



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

OMP No. 644 of 2025
in COMS No.1 of 2025
Reserved on : 05.08.2025
Decided on : 29.08.2025

Zydus Wellness Products Ltd.

...Non-applicant/plaintiff

Versus

Karnal Foods Pack Cluster Limited and others.

...Applicant/defendants

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting?¹ Yes

For the non-applicant/ : M/s Guruswamy Natraj, Shradha
plaintiff Karol and Vaibhav Singh
Chauhan, Advocates.

For the applicant/ : Mr. Rajiv Jiwan, Senior Advocate,
defendants with M/s Yug Singhal, Prashant
Sharma and Aditi Sharma,
Advocates, for applicant/
defendant No.2.

Mr. Praveen Chandel, Advocate,
for defendant No.4.

Defendants No.1 & 3 already
exparte.

Ajay Mohan Goel, Judge (*Oral*)

By way of this application, filed under Order VII,
Rule 11(d) read with Section 151 of the Civil Procedure Code
(hereinafter referred to as 'CPC'), prayer has been made by the

¹Whether reporters of the local papers may be allowed to see the judgment?

applicant for the rejection of the plaint.

2. Learned Senior Counsel for the applicant/defendant No.2 argued that as the subject matter of the present suit constitutes a commercial dispute as defined under Section 2(c) (xvii) of the Commercial Courts Act, 2015 (hereinafter referred to as 'the Act'), it was mandatory upon the plaintiff to comply with pre-institution mediation as provided under Section 12A(1) of the Act and in the present case as the plaintiff did not exhaust the said remedy, therefore, the plaint is liable to be rejected on the said ground. He argued that the only exception to the above mandatory compliance is when the party has prayed for an urgent relief and the party can demonstrate before the Court that in light of the fact that it is urging the Court to grant urgent relief, it is not in the peculiar facts of that case, required to go for a pre-litigation mediation in terms of the provisions of the Act. Learned Senior Counsel by referring to the judgments of the Hon'ble Supreme Court, which I will refer to in the later part of this order, argued that mere filing of an application for an interim injunction by the plaintiff is not sufficient and the Commercial Court is obliged to holistically

examine and scrutinize the nature and subject matter and cause of action to affirm the genuineness of the urgency to seek an interim relief. He submitted that a perusal of the plaint demonstrates that herein the alleged cause arose in favour of the defendant in the month of April, 2023 when the first Cease and Desist notice was issued and since then the plaintiff has been sending such kind of notices or reminders to defendant No.2 and as the plaintiff approached the Court after a lapse of two years as from the date when the cause of action accrued, without demonstrating any sufficient cause so as to seek any urgent interim relief, the bypassing of the mandatory requirement of pre-litigation mediation cannot be condoned and the plaint deserves to be rejected under Order VII, Rule 11 of the CPC.

3. On the other hand, learned counsel for the non-applicant/plaintiff submitted that a perusal of the plaint clearly demonstrates that when the suit was filed by the plaintiff along-with an application under Order XXXIX, Rules 1 and 2 of the CPC praying for interim relief, the fact situation necessitated the plaintiff to approach the Court to seek urgent relief in light of the

conduct of the applicant/defendant No.2 who was flagrantly violating the trademark of the plaintiff and as in this regard the last cause of action arose in the month of December, 2024, as is clearly spelled out in the plaint, and thereafter, as the plaintiff immediately approached this Court by way of the suit as well as the application for urgent relief, the plaintiff was not obliged to resort to the pre-litigation mediation and, therefore, as there is no merit in the application, the same be dismissed.

4. I have heard learned Senior Counsel for the applicant/defendant No.2 as well as learned counsel for the non-applicant/plaintiff and have also gone through the contents of the application as well as the reply thereto and the plaint.

