temporarily restrain the Defendant No. 1 and/or its Directors, servants, agents and/or any person claiming through and under them by an order of temporary injunction from its operation, usage, effect and enforcement of the clauses bearing Nos. Recital K, Clause 13, 14, 15(a) (b), 16(b) (c), 22(d), 22(g), 23(a), 23(c), 23(e), 27, 34, 37, 48 of FPAs executed before the year 2017 and Clauses 4.2.6, 4.4.1, 4.4.3, 4.4.6, 10.2.1 and 10.4.1 of FPAS executed in/after 2017 (Exhibit V & Exhibit Y hereto);
>
> V. Appoint an Architect/Court Commissioner to inspect the suit project and place on record a report stipulating the violations, deviations, alterations, committed by the Defendant No. 1 in respect utilization of the FSI of the Plaintiff No.1 Society;
>
> VI. That this Hon'ble Court be pleased to temporarily restrain the Defendant No.1 by an order of injunction against the Defendant No.1 from carrying out any construction and / it utlilizing the plaintiff no.1's

FSI to the extent of 44,905.25 square meters and/or any other additional FSI accured due to any further change in law/ regulations.

VII. That this Hon'ble Court be pleased to temporarily restrain by an order of injunction against the Defendant No.2 to 5 from granting any permissions/ approvals in respect of the Defendant No.1's application for carrying out any construction and/or utilizing the Plaintiff No.1's FSI to the extent of 44,905.25 square meters and/or any other additional FSI accrued due to any further change in law/regulations in respect of the Impugned project.

18) Thus, by way of interim relief, Plaintiffs are seeking, *inter-alia* to restrain Defendant No.1 from amending or revising the sanctioned plan without the consent of Plaintiff No.1-society, as well as from carrying out any construction in the layout by utilizing the FSI of Plaintiff No.1 to the extent of 44,905.25 sq.mts. Plaintiffs have also sought restraint order against MCGM from granting any permission/approvals in respect of the application of Defendant No.1 for carrying out any construction by utilizing FSI of Plaintiff No.1 to the extent of 44,905.25 sq.mts.

19) Holistic reading of the entire plaint, as well as, examination of subject matter of the Suit, the cause of action and the prayer for interim relief makes it difficult for this Court to come to a conclusive finding that the prayer for urgent interim relief is a disguise or a mask to wriggle out of or get over requirement of Section 12A of the CC Act. It is only in a rare case where prayer for urgent interim reliefs is deliberately included purely with a view to overcome the bar of Section 12A that the Court can ignore such prayer and proceed to reject the plaint by having recourse to Order 7 Rule 11 of the Code. In every case where raising of prayer for urgent interim relief is found to be justified in the facts and circumstances of that case, the Court must retain the plaint. While doing so, the Court cannot go into the issue as to whether interim relief sought for in the plaint can actually be granted or not. All that needs to be examined is whether prayer for interim relief is genuine and real. In a given case, Plaintiff may not ultimately succeed in securing the interim relief but the same would not *ipso-facto* mean that subsequent rejection of prayer for interim relief would by itself be a ground for presuming that urgent interim relief was never contemplated in the suit within the meaning of Section 12A of the CC Act. The law in this regard, appears to be well settled in the recent judgment in ***Dhanbad Fuels Pvt. Ltd.*** in which the Apex Court, after referring to its decision in ***Yamini Manohar,*** has held in para-52 as under:

> 52. Thus, it becomes clear from a perusal of the aforesaid decision in Yamini Manohar 11 that the test under Section 12-A is not whether the prayer for the urgent interim relief actually comes to be allowed or not, but whether 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 contemplable when the matter is seen from the standpoint of the plaintiff. Further, what is also to be kept in mind by the courts is that the urgent interim relief must not be merely an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12-A of the 2015 Act.

