In the High Court at Calcutta
Commercial Division
Original Side

Judgment (2)

PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY

IA NO. GA-COM/3/2025
In CS-COM/48/2025

BERGER PAINTS INDIA LIMITED
VS
GPHP HOLDINGS PVT LTD

For the plaintiff : Mr. Anirban Ray, Sr. Adv.
Mr. Soham Sen, Adv.
Mr. Snehashis Sen, Adv.

For the defendant : Mr. Suddhasatva Banerjee, Adv.
Mr. Kanishk Kejriwal, Adv.
Mr.Aishwarya Kumar Awasthi,Adv.

Heard on : November 7, 2025

Judgment on : November 7, 2025

ANIRUDDHA ROY, J :

FACTS:

1. The instant application has been filed by the defendant for withdrawal and/or cancelling and/or revoking the direction of

the Co-ordinate Bench granting dispensation of requirement **under Section 12A of the Commercial Courts Act, 2015** (for short **"CC Act"**).

2. The claim of the plaintiff was for unpaid consideration on account of goods sold and delivered by the plaintiff to the defendant.

3. On the basis of contemplating an urgency for an interim order, the petitioner/plaintiff applied before this Court seeking dispensation of the requirement under ***Section 12A of the CC Act*** being the pre-suit mediation procedure.

4. The principal averments made by the plaintiff, in support of such claim, are quoted from the plaint:

> *"10. The parties were maintaining running and continuous account. Upon adjustment of all payments made by the defendant, as per the ledger maintained by the plaintiff, in respect of the said accounts of the defendant, there is a total outstanding sum of Rs.1,01,60,721/- which commensurate with on account invoices from February 2024 to June, 2024 with regard to Account No. 57027 and Account No. 66404. The details of the outstanding invoices are mentioned in a Schedule and a copy whereof is annexed hereto and marked with the letter "C". The ledgers maintained by the plaintiff with regard to the aforesaid two accounts are collectively annexed hereto and marked with the letter "D" series.*
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> *11. From time to time, the plaintiff requested the defendant to clear the aforesaid outstanding invoices,*

but the defendant failed and neglected to clear the same. However, the defendant, on such demand being made by the plaintiff, agreed for a meeting to be held at the office of the plaintiff at Berger House, 129, Park Street, Kolkata-700017, within the jurisdiction aforesaid.

12. In the meeting held on 4th February, 2025 at the registered office of the plaintiff at Berger House, 129, Park Street, Kolkata-700017, within the jurisdiction aforesaid, the representative of the defendant expressed that the defendant is in dire straits and in requirement of funds and for such funds, were trying to sell their plaint situated at Sarurpur Industrial Area, Faridabad. Further it was informed that a Scheme of Compromise with the creditors under Section 230 of the Companies Act, 2013 would be filed before the Hon'ble National Law Tribunal for settlement of the dues of the creditors. The representative of the plaintiff has expressed that such scheme is not acceptable to the plaintiff at all. The discussions of the meeting was recorded in an e-mail dated 12th February, 2025 by the defendant and a copy whereof is annexed hereto and marked with the letter "E". The said email has been prepared and issued by the defendant at 234/3A, Acharya Jagadish Chandra Bose Road, Kolkata-700020, outside the jurisdiction of this Hon'ble Court and has been received by the plaintiff at 129, Park Street, Police Station Park Street, Kolkata-700017, within the aforesaid jurisdiction of this Hon'ble Court.

13. In another meeting held on 20th March, 2025 at the corporate office of the plaintiff at Berger Paints

Corporate Office at CF Block, New Town, Action Area-1, New Town Kolkata-700156, outside the jurisdiction aforesaid, and by an e-mail dated 24th March, 2025, the defendant expressed its precarious financial condition and the closure of the operation of the blade plant located at Sarurpur Industrial Area, Faridabad, outside the jurisdiction aforesaid. The defendant communicated that an application for scheme in compromise and arrangement under Section 230-232 of the Companies Act, 2013 has been filed before the Hon'ble National Company Law Tribunal, Kolkata Bench on 7th March, 2025 and the defendant also forwarded the proposed scheme prepared by the defendant. The defendant also supplied a copy of the scheme of Compromise and Arrangement filed by the defendant alongwith an application under Section 230 of the Companies Act, 2013. A copy of the e-mail dated 24th March, 2025 alongwith the Scheme of Compromise and Arrangement is collectively annexed hereto and marked with the letter "F" series.

