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IA 2847 of 2026 in COMS 59 of 2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 2847 OF 2026  
IN  
COMMERCIAL SUIT NO. 59 OF 2025

WITH  
COMMERCIAL SUIT NO.59 OF 2025

Hapag-Lloyd (India) Private Ltd.

.... *Applicant/  
Orig. Defendant*

**In the matter of :**

Rushabh Sealink and Logistic  
Private Limited

.... *Plaintiff*

**Versus:**

Hapag-Lloyd (India) Private Limited

.... *Defendant*

WITH

INTERIM APPLICATION NO.2259 OF 2026

Hapag-Lloyd (India) Private Ltd.

.... *Applicant*

**In the matter of :**

Rushabh Sealink and Logistic  
Private Limited

.... *Plaintiff*

**Versus:**

Hapag-Lloyd (India) Private Limited

.... *Defendant*

WITH

INTERIM APPLICATION (L) NO.30087 OF 2026

Rushabh Sealink and Logistic Private Limited

.... *Applicant*

**In the matter of :**

Rushabh Sealink and Logistic  
Private Limited

.... *Plaintiff*

**Versus:**

Hapag-Lloyd (India) Private Limited

.... *Defendant*

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**Mr. Rashmin Khandekar** with Ms. Shalaka Patil, Ms. Brinda Singh, Ms. Krisha Meswani, Mr. Anand Mohan and Ms. Akshata Modi i/b. Trilegal, for the Defendant and for the Applicant in IA-2847 of 2026.

**Mr. Rubin Vakil** with Mr. Punit Damodar, Ms. Raveena Kinkhabwala, Mr. Akshay Dhayalkar and Ms. Anuja Barooah i/b. Kanga & Co., for the Plaintiff.

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**CORAM : SANDEEP V. MARNE, J.**

**JUDGMENT RESD. ON: 17 SEPTEMBER 2026**

**JUDGMENT PRON. ON: 29 SEPTEMBER 2026**

**JUDGMENT:**

1) The Application is filed by the Defendant seeking rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (**the Code**) or in the alternative, for return thereof for presentation before the appropriate Court in terms of Order 7 Rule 10 of the Code. Rejection of the plaint is sought by the Defendant on three grounds of non-compliance with the provisions of Section 12A of the Commercial Courts Act, 2015 (**C.C. Act**), non-maintainability of the suit against the Indian agent of disclosed foreign principal in view of provisions of Section 230 of the Indian Contract Act, 1872 (**Contract Act**) and exclusive jurisdiction of Courts at Hamburg, Germany being agreed between the parties. Alternatively, the application seeks return of the plaint under Order 7

Rule 10 of the Code for being presented to the Courts at Hamburg, Germany.

### **FACTS**

2) Plaintiff is an Indian incorporated entity engaged in the business of freight forwarding. Defendant is an Indian incorporated entity and according to the Plaintiff, it is engaged in the business of providing global cargo transportation services and integrated logistics services. Defendant is a wholly owned subsidiary of Hapag-Lloyd AG, a German international shipping and container transportation company. According to the Defendant, it is merely an Indian agent of its German parent and the principal - Hapag-Lloyd AG.

3) In February 2022, Plaintiff received inquiries from its customers for export of their goods to the port at Djibouti, East Africa. Plaintiff made inquiries with Defendant's parent company Hapag-Lloyd AG and requisitioned quotations for booking container space on vessels on 3 routes viz, (i) one vessel sailing from the port at Nhava Sheva, India to the port at Djibouti, East Africa, (ii) second vessel sailing from the port at Mundra, India to the port at Djibouti, East Africa and (iii) third vessel sailing from Concor Inland Container Depot at Mihan, India to Nhava Sheva, India through ramp/rail and thereafter in the vessel sailing from the port at Nhava Sheva India to the port at Djibouti, East Africa. Hapag-Lloyd AG provided quotations/offers dated 21 February 2022. Plaintiff accepted the offers and made bookings for 510 containers. Thereafter, various booking confirmations were issued to the Plaintiff in respect of

vessels for the routes desired by the Plaintiff. According to the Plaintiff, it entered into various onwards contracts with its customers for booking of container space in those vessels for export of goods of its customers. The plaint gives details of bookings made by various customers of the Plaintiff.

4) On 23 February 2022, the booking confirmations were cancelled on the ground of acceptance of bookings citing the reason of an internal system error. Though the quotations were sent and the booking confirmations were made by Hapag-Lloyd AG, Plaintiff made correspondence with the Defendant in respect of cancellation of booking conformations. On 24 February 2022, Plaintiff addressed an email to the Defendant, calling upon the Defendant to perform the contractual arrangement. Since the Defendant did not reply, another email dated 1 March 2022 was addressed by the Plaintiff seeking compensation. By email dated 2 March 2022, the Defendant expressed regret for inconvenience caused to the Plaintiff and called for details of the bookings made by the Plaintiff. Plaintiff forwarded the details by email dated 3 March 2022. Since Plaintiff did not receive any response, it addressed email dated 4 March 2022 to the Defendant. Defendant sought time to react by email dated 5 March 2022. Plaintiff claims that the bookings made by its customers were required to be cancelled on account of actions of the Defendant. Plaintiff claims that it would have earned profits of USD 2,00,600/- in respect of the transactions with its customers between 21 and 23 February 2022. Plaintiff has accordingly filed the present suit seeking recovery of amount of USD 2,00,600/- along with interest towards loss of profits, an amount of USD 66,90,250/- on account

of loss of business opportunities and an amount of USD 20,00,00,000/- on account of loss of reputation.

5) The Defendant has filed Interim Application No. 2847 of 2026 seeking rejection of the plaint under Order 7 Rule 11 of the Code. Alternatively, Defendant has sought return of the plaint for being presented to the Court having jurisdiction under Order 7 Rule 10 of the Code. Plaintiff has filed affidavit in reply opposing the application. Plaintiff has filed a rejoinder dealing with the contentions raised in the affidavit in reply.

#### **SUBMISSIONS**

6) Mr. Khandekar, the learned counsel appearing for the Applicant/Defendant submits that the suit is barred for non-compliance with the provisions of Section 12A of the C.C. Act. That the pleaded cause of action arose on 23 February 2022 and the suit is instituted on 26 February 2025. That the only relief claimed in the Suit is monetary. That Plaintiff himself has pleaded that it had initiated pre-institution mediation in accordance with Section 12A of the C.C. Act. That it is mandatory under Section 12A not just to initiate pre-institution mediation but to attempt and exhaust the same. In support, he relies on judgment of the Apex Court in **Patil Automation Private Limited and others Versus. Rakheja Engineers Private Limited**<sup>1</sup> in support of his contention that provisions of Section 12A of the C.C. Act are mandatory. He relies on judgment of the Apex Court in **Dhanbad Fuels Pvt. Ltd.**

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

**Versus. Union of India & Anr.**<sup>2</sup> That mediation application was made on 21 February 2025, and the suit was instituted immediately after 5 days on 26 February 2025. That events subsequent to filing of the suit are irrelevant for deciding compliance with the provisions of Section 12A of the C.C. Act. That the second mediation notice was never received by the Defendant. That under Rule 3 of the Commercial Courts (Pre-institution Mediation and Settlement) Rules, 2018 (**Pre-institution Mediation Rules**), the process is completed only upon a settlement or after submission of a report of non-settlement or on submission of a non-starter report. That none of the three eventualities existed when the suit was presented. That a mere formal prayer for interim relief does not take the suit outside Section 12A. That the suit does not contemplate any genuine urgent relief. He relies on judgment of the Delhi High Court in **Exclusive Capital Limited Versus. Clover Media Pvt. Ltd. & Ors.**<sup>3</sup> That the word 'urgent' does not even appear in the plaint. That the Plaintiff itself elected to apply for pre-institution mediation and never treated the case as the one exempted from Section 12A. That mandatory procedure under Section 12A cannot be bypassed by seeking attachment or other interim relief before judgment. In support, he relies on judgments of this Court in **Image Developers & Anr. Versus. Kamla Landmarc Real Estate Holding Pvt. Ltd. and others**<sup>4</sup> and **Shraddha Shelters Pvt. Ltd. In the matters between Ekta Housing Pvt. Ltd. Versus. Shraddha Shelters Pvt. Ltd.**<sup>5</sup>

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<sup>2</sup> (2025) 9 SCC 424

<sup>3</sup> 2025 SCC OnLine Del 5521

<sup>4</sup> 2025 SCC OnLine Bom 3284

<sup>5</sup> 2024 SCC OnLine Bom 3528

7) Mr. Khandekar further submits that the plaintiff does not disclose any cause of action against the Defendant who is merely an agent of its foreign disclosed principal Hapag-Lloyd AG. That documents attached with the plaint clearly describe the Defendant as an agent and a mere booking contractor of Hapag-Lloyd AG. That inquiries were made by the Plaintiff and quotations were received from Hapag-Lloyd AG. Mr. Khandekar relies on Section 230 of the Contract Act in support of his contention that the suit against an agent is not maintainable when the contract is between the Plaintiff and a disclosed foreign principal. In support, he relies on judgments of this Court in Midland Overseas Versus. M.V. 'CMBT Tana' & others.<sup>6</sup>, MV x.press Annapurana & Anr. Versus. Gitanjali Woolens Pvt. Ltd. and others<sup>7</sup> and of Calcutta High Court in Chakiat Shipping Services (Pvt.) Ltd. Versus. Bhushan Power & Steel Ltd. & Anr.<sup>8</sup>