5. By way of this Civil Suit, the plaintiff has, *inter alia*, prayed for the following reliefs:-

“(i) decree of permanent and mandatory injunction restraining Defendants, partners, proprietors, directors, employees, officers, servants, agents, subsidiaries, affiliates and all others acting for and on their behalf from manufacturing, selling, offering for sale, exporting, advertising, marketing and/or in any manner using directly or indirectly in relation to its products being

glucose powder-based drink mixes and/or any other allied or cognate goods, the mark Glucose-D, Glucospoon-D, Glucose-C and associated trade dress which is deceptively similar to Plaintiff's registered word and label trademarks Glucon-D and Glucon-C® and associated trade dress and/or any other mark/trade dress/packaging deceptively similar to Plaintiff's registered trademarks and associated trade dress mentioned in the present Plaint amounting to infringement of trademark;

(ii) decree of permanent and mandatory injunction restraining Defendants, partners, proprietors, directors, employees, officers, servants, agents subsidiaries, affiliates and all others acting for and on their behalf from manufacturing, selling, offering for sale, exporting, advertising, marketing and/or in any manner using directly or indirectly in relation to its products being glucose powder-based drink mixes and/or any other allied or cognate goods, the marks Glucose-D, Glucospoon-D, Glucose-C and associated trade dress which is deceptively similar to Plaintiff's registered word and label trademarks Glucon-D® and Glucon-C® and associated trade dress and/or any other mark/trade

dress/ packaging deceptively similar to Plaintiff's registered trademarks and associated trade dress mentioned in the present Plaint amounting to infringement of Plaintiff's trade dress or trade dress passing off;

(iii) decree of permanent and mandatory injunction restraining Defendants, partners, proprietors, directors, employees, officers, servants, agents, subsidiaries, affiliates and all others acting for and on their behalf from manufacturing, selling, offering for sale, exporting, advertising, marketing and/or in any manner using directly or indirectly in relation to its products being glucose powder-based drink mixes and/or any other allied or cognate goods, the marks Glucose-D, Glucospoon-D, Glucose-C and associated trade dress which is deceptively similar to Plaintiff's registered word and label trademarks Glucon-D® and Glucon-C® and associated trade dress and/or any other mark/trade dress/ packaging deceptively similar to Plaintiff's registered trademarks and associated trade dress mentioned in the present Plaint amounting to infringement of Plaintiff's trade dress or trade dress passing off;

(iv) decree of delivery up of all the products, labels, glasses, cartons, bottles, brochures, packets, dies, packaging and any other document or goods of Defendants bearing the marks Glucose-D and/or Glucose-C and/or Glucospoon-D and or its formative marks/variants and its associated trade dress which is deceptively similar to Plaintiff's registered trademarks Glucon-D and/or Glucon-C and its associated trade dress which is deceptively similar to Plaintiff's packaging/labels, to authorized representative of the Plaintiff for the purpose of destruction/erasure;

(v) decree for rendition of accounts of profits illegally earned by Defendants on account of the sale of the products bearing marks Glucose-D and/or Glucose-C and/or Glucospoon-D and or its formative marks/variants and its associated trade dress which is deceptively similar to Plaintiff's registered trademarks Glucon-D and/or Glucon-C® and associated trade dress which is deceptively similar to Plaintiff's packaging;

(vi) decree for the amount so found due be passed in favour of Plaintiff or a Decree for damages for the amount of the tune of Rs. 1,00,77,000/- (INR One crore seventy-seven thousand only) or such higher sum as

may be determined by this Hon'ble Court in its discretion be passed against Defendants and in favour of Plaintiff;

(vii) a mandatory injunction against all Defendants to take down and ensure that no further listings of such impugned products bearing the infringing marks Glucose-D and Glucose-C and/or Glucospoon-D and/or variants thereof are uploaded on any website(s) under their direct or indirect control;

(viii) a declaration that Plaintiff's registered trademark Glucon-D® word marks of the Plaintiff are a well-known marks within the meaning of Section 2(1)(zg) of the Trademarks Act, 1999."