14. The defendant again on 24th March, 2025 informed the representatives of the plaintiff that they shall be selling their factory land at Plot No. 23, Gali No. 3(West), Sarurpur Industrial Area, Faridabad – 121004, outside the jurisdiction aforesaid."

5. Upon presentation of the plaint, the Co-ordinate bench by its order dated **April 16, 2025,** inter-alia, allowed dispensation of requirement for pre-litigation/ mediation under **Section 12A of the CC Act** and the plaint was admitted.

SUBMISSIONS:

6. Mr. Kanishk Kejriwal, learned Counsel led by Mr. Suddhasatva Banerjee, learned Counsel appearing for the defendant referring to the averments made in the plaint submits that the plaintiff has pleaded a case that goods were sold and delivered by the plaintiff to the defendant and despite raising invoices and demands the defendant has failed and neglected to pay the price of the goods. The defendant made part payments and last of such part payment was made in the Month of June, 2024. During February, 2024 to June, 2024 the plaintiff supplied goods aggregating for a total sum of Rs. 1,01,60,721/- and the said entire sum is now due and payable, according to plaintiff.
7. The plaintiff then pleaded that in a meeting held on **February 4, 2025** the defendant has expressed its desire and requirement of fund as the defendant was passing through severe financial crisis and to meet such crisis the defendant was trying to sell its plant situated at industrial area, Faridabad (Faridabad property). The defendant has also informed the plaintiff that it has proposed to submit scheme of compromise with the creditors under the Companies Act, 2013, which would be filed before the jurisdictional of NCLT for settlement of the dues of the creditors.
8. Learned Counsel for the defendant then submits that, the plaintiff has pleaded that by an e-mail dated **March 24, 2025**

the defendant further expressed its precarious financial condition and closure of its part of business. The scheme of arrangement has already been presented before the jurisdictional NCLT on **March 7, 2025** and the defendant also forwarded the proposed scheme prepared by the defendant to the plaintiff.

9. In the light of the above, the defendant submits that the cause of action of the plaintiff, as alleged, arose way back in June, 2024. The moment the alleged default occurred on the part of the defendant. The defendant had expressed its financial inability contemporaneously to the plaintiff which was in or about June, 2024 or so soon thereafter. The contemplation by the defendant to sell its Faridabad plant was also known to the plaintiff contemporaneously. Thus, according to Mr. Kejriwal, Learned Counsel appearing for the defendant, there was no sudden and immediate urgency for an urgent interim relief, as all such facts were known to the plaintiff much prior in point of time.

10. Learned Counsel, Mr. Kejriwal then refers to the paragraphs of the plaint where the cause of action has been pleaded and submits that since the cause of action has arisen much prior in point of time, the question for dispensation of the requirement **under Section 12A of CC Act** did not arise and

as such, the said requirement should not have been dispensed with.

11. Learned Counsel for the defendant then placed **Section 12A of the CC Act** and submits that the object of the said Section clearly denotes the mandatory condition precedent to avail of pre-suit mediation before institution of a suit, as in the instant case.

12. By not availing of the said pre-suit mediation, the plaintiff has acted contrary to the provisions laid down under **Section 12A of the CC Act** and thereby bypassed the mandatory statutory provision, which is not permitted in law. In support, Learned Counsel has placed reliance upon a decision of the Hon'ble Supreme Court **In the matter of: *Yamini Manohar vs. T.K.D. Keerthi*** reported at ***(2024) 5 Supreme Court Cases 815.***

13. Learned Counsel for the defendant then submits that on a plain reading of the plaint, it appears there was no urgency involved praying for an urgent interim order.

14. Accordingly, the defendant prays for revocation of the leave granted by the Court dispensing with the requirement of Section 12A of the CC Act.