8) Mr. Khandekar further submits that this Court does not have the jurisdiction to try and entertain the present suit as the relationship between the parties arises from quotation and booking confirmation with Hapag-Lloyd. That the transaction is governed by the Terms and Conditions of Hapag-Lloyd Bill of Lading/Sea Waybill. That under those terms, the exclusive jurisdiction is of the Courts is at Hamburg, Germany. That the quotations relied upon by the Plaintiff carry hyperlinks to the said terms. That Plaintiff itself has referred to the terms of contract indicating jurisdiction of German Law and German Courts and that therefore this Court can consider those terms and conditions even though

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<sup>6</sup> 1999 SCC OnLine Bom 460

<sup>7</sup> 2011 SCC OnLine Bom 355

<sup>8</sup> 2015 SCC OnLine Cal 7025

they are suppressed by the Plaintiff. That where the document is referred to in the plaint, such document stands incorporated by reference and is deemed to be within the knowledge of the parties. He relies on judgments of this Court in **Modinasab Indikar Versus. Board of Directors of Indian Overseas Bank, Chennai & Ors.**<sup>9</sup>, and **Rakeshsinh M. Chauhan Versus. Mehulsinh Ishwar Parmar**<sup>10</sup> in support of his contention that a clause providing for exclusive Foreign Court's jurisdiction is valid and binding. Mr. Khandekar relies on judgment of the Apex Court in **British India Steam Navigation Co. Ltd. Versus. Shanmughavilas Cashew Industries And Others**<sup>11</sup>. He submits that the Court can look into suppressed documents while deciding application under Order 7 Rule 11 of the Code and he relies on judgments of Delhi High Court in **Babita Pal & Ors. Versus. Jagdish Bansal**<sup>12</sup> and **Rakesh Sachdeva Versus. Rajesh Sachdeva**<sup>13</sup> and of this Court in **Xavier D'souza & Anr. Versus. Luis D'souza & Anr.**<sup>14</sup> In support of his contention that Courts have repeatedly rejected the plaint under Order 7 Rule 11(d) of the Code when parties have agreed for jurisdiction of Foreign Court, Mr. Khandekar relies on judgments in **Traxpo Enterprises Pvt. Ltd. Versus. Kolmar Group AG**<sup>15</sup>, **Dqs Certification India Pvt. Ltd. Versus. Isaca Inc. & Ors.**<sup>16</sup>, and **Bush Foods Overseas Pvt. Ltd. Versus. Sentinel Capital PTE Ltd. & Anr.**<sup>17</sup>

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<sup>9</sup> 2020 (6) MhLJ 244  
<sup>10</sup> 2026 SCC OnLine Bom 2609  
<sup>11</sup> (1990) 3 SCC 481  
<sup>12</sup> 2013 (133) DJR 332 (BD)  
<sup>13</sup> 2026 SCC OnLine Del 4998  
<sup>14</sup> 2008 SCC OnLine Bom 588  
<sup>15</sup> 2016 SCC OnLine Bom 3967  
<sup>16</sup> 2025 SCC OnLine Del 1892  
<sup>17</sup> 2012 (131) DJR 55

9) Alternatively, he submits that in the event the plaint is not rejected under Order 7 Rule 11 of the Code for absence of jurisdiction, the plaint be returned to the Plaintiff for being presented to the Court having jurisdiction under Order 7 Rule 10 of the Code.

10) Mr. Vakil, the learned counsel appearing for the Plaintiff opposes the application. At the outset, he submits that Plaintiff has already filed Interim Application (L) No. 30087 of 2026 seeking amendment of the plaint. He relies on judgment of this Court in **Bharat Travellers Versus. Sumitrabai Vinayakrao Buty**<sup>18</sup> in support of his contention that application for amendment needs to be decided first. He also relies on judgment in **Pramod Manoharrao Konge Versus. Shantaram Balkrushna Dhok**<sup>19</sup>.

11) Mr. Vakil further submits that the objection of non-compliance with the provisions of Section 12A of the C.C. Act is baseless since the Plaintiff has already exhausted the mediation process which has resulted into a non-starter report. That despite receiving notice of mediation, Defendant failed to appear before the Mediator. That intention of the Defendant in not making effort towards resolution of the disputes through mediation is more than apparent. That therefore, expecting Plaintiff to undertake mediation at this stage would be nothing but an empty formality. In support, he relies on judgment of Division Bench of this Court in **Jivaraj Ravaji Gandhi Versus. Solapur Jilha Dudh Utpadak Va Prakriya Sangh Maryadit, Solapur & Ors.**<sup>20</sup> That mere filing

<sup>18</sup> 2017 (6) MhLJ 703

<sup>19</sup> 2017 (3) MhLJ 223

<sup>20</sup> Commercial First Appeal No. 23 of 2025 decided on 7 August 2026

of application for pre-institution mediation does not preclude a party from filing a suit based on urgent relief. In support, he relies on judgment of this Court in **Phoenix ARC Private Limited Versus. Future Brands Limited & Anr.**<sup>21</sup> Taking me through the plaint, he submits that the suit contemplates genuine urgent interim relief when seen from the standpoint of the Plaintiff. That the case does not involve inclusion of a prayer for interim relief as a camouflage to avoid the mandatory requirement of exhausting all pre-litigation mediation remedies. He relies on judgment of the Delhi High Court in **Exclusive Capital Ltd. Versus. Clover Media Private Ltd. & Ors.** (supra).

12) Mr. Vakil further submits that Defendant's reliance on terms and conditions of Bill of Lading is totally baseless since Bill of Lading was never issued in the present case. That the said document is not referred to in the booking confirmation. Therefore, Defendant cannot invite attention of this Court to the material not produced along with the plaint for demonstrating absence of jurisdiction. He relies on judgments in **P.V. Gururaj Reddy Versus. P. Neeradha Reddy and others**<sup>22</sup> and **Correspondence RBANMS Educational Institution Versus. B. Gunashekar and another**<sup>23</sup>. He submits that in any case, the plaint cannot be rejected on the ground that the suit is maintainable before some other Court.

13) Mr. Vakil further submits that Defendant is not sued in the present Suit in capacity as agent of its principal. He submits that when

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<sup>21</sup> 2026 SCC OnLine Bom 2984

<sup>22</sup> (2015) 8 SCC 331

<sup>23</sup> 2025 SCC OnLine SC 793

principal is abroad, the agent is liable in respect of the contract entered into by him on behalf of the principal. He relies on judgments in **Cochin Frozen Foods Exports (P) Ltd. Versus. Vanchinad Agencies and others**<sup>24</sup>, **Radhakrishna Sivadutta Rai & Ors. Versus. Tayeballi Dawoodbhai**<sup>25</sup>, and **Board of Trustees of Jawaharlal Nehru Port Trust Versus. Continental Float Glass Ltd. & Ors.**<sup>26</sup> That in any case, whether the Defendant is liable to pay compensation to the Plaintiff or not is a dispute concerning merits and the same cannot be adjudicated by deciding application under Order 7 Rule 11 of the Code. Mr. Vakil prays for dismissal of the application.

#### **REASONS AND ANALYSIS**

14) Plaintiff has sued the Defendant for recovery of various amounts towards loss of profit, loss of business opportunities, loss of reputation etc. The claims of the Plaintiff arise out of a failed business transaction between the Plaintiff and Hapag-Lloyd AG, which had issued quotations to the Plaintiff for providing container spaces on its vessels on the three desired routes. Plaintiff had accepted those offers and Hapag-Lloyd AG had issued booking confirmations on 21 and 22 February 2022. However, on the following day i.e. 23 February 2022, Hapag-Lloyd AG cancelled the booking confirmations citing a reason that the same were generated due to a system error.

15) Plaintiff has filed the present suit not against the principal- Hapag-Lloyd AG, but against its Indian subsidiary- Hapag-Lloyd (India)

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<sup>24</sup> (2004) 13 SCC 434

<sup>25</sup> AIR 1962 SC 538

<sup>26</sup> 2009 SCC OnLine Bom 573

Private Limited. Hapag-Lloyd (India) Private Limited is impleaded as the sole Defendant in the Suit. Thus, the suit is not filed against the disclosed foreign principal, but only against its Indian agent. Plaintiff has sought recovery of various amounts from the Defendant towards loss of profits, loss of business opportunities and loss of reputation. Substantive prayers in the Suit are as under:

- a. that this Hon'ble Court be pleased to pass an order and decree directing the Defendant to pay to the Plaintiff an amount of USD 200,600/- (Two Hundred Thousand Six Hundred United States Dollars only) on account of actual loss of profits suffered by the Plaintiff, along with interest thereon at the rate of 18% per annum from 23rd February 2022 until payment or realization thereof;
- b. that this Hon'ble Court be pleased to pass an order and decree directing the Defendant to pay to the Plaintiff an amount of USD 66.90.250/- (United States Dollars Six Million. Six Hundred Ninety Thousand, Two Hundred Fifty only), on account of loss of business opportunities along with interest thereon at the rate of 18% per annum from 23rd February 2022 until payment or realization thereof;
- c. that this Hon'ble Court be pleased to pass an order and decree directing the Defendant to pay to the Plaintiff an amount of USD 20,00,00,000/- (Two Million United States Dollars only) on account of loss of reputation suffered by the Plaintiff;
- d. pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to order and direct the Defendant to disclose on oath the movable and immovable assets and properties which stand in the name of the Defendant;
- e. pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to order and direct that the assets and properties as disclosed by the Defendant be attached for securing the claim of the Plaintiff,
- f. pending the hearing and final disposal of the present Suit this Hon'ble Court may be pleased to direct the Defendant No. 1 to secure the Plaintiff's claim for an amount of USD 88,90,850/- (Rupees Eighty Eight Lakhs Ninety Thousand Eight Hundred and Fifty only) towards damages on account of the financial, business and reputational losses suffered by the Plaintiff on such terms and conditions as may be imposed by this Hon'ble Court;
- g. ad- interim reliefs in terms of prayer clauses (d) to (f);

h. For costs; and

i. for such further and other reliefs as the nature and circumstances of the case may require.

