IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL FIRST APPEAL NO. 8 OF 2023
IN
COMMERCIAL SUIT NO. 06 OF 2021

MITC Rolling Mills Pvt. Ltd, through Authorised Officer Mr. Dinkar Trimbak Kajale ...Appellant

Vs.

M/s. Renuka Realtors & Ors. ...Respondents

Mr. Amol V. Doijode a/w. Meezan Patel, Harshada Kamble for the appellant.
Mr. Anoushek Daver a/w. Dhaval Sethia, Sachin Masurkar, Nimish Achrekar, Rahul Theckedath, Sunitha Perumal i/b. Sachin Masurkar for the respondents.

CORAM	:	G. S. KULKARNI & DR. NEELA K. GOKHALE, JJ.
RESERVED ON	:	13 AUGUST, 2026
PRONOUNCED ON	:	21 SEPTEMBER, 2026

JUDGMENT : (Per G.S. Kulkarni, J.)

1. This Commercial Appeal, filed under Section 13(1-A) of the Commercial Courts Act, 2015 is directed against the order dated 10 November, 2022 passed by the learned District Judge-2, Nashik in Commercial Suit No. 6 of 2021, whereby an application filed by the respondents/defendants under Order VII Rule 11 of the Code of Civil Procedure, 1908 seeking rejection of the plaint on the ground of non-compliance of the mandatory pre-institution mediation as stipulated under Section 12A of the Commercial Courts Act, 2015, has been allowed.

2. The relevant facts in relation to the suit are: The appellant instituted Commercial Suit No. 6 of 2021 on 26 November, 2021 before the Court of the

learned District Judge-2, Nashik praying for a money decree against the respondents/defendants to recover an amount of Rs.2,52,38,828/- along with interest, which, according to the appellant, was due and payable by the respondents for the goods supplied by the appellant as per the invoices, which form part of the plaint.

3. The appellant is stated to be engaged in the manufacturing of TMT, mild steel & alloy rounds & billets, ISI Approved Fine Quality of Iron & Steel and specializes in heavy castings etc. at its factory situated at Dindori, Nashik. Respondent no. 1 is a partnership firm engaged in the business of construction as builders and developers. The respondents placed a purchase order dated 18 January, 2019 with the appellant, for the purchase of TMT/FE-500 steel of different sizes as required for their project. As per the terms of the purchase order, payment for the supplies was required to be made within 30 days from the date of the invoices. Pursuant to the purchase order, the appellant supplied the materials to the respondents at Mumbai, FE-500 steel of different sizes from its factory at Dindori, District Nashik. The details of the supplies are set out in paragraph 4 of the plaint. The materials were transported through various transporters and were delivered in terms of the invoices raised by the appellant. According to the appellant, the materials so supplied were duly received by the respondents, who were obligated to make payment within 30 days from the dates of the respective invoices. However, despite several reminders and repeated assurances from the respondents that payment for the supplies would be made, the respondents failed and neglected to pay an amount of Rs.1,64,60,528/-.

4. The appellant contended that, under the terms and conditions governing the transaction, in the event the invoices were not cleared within 30 days, interest at the rate of 24% per annum was chargeable from the due date of the bill/invoice. It was the appellant's case as pleaded in the plaint that the respondents were thus liable to pay the principal amount of Rs.1,64,60,528/- along with interest at the rate of 24% p.a. According to the appellant, the interest payable upto 15 November, 2021 amounted to Rs.87,78,300/-. Thus, a total amount of Rs.2,52,38,828/- was claimed by the appellant to be due and payable, together with further interest at the rate of 24% per annum from the due dates of the bills. The appellant further contended that the tax invoices raised on the respondents/defendants towards materials pertained to the period from 22 January, 2019 to 25 August, 2020 for such amounts as recoverable from the respondents.

5. In the aforesaid circumstances, as a dispute between the parties had arisen, the Commercial Suit in question came to be instituted on 26 November, 2021 under the provisions of Commercial Courts Act, 2015. In regard to pre-institution mediation to be dispensed with, the following averments were made in paragraph 19 of the plaint:

> "19. The plaintiff states that Pre-Institution mediation and settlement process may be permitted to be exempted on basis of urgency as the defendants are in process of disposing their assets in order to defraud the plaintiffs and huge liabilities been created in course of business by defendants. That plaintiff pray that they may be exempted as per Section 12-A of the Commercial Courts Act, 2015 on basis of urgent interim reliefs. The plaintiff is verifying the pleading and also affidavit as per the Commercial Courts Act, 2015."
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> (emphasis supplied)

6. The appellant in such circumstances filed an independent Interim Application praying for urgent reliefs/temporary ad-interim injunction and for attachment of property before judgment, and other reliefs, clearly making the averments that the respondents/defendants are in the process of disposing of their immovable properties to defeat the claims of the creditors and creating third party interest in the project in respect of which material was supplied by the appellant. Accordingly, the appellant prayed for an interim relief of temporary injunction restraining the respondents/defendants in any manner to deal with the three properties, the details of which were set out in paragraph 10 of the said Application for interim relief. The following reliefs of urgent nature were prayed by the appellant in the said Interim Application filed in the Commercial Suit.

> "a) That pending hearing and final disposal of suit, the defendants by themselves, their successors, agents, servants or anyone claiming on their behalf be restrained permanently by an order & injunction of this Hon'ble Court from in any manner dealing with, disposing off, encumbering or developing the suit properties or any portion thereof or inducting in assets as under:
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> i) Ruparel Jewel, Turner Sanitorium Hill Road, Ambedkar Marg Jerbai Wadia Road, Sewree, Mumbai – 400 014.
>
> ii) Ruparel Zion, 10, 1st floor, Ruparel, Iris, Nair Mahal, Senapati Bapat Marg, Matunga Road (West), Mumbai – 400 016.
>
> iii) Ruparel Zion Plot No. 151, Behind PVR Cinema, Shivaji Nagar Road No. 28/A, Sion (East), Mumbai – 400 022.
>
> b) The Plaintiff pray that pending the hearing and final disposal of the Suit, Defendant nos. 1 and 2 be directed to place on record the location/details of assets, i.e., moveable's and immovable and their value having as on today of the defendants.
>
> c) That pending hearing and final disposal of suit, the defendants by themselves, their successors, agents, servants or anyone claiming on their behalf be restrained permanently by an order & injunction of this Hon'ble Court from in any manner dealing with, disposing off, encumbering or developing the properties or any portion thereof or inducting in project at
>
> i) Ruparel Jewel, Turner Sanitorium Hill Road, Ambedkar Marg Jerbai Wadia Road, Sewree, Mumbai – 400 014.
>
> ii) Ruparel Zion, 10, 1st floor, Ruparel, Iris. Nair Mahal, Senapati Bapat Marg, Matunga Road (West), Mumbai – 400 016.
>
> iii) Ruparel Zion Plot No. 151, Behind PVR Cinema, Shivaji Nagar Road

No. 28/A, Sion (East), Mumbai – 400 022.

d) Any other reliefs in circumstances of case fit proper."

7. Further, an affidavit in support of the application for urgent relief was also filed setting out the urgency and clearly making averments, that there was a reasonable apprehension from the information gathered from the business circles that the respondents/defendants were likely to deal with and/or dispose of the assets, with a view to defrauding and/or depriving the creditors, hence it was necessary in the interest of justice that pending the hearing and final disposal of the suit, the respondents/defendants be restrained, by an order and injunction, from in any manner whatsoever dealing with, disposing of, transferring, encumbering, alienating or parting with possession of or creating third party interest in the assets to secure the suit claim, failing which, the appellant would suffer irreparable loss or injury.

