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

INTERIM APPLICATION (L) NO.26065 OF 2024
IN
COM IPR SUIT (L) NO.10862 OF 2024

Y-Not Films LLP and Anr.

...Applicant /
Defendant Nos.1
and 2

In the matter between
Ultra Media and Entertainment Pvt. Ltd.

...Plaintiff

Versus

Y-Not Films LLP and Anr.

...Defendants

Hiren Kamod with Anees Patel, Krunal Mehta and Karen Koya for the
Plaintiff.

Mohit Khanna, Bijal Vora and Chandragupta Patil i/b. Parinam Law
Associates for Applicants in IA (L) No.26065 of 2024 and Defendant
Nos.1 and 2.

Anand Mishra i/b. Ashok Saraogi for Defendant No.3.

CORAM : R.I. CHAGLA J.
DATE : 6TH SEPTEMBER, 2024.

ORDER :

1. By this Interim Application, the Applicant / Original
Defendant Nos.1 and 2 have sought rejection of the Plaint under
Order VII Rule 11 read with Section 151 of the Code of Civil
Procedure, 1908 on the ground that the Plaintiff has not exhausted

the mandatory recourse of pre-litigation mediation stipulated under Section 12-A of the Commercial Courts Act, 2015 (“the C C Act”).

2. The Defendant Nos.1 and 2 have in their Interim Application sought invocation of Section 151 read with Order VII Rule 11(d) of Code of Civil Procedure, 1908 for rejection of Plaintiff. The Defendant Nos.1 and 2 have raised certain issues during their arguments and written submissions filed before this Court which read thus:-

(i) Whether in a Suit seeking protection of an intellectual property filed under the Commercial Courts Act, 2015 (“the CC Act”) in which the Plaintiff bases its claim on an alleged continuing wrong, whether the provisions of Section 12-A of the CC Act will have no application? Or Whether the Court will take into account the delay in approaching the Court as a relevant factor and the pleaded cause of action/s and relegate the parties to mediation under Section 12-A of the Act if it concludes no such urgency exists?

(ii) Whether a Court merely on the basis of correspondence exchanged between the parties, prior to the institution of a lis, can conclude that mediation is not viable and hence give a go-by to Section 12-A of the CC Act, which is mandatory?

3. It is pertinent to note certain relevant dates for the

purpose of this Application, which are as under:

(i) The subject movie – Vikram Vedha (“movie”) was theatrically released on 30th September, 2022;

(ii) The movie was released on Jio Cinema (OTT Platform) on 12th May, 2023;

(iii) It is the Plaintiff’s case that it learnt of the alleged infringement in May, 2023 (para 23/pg.28 of the Plaintiff);

(iv) Plaintiff addressed its first cease and desist notice on 2nd June, 2023;

(v) Parties exchanged correspondence inter se resting with the last letter addressed by Plaintiff to Defendant No.3 on 9th August, 2023;

(vi) The present Suit was filed on 15th April, 2024; and

(vii) Present Suit moved for ad-interim reliefs on 9th August,

2024.

4. The case of the Defendant Nos.1 and 2 is that upon a bare reading of the Plaint, the documents filed along with Plaint and Plaintiff's Interim Application filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 seeking interim / ad-interim reliefs against the Defendants, it is evident that the same contemplate no urgency.

5. The Defendant Nos.1 and 2 have in their Interim Application stated that in view of the Plaintiff having become aware of alleged infringement in May, 2023 no steps were taken to institute any proceedings to protect its alleged copyright for a period of 11 months. Further and more importantly, apart from claiming that the alleged infringement of copyright of the Plaintiff is continuing, there is no explanation forthcoming as to why the Plaintiff waited for a period of 11 months to institute the present Suit.

6. Mr. Mohit Khanna appearing for the Defendant Nos.1 and 2 has submitted that while adjudicating whether the parties ought to be relegated to mediation under Section 12-A, the test to be

applied and considered is:-

- (i) delay (as one of the factors);
- (ii) position of the parties;
- (iii) developments in the intervening period; and
- (iv) conduct of the parties.

7. Mr Khanna has submitted that from the factual background it becomes plain and apparent that the reason why the Plaintiff has preferred the Interim Application under Order XXXIX Rule 1 and 2 under guise of contemplating a relief is only to paralyze the application of Section 12-A of the C.C. Act. This is so because the Plaintiff became aware of the alleged infringement in May 2023 when the first cause of action arose. However, the Plaintiff has not been able to give any reasons and / or explanation for its inaction in instituting the present Suit after the first cause of action arose. This is a factor that is required to be considered by the Court when a Plaintiff approaches it claiming urgent ad-interim reliefs bypassing mediation under Section 12-A of the CC Act. He has submitted that due to passage of time the movie has been exploited theatrically and is presently on OTT platforms. Defendant No.1 is a bonafide contracting party having obtained license from Defendant No.3 to use

the clips of Shaktimaan in the movie vide a License Agreement dated 4th August, 2022. Further, there is no question of any confusion being caused in the minds of the general public in respect of the ownership of the copyright of Shaktimaan, in as much as the same is shown in the film for a mere time period of 10 seconds and the clips are playing on the television set in the background, while the characters are interacting.

8. Mr. Khanna has referred to the decision of the Delhi High Court in *Dr. Reddy's Laboratories Vs. Smart Laboratories Ltd.*¹ at paragraph 37 wherein the Delhi High Court has held that the Court must ensure that subterfuge and stratagem must not be permitted to be used by a Plaintiff to escape the rigours of Section 12A of the C.C. Act. The Court after referring to *Yamini Manohar Vs. T.K. D. Keerthi*² has laid down that if the Plaint is cleverly worded in such a manner so as to make it appear that urgent interim reliefs are necessary, the Court would necessarily relegate parties to mediation. He has submitted that the dictum of the Delhi High Court is squarely applicable to the case at hand, in as much as, the urgency, if any, is firstly the Plaintiff's own doing, secondly, the Plaintiff has, by merely

1 (2023) SCC OnLine Del 7276.