**16)** Defendant has sought rejection of the plaint under Order 7 Rule 11 of the Code essentially on three grounds of (i) non-compliance with the provisions of Section 12A of the C.C. Act, (ii) non-maintainability of the Suit against an Indian agent, when contract is with disclosed foreign principal and (iii) this Court not having territorial jurisdiction to try and entertain the Suit. Defendant has alternatively prayed for return of the plaint under Order 7 Rule 10 of the Code for being presented before the Court having jurisdiction.

**DECISION OF APPLICATION FOR REJECTION OF PLAINT BEFORE DECISION OF APPLICATION FOR AMENDMENT**

**17)** Defendant has taken out the Application for rejection of the plaint under Order 7 Rule 11 of the Code on 19 May 2026. After filing of that application, the Plaintiff has filed application for amendment of the plaint on 28 August 2026. Mr. Vakil has suggested that the application for amendment needs to be decided first.

**18)** However, in my view, it would be necessary to decide the application for rejection of plaint under Order 7 Rule 11 of the Code as the objection raised in the application goes to the very root of the suit. Rejection of the plaint is on the grounds of non-compliance with the provisions of Section 12A of the C.C. Act and non-maintainability of a suit against the Defendant, who is merely an Indian agent of a disclosed foreign principal. Therefore, application for amendment by the Plaintiff

will have little impact on the objections raised by the Defendant. The two objections are required to be decided in the light of provisions of Section 12A of the C.C. Act and Section 230 of the Contract Act. These are pure questions of law. In my view therefore, application for rejection of the plaint under Order 7 Rule 11 needs to be decided first before taking up the application for amendment.

19) It is otherwise trite that when the objection in an application under Order 7 Rule 11 goes to the root of the issue such as jurisdiction and/or bar on institution of the suit, the application needs to be decided first rather taking up for decision, the application for amendment. In **Prakash G. Goyal and Ors. V/s Sayyed Ayaz Ali s/o Makdoom Ali and Ors.**<sup>27</sup> this Court has held in paragraph 15 of the judgment as under:

15. The trial Court despite noticing the fact that the relief of declaration with regard to the nature of plaintiffs title not having been sought, committed an error in granting time to the plaintiff to seek proper relief and pay Court fees within a period of 15 days. From the provisions of Order VII, Rule 11 of the Code and especially clauses (b), (c), (e) and (f) the Court can extend the time for permitting the plaintiff to comply with its directions only in the situations contemplated therein. **Where the rejection of the plaint is sought under provisions of Order VII, Rule 11(a) or (d) of Rule 11, there would be no question of granting time to the plaintiff to rectify the defects in the plaint.** In the present case the trial Court having found that a case under provisions of Order VII, Rule 11(d) of the Code had been made out, there was no occasion for the trial Court to have granted further time of fifteen days to seek appropriate relief. By granting that time the trial Court acted beyond its jurisdiction and hence the order to that extent cannot be sustained. The submission made on behalf of the plaintiff that the defect in question was curable and hence liable to be rectified by placing reliance on the decisions in *Mst Rukhmabai* and *Vidyavati Gupta* (supra) does not deserve acceptance. **If the suit appears from the statements in the plaint to be barred by any law, that defect cannot be said to be curable as contended by the plaintiff. Needless to state that recourse to provisions of Order VII, Rule 13 of the Code in that context is always permissible in accordance with law.**

(emphasis added)

<sup>27</sup> 2018 (5) Mh.L.J 830

20) In ***Hal Offshore Ltd. vs. Sale Proceeds of the vessel OSV Beas Dolphin IMO<sup>28</sup>***, this Court has held that the Application under Order VII Rule 11 of the Code needs to be decided first before deciding the application for amendment. This Court has distinguished the judgments in ***Bharat Travellers*** and ***Pramod Manoharrao Konge*** relied upon by Mr. Vakil. It is held in ***Hal Offshore Ltd.*** thus:

10. Mr Jumani, learned counsel appearing for Defendant 1 has relied upon the decision of the Calcutta High Court in the case of ***Mst. Zohra Khatoon*** (supra). In the said decision, the Calcutta High Court was considering the challenge in an appeal from an original order passed by the City Civil Court at Calcutta directing return of plaint on the ground that the City Civil Court did not have territorial jurisdiction to try the Suit. The Calcutta High Court observed that whereas the Court inherently lacked jurisdiction to entertain the Suit, it could not make any order for amendment to bring the Suit within its jurisdiction and in that case, the Court will be exercising jurisdiction which it has not. The Calcutta High Court relied upon the decision of the Division Bench of Madras High Court in the case of ***Ramanna v. Ami Reddy*** where it was observed as under:

“If a court finds that it has no jurisdiction, then to say that it has jurisdiction to ask the plaintiff to amend his valuation with a view to direct him to pay additional court-fee and then return the plaint, would seem to suggest that a court not having jurisdiction has got jurisdiction to do something which is prima facie the duty and function of the proper court”.

11. The Calcutta High Court has held in the said decision of ***Mst. Zohra Khatoon*** (supra) that the said view has also been the consistent view of other High Courts in the cases of ***Lalji Ranchhoddas v. Narottam Ranchhoddas***, ***H.C. Khan v. Purni Agarwallani*** and ***Tirkha v. Ghasi Ram***.

12. I am in full agreement with the aforesaid view but that can only be decided after hearing the Interim Applications under Order VII, Rule 11 of the Civil Procedure Code, 1908 (the “CPC”). Whether or not this Court lacks inherent jurisdiction can only be decided after hearing both the Applications on merits. All that, this Court has to do at the moment is to decide which of the Applications have to be heard first: the one seeking rejection of plaint or the one seeking amendment. Considering the law that if the plaint does not disclose

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<sup>28</sup> 2026 SCC OnLine Bom 7572

a cause of action, this Court would not have jurisdiction, I am of the view that the Applications under Order VII Rule 11 be heard on merits first. In the facts of this case, once these applications are heard, only then a decision can be taken as to whether the Interim Application seeking amendment need to be heard or not.

19. The decision in the case of ***Bharat Travellers*** (supra), rendered by a Single Judge of this Court has also been relied upon by Mr Pratap, learned Senior Counsel, appearing for the Plaintiff, to submit that whenever an application for amendment is filed in the face of an application by the opponent for rejection of the plaint, the application for amendment would have to be considered first on merits before considering the application for rejection of the plaint and that it could not be procedurally correct to decide the application for rejection of the plaint first, since even if the defendant were right and the plaint were to be rejected, it would still be permissible for the Plaintiff to file a fresh suit including the subject matter of the proposed amendment within it and no practical purpose would be served in having the defendant's application heard first and then relegating the Plaintiff to file a fresh suit with the amended plaint.

20. The present discussion as noted above revolves around the issue as to whether the amendment applications under Order VI Rule 17 CPC need to be heard before the applications under Order VII Rule 11 CPC for rejection of the Plaint. As noted above, in view of the legal position obtaining that if it is found after hearing the applications for rejection of plaint under Order VII Rule 11CPC that the plaint does not disclose a cause of action, and thereby this Court not having jurisdiction, the question of considering the amendment applications would not arise, it would be appropriate to first hear the applications under Order VII Rule 11 CPC. In this view of the matter and also considering that the decision in the case of ***Bharat Travellers*** (supra) clearly records in para 9 that it could not be said that the Court inherently lacked jurisdiction to entertain the suit. The said decision in my view distinguishable on facts.

21) In ***Saurer Technologies GMBH & Co KG v Jingwei Textile Machinery Co. Ltd***<sup>29</sup>, this Court has held thus:

16. The issue as to whether the amendment could be allowed is dependent on the issue as to whether this Court had jurisdiction to adjudicate the Application for amendment itself and as this Court lacks jurisdiction, the application for amendment cannot be considered.

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<sup>29</sup> Interim Application (L) No. 4738 of 2025 decided on July 4, 2025

22) In the present case, since rejection of plaint is sought on the ground that the suit is not maintainable on account of non-compliance with provisions of Section 12A of the CC Act and in view of specific bar under Section 230 of the Contract Act, the issue goes to the root of the matter and therefore the Application for rejection of plaint needs to be decided first. It is another matter that Mr. Vakil has defended Defendant's application and has not really argued the application for amendment. Be that as it may. In the facts of the present case, it is otherwise necessary to decide the application for rejection of plaint first. If the suit itself is found to be not-maintainable, the question of permitting the Plaintiff to amend the plaint therein does not arise.

**NON-COMPLIANCE WITH PROVISIONS OF SECTION 12A OF THE COMMERCIAL COURTS ACT**

23) The first ground raised by the Defendant for seeking rejection of plaint is non-compliance with the provisions of Section 12A of the C.C. Act. Under Section 12A, a suit which does not contemplate any urgent interim relief cannot be instituted unless the Plaintiff exhausts the remedy of pre-institution mediation. Section 12A of the C.C. 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."

24) By now, it is well-settled principle that provisions of Section 12A of the C.C. Act are mandatory and any suit which does not contemplate urgent interim relief, must be visited with the consequences of rejection of plaint under Order 7 Rule 11 of the Code, where the remedy of pre-institution mediation is not exhausted [SEE: ***Patil Automation Private Limited*** (supra)].

