

Form J(2)
Sl.No. 02

In The High Court at Calcutta
Ordinary Original Civil Jurisdiction
[Commercial Division]
Original Side

Present:

The Hon'ble Justice Aniruddha Roy

CS-COM/127/2026

AMOGA GLOBEX PRIVATE LIMITED

VS

S K GUPTA AND SONS AND ANR

For plaintiff:

Mr. Chayan Gupta, Adv.

Ms. Darshana Sett, Adv.

Mr. Tanay Agarwal, Adv.

Ms. Priyanka Agarwal, Adv.

Ms. Arpita Dey, Adv.

Reserved on : 09.09.2026

Judgment on : 15.09.2026

ANIRUDDHA ROY, J.:

Facts:

1. This is a commercial suit, at this stage of presentation of plaint, plaintiff prays for **leave for dispensation of requirement for pre-institution mediation** under **Section 12A of the Commercial Courts Act, 2015** (hereinafter, **C.C. Act**). In addition, plaintiff claims leave under **Clause**

12 of the Letters Patent, 1865 (hereinafter, **Letters Patent**) and leave under **Order II Rule 2 of Civil Procedure Code, 1908** (hereinafter, **CPC**).

2. The summary of the plaint case is stated hereinafter.
3. The plaintiff placed orders for purchase of some electronic goods and a formal agreement was executed on August 09, 2023.
4. Plaintiff had placed three purchase orders upon the defendants. Goods were supplied by the defendants under the first two purchase orders and was not supplied against the last, being the third purchase order.
5. The defendants had issued cheques in favour of the plaintiff as security. Despite repeated demands, the defendants did not supply the goods, when the plaintiff presented the cheques, which were dishonored.
6. Plaintiff claims that it had made excess payment of **Rs.2,04,04,769/-** for which the plaintiff had not received the goods, as the goods were not supplied by the defendants.
7. Claiming the amount paid by the plaintiff to the defendants, as the defendants did not supply the goods, the plaintiff on or about **April 08, 2024** filed a suit being **CS 129 of 2024** before the non-commercial division where the plaintiff had also claimed consequential damages along with other consequential prayers.
8. In the said previous suit, plaintiff moved an application for injunction exparte where a Coordinate Bench on May 06, 2024 passed an interim order, inter alia, recording that the defendants had issued cheques which were dishonored upon presentation and the defendants had acknowledged the amount claimed by the defendants by an email dated

November 28, 2023. An order was passed directing the defendants to maintain a balance for a sum of Rs.2,21,96,816/- in their bank account with South Indian Bank, Gurgaon and Axis Bank Limited at Gurgaon. The defendants were also directed to file their affidavits of assets relating to the fixed deposits and other assets and properties, bank accounts and receivables. The said interim order was extended from time to time in presence of the defendants.

9. Coordinate Bench thereafter by an order dated June 22, 2026 had returned the plaint for being instituted before the Commercial Division.
10. In the above facts and circumstances, the plaintiff has filed the instant commercial suit and has prayed for dispensation of the requirement of pre-institution mediation as provided under Section 12A of the C.C. Act.

Submissions :

11. Mr. Chayan Gupta learned Advocate appearing for the plaintiff submits that the plaintiff has contemplated an urgent interim relief in the light of the averments made, inter alia, in **paragraphs 2, 3, 6, 7, 15, 18, 23 and 25** of the plaint.
12. Referring to the relevant paragraphs from the plaint with the supportive documents annexed thereto, Mr. Chayan Gupta learned Advocate appearing for the plaintiff has submitted that in the previous suit a Coordinate Bench having found a *prima facie* case had passed the interim order *ex parte* on **May 06, 2024** as narrated above, which was extended from time to time even on contest until the plaint was returned to be filed before the Commercial Division.