2 (2024) 5 SCC 815.

pleading a continuing cause of action sought to cleverly (albeit having no basis in law) escape the rigours of Section 12-A of the C.C. Act.

9. Mr. Khanna has submitted that there is no merit in the submissions of the Plaintiff that, the cause of action as pleaded in the Plaintiff is a continuous one and accordingly, an intellectual property rights suit, would stand on a different footing altogether, and the application of Section 12A of the C.C. Act has to be relaxed. He has submitted that accepting such a contention would result in absurd consequences. The legislature has enacted the C.C. Act and in particular Section 12-A with the intention of ensuring that there is ease of doing business in the country and an early and expeditious quietus to commercial disputes. Section 12-A of the C.C. Act was also inserted to ensure that the docket explosion that Courts face is reduced and the pace of disposal of commercial disputes is fast-tracked. He has placed reliance upon the decision of the Supreme Court in *Patil Automation Pvt. Ltd. Vs. Rakheja Engineers Pvt. Ltd.*³ at Paragraphs 70 to 91.4 wherein the Supreme Court has considered Section 12 -A of the C.C. Act and held this provision to be mandatory

³ (2022) 10 SCC 1.

nature. He has submitted that the object and purpose of the C.C. Act is to bring about expeditious proceedings in commercial suits. The legislature consciously thought that the express amendments and additions to the provisions would subserve the objective of expediting the outcome of commercial suits.

10. Mr. Khanna has submitted that the intellectual property rights disputes are not exempted from the rigours of Section 12-A, which is clear from a plain reading of the provisions of the C.C. Act. It is a well settled principle of law that the Court cannot read anything into a statutory provision that is plain and unambiguous. A statute is an edict of the legislature as held in *Shiv Shakti CHS, Nagpur Vs. Swaraj Developers and Ors.*⁴ at paragraph 19 and *Dr. Reddy's Laboratories Ltd. (Supra)*, at paragraph 44.

11. Mr. Khanna has submitted that what the Plaintiff expects the Court to do is to read into Section 12-A of the C.C. Act, a relaxation for intellectual property rights suits, which is plainly not permissible. He has submitted that when the Plaintiff has ascertained the date when first cause of action arose, and waits for a long period

⁴ (2003) 6 SCC 659.

of time, when in the meanwhile subsequent events and developments have taken place, such a party cannot be given the benefit of exemption from the application of Section 12-A to knock the door of the Court claiming urgent reliefs. Such contemplation of urgent relief is in effect an artificial sense of urgency because the Plaintiff did not deem it fit to approach the Court in the first instance.

12. Mr. Khanna has submitted that the Delhi High Court in *Dr. Reddy's Laboratories Ltd. (Supra)* in paragraph 39 has held that Section 12-A of the C.C. Act and the principles laid down in *Yamini Manohar (Supra)* and *Patil Automation (Supra)* would equally apply to intellectual property suits.

13. Mr. Khanna has submitted that it is a duty of the Court to enquire into the conduct of the Plaintiff and take a holistic view of the matter to see why the parties should not be relegated to mandatory mediation under Section 12-A.

14. Mr. Khanna has submitted that without such consideration and merely on the allegation of the Plaintiff that a cause of action is a continuing one, exemption from Section 12-A is

granted, it would render the letter and intention of Section 12 -A completely otiose and would defeat the purpose for which the legislature enacted the provision in the first place. Such a interpretation, if accepted, would yield a weapon in the hand of every Plaintiff to seek exemption from mandatory mediation under Section 12-A merely because the cause of action is a continuing one. This would affect not merely intellectual property rights disputes but also many other commercial disputes such as those alleging MOFA violations and the likes, where in a given case, there may be a continuing breach. This was and is not the intention of the legislature.

15. Mr. Khanna has submitted that the Plaintiff has placed great emphasis and relied upon the decision of this Court in the case of *Chemco Plast Vs. Chemco Plastic Industries Pvt. Ltd.*⁵ to contend that a lenient view taken by this Court in respect of Section 12-A and its application to intellectual property rights Suits. He has submitted that the principles laid down in *Chemco Plast (Supra)* were in the facts of that case and would not be applicable to the instant case. He has in particular referred to paragraphs 27 to 33 of the said decision

⁵ (2024 SCC OnLine Bom 1670).

and submitted that in these paragraphs what weighed with the Court was the continuous steps taken by the Plaintiff either in civil law or criminal law to protect its registered trademark. The Plaintiff had specifically been able to demonstrate the dilution of its mark and the loss it is suffering due to the confusion being caused. The Plaintiff in that case had placed on record facts and data pertaining to reputation and goodwill earned over a period of time and how the same was getting diluted. Whereas, in the present case no such facts have been pleaded and / or explained. In fact, the Plaintiff in the present case has itself been unable to ascertain the damage caused to it. He has placed reliance upon paragraph 21 of the Plaint in this context.

16. Mr. Khanna has submitted that in paragraph 38 of the said judgment in *Chemco Plast (Supra)* the Court was aware to the fact that in intellectual property rights Suits, not only the proprietary rights but also rights of the consumers have to be given weightage. Thus, it cannot be said that the principle laid down in *Chemco Plast (Supra)* gives a blanket by-pass to mandatory mediation under Section 12-A. The facts of each case have to be ascertained, and the facts of the present case would only lead to one conclusion i.e. that

the present Plaintiff has taken no steps right from May, 2023, allowed the movie (a completed work) to be substantially exploited and in April, 2024 sprung in action by filing the present Suit, which was only moved for interim reliefs in August, 2024.