25) In ***Dhanbad Fuels Pvt. Ltd.*** (supra), the Apex Court has reiterated the principle that compliance with the provisions of Section 12A of the C.C. Act is mandatory in nature. The Apex Court has explained the true meaning of the expression '*contemplate any urgent interim relief*' used in Section 12A of the Act. The Apex Court has summarized its conclusions in para-62 of the judgment as under:

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

a. The decision of this Court in Patil Automation (supra) lays down the correct position of law as regards Section 12A of the 2015 Act by holding it to be mandatory in nature.

b. As held in paragraph 104 of the decision in Patil Automation (supra), the declaration of the mandatory nature of Section 12A of the 2015 Act relates back to the date of the Amending Act.

c. As held in paragraph 113.1 of the decision in Patil Automation (supra), any suit which is instituted under the 2015 Act without complying with Section 12A is liable to be rejected Under Order VII Rule 11. However, this declaration applies prospectively to suits instituted on or after 20.08.2022.

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

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

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

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

**h. Even if the urgent interim relief ultimately comes to be denied, the suit of the Plaintiff may be proceeded with without compliance with Section 12A if the test for "urgent interim relief" is satisfied notwithstanding the actual outcome on merits.**

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

j. In suits instituted without complying with Section 12A of the 2015 Act prior to 20.08.2022 which are pending adjudication before the trial court, the court shall keep the suit in abeyance and refer the parties to time-bound mediation in accordance with Section 12A of the 2015 Act if an objection is raised by the

Defendant by filing an application Under Order VII Rule 11, or in cases where any of the parties expresses an intent to resolve the dispute by mediation.

*(emphasis added)*

*Initiation of Pre-litigation mediation by Plaintiff.*

26) In the present case, the Plaintiff has not disputed the fact that it is required to meet the requirement under Section 12A (1) of the C.C. Act. It accordingly initiated pre-institution mediation in accordance with the provisions of Section 12A of the C.C. Act. In para-66 of the plaint, it is pleaded thus:

66. The Plaintiff had initiated pre-institution mediation proceedings in accordance with the provisions of Section 12A of the Commercial Courts Act, 2015 prior to filing the present Suit.

27) However, after making the application for mediation on 21 February 2025 under Rule 3 of the Pre-institution Mediation Rules before the Main Mediation Centre of this Court, Plaintiff immediately instituted the present Suit on 26 February 2025. Thus, Plaintiff merely completed the formality of filing application under Rule 3(1) of the Pre-institution Mediation Rules and did not even await the Mediation Centre to issue notice under Rule 3(2) to the Defendant. The notice was issued by the Mediation Centre much later on 27 February 2025. On 13 March 2025, the Plaintiff remained present before the Mediation Centre, but Defendant did not appear despite receipt of notice dated 27 February 2025. The Mediation Centre issued final notice under Rule 3(3) of the Pre-institution Mediation Rules to the Defendant on 17 March 2025. It is the case of the Defendant that it never received notice dated 17 March 2025. Plaintiff disputes this contention. However, it is not necessary to delve

deeper into this controversy. On 27 March 2025, Plaintiff remained present before the Mediation Centre, but Defendant failed to appear. Further when the date in the mediation was fixed as 7 May 2025, Plaintiff gave private notice to the Defendant on 5 May 2025. Again on 7 May 2025, the Defendant failed to appear before the Mediation Centre. Finally on 9 May 2025, the Mediation Centre issued a non-starter report in terms of Rule 3(4) of the Pre-institution Mediation Rules.

28) In the light of the above chronology of events, Plaintiff has essentially raised two contentions in support of its plea of compliance with the provisions of Section 12A of the C.C. Act. Firstly, it is contended that initiation of mediation by filing application on 21 February 2025 meets the requirement of Section 12A. Secondly, it is contended that mediation has ultimately culminated into a non-starter report on account of refusal on the part of the Defendant to participate in mediation. It is therefore contended that rejecting the plaint in such circumstances and making the Plaintiff undergo the entire process of mediation once again would be nothing but a mere empty formality.

*Whether mere initiation of pre-litigation mediation enough?*

29) I accordingly proceed to consider whether mere filing of an application under Section 3(1) of the Pre-institution Mediation Rules by the Plaintiff would constitute sufficient compliance with the provisions of Section 12A of the C.C. Act. Provisions of sub-section (1) of Section 12A would indicate that the word used therein is '*exhausts*'. The Legislature has consciously not used the word '*initiates*'. Thus, what is contemplated

under Section 12A of the C.C. Act is completion of the entire process of mediation under Rule 3 of the Pre-institution Mediation Rules. Rule-3 reads thus:

**3. Initiation of mediation process-**

(1) A party to a commercial dispute may make an application to the Authority as per Form I specified in Schedule 1, either online or by post or by hand, for initiation of mediation process under the Act along with a fee of one thousand rupees payable to the Authority either by way of demand draft or through online;

(2) The Authority shall, having regard to the territorial and pecuniary jurisdiction and the nature of commercial dispute, issue a notice, as per Form 2 specified in Schedule 1 through a registered or speed post and electronic means including e-mail and the like to the opposite party to appear and give consent to participate in the mediation process on such date not beyond a period of ten days from the date of issue of the said notice.

(3) Where no response is received from the opposite party either by post or by e-mail, the Authority shall issue a final notice to it in the manner as specified in sub-rule (2).

(4) Where the notice issued under sub-rule (3) remains unacknowledged or where the opposite party refuses to participate in the mediation process, the Authority shall treat the mediation process to be a non-starter and make a report as per Form 3 specified in the Schedule 1 and endorse the same to the applicant and the opposite party.

(5) Where the opposite party, after receiving the notice under sub-rule (2) or (3) seeks further time for his appearance, the Authority may, if it thinks fit, fix an alternate date not later than ten days from the date of receipt of such request from the opposite party.

(6) Where the opposite party fails to appear on the date fixed under sub-rule (5). the Authority shall treat the mediation process to be a non-starter and make a report in this behalf as per Form 3 specified in Schedule I and endorse the same to the applicant and the opposite party.

(7) Where both the parties to the commercial dispute appear before the Authority and give consent to participate in the mediation process, the Authority shall assign the commercial dispute to a Mediator and fix a date for their appearance before the said Mediator.

(8) The Authority shall ensure that the mediation process is completed within a period of three months from the date of receipt of application for pre-institution mediation unless the period is extended for further two months with the consent of the applicant and the opposite party.

**30)** Thus, making an application to the Mediation Centre under Rule 3(1) of the Pre-institution Mediation Rules is merely commencement of mediation proceedings. Thereafter, the steps provided for under Sub-rules (2) to (8) are required to be followed. The process of mediation within the meaning of Section 12A gets completed only upon either a settlement, or a report of non-settlement, or a non-starter report. Therefore, before the stage arrives for occurrence of either of the three eventualities, it cannot be inferred that the remedy of pre-institution mediation is '*exhausted*' by the Plaintiff within the meaning of Section 12A of the C.C. Act.

**31)** The Legislature has not contemplated pre-institution mediation in commercial suits to be a mere formality. Use of the word '*exhausts*' in Section 12A (1) of the C.C. Act makes it abundantly clear that mere filing of an application to the Mediation Centre does not satisfy the requirement under Section 12A of the Act. The mandatory requirement of exhaustion of pre-litigation mediation get satisfied only if either of the three eventualities of settlement, or report of non-settlement, or non-starter report occurs. Thus, a Plaintiff who merely files an application for mediation and immediately rushes to the Commercial Court by lodging a Suit does not comply with the provisions of Section 12A of the CC Act. The Plaintiff must wait either for a non-starter report or a report of non-settlement before filing a Suit in a Commercial Court.

32) In *Patil Automation Private Limited* (supra), the Apex Court has interpreted the provisions of Section 12A of the C.C. Act read with Rule 3 of the Pre-institution Mediation Rules and has held in paragraph 62 of the judgment as under:

62. Since, Section 12A also contemplated the making of Rules to give effect to the scheme of pre-litigation mediation. The Rules were promptly made and published on 03.07.2018. Rule 3 elaborately provides for the manner in which the mediation process is initiated. It contemplates that a party, to a commercial dispute, may make an application to the Authority. This Rule speaks about a party. Section 12A declares that the Plaintiff must exhaust the remedy of pre-litigation mediation. **What, apparently is required is that the Suit cannot be filed except after the remedy of pre-litigation mediation, contemplated under the Act and the Rules, is attempted and exhausted.** What Rule 3(1) provides is the form in which the application is to be made, viz., Form-I, as specified in Schedule-I. The making of the Form can be by online transmission or by post or by hand.

*(emphasis and underlining added)*

33) Thus, what is contemplated under Section 12A(1) is not mere 'initiation' but 'exhaustion' of the remedy of pre-institution mediation. In my view therefore, mere filing of application by the Plaintiff on 21 February 2025 under Rule 3(1) of the Pre-institution Mediation Rules has not satisfied the mandatory requirement of Section 12A(1) of the C.C. Act.