- 13.** Large numbers of criminal cases are pending against the defendants which would demonstrate that the defendants are in habit of defrauding its creditors and committing default of payment towards them in the commercial market. The defendants have lost its commercial probity. Unless the requirement of pre-institution mediation is dispensed with, the plaintiff cannot pray for an urgent interim relief, as contemplated in the plaint against the defendants so that necessary order of injunction can be passed to protect and secure the claim of the plaintiff which is otherwise admitted and acknowledged by the defendants.
- 14.** In the event, the requirement for pre-institution mediation is not dispensed with and the plaintiff is not allowed to pray for an urgent interim relief, as contemplated in the plaint, plaintiff apprehends that the defendants would dissipate its assets and properties and in that event, even if a decree is pronounced in favour of the plaintiff, it will be a paper decree and can never be satisfied since the defendants would deal with its assets and properties during pendency of the mediation.
- 15.** The grounds submitted by Mr. Chayan Gupta learned Advocate appearing for the plaintiff in support of his prayer for dispensation of the formalities for pre-institution mediation are summarized in the following manner :-
- (a) Several criminal cases are pending against the defendants which show that the defendants intend to defraud its creditors. The defendant nos. 2 and 3 applied for bail before the jurisdictional criminal court, such prayer was rejected;*

- (b) Upon the previous suit being filed before the non-commercial division, a Coordinate Bench having found prima facie case had passed an ex parte interim injunction which was extended from time to time and continued ;*
- (c) Post-dated cheques were issued by the defendants, which upon presentation were dishonored;*
- (d) The defendants had specifically admitted and acknowledged the claim of the plaintiff through an email dated November 28, 2023;*
- (e) Defendants had filed their written statement in the previous suit where the defendants in a routine manner had barely denied the plaint case.*

16. Mr. Chayan Gupta learned Advocate appearing for the plaintiff has submitted that when a plaint is presented in commercial division and dispensation for formality for the requirement of pre-institution mediation as provided under Section 12A of C.C. Act is prayed for, the Court shall appreciate the case for contemplation of an urgent relief, as pleaded in the plaint from the stand point of the plaintiff and if the Court is satisfied that sufficient contemplation is there, as in the instant plaint, the Court has discretion to dispense with the requirement of pre-institution mediation. The expression “contemplate” means the plaint, its documents and facts should show and indicate the need for an urgent interim relief. This precise and limited exercise, the commercial Courts would have to undertake.

- 17.** Mr. Chayan Gupta learned Advocate appearing for the plaintiff then submits that from a meaningful reading of the averments made in the instant plaint, it would be evident that the contemplation for an urgent interim relief of the plaintiff has been clearly expressed and the same should be understood by this Court only upon reading the plaint from the stand point of the plaintiff.
- 18.** Mr. Chayan Gupta learned Advocate appearing for the plaintiff further submits that contemplation thus, would not meet an instant immediacy but the prejudice and the irreparable loss and injury that the plaintiff is likely to suffer if the plaintiff is made to wait for pre-institution mediation. The Court has to examine whether the facts and circumstances justify a genuine apprehension has posted to a camouflage for an irreparable injury, the plaintiff is likely to suffer. In the facts of the instant case as pleaded in the plaint, it would be evident that in acknowledgement of its dues, the defendants made over the post-dated cheques, inter alia, as security and since the plaintiff did not receive its money claimed from the defendants despite the purchase price being placed and the goods not being supplied by the defendants, upon presentation the cheques were dishonored. Through the said email dated November 28, 2023 the defendants had acknowledged and admitted its liability but still not paid. The plaintiff would immediately pray for protective order for preservation of the assets of the defendants, so that the claim of the plaintiff can be secured. In the event, taking advantage of the time to be spent for pre-institution mediation, the defendants dissipate its assets and properties and transfer the same,

plaintiff would have no other mode to protect its claim until the suit is finally adjudicated and in the event, a decree is pronounced in favour of the plaintiff, the same will be merely a paper decree.

19. Mr. Chayan Gupta learned Advocate appearing for the plaintiff has placed reliance on the following decisions :-

- (i) In the matter of: Odisha Slurry Pipeline Infrastructure Ltd. vs. IDBI Bank Ltd. reported at 2022 SCC Online Cal 3951;**
- (ii) In the matter of: Basu's Polyfab Pvt. Ltd. & Ors. vs. SRG Earth Resources Pvt. Ltd. & Ors. rendered in CS 143 of 2023 on 25th July, 2023;**
- (iii) In the matter of: Gavrill Metal (P) Ltd. Vs. Maira Fabricators (P) Ltd., reported at 2023 SCC OnLine Cal 2443;**
- (iv) In the matter of: Yamini Monohar vs. T.K.D. Keerthi reported at (2024) 5 SCC 815;**
- (v) In the matter of: Tuhin Kanti Choudhury vs. State of West Bengal & Ors rendered in FMAT No.193 of 2024 on 21st May, 2024;**
- (vi) In the matter of: Tuhin Kanti Choudhury vs. State of West Bengal & Ors rendered in FMAT No.193 of 2024 on 20th June, 2024;**
- (vii) In the matter of: Shristi Infrastructure Development Corpon. Ltd. vs. Sarga Hotel (P) Ltd., reported at 2024 SCC OnLine Cal 7817;**