17. Mr. Khanna has submitted that this Court in the present case requires to consider that the movie is a completed work. The film has not only been fully made but has also been released for a sufficiently long period of time. Such a factor will weigh in favour of the Applicant in view of the test laid down in *Quality Services and Solutions Pvt. Ltd. & Ors. Vs. QSS Inspection and Testing Pvt. Ltd. & Ors.*⁶. This being a subsequent development, it ought to be taken into account along with delay in seeking ad-interim relief. He has submitted that urgency, if any, is the Plaintiff's own creation due to its own inaction. He has placed reliance upon the decision of the Madras High Court in the case of *V Prabhakar Vs. Saga Films*⁷. He has submitted that despite the Plaintiff's alleged grievance of infringement of copyright, the balance of convenience tilts in the favour of the Applicant. He has placed reliance on the decision of this

6 2024 SCC OnLine Bom 2120.

7 MANU/TN/8540/2022.

Court in *Shamoil Ahmad Khan Vs. Falguni Shah and Ors.*⁸ and in particular paragraphs 21 to 23, in this context.

18. Mr. Khanna has submitted that on a bare reading of the Plaintiff and documents annexed thereto the Plaintiff has miserably failed to demonstrate as to how the alleged continuing infringement would result in any loss and / or injury, which cannot be compensated by way of damages. Thus, even for this reason, this Court ought to relegate the parties to mediation.

19. Mr. Khanna has submitted that the reliance placed by the Plaintiff on the Order passed by this Court in *Goregaon Sports Club Vs. Novex Communications Pvt. Ltd.*⁹ does not take their case any further. This is so because the same is only an interlocutory order and not a binding precedent. Further, in that case, the Applicant had not argued the position in law that continuous cause of action cannot be read into Section 12-A in order to bypass the mandatory statutory mediation. He has accordingly submitted that the said Order cannot be relied upon for any purposes.

⁸ (2020) 6 Mh.L.J., 465.

⁹ Interim Application (L) No.13226 of 2024 dated 12th July, 2024.

20. Mr. Khanna has submitted that the Plaintiff's contention that the correspondence exchanged between the parties demonstrates that mediation if relegated to, would be a futile exercise, merits no consideration. He has referred to the correspondence namely, letter dated 8th June, 2023 addressed by the Advocates for Defendant Nos.1 and 2 which has been relied upon by the Plaintiff in support of its case that mediation would be a futile exercise in as much as Defendant No.1 had called upon the Plaintiff to withdraw the cease and desist notice and further agitated that any proceedings that would be initiated by the Plaintiff would be defended. He has submitted that this argument of the Plaintiff has no basis in law and is without prejudice made to obfuscate facts. He has submitted that mere exchange of correspondence between the parties, wherein legal rights and factual aspects are asserted, cannot ipso facto lead to a conclusion to be drawn by Court that mediation of disputes is impossible. This is not the mandate of law as well as the dictum laid down in *Patil Automation (Supra)*.

21. Mr. Khanna has submitted that if this contention of the Plaintiff is accepted, it would lead to a disastrous consequence. The mere reliance upon the correspondence to come to such a conclusion

would amount to shutting the door to explore mediation which is the mandate of the C.C. Act in the first instance. The Court ought not to accept such a legal proposition which would only lead to a decline in referring the parties to mediation against the intent of the statute and the edict of the Supreme Court in *Patil Automation (Supra)*.

22. Mr. Khanna has submitted that what the Plaintiff misses the fact that the Defendant Nos.1 and 2 have at all times asserted that it has obtained a license from Defendant No.3 on the basis of representations made by it and indemnities provided by Defendant No.3. This is borne out from the email dated 6th June, 2023 addressed by the Defendant Nos.1 and 2 to Defendant No.3 and marked to the Plaintiff which clearly shows that the Defendant Nos.1 and 2 forwarded the notice dated 2nd June, 2023 to Defendant No.3 calling upon him to resolve the issue. It is only after no action was forthcoming from Defendant No.3 did Defendant Nos.1 and 2 address correspondence asserting their rights under the license agreement.

23. Mr. Khanna has submitted that the reliance placed by the Plaintiff upon the judgment of the Delhi High Court in *Bolt*

*Technology OU Vs. Ujoy Technology Pvt. Ltd.*¹⁰, does not take the case of the Plaintiff any further. He has submitted that the Delhi High Court in paragraphs 24 and 25 based its conclusion on the basis that the Plaintiff, in that case, had suggested an amicable settlement of the dispute, and whereas the same was ‘met with a tight slap’ by the Defendant in that case. In *Bolt Technology (Supra)*, the Defendant raised demands for compensation as noticed in paragraph 22 of the judgment. No such facts exist in the present case. Thus, the said judgment is clearly distinguishable on facts and law.

24. Mr. Khanna has submitted that this a classic case where the Court ought to relegate the parties to mediation under Section 12-A of the C.C. Act in as much as the dispute resolves over a small and minor clip used in a film. The parties are commercial entities and it is not as if the present dispute cannot be resolved by resorting to mediation. The larger objective contemplated by the legislature would be met, which would save the Court’s time in view of the ever-continuing docket explosion.

25. Mr. Hiren Kamod the learned Counsel for the Plaintiff

¹⁰ (2022) SCC OnLine Del 2639.

has submitted that vide Agreement of Assignment dated 25th November, 2010 read with subsequent Agreement of Assignment dated 17th December, 2010 entered into between Defendant No.3 as the Assignor and the Plaintiff as the Assignee, the Plaintiff acquired the Rights in Hindi language television series 'Shaktimaan' on a sole and exclusive basis. There are averments in the Plaint regarding the Plaintiff's lawful acquisition of the rights in the said series and the Plaintiff's ownership of copyright in the said series. He has placed reliance upon paragraphs 5(a) to 5(e) of the Plaint in this context. He has further submitted that in Clause 5 of the Agreement of Assignment dated 25th November, 2010, it is provided that the sole and exclusive assignment means an assignment which confers on the Plaintiff or any person authorized by the Plaintiff the said Rights to the exclusion of all other persons including the owner of copyright i.e. Defendant No.3.