*Whether non-starter report after filing of suit constitutes compliance with Section 12A of C.C. Act?*

34) Mr. Vakil has strenuously relied on the events post filing of the suit in support of his contention that the mediation ultimately resulted in a non-starter report dated 9 May 2025. In my view, however, what needs to be examined is whether the Plaintiff complied with the mandatory requirement of 'exhaustion' of remedy of pre-institution mediation as on 26 February 2025, when the suit was lodged. The answer

to the question is in the negative. As observed above, the Plaintiff merely filed the application for mediation on 21 February 2025 and filed the suit immediately on 26 February 2025. The non-starter report was submitted by the Mediation Centre subsequently on 9 May 2025. According to the Plaintiff, submission of non-starter report on 9 May 2025 can be treated as sufficient compliance with the provisions of Section 12A of the C.C. Act. It is Plaintiff's contention that since the Defendant did not participate in the mediation, it cannot raise the issue of non-compliance with provisions of Section 12A of the C.C. Act. In my view, however, compliance with provisions of Section 12A needs to be demonstrated at the time of institution of the suit. Non-compliance with the mandatory requirement of exhaustion of the remedy of pre-litigation mediation before lodging of the suit renders the suit inherently defective. It is trite that rights of the parties are crystallized on the date of filing of an action and that subsequent events and documents cannot cure the plaint, which is defective when presented. Therefore, the events that unfolded after 26 February 2025 cannot cure the inherent defect in Plaintiff's suit which was lodged without exhausting the remedy of pre-institution mediation.

35) I am not impressed with the submission of Mr. Vakil that directing Plaintiff to go for another round of pre-institution mediation would be an empty formality on account of refusal on the part of the Defendant to participate in mediation proceedings. As observed above, this Court cannot validate inherently defective and invalid suit on the basis of occurrence of subsequent events. When the suit was barred under provisions of Section 12A when the same was presented on 26 February 2025, the subsequent event of a non-starter report dated 9 May 2025

cannot have the effect of curing such defect. There is a statutory interdict on filing of the suit under Section 12A of the C.C. Act without exhaustion of the remedy of pre-litigation mediation. The theory of 'useless formality' cannot be imported in the scheme of the C.C. Act. If the event of subsequent failure of mediation is taken into consideration as compliance with provisions of Section 12A of the C.C. Act, the same would encourage parties to file suits without waiting for completion of mediation process. Such course of action would frustrate the scheme of mandatory pre-litigation mediation in commercial suits. The legislative intent behind Section 12A of the Act is to ensure that the suits which are capable of being settled are not unnecessarily brought before the court, thereby saving cost of parties as well as valuable judicial time. Therefore, it is mandatory that the plaintiff awaits completion of mediation process before institution of the suit. In my view therefore, this Court cannot retain the plaint in a defective suit by taking into consideration the non-starter report issued by the Mediation Centre on 9 May 2025.

*Cases where commercial suit can be instituted before completion of mediation process.*

36) It must, however, be clarified that there cannot be an inflexible rule that once pre-litigation mediation is initiated, the Plaintiff is prohibited from instituting the suit before occurrence of the three eventualities discussed above. In a given case where urgency gets created after filing of application under Rule 3(1) of the Pre-institution Mediation Rules, it is not mandatory that Plaintiff must complete the process of mediation before lodging of the Suit. To illustrate, if after receipt of

notice from the mediation center, the Defendant puts the property for sale, the Plaintiff would be justified in rushing to the Commercial Court by filing the suit to injunct the Defendant from selling the property even before completion of the mediation process. In such exceptional circumstances, however, the event leading to extreme urgency must occur after initiation of the mediation process. This concession can legitimately be conceded where there was no contemplation of urgent interim relief at the time of initiation of mediation, but the same occurs after filing of application for mediation. Sometimes the process of mediation may take a long time. In a given case, the defendant may deliberately keep involved the plaintiff in negotiations and simultaneously takes steps to frustrate the action initiated by the plaintiff. If plaintiff senses need for seeking urgent relief based on actions of the defendant post initiation of mediation process, the plaintiff would be justified in abandoning the mediation and in filing the suit for pressing urgent interim relief. Reliance by Mr. Vakil on judgment of this Court in *Phoenix ARC Private Limited* (supra) in this regard is apposite in which it is held in paragraph 33 as under:

33. As per the second proviso to sub-section (3) of Section 12-A of the said Act, the period during which the parties remain occupied with the pre-institution mediation is excluded for the computation of the period of limitation under the Limitation Act. Thus, the whole idea of exhausting the remedy of pre-institution mediation and settlement provided under Section 12-A is to enable the parties to arrive at an amicable settlement that can be enforced, thereby ending the commercial dispute speedily and preventing the parties from going through the lengthy process of a suit. **However, filing an application under subsection (1) of Section 12-A would not take away the plaintiff's right to file a suit in the event a situation arises where the plaintiff is required to seek any urgent interim relief from the court. Only because the plaintiff applied for exhausting the remedy under Section 12-A, because, as on that date, the urgent interim relief was not contemplated, would not preclude the plaintiff from filing a suit at a later stage, if, according to the plaintiff,**

**a situation has arisen to seek urgent interim relief from the Court.** If a plaintiff is prohibited from filing a suit for seeking urgent interim relief only on the ground that an application to exhaust the remedy of mediation and settlement is filed and the process is not completed as provided under the said Mediation Rules, it would be contrary to the well-established legal principle that if urgent interim relief is contemplated in the suit from the standpoint of the plaintiff, the bar under Section 12-A would not apply.

*(emphasis added)*

37) However, in the present case, the exceptional circumstance as discussed above does not exist as no emergency/urgency has arisen during the period between 21 February 2025 (*date of initiation of mediation*) and 26 February 2025 (*date of lodging of suit*). The case thus does not involve creation of urgency after filing of application for mediation. The plaint lacks any averment indicating generation of any urgency warranting filing of the suit during pendency of pre-institution mediation. Mr. Vakil has also fairly conceded that the case does not involve creation of urgency between the gap period from the date of initiation of mediation and date of lodging of the suit.

*Filing of application for pre-litigation mediation on admission of the suit not contemplating urgent interim relief within the meaning of Section 12A of the C.C. Act.*

38) In my view, when a Plaintiff decides to institute the suit in a Commercial Court which involves a prayer for temporary injunction/urgent interim relief, the Plaintiff needs to take a pause and decide whether to exhaust the remedy of pre-institution mediation or to take the risk of lodging the Suit without exhausting the remedy of mediation by justifying before the Court as to how the suit contemplates urgent interim relief. Once the former choice is made, Plaintiff must stick

to the choice so made and complete the process of mediation and then lodge the suit. Plaintiff cannot change his mind midway by initiating mediation and thereafter abandoning the same by raising a plea that there was always urgency involved for bypassing the remedy of mediation. As observed above, the only exceptional circumstance is where some event occurs after initiation of mediation which warrants an application for urgent interim relief. Thus, the exception can be recognized only where an intervening event occurs between the date of initiation of mediation and the date of filing of the Suit. However, if the claim for urgency is based on events prior to initiation of mediation, those events cannot be cited for the purpose of claiming contemplation of urgency for leaving the mediation remedy midway once the same is initiated.

39) In the present case, the Plaintiff has accepted the position that the suit does not contemplate any urgent interim relief by filing application for mediation. By filing such application, the Plaintiff has acquiesced in the position that the application for interim relief can await completion of process of mediation. Therefore, once this choice is made, Plaintiff cannot take a *volte face* and file the suit before the Commercial Court by leaving the mediation process midway.

Non-contemplation of urgent interim relief in the suit.

40) Even otherwise, the Suit does not contemplate any real or genuine urgency to seek interim reliefs. As pleaded in para-63 of the plaint, the cause of action first arose on 23 February 2022 when

Defendant allegedly cancelled the bookings. It is pleaded in paragraph 63 that despite repeated requests, the Defendant failed and neglected to give any response to the Plaintiff. The averments in paragraph 63 of the plaint read thus :

63. The cause of action for filing the present Suit first arose on 23rd February 2022 when the Defendant unilaterally and arbitrarily cancelled the bookings and refused to perform the contract. Thereafter, despite repeated requests, the Defendant has failed and neglected to give any response to the Plaintiff. Thus, the present suit is well within the period of limitation and no part of the cause of action thereof is barred by the law of limitation.

41) Perusal of various documents produced along with the plaint would indicate that the last correspondence between the parties in respect of the claims of the Plaintiff was on 5 March 2022. After 5 March 2022, there is total silence by the Plaintiff.

42) The suit otherwise involves a simple monetary claim. Plaintiff wants to recover from the Defendant various amounts towards alleged loss of profit, loss of business opportunity and loss of reputation. The interim relief sought in the plaint and in the application for temporary injunction is for disclosure of assets, attachment thereof and for providing security for amount of USD 88,90,850/-. Thus, with these prayers, the Plaintiff believed that filing of the suit could have awaited outcome of mediation. Accordingly, Plaintiff has made a conscious choice of availing the remedy of pre-institution mediation. It cannot now turn around and raise a plea that the suit otherwise contemplates a genuine urgency so as to bypass the remedy of exhaustion of pre-institution mediation.

43) In my view therefore, there is non-compliance with the provisions of Section 12A of the Commercial Courts Act warranting rejection of plaint under Order 7 Rule 11 of the Code. Since Plaintiff itself has admitted non-contemplation of urgent interim relief by filing application for mediation, it is not necessary to discuss the ratio of the judgments in *Exclusive Capital Limited*, *Image Developers* and *Shraddha Shelters Pvt. Ltd.* (supra). The facts and circumstances of the present case are unique. After admitting that the suit does not contemplate urgent interim relief, Plaintiff cannot leave the mediation process midway and file the suit even before the Mediation Centre could issue notice to the Defendant. Having acted hastily, Plaintiff must bear the consequences of its actions. As held by the Apex Court in *Patil Automation Private Limited* and *Dhanbad Fuels Pvt. Ltd.*, every suit which does not meet the mandatory requirement of Section 12A of the C.C. Act must meet the fate of rejection of plaint under Order 7 Rule 11 of the Code. No discretion is left to the Court in this regard. The moment the Court comes to the conclusion that the suit does not contemplate any urgent interim relief when it was lodged and that the remedy of pre-institution mediation is not exhausted, the Court has no choice but to reject the plaint under Order 7 Rule 11 of the Code.