(viii) In the matter of: Sarga Hotel Private Ltd. & Anr., vs. Shristi Infrastructure Development Corporation Ltd. rendered in SLP (Civil) Diary No(s). 43860/2024 on 22nd November, 2024;

(ix) In the matter of: Asa International India Microfinance Ltd. vs. Northern ARC Capital Ltd. & Anr., rendered in FMAT 3 of 2025 on 17th January, 2025;

(x) In the matter of: Dhanbad Fuels Private Limited vs. Union of India reported at (2025) 9 SCC 424.

20. Mr. Chayan Gupta then submits that while considering the prayer for dispensation for pre-institution mediation, the Court shall only consider whether a case for contemplation for urgent interim relief has been made out in the plaint. The plaintiff ultimately may not succeed on merit on its prayer for interim relief. If contemplation is sufficiently pleaded, the requirement for pre-institution mediation should be dispensed with.

21. In support, Mr. Chayan Gupta relied upon the following decisions :-

(a) In the matter of: Berger Paints India Limited vs. GPHP Holdings Pvt. Ltd. rendered in CS(COM)/48/2025 on 7th November, 2025;

(b) In the matter of: Srigopal Yarn Trading (P) Ltd. vs. Mahalaxmi Enterprise reported at 2026 SCC OnLine Cal 1702;

(c) In the matter of: Nupur Saha & Ors. vs. Swapan Sonkar & Ors. rendered in CS(COM) 106 of 2026 on 11th August, 2026.

- 22.** In the light of the above submissions, plaintiff prays for dispensation of the requirement for pre-institution mediation as provided under Section 12A of C.C. Act.

Decision :

- 23.** At the outset, the fundamental rule of law in a commercial suit is that once a suit has been registered as a commercial suit, the same is governed under the provisions of the C.C. Act and the relevant rules framed thereunder. The provisions laid down under C.C. Act including **Section 12A** of the Act are mandatory in nature and in absence of compliance of such provision including Section 12A of C.C. Act, the plaint should be rejected being barred by law.
- 24.** In the facts and circumstances of the instant case, the plaintiff had previously filed a suit in a non-commercial division. The non-commercial division having found the suit to be commercial in nature, had returned the plaint and the instant plaint had been filed in the commercial division. Thus, the instant suit being a commercial suit, the adjudication thereof will have to be and should be governed under the provisions of C.C. Act. The contemplation for an immediate interim relief will have to be seen and considered on the basis of the statements made in the plaint and the documents annexed to the plaint. Once the plaint is returned from the non-commercial division and has been filed before the commercial division, whatever order those had been passed in the

non-commercial division would not have any bearing or material bearing in the instant suit, which is a commercial suit. Therefore, the ad interim order or the interim order passed in the previous non-commercial suit or the prima facie case that led the non-commercial Court to pass such interim order and to continue with the same or the stand taken by the defendants in the written statement filed in the non-commercial suit would have no effect whatsoever to ascertain the contemplation of the plaintiff for an urgent interim relief in the instant suit. The plaint filed in the commercial division will have to be independently read by the commercial court strictly in the light of the provisions laid down under **C.C. Act only** without carrying any impression whatsoever in the mind with regard to what had happened when the previous suit was filed in the non-commercial division, notwithstanding whatever interim order was passed by the non-commercial court or the stand taken by the defendants in their written statement filed in the non-commercial suit.

25. Upon reading the decisions mentioned above, as referred to on behalf of the plaintiff, this Court proceeds to summarize its findings hereinbelow.