26. Mr. Kamod has submitted that pursuant to the Agreement of Assignment, various correspondence were exchanged between the Defendant No.3 and the Plaintiff with respect to the delivery of material of the said series, invoices raised by Defendant No.3 and payments made thereto by the Plaintiff. He has referred to

the letter-cum-Affidavit dated 10th February, 2011 and a letter dated 22nd December, 2014 confirming the assignment by Defendant No.3 of the said Rights to the Plaintiff. On 27th November, 2010, the Plaintiff also issued a public notice in a leading film magazine informing the public at large of its acquisition of the said Rights in the said series.

27. Mr. Kamod has submitted that there are averments in the Plaintiff that in or around May, 2023, the cause of action first arose when the Plaintiff noticed a few audio visual clips of the said series being unlawfully and unauthorizedly used in the Hindi language cinematograph film “Vikram Vedha” (“said film”) produced by Defendant Nos.1 and 2. The clip used in the said film has been further exploited by Defendant Nos.1 and 2 on various platforms including on the OTT platform Jio Cinema.

28. Mr. Kamod has submitted that the correspondence which ensued between the parties thereafter, including between the Defendants inter se, has been set out in paragraph 5 (g) to 5(n) of the Plaintiff.

29. Mr Kamod has submitted that what is pertinent to note is the response to the Plaintiff's cease and desist Notice dated 2nd June, 2023 addressed by Defendant Nos.1 and 2 through their Advocates on 8th June, 2023. The Defendant Nos.1 and 2 asserted inter alia that the claims made therein are "incoherent, false and frivolous", that Defendant Nos.1 and 2 "will not be complying with the requisitions as mentioned (in the said Notice)," and called upon the Plaintiff to "withdraw the contents of the said Notice in its entirety and refrain from addressing such communication in the future". The Defendant Nos.1 and 2 further stated that they are entitled to sublicense the impugned clips from the said series to or the said Film containing the impugned clips to any studio, platforms, companies, third parties etc. without any prior approval or intimation.

30. Mr. Kamod has submitted that the tone and tenor of the reply dated 8th June, 2023 sufficiently points to the direction that Defendant Nos.1 and 2 had no intention whatsoever of amicably resolving the present dispute. Consequently, the Plaintiff was under a bona fide apprehension that the Defendants are going to continue to unauthorizedly utilize the impugned clips and thereby continue to commit acts of infringement of the Plaintiff's copyright in the said

series. Further, the Plaintiff was under a bona fide apprehension that Defendant Nos.1 and 2 would sub- license / create third party rights in the impugned clips thereby perpetuating the infringement of the Plaintiff's copyright in the said series. It is for these reasons alone, the present Suit contemplates the grant of urgent interim reliefs.

31. Mr. Kamod has submitted that by the Defendant No.3's Advocate's letter dated 28th August, 2023, the Defendant No.3 for the very first time, falsely alleged fraud and forgery being played by the Plaintiff on Defendant No.3. Such contention was never raised before this point, despite Defendant No.3's aforementioned prior correspondences with the Plaintiff. He has submitted that it was thus clear that even Defendant No.3 had no intention of amicably resolving the present dispute.

32. Mr Kamod has submitted that as stated in paragraph 20 of the Plaint the cause of action is a continuing / recurring cause of action as Defendant Nos.1 and 2 have not removed portions of the said series included in the said Film from the OTT platform Jio Cinema despite being put to notice, thereby continuing to commit acts of infringement of copyright as complained of in the Plaint. He

has referred to prayer Clauses (g) and (l) of the Plaint which pertain to urgent interim and ad-interim reliefs that are claimed by the Plaintiff. Further, he has referred to the Interim Application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, wherein in paragraph 17, the Plaintiff has stated that unless the reliefs as prayed for in this Suit are granted, grave and irreparable loss, harm and injury will be caused to the Plaintiff. He has submitted that these averments / factors point to the direction that the present Suit contemplates urgent interim reliefs.

33. Mr. Kamod has submitted that rejection of the Plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 is required to be decided only on the averments made in the Plaint, and nothing else. He has submitted that whether the averments made in the Plaint are sustainable or whether the Plaintiff has made out any prima facie case or adduced evidence to support the averments made in the Plaint are all irrelevant factors in considering such rejection. He has submitted that the law in this regard is well settled and does not require further deliberation. In this context he has placed reliance upon the decision of the Supreme Court in *Liverpool and London S.P*

and I Association Ltd. Vs. M.V Sea Success I¹¹.

34. Mr. Kamod has submitted that the word ‘contemplate’ used in Section 12-A of the C.C. Act means that the averments in the Plaintiff seek urgent interim reliefs. He has submitted that Section 12-A of the C.C. Act does not come into play if the Suit contemplates an urgent relief i.e. the averments showing that urgent reliefs are sought by the Plaintiff. The Court cannot read into Section 12-A words like ‘sustainable’, or ‘justifiable’ or ‘bonafide’ as the Court is not called upon to decide the bonafides of the averments which contemplate urgent reliefs.

35. Mr. Kamod has relied upon the judgment of this Court in ***Deepak Raheja Vs. Ganga Taro Vazirani***¹² particularly paragraph 24 thereof. He has submitted that the Division Bench of this Court has held that for some disputes with urgent interim reliefs, adjudication in Court can be a suitable remedy, while for some disputes resolution through mediation can be more appropriate. Further, a clear legislative intent emerges from the plain reading of Section 12A that commercial dispute which contemplates an urgent interim relief,

11 (2004) 9 SCC 512.