6. By way of OMP No. 17 of 2025, filed under Order XXXIX, Rules 1 and 2 of the CPC, the plaintiff has prayed for the grant of following interim relief, during the pendency of the Civil Suit:-

"(i) an Order for ex parte ad interim/ ad interim or interim injunction restraining Defendants from using the marks Glucose-D, Glucose-C and Glucospoon-D and/or any other mark/label identical with or confusingly/ deceptively similar to the Plaintiff's registered Glucon-D®, Glucon-C® and/or formative trademarks in respect of any product or advertising or promoting or offering for sale or

selling or exporting or importing any such product so as to amount to an infringement of trademark;

(ii) an Order of ex parte ad interim/ad interim/interim injunction restraining Defendants from manufacturing, selling, offering for sale, exporting, advertising, marketing and/or in any manner using directly or indirectly in relation to its products being glucose powder-based drink mixes and/or any other allied or cognate goods, the marks Glucose-D, Glucose-C and Glucospoon-D and/or associated trade dress deceptively similar to Plaintiff's registered trademarks Glucon-D®, Glucon-C® and/or formative marks and/or associated trade dress and/or any other mark/trade dress/ packaging ED/TOD/deceptively similar to Plaintiffs registered trademarks and associated trade dress mentioned in the present plaint amounting to passing off of the der to Regisgoods of Defendants as those of Plaintiff or trade dress infringement;

(iii) an Order for ex parte ad interim/ ad interim or interim injunction restraining the Defendants from using Glucose-D, Glucose-C and Glucospoon-D label or artwork identical or deceptively similar therein which is similar to the Plaintiff's copyright in such labels and

words in respect of any product or advertising or promoting or offering for sale or selling or exporting or importing any such product so as to amount to an infringement of copyright of the Plaintiff;

(iv) an Order for ex parte ad interim/ ad interim or interim injunction restraining the Defendants from using including by displaying online in any media, the trademark/marks Glucose-D, Glucose-C and Glucospoon-D label which is identical with or confusingly/deceptively similar to the Plaintiff's registered trademarks Glucon-D®, Glucon-C® in respect of any product or advertising or promoting or offering for sale or selling or exporting or importing any such product so as to amount to an infringement of trademark;

(v) an Order for ex parte ad interim/ ad interim or interim injunction restraining the Defendants from using including by displaying online in any media, the trademark/marks Glucose-D, Glucose-C and Glucospoon-D label which is identical with or confusingly/deceptively similar to the Plaintiff's registered trademarks Glucon-D®, Glucon-C® in respect of any product or advertising or promoting or offering for sale or selling or exporting or importing any such product so as

to amount to passing off qua such brands;

(vi) an Order for ex parte ad interim/ ad interim or interim injunction against all Defendants to take down any listing/listings online in any media and/or withdraw all such promotional material including any offline or online advertisements or offers for sale, including brochures, pamphlets, leaflets, etc., qua the products impugned in the present Suit which bear Glucose-D, Glucose-C and Glucospoon-D label and/or artwork which is identical or deceptively similar thereto;

(vii) an order directing Defendant Nos. 1 and 2 to state on affidavit the exact dates of commencement of sale/offer for sale by them of the product impugned in the present Suit and file such affidavits in this Hon'ble Court;

(viii) an order directing Defendant Nos. 1 and 2 to file a statement of account and assets on affidavit within a period of three weeks qua the said products 101 impugned in the present Suit and refrain from disposing or dealing with such assets in a manner which may adversely affect the Plaintiff's ability to recover damages, costs or other pecuniary reliefs which may finally be awarded to the Plaintiff;

(ix) pass ex parte ad interim reliefs in terms of prayers

(i) to (ix) above”

7. Order VII, Rule 11 of the CPC provides as under:-

“11. Rejection of plaint— *The plaint shall be rejected in the following cases:—*

(a) *where it does not disclose a cause of action;*

(b) *where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*

(c) *where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*

(d) *where the suit appears from the statement in the plaint to be barred by any law;*

¹*[(e) where it is not filed in duplicate;]*

²*[(f) where the plaintiff fails to comply with the provisions of rule 9];*

³*[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an*

exceptional nature form correcting the valuation or supplying the requisite stamp-paper , as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.] ”

8. In terms of the provisions of Order VII, Rule 11 of the CPC, the plaint shall be, *inter alia*, rejected by the Court where it does not disclose a cause of action or where the suit appears from the statement in the plaint to be barred by any law. It is settled law that for the purpose of the adjudication of an application under Order VII, Rule 11 of the CPC, the Court has to restrict itself to the contents of the plaint as well as documents filed therewith to assess and ascertain as to whether the plaint is hit by the provisions of Order VII, Rule 11 of the CPC or not. The Court is not to delve into the defence of the other side to judge the credibility of the application. The merit of the application has to be assessed by the Court on the basis of the contents of the plaint itself.