20) The judgments of the Apex Court in ***Yamini Manohar*** and ***Dhanbad Fuels Pvt. Ltd.*** are also illustrative on the principle that contemplation of prayer for interim relief in a Suit must be seen from the standpoint of the Plaintiff. Thus, contemplation of urgent interim relief within the meaning of Section 12A of the CC Act cannot be decided from the point of view of either the Defendant or of the Court. While deciding application for rejection of the plaint under Order 7 Rule 11 of the Code, the Commercial Court cannot therefore decide whether prayer for interim relief is grantable or not. It also cannot take into consideration Defendant's case that in the facts and circumstances of the case the prayer for interim relief can never be granted. All that the Commercial Court needs to examine is whether the prayer for interim relief is deliberately and consciously included in the plaint purely with a view to avoid mandatory requirement of exhausting all remedies of pre-litigation mediation. The Court needs to check whether the prayer for interim relief is a mere camouflage and a guise where deception and falsity in the plaint is apparent or established as held by the Apex Court in ***Yamini Manohar.*** In the present case, looking at the frame of the Suit, the cause of action and the prayer for interim relief, it is difficult to hold that prayer for interim relief raised by the Plaintiff is a mere camouflage or guise for by-passing the statutory mandate of pre-litigation mediation. The prayer for interim relief appears to be genuine. The apprehension of urgency as made out in the plaint is real and not a mere camouflage.

21) One of the facets highlighted by Mr. Chinoy for demonstrating lack of any real urgency for the Plaintiff to seek interim relief is its conduct post filing of the Suit. It is contended that the Suit has been filed on 9 March 2023 and the same was not moved even once for seeking urgent interim relief till November 2025. I am afraid, while deciding application under Order 7 Rule 11, the Court cannot take into consideration conduct of the Plaintiff post institution of the Suit. Mr. Chinoy recognizes this principle. However, he submits that though conduct of the Plaintiff post institution of the Suit may not be of much relevance, the same can be taken into consideration as a relevant factor to decide whether any real case of urgency for interim reliefs is made out within the meaning of Section 12A. He has placed reliance on judgment of this Court in ***Kamla Landmarc*** in which the Single Judge of this Court has held in para-15 as under:

> 15. Although, it is the plaintiffs' view which has to be considered whether any urgent relief is contemplated or not at the time of filing the plaint, however, the facts prior to the filing of the plaint, the relief sought in the plaint and the subsequent conduct of the plaintiffs post filing of the suit should be examined whether the belief which plaintiffs had for dispensing with the mandatory requirement under Section 12-A(1) is bona fide or not.

22) I am however unable to read the observations made by this Court in para-15 of the judgment in ***Kamla Landmarc*** to mean laying down an abstract principle of law that in every case subsequent conduct of the Plaintiff post filing of the Suit becomes a relevant factor for deciding existence of urgency in claiming the interim relief. I am fortified in my view by observations made by another Single Judge of this Court in ***IIFL Finance Ltd.*** in which it is held that post filing stages of the Suit cannot be considered to decide whether plaint can be rejected under Order 7 Rule 11 on the ground of non-compliance with the mandatory provisions of Section 12A of the CC Act. In ***IIFL Finance Ltd.*** this Court has held that the reference to the post-filing conduct of the plaintiff in ***Kamala Landmarc*** is a passing observation. This Court held in paras-45 and 46 of the judgment as under:

> 45. **Therefore, the observations in the judgment in Kamla Landmarc Real Estate that the foundation in the plaint for non-compliance with Section 12-A must be tested by the Court by considering various factors including the prior and post-filing**

> **conduct of a plaintiff must be read in the context of the well-established legal principles by the Apex Court that the test under Section 12-A is whether 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 contemplable when the matter is seen from the standpoint of the plaintiff.** In Kamla Landmarc Real Estate, it is held that the foundation in the plaint for non-compliance with Section 12-A has to be tested by the Court by considering various factors, including the conduct of the plaintiffs prior to and post-filing the suit for applying the bar under Section 12-A. **Thus, the reference to the post-filing conduct of the plaintiff is a passing observation.** In view of the legal principles settled by the Apex Court, on the test to be undertaken for the applicability of the bar under Section 12-A, the said observation on post-filing conduct of the plaintiff cannot be considered as a binding precedent.
>
> 46. Therefore, the post-filing stages of the suit would not be relevant for considering whether the plaint can be rejected under Order VII Rule 11(d) of the CPC on the ground of non-compliance with the mandatory provision under section 12-A of the said Act.
>
> *(emphasis and underlining added)*