44) Reliance by Mr. Vakil on judgment of Division Bench of this Court in *Jivaraj Ravaji Gandhi* (supra) is inapposite. The judgment is relied upon in support of the contention that when Defendant does not wish to pursue the mediation, the Suit would not fall foul of the provisions of Section 12A of the C.C. Act. In the case before the Division Bench, the Plaintiff had approached the District Legal Services Authority,

Malshiras as per the mediation rules and the DLSA had issued two notices to the Defendants and had thereafter issued a non-starter report due to non-appearance of the Defendants. The case thus clearly involves submission of non-starter report before institution of the suit and therefore the judgment has no application to the facts of the present case where the suit is filed before issuance of non-starter report by the Mediation Centre. Even in the case of ***Phoenix ARC Private Limited***, a non-starter report was generated, after which the suit was filed. Since both the judgments relied upon by Mr. Vakil involved the eventuality of submission of non-starter reports '*before*' institution of the suit, the same do not support his contention that submission of non-starter report '*post*' filing of the suit would constitute compliance with provisions of Section 12A of the C.C. Act.

45) In my view therefore, the plaint in the Suit deserves to be rejected on the ground of failure to comply with the mandatory provisions under Section 12A of the C.C. Act.

**BAR TO MAINTAINABILITY OF SUIT UNDER SECTION 230 OF CONTRACT ACT**

46) So far as the second ground of absence of cause of action against the Defendant for filing the Suit is concerned, the same is premised essentially on the status of the Defendant as a mere Indian agent of Hapag-Lloyd AG, a disclosed foreign principal. Plaintiff has admitted in para-2 of the plaint that Defendant is a wholly owned subsidiary of Hapag-Lloyd AG, which is a company incorporated in Germany. In para-8 of the plaint, there is an averment that the Plaintiff

made inquiries with Defendant's parent company Hapag-Lloyd AG and sought quotation/request for offer for booking container spaces on Hapag-Lloyd AG's vessels. In paragraphs 9, 10 and 11 of the plaint, there are averments that Defendant's parent company Hapag-Lloyd AG provided the quotations/offers to the Plaintiff. Thus, from the plaint, it is apparent that the inquiries are made with and quotations are provided by Hapag-Lloyd AG and not by the Defendant. However, in paragraph 12 of the plaint, Plaintiff conveniently changes the stand and pleads a position that bookings were made with the Defendant. Again in paragraphs 13 to 15 of the plaint, it is pleaded that the booking confirmations were issued by the Defendant. However, perusal of copies of booking confirmations produced along with the plaint would indicate that the same were issued by the Defendant 'as agent'. The booking confirmations bear the name of 'Hapag-Lloyd AG'. Thus, though the name of Defendant appears in the booking confirmations, the same are essentially issued by Hapag-Lloyd AG mentioning the name of the Defendant as its agent. The Defendant has acted as a mere 'booking contact' between Plaintiff and Hapag-Lloyd AG. Even otherwise, when the inquiries are made with Hapag-Lloyd AG and quotations are issued by Hapag-Lloyd, it becomes difficult to believe that Defendant would issue booking confirmation in its own name. Perusal of the booking confirmations would clearly indicate that the same are issued by Hapag-Lloyd AG by mentioning the name of the Defendant as 'agent' and 'booking contact'. Thus, it is Plaintiff's own case that contracting party, if at all there was any contract, was Hapag-Lloyd AG. Thus, the name of the foreign principal is disclosed to the Plaintiff. Defendant is a mere Indian agent of the foreign principal.

47) Under Section 230 of the Contract Act, in absence of contract to the contrary, an agent is neither personally bound by nor entitled to enforce contracts entered into on behalf of his principal. Unless there is a contractor to the contrary, a local agent of a foreign carrier is not personally liable for breach of contract to carriage. Section 230 of the Contract Act provides thus:

**230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal-**

In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary- Such a contract shall be presumed to exist in the following cases:-

- (1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;
- (2) where the agent does not disclose the name of his principal;
- (3) where the principal, though disclosed, cannot be sued.

48) In the present case, neither there is any contract to the contrary nor the case is covered by any of the three exceptions recognised under Section 230 of the Contract Act. The alleged contract was not for sale or purchase of goods. The failed transaction between the parties related to carriage of Plaintiff's goods by sea and rail/road. The name of the principal has been disclosed to the Plaintiff. There is no embargo on suing the principal. Plaintiff has not pleaded that for a particular reason, it is not possible to sue the principal and that therefore its agent is being sued. Thus in a suit not involving sale or purchase of goods where the principal is disclosed and where the bar on suing the principal is not

pleaded in the plaint, the rigors of Section 230 of the Contract Act would apply.

49) The issue of non-maintainability of a suit against an Indian agent of a disclosed foreign principal is no more *res integra* and is covered by several decisions. In **Midland Overseas**, rejection of plaint was sought on the ground that the suit was filed against the agent of a disclosed principal. In **Midland Overseas**, plaintiff's claim was founded on non-delivery of container containing plaintiff's cargo to the consignees at Durban. Plaintiff alleged breach of contract of carriage. The defendant No.3 had merely acted as an agent of defendant No.2 in accepting the delivery of the container. However, the plaintiff impleaded defendant No.3 also in the suit because it was a shipping agent for and on behalf of defendant No.2, a foreign disclosed principal. Referring to the provisions of Section 230 of the Contract Act, a Single Judge of this Court (*R.M. Lodha, J. as he then was*) held that once the principal is disclosed and the third defendant had merely acted as an agent of the principal, no action could lie against defendant No.3 who was only an agent of defendant No.2. This Court held in paras-6 and 8 of the judgment as under:

6. On these admitted facts which have been pleaded by the plaintiffs themselves in the plaint the question that arises for determination is whether any cause of action has accrued against the 3rd defendants who had only acted as agents for and on behalf of 2nd defendants. The agent cannot personally enforce nor be bound by, contracts on behalf of principal. Ordinarily an agent contracting in the name of his principal cannot be sued on such contracts. The agent in such circumstances is also not entitled to sue in his name. This position emerges from Section 230 of Contract Act which reads thus:

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It is apparent that the principal is disclosed and has been impleaded as 2nd defendant. It is further admitted case in the plaint that the 3rd defendant acted as an agent of the 2nd defendant and the container was accepted by the 3rd defendant on behalf of the 2nd defendant. In the circumstances, where the principal is disclosed and has been impleaded as defendant No. 2, no action would lie against the defendants No. 3 who are only agent of defendant No. 2. There is not even a whisper in the entire plaint that the 3rd defendants acted independent of 2nd defendant or that the container was accepted by the 3rd defendants in the capacity of their own or the 3rd defendants while contracting undertook any personal liability under the said contract.

7. The plaintiffs claim is founded on non-delivery of the container containing plaintiffs cargo to the consignees at Durban allegedly attributable to negligence and breach of contract of carriage. Under Section 230 of the Act before the Agent can be sued it must be pleaded and shown that the principal is undisclosed and the contract, the breach of which is sued on was entered into by the Agent as having contracted personally. **Where the contract is entered into by agent contracting on behalf of a foreign principal who is named and disclosed, the agent cannot be sued personally nor made personally liable.** From the pleaded facts in the plaint it is amply clear, therefore, that no cause of action has arisen against the 3rd defendants and plaint is liable to be rejected under Order 7 Rule 11 CPC as against 3rd defendants.

8. Accordingly, suit is dismissed against defendants No. 3 and office is directed to make an endorsement to that effect in red ink in the title of the plaint against the name of 3rd defendants.

*(emphasis added)*

50) The Division Bench of this Court in *MV x.press Annapurana* has set aside the decree of the learned Single Judge against an agent of disclosed foreign principal, where the contract was not for sale/purchase of goods. The learned Single Judge had apparently held that the bar under Section 230 of the Contract Act does not apply when the principal is a foreign company. Setting aside the decree against the agent (defendant No.3), the Division Bench has held in paragraphs 30 and 31 of the judgment as under :

30. The third point which is to be considered is whether any decree could have been passed against Defendant No. 3. It was specifically claimed on behalf of

the Defendant No. 3 that since the Defendant No. 3 was admittedly acting as an agent on behalf of the disclosed principal namely the Defendant No. 2, the Plaintiff could not hold the Defendant No. 3 liable for any loss allegedly caused to it. The learned single Judge has while passing the decree against the Defendant No. 3 has held that the fact that the Defendant No. 3 acted as agent on behalf of the disclosed principal would not come to the aid of the Defendant No. 3, as the principal i.e. the Defendant No. 2 was a foreign principal. The relevant observations are to be found in paragraph 31 of the judgment. It reads as under:

31. The Defendant No. 3 has on the other hand contended that the Defendant No. 2 being the principal and a disclosed principal under the Contract Act, the 3rd Defendant is not liable but only the Plaintiff is liable. It is an admitted position that the 2nd Defendant is a foreign company and in case of a foreign principal the liability of the 2nd Defendant does not get discharged merely by virtue of the fact that he is a disclosed principal.