8. Also, another independent application came to be filed by the appellant *inter alia* contending that the appellant has filed an application for attachment before judgment and as the urgent interim reliefs were prayed for, the pre-institution mediation and settlement process may be permitted to be exempted on the basis of urgency on the ground that the respondents/defendants were in the process of disposing of their assets in order to defraud the appellant and huge liabilities been created in course of business by respondents/defendants. It was hence specifically prayed that the appellant be exempted as per Section 12-A of the Commercial Courts Act, 2015 on the basis of urgent interim reliefs and that the registry of the Court be directed that the suit be verified, examined and

numbered.

9. There is no dispute on the institution of the aforesaid proceedings filed by the appellant and that the interim application for interim injunction as also the application for exemption from the requirement of pre-institution mediation were the subject matter of consideration before the learned trial Judge.

10. On the aforesaid backdrop, the respondents/defendants filed an application for return of plaint under the provisions of Order VII Rule 11 *inter alia* contending that the suit summons was received by the respondents/defendants on 10 January, 2022. It was contended that the plaint would be required to be rejected in exercise of the jurisdiction of the Court under Order VII Rule 11. The contentions of the respondent/defendant were to the effect that the appellant has impleaded Mr. Amit Ruparel as defendant no. 2 and Mr. Parikshit M. Sharma as defendant no. 3 in their capacity as partners of defendant no. 1 firm, who are not proper parties to the suit, hence the suit was bad on the ground of misjoinder of parties. It was next contended the appellant ought to have exhausted the remedy under Section 12A before filing of the suit, which is mandatory, namely, a pre-instituted mediation. Such application as made by the respondent/defendant was a composite application in which the respondents asserted the suit to be not maintainable. It was next contended that an application for interim relief was not maintainable and ought to be returned on several grounds and one of the grounds being that the same was filed with an oblique intention to avoid compliance of Section 12A of the Commercial Courts Act. It was asserted that the suit was a malafide suit. There were discrepancies in

the tax invoices. Delivery challans were not annexed. In the event, if any amount had remained to be paid by the respondents/defendants, the same was a matter of reconciliation of the books of accounts. All pages of the plaint were not signed by the authorized signatory of the appellant.

11. We find that there were several other grounds which were urged to point out the non-maintainability of the proceedings. Further, without prejudice to the defences of defendant no. 1, it was stated that they would be raised at the appropriate stage of trial. Also, other procedural objections as set out in paragraph 5 of the said application were raised. Thus, the prayer of the respondents/defendants was for return of plaint and corresponding application for seeking urgent relief as per provisions of Order VII Rule 11 on the ground that the appellant has not complied with the provisions of Section 12A of the Commercial Courts Act. Also, a prayer was made that the suit is defective as per the provisions of Order VII Rule 1 and Order VII Rule 9 and accordingly, for return of the plaint on the grounds as urged in the said application, as no cause of action has arisen against respondent no. 3/defendant no. 3.

12. Such application was opposed by the appellant by filing a detailed reply on merits, *inter alia* contending that an appropriate case pointing out the urgency was made out and accordingly, also a prayer was made that the pre-institution mediation and settlement process may be exempted on the basis of urgency as pointed out, namely, that the respondents/defendants were in the process of disposing of their assets in order to defraud the appellant and huge liabilities would be created in the course of business, which would defeat the appellant's

claim. It was contended that the suit claim was a legal liability on the respondents in the course of commercial transactions. It was also pointed out that the defendant has a sister concern, namely, Shree Siddhivinayak Infrastructure and Realty, Arise Developers and Shree Siddhivinayak Construction Pvt. Ltd. wherein the respondents/defendants had created huge liabilities and were not able to discharge the same. It was hence contended that considering the nature of the indisputed transactions in regard to the pre-institution mediation as per the provisions of Section 12A was required to be dispensed, when bonafide urgent interim reliefs were prayed for in the suit, and the Court has jurisdiction to exempt the same. It appears from the record that defendant no.1 also filed its written statement dated 21 April, 2022. Also, a detailed reply was filed on behalf of the appellant on the application filed by the defendant seeking reference of the matter to mediation. Such application was filed by the respondent/defendant on 13 July, 2022, which was opposed by the appellant by its reply dated 1 September, 2022.

13. On the aforesaid backdrop, the parties were heard by the learned trial Judge, leading to the passing of the impugned order dated 10 November, 2022, whereby the application filed by the respondent/defendant under Order VII Rule 11 came to be allowed by the learned trial Judge, rejecting the plaint under the said provisions. In passing such order, in paragraph 1 to 3 , the learned trial Judge has recorded the rival contentions. In paragraph 4 of the impugned order, the learned trial Judge has referred to the provisions of Section 12A of the Commercial Courts Act. In paragraph 5 of the impugned order, the learned trial

Judge observed that as per the provisions of Section 12A, it was mandatory for the appellant to exhaust the remedy of mediation, as per the prescribed rules, before instituting the suit, the exception being only the suit which did contemplate interim relief, as the object of the provision is that high value commercial dispute be mandatorily referred to pre-institution mediation. It was observed that in the present case, although the appellant had pleaded on interim reliefs, the nature of litigation, i.e., controversy between the parties was clearly based on monetary transactions and that both the parties were in business since long. It was observed that although the appellant contended that the defendants were in the process of disposing of their property, there was no prima facie evidence to that effect and, therefore, the very crux of the matter to claim urgent relief of the matter is found to be baseless. It was observed that the dispute as to the monetary claim as made by the plaintiff could be decided, only after a full-fledged trial by taking evidence of both the parties or by appointing an expert to settle the accounts. It was thus held that mediation was necessary before proceeding with the suit. In paragraph 6 of the impugned order, referring to the decision of the Supreme Court in **Patil Automation Pvt. Ltd. vs. Rakheja Engineers Pvt. Ltd.**[1]**,** it was held that the provisions of Section 12A of the Act are mandatory and therefore, it was necessary to reject the plaint under Order VII Rule 11. The relevant observations as made in the impugned order, on the basis of which the learned trial Judge rejected the plaint exercising jurisdiction under Order VII Rule 11 are paragraphs 5, 6 and 7, which are required to be noted, which reads thus:

1 2022 SCC OnLine SC 1028

"5. As per this provision/amendment, it is compulsory to exhaust the remedy of mediation as per the rules prescribed by the Central Government, before instituting the suit except the suit which does contemplate interim relief. Object of the provision is required to be taken into consideration. High value commercial dispute involve the complete fact and question of law. There is need to provide mechanism for early resolution and thereby pre-institution mediation is made compulsory. But then, tendency of litigants is still remains the same that to file a suit and insist for some interim relief and keep the litigation pending for long time. In the present matter, plaintiff has pleaded about urgent relief. Nature of litigation i.e. controversy between the parties is clearly based on monetary transaction. Both the parties are in business since long. It is pertinent to note that defendants are not denying the dues, only requirement prima facie appears is to reconciliation of the account. According to defendants, claim of plaintiff is vague and vexatious and clearly exorbitant in nature. Such contention of defendants is found to be based on the averments in the plaint, interest rate claimed by the plaintiff and calculations without specification. Though, it is the contention of plaintiff that defendants are in process to dispose off their property, there is absolutely no any prima facie evidence to that effect. Therefore, the very crux of the matter to claim urgent relief is found to be baseless. baseless. Other controversy as to the monetary claim of plaintiff, can be decided only after full-fledged trial by taking evidence of both the parties or by appointing neutral expert person to settle the accounts. Thus, prima facie, it becomes abundant clear that the mediation was necessary before proceeding with the suit. But plaintiff failed to opt as per the mandatory provisions. Law is certain that the procedure provided under Section 12-A of the Act is mandatory in nature. Aim and object of Section 12-A of the Act is to insure that before commercial dispute is filed before the Court, alternative means of dissolution are adopted so that genuine result comes before the Court.