9. Coming to the facts of this case in terms of the averments made in the plaint, the plaintiff is stated to be the holder of registered trademarks Glucon-D and Glucon-C. Its grievance is that the defendants are infringing its trademarks by

using trademarks identically/deceptively similar to its registered trademarks and thus passing on their products as those manufactured by the plaintiff.

10. According to the plaintiff, the infringing activities of defendant No.2 date back as far as 28.04.2023, when defendant No.2 was sent a Cease and Desist notice by the plaintiff with respect to impugned mark Glucospoon-D. Further in terms of the averments made in the plaint, this was followed by a reminder sent to defendant No.2 on 18.05.2023. Thereafter, plaintiff found that defendant No.1 was selling the impugned products for defendant No.2 and a Cease and Desist notice was issued to both defendants No.1 and 2 on 18.05.2023.

11. According to the plaintiff, a reply was sent to the said notice on behalf of defendants No.1 and 2 on 28.07.2023, blatantly disregarding the rights of the plaintiff. It is further mentioned in the plaint that thereafter, since plaintiff could not find the products of either defendant No.1 and/or of defendant No.2 in brick-and-mortar stores, the plaintiff bonafidely believed that the physical products of defendants No.1 and 2 bearing the

infringing marks had been exhausted and were not available for sale any longer. However, upon conducting a routine market check, plaintiff came across the same infringing products on third party websites. Thereafter, plaintiff sent a Cease and Desist notice to defendant No.1 on 29.05.2024 and via e-mail on 01.06.2024. Reminders were sent on 11.06.2024 and on 12.07.2024. It is further the contention of the plaintiff that on 19.07.2024 defendant No.1 sent a signed and notarized undertaking dated 19.07.2024 agreeing to refrain from infringing the trademarks of the plaintiff.

12. According to the plaintiff, upon further follow up, it was discovered that defendant No.1 continued to engage in infringing the impugned marks and non-compliance e-mails were sent to defendant No.1 on 22.07.2024 and 12.09.2024. As per the plaintiff, a Cease and Desist notice was also sent to defendant No.2, in the interregnum, on 18.04.2024 and this notice was served upon the said defendant through e-mail on 22.05.2024. Defendant No.2 sent a reply to the Cease and Desist notice dated 18.10.2024 denying plaintiff's rights over its trademarks. Despite multiple notices and efforts made by the

plaintiff to arrive at an amicable resolution, defendants blatantly disregarded the rights of the plaintiff and continued to sell the infringing products on the websites of defendants No. 2, 3 & 4.

13. According to the plaintiff, it received a message via whatsapp from defendant No.2 on 09.12.2024 offering to supply the infringing products.

14. Under the head 'Cause of Action' in Para-90 to 96 of the plaint, the following is mentioned:-

"90. The cause of action is as recent as September 2024 for Defendant No. 1 when Plaintiff learnt of online advertisements of infringing products of Defendant No. 2 being sold by Defendant No. 1 on third party websites such as IndiaMart and Trade India within the territorial jurisdiction of this Hon'ble Court. Plaintiff sent multiple mails asking Defendant to comply with terms of the undertaking signed by it.

91. The cause of action has been continuing from the date of Cease & Desist Notice being sent to Defendant No. 1 in May 2024. Critically, the products sold by Defendant No. 1 are accessible from within the jurisdiction of this Hon'ble Court.

92. The cause of action arose again in December 2024

when Defendant No. 2 offered for sale the impugned products to Plaintiff's counsel. The WhatsApp conversation is attached with the proceedings as Annexure W. The cause of action for Defendant No. 2 is a continuing cause of action dating back to April 2023.

93. Defendant No. 2 has paid no heed to the notices and communications sent by Plaintiff and continues to infringe Plaintiff's rights. This is a clear attempt to deceive consumers and ride on the coattails of Plaintiff's reputation built over so many years.