It appears that the learned single Judge has totally misread the provisions of Section 230 of the Indian Contract Act. Section 230 of the Indian Contract Act reads as under:

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31. It appears that the learned single Judge is referring to Clause (1) of second part of Section 230. But that clause will come into play where the contract is made by an agent for the sale or purchase of the goods for a merchant residing abroad. **The contract which was subject matter of the suit was not a contract for either sale or purchase of the goods. In the present case, the Defendant No. 3 acted as an agent on behalf of the disclosed principal for carriage of goods by sea and not for sale or purchase of goods, and therefore, clearly no decree against Defendant No. 3 could have been passed.**

*(emphasis added)*

51) In *Chakiat Shipping Services (Pvt.) Ltd.*, the judgment of this Court in *Midland Overseas* has been followed by the Single Judge of Calcutta High Court. It is held in paragraphs 8, 11 and 12 of the judgment as under:

8. The meaningful reading of the aforesaid provision makes amply clear that ordinarily the agent cannot be personally bound by any action of the principal in absence of any specific contract to that effect. The second part of the said section raises a statutory presumption of contract to the contrary in case the

contract relates to sale or purchase of a goods made by the agent for the disclosed foreign principal or for and on behalf of the undisclosed principal or where the principal though disclosed cannot be sued. The entire argument is based upon the first contingency and according to the opposite party, the defendant No. 1 being the disclosed foreign principal resident abroad can be sued alongwith the agent. Admittedly the Bill of Lading is signed by the defendant No. 2/petitioner as an agent of the defendant No. 1 who is resident abroad. There is no indication therein to the effect that the agent would be bound by the contract entered into or on behalf of its principal. The plaint does not disclose any facts that the said contract is coupled with interest. The defendant No. 2/petitioner may be working as an agent on commission but there is no indication in the contract that he would be personally responsible and liable for any breach thereof. In case, the name of the principal is disclosed the agent can no more be responsible or liable unless the case is made out within the later part of section 230 of the Act raising presumption for existence of contract.

11. For the reasons stated above, the defendant No. 2 succeeds in its application. The plaint however cannot be struck out in its entirety. Following the decision of the Division Bench in P.B. Shah and Co. v. The Chief Executive Officer MANU/WB/0068/1962 : AIR 1962 Cal 283. It is directed that the name of the defendant No. 2 be struck out and deleted from the cause list of the plaint in this suit."

12. The plaint against the agent was rejected in' case of **Midland Overseas** (supra) applying the provisions laid down under section 230 of the Act as both the principal and the agent cannot be sued unless the contract clearly provides a personal liability of the agent. It is relevant to quote Paragraph 7 of the said report which runs thus:

"7. The plaintiffs claim is founded on non-delivery of the container containing plaintiffs cargo to the consignees at Durban, allegedly attributable to negligence and breach of contract of carriage. Under section 230 of the Act before the Agent can be sued it must be pleaded and shown that the principal is undisclosed and the contract, the breach of which is sued on was entered into by the Agent as having contracted personally. Where the contract is entered into by agent contracting on behalf of a foreign principal who is named and disclosed, the agent cannot be sued personally nor made personally liable. From the pleaded facts in the plaint it is amply clear, therefore, that no cause of action has arisen against the 3rd defendants and plaint is liable to be rejected under Order VII, Rule 11 of the C.P.C. as against 3rd defendants."

52) Mr. Vakil has strenuously placed reliance on judgment of Coordinate Bench of this Court in **Board of Trustees of Jawaharlal Nehru**

**Port Trust.** Relying on the judgment, it is sought to be contended that the judgment of the coordinate Bench in **Midland Overseas** is distinguished, and it is held that the judgment of the Apex Court in **Cochin Frozen Foods Exports (P) Ltd.** impliedly overrules the judgment of this Court in **Midland Overseas**. In the case before the coordinate Bench in **Board of Trustees of Jawaharlal Nehru Port Trust**, a motion was taken out by Defendant No.2 - an Indian agent, seeking dismissal of the suit against it or to delete its name from the suit on the ground that it was merely an agent of a disclosed foreign principal. The case involved import of goods by Defendant No.1 and storage thereof in the premises of Plaintiff-Board JNPT. The suit was filed for recovery of storage charges and ground rent for the period for which the goods remained in the premises of the Plaintiff-Board JNPT. Defendant No.2 raised a plea that it was merely an agent of foreign principal in Belgium and was merely acting on behalf of the disclosed principal. Reliance was placed by Defendant No.2-agent on provisions of Section 230 of the Contract Act. This Court held in paragraphs 8 of the judgment as under:

8. It is argued on behalf of Defendant No. 2 by Ms. Sethna that the Plaintiff can and must sue the disclosed principal though the disclosed principal is a foreigner. If the Plaintiff cannot sue such principal, the Plaintiff must aver under what circumstances and why such disclosed principal cannot be sued. If such averment is not made, the agent of such disclosed foreign principal in India cannot be sued. This aspect may be a question of law to be decided at the final hearing of the Suit. In this Notice of Motion, which would require the rights of the Plaintiff and Defendant No. 2 to be agitated and disposed of finally, the only aspect to be considered is whether in the Suit as it stands, the Plaintiff having not sued the foreign disclosed principal, can sue the agent in India of such principal. The principal of Defendant No. 2 is not sued. The Plaintiff ordinarily would not be entitled to sue Defendant No. 2 as the agent because the principal of Defendant No. 2 has been disclosed. This is the prime mandate of Section 230 of the Act. This is subject to a contract to the contrary between the agent and the principal. Even if there is no contract to the contrary between the agent and the principal, in the case of a foreign disclosed principal the party in India is put to a choice to sue the foreign disclosed principal or to sue his agent

in India. The Plaintiff has exercised that choice and option. The Plaintiff has sued the agent and not the principal, though disclosed, but who is "a merchant resident abroad", a foreigner.

53) This Court relied on the judgment of the Apex Court in ***Cochin Frozen Foods Exports (P) Ltd.*** and held in paragraphs 10 to 15, 18 and 20 as under:

10. The Plaintiff's Advocate has relied upon a judgment in the case of *Cochin Frozen Food Exports (P) Ltd. v. Vanchinad Agencies and Ors.* (2004) 13 Scc 434 in which the requirement under Section 230 Exception (1) has been considered. It is held that the only requirement is that the principal should be resident abroad and if that is so, even if such principal is disclosed the agent could be sued by the third party. It was observed that the High Court holding that since the name of the foreign principal was disclosed and it had been made a party before it, the Suit was not maintainable against an Indian agent was an incorrect proposition of law. Hence in that case though the foreign principal was disclosed and made a party since the principal was a foreigner, the agent in India was held liable to be sued.

11. Ms. Sethna has relied upon the case of *Midland Overseas v. m.v. "CMBT Tana"* and Ors. MANU/MH/0106/2000 : 1999(3) ALL MR 662 under Section 230 of the Act in which it was held that when the agent was contracting in the name of the principal he cannot be sued upon such contract since he cannot personally enforce or be bound by such contract under the section. Hence it is held that ordinarily such agent contracting in the name of his principal cannot sue or be sued upon such contracts. In that case it was observed that the agent acted as the general agent for the disclosed principal. The disclosed principal as well as the agent were sued. The agent was sued as Defendant No. 1. The disclosed principal was sued as Defendant No. 2, the agent carrying on business in Bombay on behalf of the 2nd Defendant. The order does not show that the 2nd Defendant was an Indian principal or a foreign principal. The order only relates to what ordinarily is the rights as well as the liabilities of an agent under a contract where a principal is disclosed. In fact, the order sets out the first part of Section 230 of the Act, but not the presumptions/exceptions thereto.

12. It is clear that if an agent acts on behalf of the Indian principal who is disclosed the agent, cannot be sued. Hence ordinarily the agent cannot be sued. Only if the agent acts on behalf of a foreign principal, he can be sued. The aforesaid order in *Midland Overseas* (supra) goes thus far.

13. Ms. Sethna states that that was a case of a foreign principal (since she had appeared in that case). **If that is so, the judgment in the case of *Midland Overseas* (supra) must be taken to have been impliedly overruled by the judgment in the case of *Cochin Foreign Foods* (supra).**

14. In a further order of the learned Single Judge of this Court in Notice of Motion No. 2699 of 1998 in Admiralty Suit No. 35 of 1995 dated 14th January 1999 also Section 230 has been considered. That was an application for striking off the name of the agent upon the plea that there was no cause of action disclosed against the agent in the Plaint. In that case also the principal was disclosed. The Suit was for recovery of the damages to the cargo during transit in a ship. It was observed that the Plaintiff justified suing Defendant No. 3 though the Plaintiff could not sue him under Section 230 of the Act and the Plaintiff's case would not fall within the third presumption / exception to Section 230 of the Act.

15. Hence naturally if the case does not fall within the third presumption or exception i.e. if the principal, who is disclosed, can be sued, the agent cannot be. In this case, the principal being a party from Belgium, the case falls within the first exception to Section 230 of the Act.

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18. It may be mentioned that the judgment in the case of Cochin Frozen Food Exports (P) Ltd. (supra) delivered much later in 2004 and holding as erroneous view of the High Court that since the name of the foreign principal was disclosed the Suit could not be instituted against the agent must be taken to have impliedly overruled the order of the learned Single Judge of this Court in the aforesaid Notice of Motion in which the agent was allowed not to be sued because the principal was sued. Hence even if the principal is sued, as per the observations of the Supreme Court in Cochin Frozen Food Exports (P) Ltd. (supra), the agent in India of such foreign principal can be sued.

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20. In this case, the Plaintiff has not sued the foreign disclosed principal. The Plaintiff has only sued the Indian agent. Under Exception to Section 230 of the Act, the action is maintainable. However, the Indian agent, the 2nd Defendant, may claim on merits that he is otherwise not liable which aspect can be adjudicated at the time of the trial.