26. This Court recently has dealt with the subject proposition of law in its judgment ***In the matter of: J K Engineering Private Limited vs Ane Industries Private Limited rendered in IA.No.GA-COM/3/2025 in C.S-COM/834/2024 decided on 28th July, 2026 reported at 2026 SCC OnLine Cal 9898*** where this Court had observed as under :-

58. Section 12A of C.C. Act provides that a suit, which does not contemplate any urgent interim relief under the Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in the manner and mode prescribed under the procedure. The

provision further makes it clear that the period during which the parties remain occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation to institute a suit. The provision imposes a clear bar, which is mandatory in nature, that the plaintiff must exhaust the remedy of pre-institution mediation but the exception is if the plaintiff contemplates an urgent interim relief. However, the Section does not specify for dispensation of the requirement of pre-institution mediation in the event, the plaintiff contemplates an urgent relief. Rule 8 of the Practice Directions, 2021 provides for leave of Court for institution of suits without exhausting the remedy of pre-institution mediation. The Practice Directions of 2021 has been framed by this Court in due exercise of its power provided under the C.C. Act. Rule 8 states that in the case of a suit under the C.C. Act which contemplates any urgent relief by reasons of which the plaintiff seeks to institute such suit without exhausting the remedy of pre-institution mediation in terms of Section 12A of C.C. Act, the Court shall be empowered to receive, try and determine such suit only upon the leave of the Court having been first obtained. The Rule further provides in the event the Court not being satisfied that the suit contemplates any urgent relief which would justify the dispensation with the necessity of the plaintiff exhausting the remedy of pre-institution mediation, the Court shall be entitled to return the plaint and directed the plaintiff to comply with the requirement of pre-institution mediation within the meaning of C.C. Act.

59. On harmonious reading of Section 12A with Rule 8 of the Practice Directions, 2021, makes it clear that from the statements made in the plaint and on the basis of the submissions made on behalf of the plaintiff, if the Court is satisfied that the contemplation of the plaintiff is there for any urgent interim relief, the Court has ample authority and discretion to dispense with the formality required for pre-institution mediation and the Court is empowered to receive the plaint, try and determine the suit. The Court must arrive at its satisfaction with the case made out in the plaint and then shall use its power and discretion judiciously.

60. It is the settled proposition now that the provision under Section 12A of C.C. Act is a mandatory provision

and the provision under C.C Act should be read, construed and interpreted strictly. Liberal construction has no role to play. If a suit is instituted in violation of the mandate contained under Section 12A of C.C. Act must be visited with rejection of the plaint.

61. In the recent judgment of the Hon'ble Supreme Court In the matter of: Novenco Building and Industry A/S (supra) where the action concerned related to continuing infringement of intellectual property rights, the Hon'ble Supreme Court after considering all the previous judgments on the field, namely, In the matter of: Patil Automation Private Limited and Others (supra), In the matter of: Yamini Monohar (supra), and In the matter of: Dhanbad Fuels Private Limited (supra) had observed as under :-

"17. The scope and ambit of Section 12A of the Act which makes pre-institution mediation mandatory for commercial disputes, except where the suit 'contemplates any urgent interim reliefs', has been considered in three recent decisions of this Court. In Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd. a two-Judge Bench of this Court dealt with a case where a suit for recovery of money was filed without adherence to Section 12A of the Act. It was held that Section 12A of the Act is mandatory and any suit instituted in violation of the mandate contained in Section 12A of the Act must be visited with rejection of the plaint.

18. In Yamini Manohar (supra), another two-Judge Bench of this Court laid down the criteria to judge whether the plaint contains a prayer for urgent interim relief, by taking into account the subject matter of the suit, the cause of action and the prayer for interim relief. It was further held that the facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff and the prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the Act. The scope and ambit of the words 'contemplate any urgent interim relief' in Section 12A of the Act, with reference to the suit, were also considered and it was held that the plaint, documents, and facts should show and indicate the need for urgent interim relief. It was further held that this is the precise and

limited exercise that the Commercial Courts will undertake.

19. In DHANBAD FUELS (P) LTD. v. UOI, another two-Judge Bench of this Court held that the test under Section 12A is not whether the prayer for urgent interim relief actually comes to be allowed or not, but whether on examination of the nature and the (2025) SCC Online SC 1129 subject-matter of the suit and the cause of action, the prayer for urgent interim relief by the plaintiff could be said to be contemplable when the matter is seen from the standpoint of the plaintiff. It has been further held that the interim relief must not merely be an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12A of the Act.

20. The legal test distilled from the aforesaid decisions for the purposes of rejection of the plaint and for adjudication of interim relief can be culled out as follows:

(i) Section 12A mandatorily requires pre-institution mediation for commercial suits, non-compliance of which would ordinarily render the plaint institutionally defective.