94. Defendant No. 2 has moreover tried to trick Plaintiff by getting Defendant No. 1 to sign and notarise the undertaking while carrying out the same infringing activities on its own website and those of Defendant Nos. 3 and 4.

95. The cause of action is a continuing cause of action in as much as Defendant No. 2 continues to advertise and offer for sale the infringing products bearing the impugned marks on its own websites and websites of Defendant Nos. 3 and 4. The cause of action thus subsists every day such acts of infringement are continued by Defendants and the present Suit is within limitation. Copies of Cease and Desist Notices and their

replies have been filed with the proceedings marked as Annexure X.

96. The present Suit is being filed on an urgent quia timet basis in as much as Defendant Nos. 1 and 2 appear to have paid no heed to the earlier legal proceedings through Cease and Desist Notices and are likely to dump huge stocks of low-quality material.”

15. Section 12A of the Commercial Courts Act, 2015 provides as under:-

“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.

(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.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 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).]

16.

Hon'ble Supreme Court of India while interpreting this statutory provision in ***Patil Automation Private Limited and others versus Rakheja Engineers Private Limited***, (2022) 10 Supreme Court Cases 1, has been pleased to hold as under:-

“99. We may sum-up our reasoning as follows:

99.1. 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.

99.2. 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 CPC and Section 69 of the Partnership Act.

99.3. The language used in Section 12-A, which includes the

word "shall", certainly, goes 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.

99.4. 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 12-A, a mandatory interpretation, would result in defeating the object and intention of 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 lawgiver 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 12-A 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.

100. 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 12-A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis. Section 80(2) 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 12-A does not This is a matter which may engage attention issues which arise for our consideration. IN the fact of the cases admittedly there is no urgent interim relief contemplated in the complaints in question."

Thereafter, Hon'ble Supreme Court in Para-113.1 thereof, held as under:-

"113.1. We declare that Section 12-A of the Act is mandatory and hold that any suit instituted violating the

mandate of Section 12-A must be visited with rejection of the plaint under Order 7 Rule 11. This power can be exercised even suo motu by the court as explained earlier in the judgment. We, however, make this declaration effective from 20-8-2022 so that stakeholders concerned become sufficiently informed.”

17. This was followed by the judgment of Hon'ble Supreme Court in ***Yamini Manohar versus T.K.D. Keerthi***, (2024) 5 Supreme Court Cases 815, in which Hon'ble Supreme Court after referring to its earlier judgment in Patil Automation Private Limited and others versus Rakheja Engineers Private Limited (supra), was pleased to hold as under:-

“10. We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine the nature and the subject-matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12-A 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 7 Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order 7 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.

11. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyse Section 12-A 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 12-A of the CC Act. An "absolute and unfettered right" approach is not justified if

the pre-institution mediation under Section 12-A of the CC Act is mandatory, as held by this Court in Patil Automation.

12. The words "contemplate any urgent interim relief in Section 12-A(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 12-A of the CC Act is not defeated."

*18. These principles have been reiterated by the Hon'ble Supreme in **M/s Dhanbad Fuels Private Limited versus Union of India and another**, (2025) SCC online 1129 (Neutral Citation No. 2025 INSC 696) and Para-62 thereof, Hon'ble Supreme Court has been pleased to hold as under:-*

"E. CONCLUSION

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 CPC, 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.”

19. Thus, it is evident from the said judgments of the Hon'ble Supreme Court that when a plaint is filed under the Commercial Court Act, with a prayer for urgent interim relief, the Commercial Court is duty bound to examine the nature and subject matter of the suit, the cause of action and the prayer for interim relief. The Court has to ascertain and satisfy itself that the prayer for urgent relief should not be a guise or mask to wriggle out of and get over Section 12A of the Act. Hon'ble Supreme Court has also held that 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 7 of the CPC. Camouflage to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established.

20. Therefore, now, in the facts as they stand narrated hereinabove, this Court has to adjudicate as to whether the plaintiff was justified in the facts of the case in bypassing the pre-litigation mediation as is envisaged under Section 12-A of the Act or not.