12 Order dated 1st October, 2021 in COMAPL No.11950 of 2021.

dispute resolution by Courts is primary and when there is no such interim relief contemplated, pre-institution mediation for mutual resolution of disputes to be attempted first should be appropriate.

36. Mr. Kamod has submitted that the Court while deciding an application under Order VII Rule 11 of Code of Civil Procedure, 1908 read with Section 12-A of the C.C. Act cannot go beyond the Plaintiff i.e. averments made in the Plaintiff and documents annexed thereto, except when the Court finds that the averments are a disguise or a mask for escaping from the provisions of Section 12-A of the C.C. Act. However, the Court cannot go further to make any enquiry about the genuineness or strength or sustainability of the averments made in the Plaintiff. The facts and circumstances of the case have to be considered holistically from the standpoint of the Plaintiff. He has placed reliance upon the decision of the Supreme Court in *Yamini Manohar (Supra)* which has taken a note of its prior decision in *Patil Automation (Supra)*. He has in particular relied upon paragraphs 10 and 11 of *Yamini Manohar (Supra)*.

37. Mr. Kamod has submitted that as per the ratio in *Yamini Manohar (Supra)* the Court must be vigilant to ensure that by artful

drafting or creation of artificial urgency, wherein no urgency exists, a Plaintiff is not allowed to bypass Section 12-A of the C.C. Act. All that the Court is required to determine is that the plea is genuine and bona fide and not by practicing 'deception' or 'falsehood' or 'clever drafting' so as to make it appear that urgent interim relief is necessary. In arriving at this decision, the Court is not concerned with the merits of the plea for interim relief.

38. Mr. Kamod has submitted that the requirement under *Yamini Manohar (Supra)* is that camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. He has submitted that there is small window made available by *Yamini Manohar (Supra)* in considering whether Section 12-A of the C.C. Act is applicable which is only in the case of (i) deception and (ii) falsity apparent or established and that too from the Plaint itself i.e. without going to the reply or any other document filed by the Defendant. The Court is not concerned with the merits of the plea for interim relief. Hence, delay being an integral part of the defence set up against the grant of interim relief, the same per se can never be a ground for consideration while interpreting the provision of Section 12 A of the

C.C. Act.

39. Mr. Kamod has submitted that the Court in considering whether to dispose of the Section 12A requirement, a limited exercise is to be done. This would only be for the purpose of checking if such plea for interim relief is based on deception or falsity or is a camouflage to bypass the mandate of Section 12A. The Court will take into consideration the nature and subject matter of the Suit, cause of action involved in the Suit, and most importantly the nature of the interim reliefs sought by the Plaintiff. The Court cannot make any enquiry about the genuineness or strength or sustainability of the averments made in the Plaint; get into the merits of the case; consider the defence set up by the Defendant on the merits for grant of ad-interim / interim reliefs; consider whether the Plaintiff has or would be able to make out a case for ad-interim or interim reliefs etc. as these factors would be irrelevant for the purpose of considering the applicability of Section 12A of the C.C. Act.

40. Mr. Kamod has submitted that in the present case it cannot be said that the Plaintiff has indulged in clever drafting or falsity or deception, for the reason that the Plaintiff has clearly stated

in the paragraphs of the Plaint the date of knowledge of the Plaintiff and the subsequent events that transpired thereafter. Besides, it is not even the pleaded case of the Defendant Nos.1 and 2 in the present Application or during the course of their arguments that there has been any act of deception or falsehood on the part of the Plaintiff while presenting its case in the Plaint in order to show that it is in need of urgent interim reliefs.

41. Mr. Kamod has submitted that the decision of the Court on the question whether the Plaintiff is trying to escape from the rigors of Section 12-A of the C.C. Act is required to be decided on the entire Plaint alone. He has placed reliance upon the judgment of the Delhi High Court in *Dr. Reddy's Laboratories Ltd. (Supra)* in this context.

42. Mr. Kamod has submitted that in the present case, the Plaintiff has set out all material facts and circumstances involved in the case. The averments and documents annexed to the Plaint indeed make out enough grounds to demonstrate that the present Suit contemplates urgent interim reliefs, thereby showing that the Plaint in the present case cannot be rejected as being barred by Section 12-

A of the C.C. Act.

43. Mr. Kamod has submitted that the contention on behalf of Defendant Nos.1 and 2 that the present Suit does not contemplate any urgency and that therefore the same is liable to be rejected under Order VII Rule 11 Code of Civil Procedure, 1908 read with Section 12-A of the C.C. Act deserves to be rejected.

44. Mr. Kamod has submitted that the intellectual property Suits involving infringement or passing off could ordinarily be instituted without exhausting the pre-institution mediation requirement under Section 12-A of the C.C. Act. The Court will not base its findings merely on the parameter of interval of time between the date of knowledge of infringement and the date of filing the Suit. He has submitted that the present case is concerned with the infringement of the Plaintiff's intellectual property rights and violation thereof by the Defendants. He has submitted that in intellectual property matters, the relief of interim injunction is extremely crucial. It is a settled principle of law that in cases of infringement either of trade mark or of copyright, normally an injunction must follow and mere delay in bringing action is not

sufficient to defeat grant of injunction in such cases. He has placed reliance upon the judgment of the Supreme Court in *Midas Hygiene Industries Pvt. Ltd. Vs. Sudhir Bhatia & Ors.*¹³ and in particular paragraph 5 thereof in this context.

45. Mr. Kamod has also relied upon the judgment of the Supreme Court in *Laxmikant Patel Vs Chetanbhai Shah & Anr.*¹⁴ and in particular paragraphs 13, 14 and 17 of the said decision. The Supreme Court has considered the importance of an interim injunction in intellectual property matters and held that a refusal to grant an injunction inspite of the availability of facts, which are prima facie established by overwhelming evidence and material available on record justifying the grant thereof, occasion a failure of justice and such injury to the Plaintiff as would not be capable of being undone at a latter stage. He has submitted that although the provisions of Section 12-A of the C.C. Act apply to intellectual property suits, the Court is required to be more cautions and circumspect in rejecting the Plaint under Order VII Rule 11 of the Code of Civil Procedure Code, 1908 read with Section 12-A of the C.C. Act because firstly in the intellectual property rights matters,

¹³ (2004) 3 SCC 90.