23) Similarly, in para-42 of the judgment in ***Warna Sugar Ltd.*** this Court is held in para-42 as under:

> 42. Thus, in view of the legal principles settled in the Apex Court's decisions discussed in the above paragraphs, what is important to examine is whether the pleadings in the plaint demonstrate that urgent interim relief is contemplated according to the plaintiff for not following the mandatory pre-institution mediation under Section 12A of the said Act. Hence, what is relevant is the reason to seek urgent interim relief and whether it is well-founded. **Therefore, the circumstances post-filing of the suit are irrelevant to decide the justification for not following the mandatory pre-institution mediation under Section 12A of the said Act. The decision of this Court in Kamla Landmarc Real Estate and the Delhi High Court judgment in Exclusive Capital Ltd., which refers to the post-filing circumstances, is with reference to the facts of those cases, holding that the reason seeking urgent interim relief did not inspire confidence.** Hence, those decisions would not be of any assistance to the submissions made on behalf of the defendants on the post-filing circumstances of this suit.
>
> *(emphasis and underlining added)*

24) In my view therefore the conduct of the Plaintiff post filing of the Suit is irrelevant for the purpose of determining whether there is any contemplated urgency in seeking any interim relief within the meaning of Section 12A of the CC Act.

25) Mr. Chinoy has also relied upon judgment of this Court in ***Shraddha Shelters Pvt. Ltd.*** in which it is held in para-67 as under:

> **67. The very fact that the Interim Application has not yet been circulated for interim reliefs itself demonstrates that there is hardly any apprehension, let alone a serious one, as to the intention of the Defendants to obstruct or delay the execution of any decree that may be passed against them.** Merely, repeating the language of a provision is not sufficient and the same would not assist the case of the Plaintiff in avoiding the mandatory requirement of pre-institution mediation under Section 12-A of the said Act.
>
> *(emphasis added)*

26) Again, the observations made by this Court in para-67 of the judgment in ***Shraddha Shelters*** cannot be read to mean as if any principle is laid down that post filing stages of the Suit becomes a relevant factor for deciding contemplation of urgency for seeking interim relief within the meaning of Section 12A of the CC Act. Consideration of post-filing conduct of plaintiff for deciding an application for rejection of plaint under Order 7 Rule 11 of the Code would go contrary to the settled cannons of law that the Court cannot go beyond the pleadings and documents annexed with it while deciding the rejection application. For deciding the urgency, the conduct before filing of the suit can be considered. However, Court's inability to take up or decide the application for temporary injunction, cannot be a factor for deciding whether the urgent interim relief is contemplated or not.

27) Mr. Chinoy has also highlighted lack of requisite alacrity on the part of Plaintiffs in filing the suit contending that Plaintiffs had acquired knowledge about the construction activities in December 2021 but awaited till March 2023 for filing the suit. However it is well established that mere delay in filing the suit is not a ground ipso facto for presuming that there was no urgency contemplated for seeking interim relief when the suit was filed. Dr. Saraf has relied on judgment of this Court in ***Buildcon Sethia Construction Versus. Dipti Co-op Housing Society Limited*** (supra) in which it is held that the the Plaint must be read holistically and absence of some specific words in averments is not enough to justify rejection. The pleading of urgency in a Suit coupled with prayers for interim relief and a separate interim application for interim relief make out a case for urgency from the Plaintiff's standpoint. It is held that mere delay in filing a Suit does not mean there was no urgency. It is held thus:

> 14. Thus, in view of the well-established legal principles as discussed above, there cannot be a straitjacket formula while examining the justification for non-compliance with Section 12A. After reading the plaint as a whole, each suit has to be examined in the facts and circumstances of that case for ascertaining whether non-compliance with Section 12A is justified on the ground that urgent interim relief is contemplated from the plaintiff's point of view.
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> 16. Thus, the legal principles for rejection of the plaint under Order VII Rule 11 of the CPC are required to be strictly adhered to for rejecting the plaint at the threshold. Considering the relevant pleadings in the plaint in the present case, the plaint cannot be rejected at the threshold for non-compliance with the mandatory requirement under Section 12A of the said Act. **The pleadings in the plaint, the supporting documents, the facts and circumstances explained in the plaint, and the prayers made in the plaint for interim relief, supported by a separate interim application seeking urgent interim relief, clearly make out the case, when viewed from the standpoint of the plaintiff, that the suit contemplates urgent interim relief. Filing a**

> **separate interim application seeking urgent interim relief on a subsequent date cannot be a ground for holding that, on the date of filing the suit, no urgent interim relief was contemplated.** Hence, in the present case, non-compliance with the provisions of Section 12A is justified. Therefore, the plaint cannot be rejected at the threshold on the ground of non-compliance with Section 12A of the said Act.
>
> *(emphasis added)*

28) On the aspect of delay in filing the suit in the context of requirement of Section 12A of CC Act, Dr. Saraf has relied on judgment of Calcutta Court in ***Gavrill Metal Pvt. Ltd. Versus. Maira Fabricators Pvt. Ltd.*** in which it is held that the legislative has not prescribed any specific period within which the aggrieved party must approach the Court for seeking relief, nor does it mandate that such relief must be sought immediately or without delay. Further, the Legislature has not defined the nature or character of the relief which would qualify as "urgent relief". Therefore, the mere absence of immediate recourse to the Court, by itself, cannot be treated as disqualifying the relief from being considered urgent, unless the statute expressly imposes such a requirement. It is held thus:

> 35. In the instant matter Learned Trial Judge revoked the leave granted under Section 12A of the Commercial Courts Act, 2016, on the ground that since two years after institution of the suit no interim. application for an urgent relief had been moved by the appellant plaintiff Section 12A leave was liable to be revoked and the suit dismissed. **As rightly observed by my learned brother that the legislature does not say that the relief should be urgently sought from the Court or the time period within which the relief is to be sought or the nature of the relief to be sought to qualify as an urgent relief. The legislature only mentions that the suit should contemplate urgent interim relief.**
>
> *(emphasis added)*

29) To buttress his case on delay in filing the suit and post filing conduct of the Plaintiffs, Mr. Chinoy has relied on the judgment of this Court in ***Tech Data Advanced Solutions (India) Ltd.*** (supra). In that case, the suit was filed in the year 2021 and there are no reliefs granted till 2025. Furthermore, on a perusal of the plaint the Court found that no case was made out by the plaintiff to fall within the exception. This Court held that the exception carved out in Section 12A(1) for non-compliance of pre-litigation mediation and settlement is a case where any urgent relief is contemplated. It is held that the objective of this exception is that the interim relief required are of such a nature that it cannot wait for the period which would be consumed for initiating and concluding mediation. In the fact of that case, this Court held that the plaintiff therein had not made out any case in support of its submission to fall within the exception carved out in Section 12A(1) of the CC Act. It is held by this Court thus:

> 11. The only exception made out in Section 12-A is, if any urgent relief is sought on the basis of the averments made in the plaint. In this case, the suit was filed in the year 2021 and there are no reliefs granted till today, that is upto 2025. Furthermore, on a perusal of the plaint also, no case is made out by the plaintiff to fall within the exception as per Section 12-A(1) of the Commercial Courts Act for dismissal under Order VII Rule 11 of CPC. It is also important to note that although the contract of the plaintiff was with defendant no.2, there is no material to show that there was a privity of contract between the plaintiff and defendant no.1 for recovery of the amount except the email which is referred to above.
>
> 12. The exception carved out in Section 12-A(1) for noncompliance of pre-litigation mediation and settlement is a case where any urgent relief is contemplated. The objective of this exception is that the interim relief required are of such a nature that it cannot wait for the period which would be consumed for initiating and concluding mediation. It is in these circumstances that Section 12-A(1) makes an exception for instituting a suit without undergoing pre-litigation mediation and settlement. **In the instant case before me, the plaintiff has not made**

out any case in support of its submission to fall within the exception carved out in Section 12-A(1) of the Commercial Courts Act, 2015.