6. In this regard, learned Advocate for the defendants is relied on the following authority.

Patil Automation Pvt. Ltd. Vs. Rakheja Engineers Pvt. Ltd., 2022 SCC OnLine SC 1028, wherein Hon'ble Supreme Court has observed as follows.

> "We declare that Section 12A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11. This power can be exercised even suo moto by the court as explained earlier in the judgment. We, however, make this declaration effective from 20.08.2022 so that concerned stakeholders become sufficiently informed. Still further, we however direct that in case plaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff. Finally, if the plaint is filed violating Section 12A after the jurisdictional High Court has declared Section 12A mandatory also, the plaintiff will not be entitled to the relief".

7. On the basis of aforesaid exposition of law, it becomes abundant clear that the provisions of Section 12A of the Act is mandatory and therefore, there is no other go but to reject the plaint under Order VII Rule 11 of CPC. Hence, the order.

Order

1. Application Exh. 15 is allowed.
2. Plaint filed by plaintiff stands rejected under Order VII Rule 11 of CPC.
3. Both parties shall bear their own costs."

(emphasis supplied)

14. On such conspectus, being aggrieved by the impugned order (supra) passed by the learned District Judge/Commercial Court, the present appeal has been filed.

Submissions on behalf of the appellant

15. Mr. Doijode, learned counsel for the appellant, has made extensive submissions. It is his submission that the approach of the learned trial Judge, is in the teeth of the provisions of Section 12A of the Commercial Courts Act, inasmuch as there was substantive material before the learned trial Judge whereby the appellant, for clear reasons, as set out not only in the plaint, but also, in the accompanying application seeking urgent interim reliefs, by way of injunction and attachment before judgment, had pointed out the urgency and the requirement of such urgent interim reliefs. Hence, according to him, the suit fell within the category of suits contemplating urgent interim relief, in respect of which Section 12A itself permits institution without exhausting the remedy of pre-institution mediation. It is submitted that, admittedly, on a plain reading of the impugned order, it is clear that the learned trial Judge has failed to examine the case of the appellant, particularly when categorical contentions were urged as to why the relief of temporary injunction and/or attachment before judgment was necessary. It is submitted that considering the several averments made to that effect in the

plaint, the appellant had made out a case for urgent reliefs.

16. It is also Mr. Doijode's submission that this is certainly not a case where proforma or formal averments were made in the plaint or in the application with an intent to disguise or mask the real nature of the claim so as to wriggle out of, or get over, the mandate of Section 12A of the Commercial Courts Act, of a mandatory pre-institution mediation. It is his submission that the properties in respect of which the reliefs were sought, and which were likely to be dealt by the respondent were specifically set out in the appellant's application. According to him, this required an adjudication of the said application on merits, i.e., hearing the parties on their respective contentions on the merits, and for appropriate orders to be passed, as the law would mandate. It is his submission that, however, this exercise has been completely discarded by the learned trial Judge oblivious to the mandate of law and by misinterpreting Section 12A. According to him, whether urgency was made out and what relief could be granted was subject matter of determination of the injunction application. It is Mr. Doijode's contention that thus the entire approach of the learned trial Judge was contrary to the settled principles of law and, in fact, is in the teeth of Section 12A of the Commercial Courts Act.

17. Mr. Doijode has also submitted that, in the meantime, the specific properties referred by the appellant in the application seeking urgent injunction application, in the absence of the reliefs as prayed for being granted to the appellant, have now been dealt by the respondent, hence are no longer available to secure the amounts due and payable by the respondents/defendants to the

appellant and as claimed in the suit in question requiring the appellant to search for other security to safeguard the suit dues. It is also his submission that merely because the claim in the suit is based on monetary transactions on observations that the respondents/defendants were not denying the dues, hence the only requirement was reconciliation of accounts, the learned Judge has in fact stepped into adjudicating the interim application, and that too without assigning any reasons whatsoever, held that there was no prima facie evidence of the respondents/defendants disposing of their properties. It is submitted that hence the claim for urgent relief as prayed for by the appellant being regarded as baseless by the learned trial Judge, was an apparent perversity. It is submitted that at the same time, in paragraph 5 of the impugned order, it was observed that the monetary claim of the plaintiff can be decided only after a full-fledged trial, on the evidence led by both the parties or by appointing neutral experts to settle the accounts. It is for this reason, Mr. Doijode submits that the learned trial Judge, having regard to the objects and purpose of Section 12A, has prima facie come to the conclusion that mediation was necessary before proceeding with the suit. It is his submission that the observations made in paragraph 5, by no stretch of imagination and looked from any angle, can be accepted in law, having regard to the clear facts and circumstances of the case, particularly when the question was whether an appropriate case of urgency and protection of the appellant's interests pending the suit was made out, in the urgent relief of an injunction and attachment before judgment as prayed for by the appellant.

18. In support of his submissions, Mr. Doijode has relied on the decision of the

Supreme Court in **Dhanbad Fuels Private Ltd. vs. Union of India and Anr.**[2] to contend that the Supreme Court has considered whether a suit filed without complying with Section 12A of the 2015 Act is required to be dismissed or kept in abeyance, with a direction to the parties to explore the possibility of mediation, while referring to the decision in **Patil Automation** (supra). Mr. Doijode submits that the Supreme Court has held that, when a suit is instituted on or after the date of decision in **Patil Automation,** i.e., 20 August, 2022, without complying with the requirement of Section 12A of the 2015 Act, the plaint must be rejected under Order VII Rule 11 of Code of Civil Procedure, however, if the suit was instituted prior to 20 August, 2022, as in the present case, the suit having been instituted on 26 November, 2021, then, even if the requirement of Section 12A was not complied with, and the case does not fall within any of the exceptional categories explained in paragraph 55 of the said decision, it would be open to the Court to keep the suit in abeyance and direct the parties to explore the possibility of mediation in accordance with the provisions of Commercial Courts Act. It is, therefore, his submission that, when tested on the principles of law laid down in **Dhanbad Fuels Private Ltd.** (supra), the impugned order would be required to be quashed and set aside.

19. Mr. Doijode has also placed reliance on the decision of the Supreme Court in **Yamini Manohar vs. T.K.D. Keerthi**[3] to contend that, when the appellant had filed an exhaustive application seeking urgent interim reliefs, it was incumbent on the learned trial Judge/Commercial Court to consider, such interim application

2 (2025) 9 SCC 424

3 2024 5 SCC 815

from the standpoint of the plaintiff, on the basis of the documents and facts placed before the trial Court, in the case of the plaintiff on the urgent interim reliefs. It is submitted that such exercise was admittedly not undertaken. This was wholly contrary to the requirement in law. On such contentions, it is submitted that the impugned order deserves to be quashed and set aside and that the rejected plaint needs to be restored to the file of the Commercial Court to be adjudicated on merits.