¹⁴ (2002) 3 SCC 65.

mere delay is no defence to the grant of relief of injunction. Secondly, in intellectual property matters not only the Plaintiff's economic interest but also the public interest of safeguarding the members of the public from deception and confusion are required to be considered.

46. Mr Kamod has submitted that the present case, which is one for infringement of the Plaintiff's copyright, will have to be looked at in the background of the settled legal positions particularly in relation to intellectual property matters. He has placed reliance upon the decision of the Delhi High Court in ***Bolt Technology OU (Supra)*** where it was held that even though the Plaintiff therein had not exhausted the remedy of pre-institution mediation, the Plaint could not be rejected due to non-compliance of Section 12-A of the C.C. Act. The aspect of public interest involved in intellectual property matters was also emphasized. He has in particular placed reliance on paragraphs 16 to 18 of the said decision.

47. Mr. Kamod has submitted that the Supreme Court in ***Yamini Manohar (Supra)***, affirmed the order of the learned Single Judge of the Delhi High Court which upheld the decision of the

Commercial Court exempting the Plaintiff from the requirement of pre-institution mediation solely on the ground that, in the Complaint, the Plaintiff had averred that the adoption by the Defendant of any infringing trade mark would damage the goodwill and reputation of the Plaintiff and result in brand dilution, the consequent loss and injury as a result of which could not be compensated in monetary terms.

48. Mr. Kamod has submitted that the law laid down by the Supreme Court in *Yamini Manohar (Supra)* was discussed in detail in the decision in *Dr. Reddy's Laboratories (Supra)* wherein the Delhi High Court held that the general principle that, in intellectual property suits, involving infringement or passing off, continuation of the alleged infringement would result in loss and injury which cannot be compensated in monetary terms and that, therefore, the Suit could be instituted without, in the first instance, exhausting the remedy of pre-institution mediation under Section 12A of the C.C. Act. He has in particular relied upon paragraph 43 of *Dr. Reddy's Laboratories Ltd. (Supra)*, in this context.

49. Mr. Kamod has referred to the decision of this Court in

Chemco Plastic Industries (Supra), where this Court has held that the considerations in the intellectual property rights suit are different. He has submitted that it is only in exceptional circumstances that the non-exhaustion of pre-institution mediation under Section 12-A of the C.C. Act could come in the way of a Plaintiff in an intellectual property suit pertaining to matters where infringement or passing off is alleged. He has submitted that though the Defendants have relied upon *Chemco Plastic Industries (Supra)* to contend that an absolute proposition of law has been laid down to the effect that the time gap between the issuance of cease and desist notice and eventual filing of the suit, in itself, leads to a conclusion that the Plaintiff cannot contemplate urgent interim relief. Such reliance is a misplaced reliance in particular referred to paragraphs 27, 28, 31, 34 and 36 of the said decision in this context.

50. Mr. Kamod has submitted that the Court is not required to base its findings merely on the parameter of interval of time between the date of knowledge of infringement and the date of filing the Suit in assessing whether the Suit contemplates an urgent interim relief. This has also been held in the decision of this Court in *Quality Services and Solutions (Supra)* and followed in *Goregaon Sports Club*

(Supra) which pertains to a case of copyright infringement. He has placed reliance upon paragraph 9 of *Goregaon Sports Club (Supra)*, wherein *Chemco Plastic (supra)* has been considered in light of the law laid down in *Quality Services and Solutions (Supra)*. He has submitted that it is now a well settled position of law that the Court in considering whether the Plaintiff has made out a case for urgent ad-interim relief will take into consideration the Plaint, documents and facts and will not base its finding merely on the parameter of interval of time between the knowledge of infringement or rights and the institution of the Suit.

51. Mr. Kamod has submitted that copyright is a right in property. If a copyright is being infringed, such infringement would normally not be an isolated instance but would continue to recur each time the copyright is being violated or unauthorizedly exploited. Each act of infringement would give rise to a distinct and separate cause of action, and a Plaintiff would be well within his right to initiate appropriate proceedings seeking to enjoin the Defendant. Besides, the public at large could be duped by a Defendant unlawfully claiming to be the owner of copyright in a work.

52. Mr. Kamod has submitted that it has been held by this Court in *Maganlal Savani Vs. Uttam Chitra*¹⁵ that copyright is a right in property and each infringement furnishes a distinct and separate of cause of action. He has in particular referred to paragraph 9 of the said decision wherein the judgment of the Supreme Court in *Bengal Waterproof Ltd. Vs. Bombay Waterproof Manufacturing Company*¹⁶, has been relied upon. The Supreme Court held that an act of infringement furnishes a recurring cause of action on each occasion of infringement.

53. Mr. Kamod has submitted that Defendant Nos.1 and 2's argument that they are ready and willing to participate in mediation proceedings is inconsequential and deserves to be rejected, considering the tone and tenor of their reply to the Plaintiff's cease and desist notice. He has in this context placed reliance upon *Bolt Technology OU (Supra)* at paragraphs 23 to 25 and *Chemco Plastic* at paragraph 36.

54. Mr. Kamod has accordingly submitted that there is no merit in the present Application and the same be rejected.

¹⁵ Notice of Motion No.512 of 2008 in Suit No.29 of 2008 decided on 14th March, 2008.

¹⁶ AIR 1997 SC 1398.