*(emphasis added)*

54) It thus appears that an observation is made by coordinate Bench of this Court in para-13 of the judgment in ***Board of Trustees of Jawaharlal Nehru Port Trust*** that the judgment of in ***Midland Overseas*** must be taken to have been impliedly overruled by the judgment in the case of ***Cochin Frozen Foods Exports (P) Ltd.***

55) I have gone through the judgment of the Apex Court in ***Cochin Frozen Foods Exports (P) Ltd.***, which apparently involved a contract for sale/purchase of goods for a merchant residing abroad. In that case, the Appellant before the Apex Court had filed a suit against Defendant No.2, which was a company incorporated under the laws of France and was carrying on business in France. Defendant No.3, who was a shipping agent of Defendant No.2 and a resident of France was also impleaded. The suit was for recovery of price of goods alleged to have been supplied by the Plaintiff to Defendant No.2 through the shipping agent (Defendant No.1), who was Indian agent of Defendant No.2. Thus, there were two agents of Defendant No.2 (principal) viz. Defendant No.1 in India and Defendant No.3 in France. The Trial Court had dismissed the suit against Defendant No.1 but decreed the same only in respect of Defendant Nos.2 and 3 for the price of goods supplied by the Plaintiff. The Appellant challenged the decree to the extent of dismissal of suit against Defendant No.1 by relying on provisions of Section 230 of the Contract Act contending that the provision permitted the suit to be filed against an agent of a foreign principal. The High Court, however, dismissed the Appeal holding that the foreign principal was disclosed and was made a party. Disagreeing with the findings of the High Court, the Apex Court held that under Section 230, there was an exception to the general rule when a contract contains an agreement for sale of purchase of goods for a merchant residing abroad. The Apex Court has noted in Para 2 of the decision that the Suit was for price of goods allegedly supplied by Plaintiff to Defendant No. 2 through Defendant No.1 and proceeded to rule that the Suit was maintainable against Defendant No.1.

It accordingly remanded the Appeal to the High Court for decision on merits of the dispute. The Apex Court held thus:

2. The appellant had filed a suit, inter alia, against the respondents. The present respondents were Defendants 1, 4 and 5 in the suit and are referred to as such hereafter. Defendant 2 is a company incorporated under the laws of France and carrying on business in France. Defendant 3 was the shipping agent of Defendant 2 and is also incorporated and resident in France. **The suit was for the price of goods alleged to have been supplied by the plaintiff to Defendant 2 through the (sic shipping agent, Defendant 3) and Defendant 1.** Defendant 1 was claimed to be Defendant 2's agent in India. The trial court dismissed the suit of the appellant against Defendants 1, 4 and 5 but decreed it in respect of Defendants 2 and 3 for the price of the goods supplied by the plaintiff together with interest at 12%.

5. The section provides that, as a general rule, an agent cannot be made liable for a contract entered into by such agent for and on behalf of his principal. There are three exceptions to this general exemption from liability. The first exception is the one with which we are concerned in this case. It provides that if the principal is abroad then the agent could be sued and be made liable on a contract entered into by such agent on behalf of such principal. The second exception deals with the case of an undisclosed principal and the third with the case where the principal's name though disclosed, cannot be sued by reason of any disability. The disclosure or non-disclosure of the principal as far as the first exception is concerned is immaterial. The only requirement is that the principal should be resident abroad.

6. The High Court was entertaining a first appeal. Since the appeal was dismissed on the ground of maintainability, the High Court did not consider the merits of the dispute between the parties. We are of the view that the High Court's finding on the question of maintainability cannot be sustained. **The suit was maintainable against Defendants 1, 4 and 5. This should not be taken as a finding that Defendants 1, 4 and 5 were in fact the agents of the foreign principal. That is a dispute which will have to be resolved as a question of fact on the evidence adduced.**

7. We, accordingly, allow the appeal, set aside the decision of the High Court and remand the matter back to the High Court for disposal of the first appeal on merits. There shall be no order as to costs.

*(emphasis and underlining added)*

56) Thus the suit in ***Cochin Frozen Foods Exports (P) Ltd.*** was held to be maintainable against the Indian agent since the same was for

recovery of price of goods sold. The case was clearly covered by the first exception under Section 230 of the Contract Act. As against this, the judgment of this Court in **Midland Overseas** involved mere entrustment of goods to the agent at Mumbai (Defendant No.3) and acceptance thereof by the agent on behalf of the foreign principal (Defendant No.2). The claim of the Plaintiff was founded on non-delivery of container containing Plaintiff's cargo. Thus, the case did not involve contract made by an agent for sale or purchase of goods for merchant residing abroad. The first exception under Section 230 of the Contract Act did not apply in **Midland Overseas**, whereas the same applied in the case before the Apex Court in **Cochin Frozen Foods Exports (P) Ltd.** The two judgments thus operate in different spheres. It therefore cannot be held that the judgment of the Apex Court in **Cochin Frozen Foods Exports (P) Ltd.** impliedly overrules the judgment of this Court in **Midland Overseas**. It is also a matter of fact that the judgment of this Court in **Midland Overseas** has been consistently followed by various Courts as discussed above. The judgment is also followed by this Court in **The Board of Mumbai Port Authority Versus. Sale Proceeds of The Vessel Barge Madhwa**<sup>30</sup> and **Mrs. Hemangi Vaid and Ors. Versus. MTM Ship Management (India) Private Ltd. & Ors.**<sup>31</sup>

57) In view of the above discussion, reliance by Mr. Vakil on judgment of coordinate Bench of this Court in **Board of Trustees of Jawaharlal Nehru Port Trust** is clearly inapposite. As observed above, the judgment of the Apex Court in **Cochin Frozen Foods Exports (P) Ltd.** clearly involved the first exception recognized under Section 230 of the

<sup>30</sup> IA No. 2648 of 2025 decided on 7 November 2025

<sup>31</sup> Notice of Motion 3 of 2018 decided on 28 February 2018

Contract Act where the contract was made for sale/purchase of goods for a foreign merchant. Therefore, the observations made in para-13 of the judgment in ***Board of Trustees of Jawaharlal Nehru Port Trust*** about ***Cochin Frozen Foods Exports (P) Ltd.*** impliedly overruling the judgment of this Court in ***Midland Overseas*** do not appear to be correct. Therefore the judgment rendered by coordinate Bench in ***Board of Trustees of Jawaharlal Nehru Port Trust***, delivered in peculiar facts of that case, cannot be read in support of an abstract proposition that in every case Indian agent of a foreign principal can always be sued even in a case where there is no contract for sale/purchase of goods.

58) In view of the above discussion, the Suit filed by the Plaintiff against the Defendant as merely an Indian agent of a disclosed foreign principal is clearly barred by the provisions of Section 230 of the Contract Act. Therefore, on this ground also, the plaint in the suit deserves to be rejected by having recourse to the provisions of Order 7 Rule 11 of the Code.

#### **LACK OF TERRITORIAL JURISDICTION**

59) The third ground on which rejection of plaint is sought is on account of parties allegedly agreeing for exclusive jurisdiction of the Courts at Hamburg, Germany. In my view, once it is held that the Suit filed against the Defendant, who is merely an Indian agent of a disclosed foreign principal - Hapag-Lloyd AG, is barred under Section 230 of the Contract Act, the Plaintiff will have to sue Hapag-Lloyd AG in a Court of competent jurisdiction. As and when Plaintiff files a Suit against Hapag-

Lloyd AG, the issue of jurisdiction can be decided depending on the Court in which the Suit would be filed. In my view therefore the issue of absence of territorial jurisdiction of this Court is rendered academic once it is held that the Suit is not maintainable against the Defendant, who is merely an agent of disclosed foreign principal in view of the provisions of Section 230 of the Contract Act. In the present case, the Plaintiff is aggrieved by actions of Hapag-Lloyd AG in cancelling the booking confirmations. The suit for compensation and damages, loss of profits, etc would essentially lie against Hapag-Lloyd AG. As and when the Plaintiff decides to file a Suit against Hapag-Lloyd AG, it would take into consideration contractual arrangement, if any, between the parties regarding application of law and jurisdiction. It is now too early, as well as unnecessary, to go into that issue. If the present suit was held to be maintainable against the Defendant, who is an Indian agent of Hapag-Lloyd AG, the issue of jurisdiction may have taken a backseat as Defendant has its office in the territorial jurisdiction of this Court. Therefore, since the suit itself is not maintainable against the Defendant and since the suit needs to be filed against the disclosed foreign principal, it is not necessary to go into the issue of jurisdiction at this stage. It is therefore not necessary to burden this judgment by discussing the ratio of various judgments relating to the issue of jurisdiction relied upon by Mr. Khandekar. The issue of jurisdiction is left open to be decided as and when Plaintiff brings a Suit against Hapag-Lloyd AG.

**CONCLUSION**

60) In my view therefore, the plaint in the Suit deserves to be rejected on the ground of non-compliance with the provisions of Section 12A of the C.C. Act, as well as the Suit being barred by the provisions of Section 230 of the Contract Act.

**ORDER**

61) The Application succeeds and I accordingly proceed to pass the following order :

- (i) The plaint in Commercial Suit No. 59 of 2025 is rejected under Order 7 Rule 11 of the Code.
- (ii) Consequently, Commercial Suit No. 59 of 2025 is dismissed.

62) Interim Application No. 2847 of 2026 is allowed in above terms. Considering the facts and circumstances of the case, there shall be no order as to costs. Pending Interim Applications are also disposed of.

**[SANDEEP V. MARNE, J.]**

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