Submissions on behalf of the Respondent

20. On the other hand, Mr. Daver, learned counsel for the respondents/defendants has vehemently opposed the appeal. However, he has limited submissions. The first submission of Mr. Daver is that the learned Trial Judge while passing the impugned order has considered the materials on record and has correctly arrived at the observations and more particularly as made in paragraph 5 (supra) thereof. It is next submitted that such observations are in accordance with the scheme of the law in relation to Section 12A of the Commercial Courts Act as laid down in the decision of the Supreme Court in **Patil Automation Pvt. Ltd.** (supra) wherein the Supreme Court in paragraph 92 of the said decision has specifically held that if the plaint is filed, violating Section 12A of the Act after the jurisdictional High Court has declared Section 12A to be mandatory, the plaintiff will not be entitled to the relief. It is submitted that in regard to such observations of the Supreme Court, the decision of the Division Bench of this Court in **Deepak Raheja vs. Ganga Taro Vazirani** rendered in

Commercial Appeal (L) No. 11950 of 2021 dated 1 October, 2021, would be relevant wherein Section 12A has been held to be mandatory in paragraph 34. It is hence his submission that in the present case, since the suit was instituted after the date of the said decision, the provisions of Section 12A of the Act were required to be mandatorily applied, as held by the Supreme Court in **Patil Automation Pvt. Ltd.** (supra). Mr. Daver would next submit that the decision of the Supreme Court in **Yamini Manohar** (supra) has clearly held that the prayer for urgent relief cannot be a disguise or mask to the real nature of the claim, so as to get over Section 12A of the Commercial Courts Act. He submits that this is certainly a case, where the intention of the appellant was to wriggle out from the requirement of Section 12A of the Commercial Courts Act. It is next submitted that the learned trial Judge while passing the impugned order has undertaken a full-fledged exercise of considering the merits of the rival contentions as seen from the observations as made in paragraph 5 of the impugned order, hence no fault can be attributed to the impugned order.

21. Mr. Daver would next submit that the decision of the Supreme Court in **Dhanbad Fuels Pvt. Ltd.** (supra), in view of the decision having already been taken by this Court in **Deepak Raheja** (supra), the provisions of Section 12A of the Act were mandatory and squarely applicable to the plaint filed in the present case. It is submitted that the scheme of Section 12A of the Commercial Courts Act and the considerations which are required to be applied while deciding an application under Order VII Rule 11 of the Code of Civil Procedure and the parameters to be gone into in an application for urgent interim reliefs, for

attachment before judgment are completely independent of each other. In such context, it is submitted that the Supreme Court in **Yamini Manohar** (supra) has held that there is a precise and limited exercise that the commercial courts will undertake to decide whether the plea for urgent interim reliefs is only to wriggle out of the scheme of Section 12A of the Act, which has been examined in the present case by the learned trial Judge on examining the materials on record and only thereafter the learned Trial Judge has arrived at the right conclusion. It is next submitted that in the present case, a claim of Rs.2,52,38,828/- is made by the appellant for goods allegedly sold and delivered and for which the attachment was sought in respect of three development projects on the ground that the respondents/defendants are likely to deal with the said projects and with a view to defeat the decree and without being substantiated with any materials. In such context, it is submitted that selling flats in a project was a matter of course for a developer and not something which is done as contended by the appellant to defeat the decree. In these circumstances, it is submitted that the appeal needs to be dismissed.

Analysis

22. We have heard learned counsel for the parties. We have also perused the record.

23. The question which falls for determination in the present appeal is whether, in the facts and circumstances of the case, the approach of the learned trial Judge to non-suit the appellant by rejecting the plaint exercising jurisdiction under Order VII Rule 11 was legal and valid, when tested on the anvil of Section

12A of the Commercial Courts Act.

24. To answer the question, at the outset, we note the provisions of Section 12A of the Commercial Courts Act, which was inserted by an amendment brought about by Act No 28 of 2018 with effect from 3 May, 2018. The said provision as it stood at the relevant time reads thus:

> **"12A. Pre-Institution 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 preinstitution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.**
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> (2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.
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> (3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority authorised by the Central Government under sub-section *(2)* shall complete the process of mediation within a period of three months 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 two months with the consent of the parties:
>
> Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose 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 to the dispute and the mediator.
>
> (5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section *(4)* of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]
>
> (emphasis supplied)

25. On a plain reading of Section 12A, it is clear that the provisions contemplates "Pre-Institution Mediation and Settlement" to stipulate that a suit which does not contemplate any urgent interim relief, under the Act shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in the manner and procedure as may be prescribed by the rules made by the Central

Government.

26. In the context of the applicability of Section 12A, it is not in dispute that, in the present case, the appellant had sought urgent interim reliefs, in relation to which the appellant made a prayer for an urgent temporary injunction, pending the suit as also for attachment before judgment to secure the monetary claim as made in the suit. On a perusal of the application filed by the appellant, it is clear that it is a comprehensive application, which, in the normal course, required adjudication on merits, by applying the principles of whether the appellant had made out a prima facie case, whether the balance of convenience was in favour of the appellant; whether an irreparable injury would be caused to the appellant. All these aspects necessarily entailed an adjudication of the application on merits of the rival contentions.

27. Significantly, the appellant's application praying for interim relief was opposed by the respondents/defendants on 33 grounds, all of which were contentions on the merits apart from the contentions raised by the respondent on the requirement of Section 12A of the Commercial Courts Act. We find that the appellant had also filed an application specifically praying for dispensing with the pre-institution mediation, not only on the basis of the averments made in the plaint setting out the requirement of urgent interim relief, but also on the independent pleadings in that regard as borne out by such application of the appellant seeking urgent interim relief in the suit, which was being opposed by the respondents/defendants on merits.

28. In the aforesaid circumstances, the question is whether it was legal, valid and appropriate for the learned trial Judge, on the sole reasoning as contained in paragraph 5 of the impugned order (supra) to come to a conclusion that the requirement of Section 12A to dispense with the pre-institution mediation did not exist, although urgent interim reliefs were prayed for by the appellant and to reject the plaint exercising powers under Order VII Rule 11. In our opinion, the approach of the learned trial Judge is wholly untenable. The following discussion would aid our conclusion.

29. The intention behind a mandatory pre-institution mediation as provided under Section 12A in respect of a commercial dispute, wherein no urgent interim relief is prayed for, is necessarily for the reason, that the parties by first taking recourse to pre-institution mediation can avoid litigation by attempting to amicably resolve the dispute. However, the tendency of the litigants to by-pass such mandatory requirement in a camouflaged manner by ostensibly raising a plea of urgency, is what is deprecated to be an anathema to the rigours of Section 12A. Whether the present case depicted any intention on the part of the appellant to set up a false, bogus urgency, and/or there existed an intention to wriggle out of the rigours of Section 12A so as to avoid pre-institution mediation could be the only consideration. As stated above, we find from the only reasoning as set out in paragraph 5 of the impugned order (supra), the learned trial Judge has thought it appropriate to reject the plaint. The learned Trial Judge overlooked that the appellant's plea setting out the urgency was not merely a proforma plea, and/or some formal or any ostensible case of urgency, which was made out in the interim

application, seeking temporary injunction and attachment before judgment. This more particularly, when the learned trial Judge in paragraph 5 of the impugned order has categorically observed that the respondents/defendants are not denying the dues when the following observations was made - "*In the present matter, plaintiff has pleaded about urgent relief. Nature of litigation i.e. controversy between the parties is clearly based on monetary transaction . Both the parties are in business since long. It is pertinent to note that defendants are not denying the dues, only requirement prima facie appears is to reconciliation of the account*".