55. Having considered the rival submissions, in my view, it is relevant to note that the present Suit has been filed for infringement of copyright of the Plaintiff. It is alleged that Defendant Nos.1 and 2 have unlawfully and unauthorizedly used in their movie (“the said film”) the audio visual clips of the television series “Shaktiman” (“said series”), copyright of which had been assigned to the exclusion of all other persons including the owner of the copyright i.e. Defendant No.3 to the Plaintiff by Defendant No.3 vide Agreement of Assignment dated 25th November, 2010 read with Subsequent Agreement of Assignment dated 17th December, 2010.

56. The Plaintiff has in the Plaint averred that the cause of action arose in or around May, 2023 when the Plaintiff noticed a impugned clips of the said series being unlawfully and unauthorizedly used in the said film produced by Defendant Nos.1 and 2 and which was being further exploited by Defendant Nos.1 and 2 on various platforms including OTT platform Jio Cinema. Thereafter, there was correspondence which ensued between the Plaintiff and Defendants as set out in paragraphs 5(g) to paragraph 5(n) of the Plaint. The Plaintiff had addressed a cease and desist notice dated 2nd June, 2023 and in response thereto, it was not the

contention of Defendant Nos.1 and 2 that the matter could be amicably resolved and in fact there was objection to the claims made by the Plaintiff which were referred to as 'incoherent, false and frivolous' and Defendant Nos.1 and 2 categorically stated that they were not complying with the requisitions mentioned in the cease and desist Notice. The Plaintiff was called upon to withdraw the contents of the said Notice in its entirety and refrain from addressing such communication in the future.

57. Whilst considering the relevant facts in determining whether there is any merit in the Interim Application for rejection of the Plaint under Order VII Rule 11 read with Section 12-A of the C.C. Act, it appears that the Plaintiff has disclosed the relevant material including made averments as to the commencement of the cause of action as well as subsequent events. It is not the case of Defendant Nos.1 and 2 in the present Interim Application or during the course of the arguments that there has been any act of deception or falsehood on the part of the Plaintiff whilst presenting its case in order to show that there is need for urgent ad-interim relief.

58. In *Yamini Manohar (Supra)* which has been followed in

Dr Reddy's Laboratories (Supra), the principle of law has been laid down by the Supreme Court in determining whether the Section 12-A requirement is being bypassed or whether urgent interim relief is genuinely contemplated. The Supreme Court has held that the Court must be vigilant to ensure that by artful drafting or creation of artificial urgency, wherein no urgency exists, a Plaintiff is not allowed to bypass Section 12-A of the C.C. Act. All that the Court is required to determine is that the plea is genuine and bona fide and not by practicing 'deception' or 'falsehood' or 'clever drafting' as to make it appear that urgent interim relief is necessary. It is relevant in this context to refer to paragraphs 10 of *Yamini Manohar (Supra)* which reads as under:-

10. We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine the nature and the subject matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad-interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order VII, Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order VII, Rule 11 of the Code, because the interim relief,

post the arguments, is denied on merits and on examination of the three principles, namely, (i) prima facie case, (ii) irreparable harm and injury, and (iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.

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 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 C.C. Act. An “absolute and unfettered right” approach is not justified if the pre-institution mediation under Section 12-A of the C.C. Act is mandatory, as held by this Court in Patil Automation.

59. From the aforementioned paragraphs it is clear that the Supreme Court was mindful of the fact that when the Plaint is filed with a prayer for urgent interim relief, the Commercial Courts should examine the nature and subject matter of the Suit, cause of action and prayer for interim relief. The primary consideration would be whether the prayer for urgent interim relief is a disguise or mask for escaping the rigors of Section 12-A of the C.C. Act. This would have to be considered holistically from the standpoint of the Plaintiff. Further, issues such as non grant of interim relief at the ad-interim

stage, when the Plaint is taken up for registration / admission and examination will not justify the dismissal of the Commercial Suit under Order VII Rule 11 of the Code of Civil Procedure, 1908. The Supreme Court has found it difficult to agree with the proposition that the Plaintiff has the absolute choice and right to paralyse Section 12 A of the C.C. Act by making a prayer for urgent interim relief. The Supreme Court has held that “Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established”.

60. Thus, from a reading of the decision of the Supreme Court in *Yamini Manohar (Supra)* it is apparent that there is a small window to reject the Plaint under Order VII Rule 11 and the parties to the mediation under Section 12 A of the C.C. Act, and this would be only in the case of (i) deception and (ii) falsity which is apparent or established and that too from the Plaint itself. In doing so, the Court is required to take into consideration the nature and subject matter of the Suit; cause of action involved in the Suit and nature of interim relief sought by the Plaintiff. There can be no consideration of the genuineness or strength or sustainability of the averments in the Plaint and / or merits of the case from the defence set up by the

Defendants. The Court is required to consider the case holistically from standpoint of the Plaintiff alone. Further, it is irrelevant whether the Plaintiff would be able to make out a case for ad-interim or interim relief.

61. I find that in the present case, considering that the Plaintiff has not resorted to deception and / or falsity and that it is not even the pleaded case of Defendant Nos.1 and 2's case and / or during oral arguments that there has been any act or deception or falsity on the part of the Plaintiff whilst presenting its case for urgent ad-interim relief, this case does not fit into the small window of rejecting the Plaint under Order VII Rule 11 and referring the parties to mediation under Section 12A of the C.C. Act.