21. As is evident from the averments made in the plaint, the plaintiff, in terms of the pleadings, became aware of the alleged infringement of its trademark by defendant No.2 on 28.04.2023 and defendant No.1 sometime thereafter. Further in terms of the averments made in the plaint, from 28.04.2023 the plaintiff continued to issue Cease and Desist notices to the defendants along-with other notices calling upon them to desist from infringing the trademarks of the plaintiff. In terms of averments made in Para-90 to 96 of the plaint, the cause of action recently before the filing of the plaint arose in the month of September, 2024, when the plaintiff learnt of online

advertisements of infringing products manufactured by defendant No.2, being sold by defendant No.1 on third party websites, such as India Mart and Trade India and again in the month of December, 2024, when defendant no.2 offered for sale the impugned products to the learned counsel for the plaintiff.

22. If one closely peruses the averments made in the plaint, what is evident is the fact that the offending act of the defendants of purported infringement of the trademarks of the plaintiff, was in the knowledge of the plaintiff since 28.04.2023 onwards. As from the said date i.e. 28.04.2023 up to the filing of the Civil Suit, nothing new was being done by defendants No.1 and 2 except the alleged infringement of the trademarks of the plaintiff by advertising and selling the products of defendant No.2, as is mentioned in the plaint. This means that there was no qualitative change in the cause of action as from 28.04.2023 up to the filing of the Civil Suit.

23. Now, as already mentioned hereinabove, in terms of the judgments of the Hon'ble Supreme Court, compliance of

Section 12A of the Act is mandatory and it is the duty of the Courts to ensure the compliance of the said provision and also to ensure that in the garb of urgent relief, plaintiff does not circumvents the provisions of Section 12A of the Act.

24. A perusal of the application filed by the plaintiff for the grant of urgent relief demonstrates that besides giving the chronological narration of the facts as well as the narration of the cause, as to how according to the plaintiff, the trademark of the plaintiff is being infringed by the defendants, in the backdrop of the fact that the plaintiff itself alleges in the plaint that the infringement was being done by the defendants, since the month of April, 2023, there is no whisper in the application as to what necessitated the plaintiffs to seek urgent relief, by bypassing the statutory provisions of Section 12A of the Act.

This Court is not suggesting that the plaintiff, should have prayed for exemption for doing away with the mandate of Section 12A of the Act, however, as the suit filed is a Commercial Suit and Section 12A is a mandatory provision contained in the Commercial Courts Act, it ought to have been mentioned in the application as to what was the urgency, which

was necessitating the filing of the application for urgent relief, at the stage, when the Suit was filed without resorting to pre-litigation mediation. The application is completely silent on this aspect of the matter.

25. Therefore, in the facts of this case, this Court is of the considered view that the plaintiff could not have done away with the mandatory pre-institution mediation in settlement, as is contemplated under Section 12A of the Act.

26. Herein, the situation at the time when the suit was filed, was not much different as from April, 2023 and there was no Paradigm shift in the situation as from the month of April, 2023 or thereafter, till the filing of the Civil Suit qua the alleged infringement of the trademark and, therefore, the plaintiff ought to have had resorted to the pre-institution mediation in settlement, as the time frame mentioned in Section 12A of the Act to undergo pre-institution mediation in settlement, would not have caused any grave prejudice or detriment to the interest of the plaintiff as the alleged infringement of its trademark was continuing from the month of April, 2023 onwards. Therefore, act of the plaintiff in the present case of bypassing the

provisions of Section 12A of the Act, cannot be condoned.

27. It is clarified that the non-grant of urgent relief to the plaintiff has not weighed with this Court while passing this order.

28. This Court is alive to the fact that what has to be examined is whether urgent relief application was a bonafide application or just a camouflage to bypass Section 12A of the Act. In this case, the application was filed just to bypass Section 12A of the Act.

29. In light of the above observations, as this Court is of the considered view that in the present case the Civil Suit was filed by the plaintiff without there being any occasion to do away with the pre-institution mediation in settlement as is provided under Section 12A of the Act, this application is allowed and the plaint is rejected, in light of the provisions of Order VII, Rule 11(d) of the Civil Procedure Code. Costs easy. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

August 29, 2025
(Shivank Thakur)