30. If this was to be observed, we wonder as to whether the law would prohibit the plaintiff from making out a case for urgent interim reliefs and that too considering the fact that the defendant is in the construction business as also the appellant having made averments as set out in the memo of the interim application, that the sister concern of the respondent/defendant was in deep debts. Thus, it cannot be said that the appellant had not made out a case for interim relief, more particularly when the respondents did not dispute the dues/liability as observed by the learned Trial Judge. If this be so, it was rather imperative for the appellants to secure such dues by seeking urgent interim reliefs, on the duly supported apprehension that the appellants entitlement to receive the suit amount was likely to be defeated by the respondents/defendants. There is no consideration of such case of the appellants on its merits, in the only reasoning as set out in paragraph 5 of the impugned order.

31. We may observe that there is no bar under Section 12A of the Act for any

plaintiff to approach the Court by moving an independent application for urgent interim relief and prima facie consideration of the Court in such event would be to examine whether the urgent interim relief application, was in any manner a ploy to defeat the mandate of Section 12A of a pre-institution mediation. Certainly in the given circumstances, it was permissible in law for the plaintiff to take a call that there was a serious likelihood of the suit claim being defeated by the defendants and for which there would be requirement of urgent interim reliefs in the suit. If on such conspectus, an interim application was filed by the appellant praying for urgent interim relief.

32. We do not see as to how it was open for the learned trial Judge to nonetheless not delve on the merits of the said interim application and without determination of such application foist on the appellant a requirement of a mandatory mediation. This, in our opinion, apart from being an objectionable approach, was a dangerous path adopted by the learned trial Judge to discard the urgent interim application and straightway take recourse to the provisions of Section 12A to non-suit the appellant on the ground that no pre-institution mediation was resorted.

33. If such approach as adopted by the learned trial Judge is to be accepted as a rule, it would lead to drastic consequences of the plaintiff losing valuable rights to protect the subject matter of the suit and/or safeguarding the plaintiff's claim in the suit bringing about a situation that the suit is either rendered infructuous or the plaintiff meets with a *fait accompli* of ultimately being benefited only with a paper decree, so as to ever remain inexecutable. These were the consequences

which were required to be borne in mind, by the learned trial Judge. The substantive rights of the parties to claim interim reliefs in the facts and circumstances of the case, would stand defeated, by mere application of Section 12A of the Act, in the manner as adopted by the learned trial Judge sans holistic consideration of the Interim Application of the plaintiff seeking urgent reliefs. Such conclusion to which we have arrived would stand fortified from the following discussion, referring to the decisions of the Supreme Court.

34. The leading decision of the Supreme Court interpreting the provisions of Section 12A is the decision in **Patil Automation Pvt. Ltd. & Ors. Vs. Rakheja Engineers Pvt. Ltd.**(supra). An important question, which had arisen for consideration of the Supreme Court was whether the statutory pre-litigation mediation contemplated under Section 12A of the Commercial Courts Act, 2015, as amended by the Amendment Act of 2018 was mandatory and whether the Courts below have erred in not allowing the applications filed under Order VII Rule 11 of the Code of Civil Procedure, 1908, to reject the plaint, filed by the respondents therein without complying with the procedure under Section 12A of the Act. In the said case, the respondents had filed a commercial suit under Order XXXVII of the CPC before the Court of Additional District Judge, District Court at Faridabad, praying for recovery of certain amounts alongwith interest. The suit was filed on 12 October 2020. The appellant was a defendant in the said suit. It had filed an application on 5 February 2021 under Order VII Rules 10 and 11 read with Sections 9 and 20 of the CPC, *inter alia* contending that the suit was filed without adhering to the provisions of Section 12A of the Act. The

respondent/plaintiff had filed its reply on 23 March 2021, contesting the proceedings, contending that the suit was not barred for non-compliance of Section 12A of the Act. In the said case there was no application filed by the respondent/plaintiff seeking urgent interim relief as also the respondent/plaintiff had not resorted to pre-institution mediation. The Trial Court rejected the appellant/defendant's contention *inter alia* referring to the decision of this Court in **Ganga Taro Vazirani Vs. Deepak Raheja**, wherein it was held that the procedure provided under Section 12A was not a plenary provision for any punishment, and that, there was no embargo in filing the suit, without exhausting the remedy of mediation, especially when an attempt was clear to show that the intention of the applicant to resolve the dispute was already made, which had failed. It was observed that in the larger interest of justice, it was deemed appropriate that the civil suit, be kept in abeyance and both the parties be directed to appear before the Secretary, District Legal Services Authority, Faridabad, for the purpose of mediation as per the provisions of Section 12A of the Commercial Courts Act and the Rules framed thereunder. Such observations were confirmed by the High Court and accordingly, the proceedings reached the Supreme Court. The Supreme Court in such context interpreted the provisions of Section 12A, in the context of the objects and intention as sought to be achieved in its incorporation under the Commercial Courts Act. The Supreme Court observed that pre- institution mediation has been mandated only in a class of suits which do not contemplate urgent interim relief. It was held that the suits which contemplate urgent interim relief, the Law-Givers have carefully vouch-safed, immediate access to justice as contemplated ordinarily through the Courts. It was held that carving out of a class of suits and selecting them for compulsory mediation, harmonizes with the attainment of the object of the law. The following observations as made by the Court and relevant to the controversy are required to be noted, which read thus:

> "62. The potential of Section 89 of the CPC for resolving disputes has remained largely untapped on account of the fact that mediation has become the product of volition of the parties. Courts, no doubt, have begun to respond positively. <u>However, there was a pressing need to decongest the trial courts, in commercial matters in particular, as they bear the brunt of docket explosion. It is noteworthy that Section 12A provides for a bypass and a fast-track route without for a moment taking the precious time of a court. At this juncture, it must be immediately noticed that the Law-giver has, in Section 12A, provided for pre-institution mediation only in suits, which do not contemplate any urgent interim relief.</u> Therefore, pre- institution mediation has been mandated only in a class of suits. **We say this for the reason that in suits which contemplate urgent interim relief, the Law-giver has carefully vouch-safed immediate access to justice as contemplated ordinarily through the courts. The carving out of a class of suits and selecting them for compulsory mediation, harmonises with the attainment of the object of the law. The load on the Judges is lightened. They can concentrate on matters where urgent interim relief is contemplated and, on other matters, which already crowd their dockets**.
>
> …… …
>
> 71. One of the aspects which weighed with the learned single judge of the Bombay High Court in Ganga Taro (supra) is that in a case where the suit is instituted, under Section 80 of the CPC without issuing any notice, if the defendant does not take up the plea of violation of Section 80, there can be waiver. Thus, even if Section 12A in a given case, where the defendant does not set up the case there can be waiver and therefore, Section 12A is not mandatory. No doubt, the Division Bench of the Bombay High Court while reversing the learned single judge proceeded to hold that there cannot be waiver as Section 12A is based on public interest. The approach of the learned Single Judge does not commend itself to us. **The question as to whether Section 12A is mandatory or not, must be decided with reference to language used, the object of the enactment and a host of other aspects. The fact that if a defendant does not raise the plea about compliance of Section 12A, it may result in a given case of waiver cannot result in Section 12A not being mandatory. If it were so, then in a case where there is no notice under Section 80, a plaint can never be rejected. It is legally untenable and defies logic**. Another argument raised by Shri Saket Sikri, learned counsel is that by the impugned order, the High Court has affirmed the trial Court order that the suit be kept in suspended animation and referred the parties for mediation. According to him, it is substantial compliance of Section 12A of the Act. It is eminently just. He also points out the conduct of the appellant in not even cooperating in the mediation process. <u>We are unable to accept this argument. We will refer to Section 80 of the CPC to assist us in justifying our conclusion. Under Section 80 (1) of the CPC, a suit not covered by Section 80(2), which is filed in defiance of the former provision, that is without serving any notice, is not maintainable. The suit would</u>