13. The email at page 91 of the plaint only states that defendant no.1 will make payment on behalf of defendant no.2 to the plaintiff. In my view, that does not constitute a privity of contract between the plaintiff and defendant no.1. It is also important to note that although defendant no.2 has been made a party in the cause title of the plaint, no relief is sought against defendant no.2 in the prayer clause. This clearly shows that since the plaintiff is not in a position to recover any amount from defendant no.2, an attempt is made to recover the same from defendant no.1.

14. Insofar as the decisions relied upon by the learned counsel for the plaintiff/respondent in the cases of Aelea Commodities Pvt. Ltd. (supra), Grow Well Mercantile Private Limited (supra), Manoj Damani (supra), M/s. Housing Development Finance Corporation Limited (supra), Bulk MRO Industrial Supply Pvt. Ltd. (supra) are concerned, all these orders have been passed prior to 17 August 2022 and the decision of Patil Automation (supra) was rendered by the Hon'ble Supreme Court on 17 August 2022 wherein in paragraph 113.3, the Supreme Court categorically stated that if the plaint is filed violating Section 12-A after the jurisdictional High Court has declared Section 12-A mandatory, the plaintiff will not be entitled to the relief. Therefore, in the light of the subsequent decision of the Supreme Court in the case of Patil Automation (supra) the learned counsel for the plaintiff/respondent is not justified in relying upon the decisions of this Court which were rendered prior to 17 August 2022.

15. Insofar as the decision of the Hon'ble Supreme Court in the case of Dhanbad Fuels (supra) is concerned, the Hon'ble Supreme Court in paragraph 62(i) has held that suits instituted without complying with Section 12-A of the Commercial Courts Act, 2015 prior to 20 August 2022 cannot be rejected under Order VII Rule 11 of CPC on the ground of non-compliance unless they fall within exception stipulated in paragraph 113.1 and 113.3 of the decision in case of Patil Automation (supra). In my view and as observed above, the present case falls within the exception stipulated in paragraph 113.3 of the decision in the case of Patil Automation (supra) since in the instant case, before me, prior to filing of the suit, the jurisdictional High Court in the case of Deepak Raheja (supra) had already held that provisions of Section 12-A were mandatory. Therefore, paragraph 62(i) of the Dhanbad Fuels (supra) case supports the submissions made by the applicant/defendant no.1 and, therefore following the said decision, the applicant/ defendant no.1 is justified in praying for rejection of the suit under Order VII Rule 11 of CPC.

> 16. In view of above, the interim application is allowed by rejecting the plaint filed as Suit No.153 of 2021 under Order VII Rule 11 of the Code of Civil Procedure, 1908.
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> *(emphasis added)*

Thus the judgment in ***Tech Data Advanced Solutions (India) Ltd.*** rendered in the facts of that case where it was found that there was no privity of contract between Plaintiff and Defendant No. 1 and no relief was sought against Defendant No. 2. This Court therefore held that the suit therein did not contemplate any urgent interim relief. The judgment on facts, is clearly distinguishable.

30) The aspect of delay also needs to be taken into consideration from the view point of continuing wrong, It is a well-established principle that in a case involving a continuous wrong, the need for seeking interim relief also continues. The present case is for enforcement of MOFA obligations by Defendant No.1-developer. It needs no reiteration that non-fulfillment of obligations under MOFA gives rise to a continuous cause of action. To illustrate, under Section 11(1) of MOFA, there is a statutory duty on the Promoter to convey his right, title and interest in the land and building in favour of the flat purchasers within the prescribed time. Time of four months has been prescribed under Rule 9 of MOFA Rules for a promoter to transfer his title and execute a conveyance deed in favour of the organisation of flat purchasers. Reliance by Dr. Saraf on the judgment of the this Court in ***Sushama Tulsidas Adhav*** (supra) is apposite, in which it is held that breach of MOFA obligations gives rise to a continuous cause of action and a continuing wrong. It is held thus:

> 35. In Cooperage Woodhouse Co-op. Hsg Society Ltd. and Madhuvihar Co-op Housing Society v. Jayantilal Investiments (supra), it was held that breach of provisions of Section 11 of MOFA is a continuous breach giving continuing cause of action to Plaintiff.
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> 36. In the instant case the Plaintiff seeks enforcement of the statutory obligations imposed by Section 3 and 4 of MOFA. Under Section 4 of MOFA the agreement with the flat purchaser is required to be in prescribed form i.e. Form V prescribed by Rule 5 of MOFA Rules. It may be noted that, in that prescribed form, there is an explanatory note which inter alia states that certain clauses shall be statutory and shall be retained. Note 1 clarifies that a model form of agreement has been prescribed which could be modified and adapted in each case depending upon the facts and circumstances of each case but, in any event, certain clauses including clauses 9 and 22 shall be treated as statutory and mandatory and shall be retained in each and every individual agreements between the promoter and the flat taker. Clause 9 provides for the agreement to specify the date on which the possession of the flat shall be given to the flat purchaser and on demand by the flat purchasers to refund the amount already received along with interest. Clause 22 provides that the flat purchasers agreement to be presented for registration within the time limit prescribed by the Registration Act and imposes obligation on the Promoter to attend the office and admit execution thereof.
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> 37. The Plaintiff was thus seeking enforcement of Clause 9 and 22 of the Model Agreement which are non derogable and constitutes continuing wrong till the obligations are complied with. The reliance placed by Mr. Joshi on Clause 7 of the Model Agreement pertaining to termination is mis placed as Clause 7 does not find mention as being statutory and mandatory in the Note 1 to the Model Agreement. Coming to the agreement dated 1 st February, 2001 executed between the parties in respect of Shop No. 4, there is no termination clause in the said agreement and it appears that the absence of termination clause is for the reason that the total consideration agreed was Rs. 10,03,460/- out of which the plaint pleads payment of Rs. 9,10,000/-which amounts to substantial payment.
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> 38. The Defendant No. 1 has admittedly neither registered the agreement executed between the parties nor specified the date on which possession is to be handed over and has not handed over possession which amounts to a continuous breach of obligations imposed by MOFA and is thus a continuing wrong.

31) In the present case, there is not only a continuing wrong alleged on the part of Defendant No.1, but there is also a need for seeking interim reliefs even today. This is because Defendant No.1-developer is continuing with the activities of construction in the layout. So long as construction continues, Plaintiff-society is entitled to press prayer for interim relief. It cannot be contended that because construction commenced couple of years ago, prayer for interim relief is automatically rendered otiose. Therefore, in a case involving a continuous cause of action and continuation of the need to seek interim relief, mere delay in seeking interim relief cannot be a ground for presuming that the Suit does not contemplate any real urgency within the meaning of Section 12A of the CC Act. Borrowing the analogy of need for continuous need for interim injunction in a trademark violation, Dr. Saraf has relied on judgment of the Apex Court in ***Novenco Building and Industries*** (supra), in which it has held in paras-23 and 25 as under:

> 23. 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 12-A of the Act was not intended to achieve such kind of anomalous result.
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> 25. For the reasons stated above, we hold that: (i) In actions alleging continuing infringement of intellectual property rights, urgency must be assessed in the context of the ongoing injury and the public interest in preventing deception (ii) Mere delay in institution of a suit by itself, does not negate urgency when the infringement is continuing.

32) In view of the above discussion, it is seen that the present suit clearly contemplates urgent interim relief within the meaning of Section 12A of the CC Act. The prayer for interim relief has not been inserted in the plaint merely for the purpose of getting over the requirement of Section 12A of the CC Act. Therefore, no case is made out by the Defendant No.1 for rejection of plaint under Order 7 Rule 11 of the Code.

33) The Interim Application is accordingly rejected with costs.

NEETA SHAILESH SAWANT Digitally signed by NEETA SHAILESH SAWANT Date: 2026.08.21 20:02:20 +0530

[SANDEEP V. MARNE, J.]