(ii) A plaintiff can be exempted from the requirement of Section 12A only when the plaint and the documents attached with it clearly show a real need for urgent interim intervention. A wholesome reading of the plaint and the material annexed to the plaint ought to disclose the need for urgent relief.

(iii) The court must look at the plaint, pleadings and supporting documents to decide whether urgent interim relief is genuinely contemplated. The court may also look for immediacy of the peril, irreparable harm, risk of losing rights/assets, statutory timelines, perishable subject-matter, or where delay would render eventual relief ineffective.

(iv) A proforma or anticipatory prayer for urgent relief used as a device to skip mediation will be ignored and the court can require the parties to comply with Section 12A of the Act.

(v) The court is not concerned with the merits of the urgent relief, but if the relief sought seems to be plausibly urgent from

the standpoint of the plaintiff the court can dispense with the requirement under Section 12A of the Act.”

62. Hon’ble Supreme Court In the matter of: Dhanbad Fuels Private Limited (supra) specifically in its paragraphs 49 and 50 had observed that the test under Section 12A of C.C. Act is not whether the prayers for urgent interim relief actually comes to be allowed or not but whether on an examination of the nature and subject-matter of the suit and cause of action, the prayer for urgent relief by the plaintiff could be said to be contemplable when the matter is seen from the stand point of the plaintiff. It has been further observed by the Hon’ble Supreme Court that the pleadings on record and also oral submissions would be sufficient in ordinary course to demonstrate the urgent interim relief from the stand point of the plaintiff since the provision does not contemplate filing of any application praying for dispensation. In the light of the said settled position of law if the provision under Section 12A of C.C. Act is read and examined, it also appears to this Court that the expression “contemplate” has not been clarified by any further expression or instance or situation or any state of affairs with regard to the subject matter of the plaint. Therefore, it is the perspective which has to be seen through the eyes of the plaintiff, as the case made out in the plaint and then the discretion of the Court shall have to be exercised with application of mind.

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64. Since neither Section 12A of C.C. Act nor the Practice Procedure, 2021 specify or define what should be the grounds and/or causes to be stated in the plaint contemplating an urgent interim relief, in absence of such statutory prescription the perception for contemplating urgent interim relief praying for dispensation of pre-institution mediation would largely depend on the exercise of judicial discretion of the Court by reading the statements made in the plaint and by considering the submissions on behalf of the plaintiff from the stand point of the plaintiff for granting dispensation for pre-litigation mediation.”

- 27.** It is equally true that the assessment for contemplation for urgent interim relief from the stand point of the plaintiff by the Court would also depend and shall vary from facts to facts of each case. It is the perception of the Court on the basis of a particular plaint and there cannot and shall not be any straight-jacket or any thumb rule formula. With the application of mind and after arriving at a satisfaction of mind, a commercial court would have the discretion to allow the prayer for dispensation for pre-institution mediation or to reject it.
- 28.** On a meaningful reading of the instant plaint, it appears the plaintiff has contemplated an urgent interim relief in view of the facts stated in the plaint. Some relevant facts as stated in the plaint are, inter alia, that several criminal proceedings have already been pending where the criminal trials are awaited. Plaintiff has made out a specific case that the defendants are allegedly habitual defaulter in the commercial market and defendants have allegedly defrauded various creditors. The criminal cases pending, are specified. The cheques made over by the defendants to the plaintiff to secure its debt, have been dishonored upon presentation indicating that the commercial probity of the defendants are allegedly questionable. The relevant email, mentioned above also shows alleged admission of liability on the part of the defendants towards the plaintiff.
- 29.** In the light of the above, the averments in the plaint made by the plaintiff further show that the plaintiff claims for protection of its alleged claim by contemplating urgent interim relief.

- 30.** In view of the forgoing reasons and discussions, this Court is of the firm and considered view that the requirement of pre-institution mediation as provided under **Section 12A of C.C. Act** should be **dispensed with** and accordingly, such requirement stands **dispensed with**.
- 31.** In view of the statements made in **paragraphs 2, 3, 6, 7, 15, 18 and 23 in the plaint, leave granted under Clause 12 of the Letters Patent, 1865.**
- 32.** In view of the statements made in **paragraph 25 of the plaint, leave granted under Order II Rule 2 of Civil Procedure Code, 1908.**
- 33.** Accordingly, the plaint stands **admitted**, subject to scrutiny by the department.

(Aniruddha Roy, J.)

(D. Das, P.A.)