be barred and liable to be rejected under Order VII Rule 11. The only exception is what is provided in Section 80 (2). It contemplates a suit to obtain an urgent or interim relief. Such a suit may be instituted with the leave of the court without serving any notice as required under Section 80 (1). **In a case where a plaintiff does not seek urgent interim relief under Section 80(2), the suit would fall within the four walls of Section 80(1). Section 80(1) is mandatory. In regard to such suit, there is no question of substantial compliance**. The suit must culminate in rejection of the plaint on invoking power under Order VII Rule 11. We may immediately draw a parallel between Section 80(1) of the CPC and 12A of the Act. In Section 12A also, the bar of institution of the suit is applicable only in a case in which plaintiff does not contemplate urgent interim relief. **The situation is akin to what is contemplated in Section 80(1) of the CPC. In other words, the suit under the Act which does not contemplate urgent interim relief is like a suit covered by Section 80(1) of the CPC which does not project the need for any urgent or interim relief. In regard to a suit covered under Section 12A of the Act, namely, in a suit where interim relief is not contemplated, there can be no substantial compliance by way of post institution reference to mediation. The argument of the plaintiff overlooks the object apart from the language used besides the design and scheme of the law. It will, if accepted, lead to courts also spending their invaluable time on such matters which follow from adjournments, objections and hearings. There is no need to adopt such a course.**

… … …

80. We may sum-up our reasoning as follows:

The Act did not originally contain Section 12A. It is by amendment in the year 2018 that Section 12A was inserted. The Statement of Objects and Reasons are explicit that Section 12A was contemplated as compulsory. The object of the Act and the Amending Act of 2018, unerringly point to at least partly foisting compulsory mediation on a plaintiff who does not contemplate urgent interim relief. **The provision has been contemplated only with reference to plaintiffs who do not contemplate urgent interim relief. The Legislature has taken care to expressly exclude the period undergone during mediation for reckoning limitation under the Limitation Act, 1963. The object is clear. It is an undeniable reality that Courts in India are reeling under an extraordinary docket explosion. Mediation, as an Alternative Dispute Mechanism, has been identified as a workable solution in commercial matters. In other words, the cases under the Act lend themselves to be resolved through mediation. Nobody has an absolute right to file a civil suit.** A civil suit can be barred absolutely or the bar may operate unless certain conditions are fulfilled. Cases in point, which amply illustrate this principle, are Section 80 of the CPC and Section 69 of the Indian Partnership Act. The language used in Section 12A, which includes the word 'shall', certainly, go a long way to assist the Court to hold that the provision is mandatory. The entire procedure for carrying out the mediation, has been spelt out in the Rules. The parties are free to engage Counsel during mediation. The expenses, as far as the fee payable to the Mediator, is concerned, is limited to a one-time fee, which appears to be reasonable, particularly, having regard to the fact that it is to be shared equally. A trained Mediator can work wonders. Mediation must be perceived as a new mechanism of access to justice. We have already highlighted its benefits. **Any reluctance on the part of the Court to give Section 12A, a mandatory interpretation, would result in defeating the object and intention of the Parliament. The fact that the mediation can become a non-starter, cannot be a reason to hold the provision not mandatory. Apparently, the value judgment of the Law-giver is to give the provision, a modicum of voluntariness for the defendant, whereas, the plaintiff, who approaches the Court, must, necessarily, resort to it. Section 12A elevates the settlement under the Act and the Rules to an award within the meaning of Section 30(4) of the Arbitration Act, giving it meaningful enforceability. The period spent in mediation is excluded for the** purpose of limitation. The Act confers power to order costs based on conduct of the parties.

81. In the cases before us, the suits do not contemplate urgent interim relief. As to what should happen in suits which do contemplate urgent interim relief or rather the meaning of the word 'contemplate' or urgent interim relief, we need not dwell upon it. The other aspect raised about the word 'contemplate' is that there can be attempts to bypass the statutory mediation under Section 12A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis. Section 80(2) of the CPC permits the suit to be filed where urgent interim relief is sought by seeking the leave of the court. The proviso to Section 80 (2) contemplates that the court shall, if, after hearing the parties, is satisfied that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to the court after compliance. Our attention is drawn to the fact that Section 12A does not contemplate such a procedure. This is a matter which may engage attention of the lawmaker. Again, we reiterate that these are not issues which arise for our consideration. In the fact of the cases admittedly there is no urgent interim relief contemplated in the plaints in question.

.. … ..

92. Having regard to all these circumstances, we would dispose of the matters in the following manner. We declare that Section 12A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11. This power can be exercised even suo moto by the court as explained earlier in the judgment. We, however, make this declaration effective from 20.08.2022 so that concerned stakeholders become sufficiently informed. Still further, we however direct that in case plaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff. Finally, if the plaint is filed violating Section 12A after the jurisdictional High Court has declared Section 12A mandatory also, the plaintiff will not be entitled to the relief."

(emphasis supplied)

35. Thus, the aforesaid enunciation of law in **Patil Automation Pvt. Ltd.** (supra) reflects that Section 12A of the Act is mandatory and a suit which does not contemplate urgent interim relief, if instituted violating the mandate of Section 12A, must be visited with rejection of the plaint under Order VII Rule 11 of the CPC, and that such declaration is effective from 20 August 2022 so that concerned stakeholders shall be sufficiently informed. It was also observed that if the plaint is filed violating Section 12A after the jurisdictional High Court has declared Section 12A mandatory , the plaintiff is not entitled to the relief. Thus, the said decision of the Supreme Court explicitly recognizes that there would be

two categories of suits viz. (i) suits entitled to be filed by-passing mandatory provisions of Section 12A, and (ii) suits of a class which do not contemplate urgent interim relief. As to what would be the purport of the word 'contemplate' as used in the provisions of Section 12A, as dealt in paragraph 81 of the said decision has not been conclusively answered, when it has been categorically observed in the said paragraph drawing an analogy between Section 80(2) and Section 12A, that it was a matter, which would engage the attention of the lawmakers, as such were not the issues, which have arisen before the Court in the said decision, and in the facts of the case, there was no urgent interim relief contemplated in the plaints in question. Thus, the decision in **Patil Automation Pvt. Ltd.** (supra) is not a decision wherein the Supreme Court was considering a suit contemplating any urgent interim reliefs. It is hence clear from the categorical observations that a suit which contemplates an application for an urgent interim relief, would form distinct class, is the first threshold.