62. I find much merit in the submission of Mr. Kamod that in cases of intellectual property rights suits involving infringement or passing off, such Suits can ordinarily be instituted without exhausting pre-litigation mediation requirement under Section 12-A of the C.C. Act. Further, the Courts will not place its findings on the parameter of interval of time between date of infringement and date of filing of the Suit. It has been held in *Midas Hygiene Industries P. Ltd. (Supra)*

that in case of infringement, either of trademark or of copyright, normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. Further, the Supreme Court has in *Laxmikant Patel (Supra)* considered the importance of granting injunction in intellectual property matters and has held that refusal to grant injunction when a case is made out for such grant would occasion a failure of justice and such injury to the Plaintiff would not be capable of being undone at the later stage. Thus, this only leads to the conclusion that the Court must be cautious and circumspect in Intellectual Property Suits in rejecting the Plaint under Order VII Rule 11 of the Code of Civil Procedure Code, 1908 read with Section 12-A of the C.C. Act. Further, in intellectual property rights matters not only the Plaintiff's economic interest but also public interest of safeguarding the members of the public from deception and confusion are required to be considered.

63. The judgment in *Chemco Plast (Supra)* relied upon by the Defendant Nos.1 and 2 has been considered in *Quality Services and Solutions Pvt. Ltd (Supra)* as well as in *Goregaon Sports Club (Supra)* and this Court has been held that a Court in considering whether the Plaintiff has made out a case for urgent ad-interim relief,

will take into consideration the Plaintiff, documents and facts and not base its findings merely on the parameter of interval of time between the knowledge of infringement and the institution of the Suit. Thus, I find no merit in the contention of Defendant Nos.1 and 2 that there is an absolute proposition of law that time gap between the issuance of cease and desist notice and filing of the Suit would result in the Plaintiff not contemplating urgent interim relief as contemplated under Section 12A of the C.C. Act.

64. Although answering the issue raised by the Defendant Nos.1 and 2 namely whether in intellectual property Suits filed under the Commercial Courts Act, 2015 in which the Plaintiff bases its claim on alleged continuing wrong, the provisions under Section 12-A of the C.C. Act will have no application in the negative, the Court will be required to be more cautious and circumspect in considering whether Section 12A of the C.C. Act is applicable. The Court will be guided by the principles laid down by the Supreme Court in *Yamini Manohar (Supra)* and the small window created for making Section 12-A applicable viz. in case of (i) deception and (ii) falsity, apparent or establish and that too from the Plaintiff itself i.e. without going to reply or any other document filed by the Defendant. In carrying out

this exercise, the Court will take into consideration the nature and subject matter of the Suit; cause of action involved in the Suit and the nature of interim relief sought by the Plaintiff.

65. Further, though the second issue raised by the Defendant Nos.1 and 2 as to whether the Court merely on the basis of correspondence exchanged between the parties prior to the institution of lis, can conclude that mediation is not viable and give a go-bye to Section 12-A of the Act which is mandatory is also answered in the negative, the correspondence exchanged between the parties is certainly one of the factors which may weigh with the Court to consider the intention of the Defendants to go in for mediation. The Court will be required to consider the Defendants' response to the cease and desist notice and whether the Defendants were inclined to resolve their disputes through mediation as provided under Section 12-A of the C.C. Act. However, this is not the only determining factor as there is the other factor which would weigh with the Court, namely, whether the Plaintiff's case in seeking urgent ad-interim relief is based on deception and falsity apparent or established from the Plaintiff.

66. It is pertinent to refer to *Patil Automation (Supra)*, wherein the Supreme Court has held that the Section 12-A of the Commercial Courts Act is mandatory. However, in so holding, the Supreme Court has considered suits which do contemplate urgent interim relief and has defined the word 'contemplate' in the context of attempts to bypass the statutory mediation under Section 12 A of the C.C. Act. Further, in considering whether the Suit 'contemplates' urgent interim relief, the Plaintiff, documents and facts must indicate an urgent interim relief. This is precisely the limited exercise that Commercial Courts will undertake, which has been held to be sufficient.

67. Further, the judgment relied upon by the Defendant Nos.1 and 2 namely *Pankaj Rastogi V/s. Mohd. Sazid and Anr.*¹⁷ was not a case of infringement of intellectual property rights. Thus, considering the above finding that, the issue of intellectual property rights suits requiring to be treated with a certain degree of circumspect in determining whether Section 12A of the C.C. Act is applicable did not fall for consideration before the Allahabad High Court in the said decision.

¹⁷ 2024 SCC OnLine All 2187.

68. Further, the judgment of the Madras High Court in *V Prabhakar (Supra)* relied upon by the Defendant Nos.1 and 2 was prior to the decision of the Supreme Court in *Yamini Manohar (Supra)* and hence the principles laid down in *Yamini Manohar (Supra)* did not fall for consideration before the Madras High Court and hence would be inapplicable.

69. The judgment of Delhi High Court in *Ansa Vs. Zahid Shawl*¹⁸ relied upon by the Defendant Nos.1 and 2 was not a case of infringement of intellectual property rights. Hence, this decision will be inapplicable. This also applies to the judgment of the Calcutta High Court in *Proactive Ship Management Pvt. Ltd. Vs. Owners & Parties Interested in the Vessel Green Ocean*¹⁹.

70. Further, Section 12-A of the C.C. Act does not contemplate the Courts to be satisfied that no urgent or ad-interim relief or immediate relief may be granted in considering whether the provision is applicable. This is a matter on merits and will be considered only at the time of adjudicating the ad-interim application. In considering the applicability of Section 12-A of the

18 2024 SCC OnLine Del 320,

19 2024 SCC OnLine 1838.

C.C. Act, the Court is confined to the Plaint and documents annexed to the Plaint.

71. Having arrived at the above finding, I find no merit in the present Interim Application which seeks rejection of the Plaint under Order VII Rule 11 read with Section 12-A of the C.C. Act for non exercise of the mandatory recourse of pre-litigation mediation under Section 12-A.

72. Accordingly, the Interim Application is dismissed. There shall be cost of Rs.50,000/- payable by the Defendant Nos.1 and 2 to the Plaintiff for delaying the hearing of the Interim Application for urgent relief.

73. The present Interim Application is accordingly disposed of.

[R.I. CHAGLA J.]