36. In the context of the case in hand, in our opinion, it would be necessary not to overlook the purport of the words used in sub-section (1) of Section 12A namely "*a suit, which does not contemplate any urgent interim relief*". The focus being contemplation of an urgent interim relief, being prayed by the plaintiff. When the provision uses the word 'contemplate' and in the context of 'any urgent interim relief' the meaning which can be attributed to the word 'contemplate' would be required to be understood as to how the word has been defined and understood in its plain and grammatical connotation. In such context, we may refer to the New Webster Dictionary (Deluxe Encyclopedia Edition) in which

the word 'contemplate' has been defined as under:

> **"Contemplate** – To look at or view with continued attention; observe thoughtfully; to consider thoroughly and deliberately.- v.i. To think studiously upon past events and future possibilities…. … … … "

37. It is thus clear that when a commercial suit is filed contemplating any urgent interim relief, it would be an endeavour of the Court to look at or view with continued attention, observe thoughtfully, consider thoroughly and deliberately and / or to think studiously on such cause brought before it and only after such opinion is formed as held by the Supreme Court in paragraph 81 in **Patil Automation** , take further appropriate course of action.

38. Adverting to this basic requirement, the question is whether the impugned order reflects such appreciation (supra) and/or adjudication. The answer is obviously in the negative as clearly reflected from the limited observations as made by the learned Trial Judge erroneously exercising the jurisdiction to reject the plaint despite an application being filed by the appellant praying urgent interim relief. We do not find that there is any discretion available with the learned Trial Judge not to adjudicate the rival contentions even on the facts of the urgent interim application so as to come to a conclusion, i.e., either an urgency is made out warranting interim relief and/or the prayer for interim relief is false and/or a camouflage. It is not possible for the Trial Court to have a cursory view without adjudicating and assigning reasons to come to a conclusion that in fact the plea of urgency is false or bogus. If such cursory approach is adopted, there is an imminent danger of derailing an urgent application as also in a given situation as in the present case there is a likelihood of Section 12A being misutilized and/or

mis-applied defeating substantive rights of the plaintiff. The object of Section 12A is not to defeat/destroy legal rights of the plaintiff.

39. Our view would be fortified from what has been recently held by the Supreme Court in the context of the approach the Court, would be required to adopt when confronted with a situation that an urgent interim relief is prayed by the plaintiff in a commercial suit and for such reason pre-institution mediation is not being resorted. In **Yamini Manohar vs. T.K.D. Keerthi** (supra) a two Judge Bench of the Supreme Court discussed the mandatory nature of pre-litigation mediation provided under Section 12A of the Commercial Courts Act, emphasizing that it is necessary unless the suit contemplates urgent interim relief. It is held that when a plaint is filed under the Commercial Courts 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, and in such examination it needs to consider whether the prayer for urgent interim relief is not disguised or masked to wriggle out of and get over Section 12A of the Commercial Courts Act. It was held that for such determination, the facts and circumstances of the case are required to be considered holistically, from the standpoint of the plaintiff and 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 CPC and at that time, interim relief would be granted after issuance of notice. It was also observed that the suit cannot be dismissed under Order VII, Rule 11 of the CPC, 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. It was further observed that the words 'contemplate any urgent interim relief' in Section 12A(1) of the Commercial Courts 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 and this is the precise and limited exercise that the commercial Courts will undertake, so as to keep in check and ensure that the legislative object/intent behind Section 12A of the Commercial Courts Act, is not deviated. The relevant observations are required to be noted, which read thus:

> "7. 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.
>
> 8. 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). 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."

40. In **Dhanabad Fuels Pvt. Ltd. Vs. Union of India & Anr.** (supra) the Supreme Court while considering the provisions of Section 12A, considered the legislative intent behind the said provision. It was held that Section 12A is mandatory in nature as observed in Patil Automation Pvt. Ltd. (supra). As to what would be the effect of the word "does not contemplate urgent interim relief" appearing in Section 12A, and as to how the said expression is to be construed. The Supreme Court in such context made the following observations:

> "iii. How the expression "urgent interim relief" is to be construed 49. Further, it is also pertinent to note that Section 12A of the 2015 Act does not contemplate leave of the court for filing a suit which contemplates an urgent interim relief, as is clear from the language and words used in the provision. The provision also does not necessarily require an application seeking exemption if a suit is being filed without pre-institution mediation. An application seeking waiver on account of urgent interim relief setting out grounds and reasons may allay a challenge and assist the court, but in the absence of any statutory mandate or rules made by the Central Government, an application per se is not a condition under Section 12A of the 2015 Act. Pleadings on record and oral submissions would be sufficient in ordinary course.
>
> ….. …
>
> 52. Thus, it becomes clear from a perusal of the aforesaid decision that the test under Section 12A 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 12A of the 2015 Act.
>
> … …
>
> 55. This Court had further held that the protective umbrella of prospective overruling in Patil Automation (supra) would not apply to plaints which were rejected, and no steps had been taken within the period of limitation; or such rejection had been acted upon by filing a new suit; or if the plaint violating Section 12A had been filed after the jurisdictional High Court has declared the provision to be mandatory. Indisputably, the Union of India does not fall under

any of the other aforementioned exceptions. Thus, we find it difficult to agree with the submission canvassed by the appellant that the bar of Section 12A of the 2015 Act would continue to apply to the money suit filed by the respondents despite there being a prospective declaration in Patil Automation (supra).
……..

E. CONCLUSION

71. In light of the aforesaid discussion, we summarise our findings as under:

71.1. 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.

71.2. 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.

71.3. 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. 71.4. 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.

71.5 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.

71.6. 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 contemplable when the matter is seen from the standpoint of the plaintiff.

71.7. 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.

71.8. 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.

71.9 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).

71.10 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.

> 72. Thus, the answer to the question formulated by us whether a suit filed without complying with Section 12A of the 2015 Act must be dismissed or be kept in abeyance with a direction to the parties to explore mediation is as follows:
>
> 72.1. If the suit is instituted on or after the date of the decision in Patil Automation (supra), i.e., 20.08.2022, without complying with Section 12A of the 2015 Act, then it must meet with rejection under Order VII Rule 11, either on an application by the defendant or suo motu by the court.
>
> 72.2. If the suit was instituted prior to 20.08.2022 without complying with Section 12A of the 2015 Act, and the same does not fall within one of the exceptional categories as explained in paragraph 47 of this judgment, then it would be open to the court to keep the suit in abeyance and direct the parties to explore the possibility of mediation in accordance with the 2015 Act, the PIMS Rules and the 2020 SOP.
>
> 73. Having answered the issues as aforesaid, we find it difficult to accept the contention of the appellant that the Trial Court as well as the High Court committed an error in refusing to reject the plaint under Order VII Rule 11. On the contrary, the approach adopted by the High Court in the impugned order in keeping the suit in abeyance and referring the parties to mediation, strikes a perfect balance between the mandatory nature of Section 12A of the 2015 Act as well as the prospective applicability of the consequence of non-compliance with Section 12A as held in Patil Automation (supra).
>
> 74. Needless to clarify that the mediation proceedings must be completed within the time frame stipulated by Section 12A of the 2015 Act and the PIMS Rules, that is, within a period of three months and extendable by two more months, if the need so arises.
>
> 75. In the result, the present appeal fails and is hereby dismissed. Pending application(s), if any, shall also stand disposed of. We direct the Registry to circulate a copy of this judgment to all High Courts."

41. In a recent decision in **Novenco Building And Industry A/s. Vs. Xero Energy Engineering Solutions Pvt. Ltd. & Anr.**[4]**,** again the provisions of Section 12A and more particularly, as fell for consideration of the Supreme Court. The question, when a suit 'contemplates any urgent interim relief', was examined by the Supreme Court. The Supreme Court considering the decision in **Patil Automation Pvt. Ltd.** (supra), **Yamini Manohar** (supra) and **Dhanbad Fuels Pvt. Ltd. Vs. Union of India & Anr.** (supra) held thus:

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> "19. 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:
>
> 19.1 Section 12A mandatorily requires pre-institution mediation for commercial suits, non-compliance of which would ordinarily render the plaint institutionally defective.
>
> 19.2 **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.**
>
> 19.3 **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.**
>
> 19.4. **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.**
>
> 19.5 **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.**
>
> .. .. …
>
> 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 12A of the Act was not intended to achieve such kind of anomalous result."
>
> (emphasis supplied)

42. Thus, the Supreme Court has clearly held that 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, for which what is required is a holistic reading of the plaint and the material annexed to the plaint ought to disclose the need for urgent relief. It is held that the Court must

look at the plaint, pleadings and supporting documents to decide whether urgent interim relief is genuinely contemplated, and most significantly, the Court is required to 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. It is also clear that a proforma or anticipatory prayer for urgent relief used as a device to skip mediation would be ignored and the Court can require the parties to comply with Section 12A of the Act, and that the Court would not be 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.

43. Applying the aforesaid principles to the facts of the present case and more particularly, the reasons set out in the impugned order, in our opinion, the impugned order clearly fails to satisfy these basic requirements, as we find that neither there being any consideration of the urgency as set out by the appellant in the urgent interim relief application nor as set out in the plaint and the supporting documents so as to reach the conclusion on the appellant's case on such reliefs as prayed for. Further, no finding is recorded by the learned trial Judge except to hold that Section 12A is mandatory, and that the interim application praying for urgent relief by the appellant, was intended to defeat, by-pass or avoid pre-institution mediation, without considering such application and materials on record, in the manner the law would mandate, as noted by us hereinabove, and now as conclusively interpreted by the Supreme Court in the decision as discussed above.

44. We may also address another aspect of the matter, which is to the effect that the approach adopted by the learned Trial Judge has meted out injustice to the appellant; firstly, by the Court not considering the Interim Application for urgent reliefs as the law would mandate; and secondly, by the erroneous application and appreciation of the purport of Section 12A of the Act. This, in our opinion, is something which in fact is in the teeth of Section 12A. The provisions of Section 12A are not intended to defeat the substantive rights of the parties, but are intended to be seen in aid of expeditious resolution of disputes, without the parties being required to litigate by taking recourse to the pre-institution mediation. However, once a party chooses its remedy to file the Civil Suit and to move an application for urgent interim relief, as the facts of the case may require, in such event the case would be required to be decided on the touchstone of the principles as enunciated by the Supreme Court in **Yamini Manohar vs. T.K.D. Keerthi** (supra), by applying the principle of prima facie case, balance of convenience, irreparable harm and injury. In the present case, there is no finding recorded that such plea of the appellant is frivolous or intended to defeat the applicability of Section 12A in regard to pre-institution mediation. Thus, necessarily there was an obligation on the Court to adjudicate the plea of urgent interim relief. In the absence of any such finding recorded on the appellant's plea to be a camouflage or to circumvent the provisions of Section 12A, the necessary corollary would be to adjudicate the application for urgent interim relief, failing which it would amount to travesty of justice and would lead to undesirable consequence.

45. We are also not persuaded to accept Mr. Daver's contention relying on paragraph 92 of the decision of the Supreme Court in **Patil Automation Pvt. Ltd. & Ors. Vs. Rakheja Engineers Pvt. Ltd.**(supra) to contend that the Division Bench of this Court being jurisdictional High Court in **Deepak Raheja vs. Ganga Taro Vazirani**[5], has declared Section 12A mandatory and hence, the appellant was not entitled to relief, as in the present case the plaint was instituted on 26 November 2021. Also the present case was not a case of a suit being simplicitor filed without adhering to the mechanism of pre-litigation mediation as the suit was filed alongwith the interim application praying for urgent interim reliefs. If that be so, although the requirement of Section 12A otherwise would be mandatory, considering the fact that the suit fell in the class where the law itself permitted institution by dispensing with the pre-institution mediation in view of the urgent interim application filed by the appellant.

46. Our attention is also drawn to a recent decision of the co-ordinate Bench of this Court in **High Point Supply Company LLC Vs. Agati Healthcare Pvt. Ltd.**[6] wherein a similar view has been taken in paragraph 36. The following observations as made by the Division Bench read thus:

> "36. We are, therefore, of the considered opinion that although the Trial Court correctly appreciated the mandatory nature of Section 12-A(1) of the CC Act, it fell into error in applying the settled principles governing the statutory exception relating to urgent interim relief. The impugned order proceeds upon an unduly restrictive reading of the plaint, accords determinative weight to considerations germane to the merits of the interim application, and thereby travels beyond the limited jurisdiction exercisable under Order VII Rule 11(d) of the Code. The order rejecting the plaint, therefore, cannot be sustained and deserves to

5 Commercial Appeal (L) No.11950 of 2021 decided on 1 October 2021

6 Commercial First Appeal No.15 of 2026, decision dt. 5 August 2026

> be set aside. The question whether the Appellant is entitled to any interim relief shall necessarily fall for independent consideration by the Commercial Court on its own merits, uninfluenced by any observations contained either in the impugned order or in the present judgment."

47. In view of our above observations, we are not inclined to accept Mr. Daver's contention that the impugned order would satisfy the test of law and/or that the Court has considered the material in the manner as the law would mandate in the context of the prayer as made by the appellant for interim reliefs. The reasoning as set out in paragraph 5, in our opinion, is far from satisfying the test of law which would be applicable for the Court to consider the suit to be entertained with an application of such interim relief is filed. Thus, Mr. Daver's contention that the present case to be a case of mere application of Section 12A without any credence being given to the prayer for urgent interim relief as made by the appellant, is wholly an untenable submission. In our opinion, when such application for urgent interim relief was made, the test as laid down by the Supreme Court in **Yamini Manohar vs. T.K.D. Keerthi** (supra) and **Dhanabad Fuels Pvt. Ltd. Vs. Union of India & Anr.** (supra) as also in **Novenco Building And Industry A/s. Vs. Xero Energy Engineering Solutions Pvt. Ltd. & Anr. (supra)** deserved to be applied, and which is exactly, what lacked in the learned Trial Judge passing the impugned order. This has been completely missed in the submission as advanced on behalf of the respondents. We thus find much substance in the contention as urged on behalf of the appellant.

48. The aforesaid discussion would lead us to conclude that looked from any angle, the impugned order passed by the learned Trial Judge cannot be sustained

and hence, the appeal would be required to be allowed. It is accordingly allowed in the following terms:

ORDER

(i) The impugned order dated 10 November 2022 passed by the learned Trial Judge is quashed and set aside.

(ii) The Commercial suit is restored to the file of the Commercial Court, Nashik, to be adjudicated on its merits alongwith the interim application.

(iii) All contentions of the parties on the proceedings before the Trial Court are expressly kept open.

(iv) Costs to be costs in the cause.

(v) The appellant has become entitled for refund of Court fees considering the provisions of Section 15 of the Maharashtra Court Fees Act, 1959.

49. The Appeal stands allowed in the aforesaid terms. No costs.

(DR. NEELA K. GOKHALE, J.) **(G. S. KULKARNI, J.)**