15. Mr. Anirban Ray, Learned Senior Advocate appearing for the plaintiff at the threshold refers to the provisions laid down under **Section 12A of the CC Act** and submits that the

language of the Section is very clear 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-litigation mediation. Therefore, if the plaintiff contemplates an urgent interim relief the mandate under Section 12A can be dispensed with by the Court, upon being its satisfaction recorded.

16. Mr. Anirban Ray, learned Senior Advocate further submits that from a reading of the said provision, it appears that the fate of the prayer for urgent interim relief shall not be a material consideration or even the reliefs in the suit would have no bearing and the Court shall only consider whether the contemplation of the plaintiff for urgent interim relief is pleaded in the plaint or not.

17. Learned Senior Counsel Mr. Ray then refer to the averments from the plaint and submits that the meeting and the e-mail dated **February 12, 2025** and **March, 24, 2025** pleaded in the plaint would show sufficient contemplation on the part of the plaintiff for seeking an urgent interim relief for which the dispensation of requirement under Section 12A of CC Act was necessary. The point of time when the cause of action arose is not material.

18. Mr. Ray then takes support from the decision of the Hon'ble Supreme Court ***In the matter of: Yamini Manohar (Supra)***

and submits the question whether a suit involves any urgent interim relief is to be determined solely on the basis of the pleadings and the reliefs sought by the plaintiff. If plaintiff seeks any urgent interim relief, the suit cannot be dismissed on the ground that the plaintiff has not exhausted the remedy for pre-litigation mediation, as contemplated under Section 12A of CC Act. The cause of action in the plaint for final relief does not matter. In support, learned Senior Counsel has placed reliance upon a decision of the Hon'ble Division Bench of this Court ***In the matter of: Shristi Infrastructure Development Corporation Limited Vs. Sarga Hotel Private Limited and Another, dated August 23, 2024 rendered in FMAT 222 of 2024.***

19. In the light of the above, Mr. Ray, learned Senior Counsel submits that this application is devoid of any merit and should be dismissed.

DECISION:-

20. After considering the rival contentions of the parties and upon perusal of the materials on record, this Court first proceed to read the averments made in the plaint, on the basis whereof the plaintiff claims dispensation of the requirement of pre-litigation mediation. The averments are already quoted above. The averments clearly show that admittedly the meeting

dated **February 12, 2025** was held and e-mails dated **March 24, 2025** was addressed by the defendant to the plaintiff informing that the Faridabad Plant would be sold and the defendant has applied before the appropriate authority seeking permission for the same. The property would be sold to settle the outstanding claim including that of the plaintiff. The scheme for compromise with the creditor submitted by the defendant would appear from **page 159** of the application and specifically at **page 171** it appears that as against the claim of the plaintiff to the tune of **Rs.99,08,520/-** the proposed settled amount was **Rs.19,81,704/-.** The plaintiff did not accept the said settled quantum. In any event, it is not the case of the defendant that nothing is due and payable to the plaintiff. The averments in the plaint at the highest shows, prima facie, the negotiation for settlement was going on for quite some time. Even if, it was within the knowledge of the plaintiff prior in point of time than **March 2024,** that the defendant is in the process of selling its Faridabad Plant, the confirmation ultimately came by way of writing through the said two documents dated **February 12, 2025** and **March 24, 2025** as pleaded in the plaint.

21. The relevant portion from Section 12A of CC Act is quoted below:-

> "**12.A. Pre-Litigation Mediation and settlement.-** (1) *A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government*
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> …………………………………………………………………… ……………………………………………………………………."

22. On a meaningful and harmonious reading of the said provision, this Court is of the view that, if the plaintiff does not contemplate any urgent interim relief then it is a mandatory requirement under the statute to avail of the remedy of pre-litigation mediation. Therefore, if an urgent interim relief is contemplated by the plaintiff, there is no bar under the Section upon the plaintiff to file the necessary civil action without exhausting the remedy of pre-litigation mediation. To ascertain whether an urgent interim relief has been contemplated by the plaintiff, the averments in the plaint to be taken as true and correct and to be read as sacrosanct.
23. The averment in the instant plaint shows specifically that by way of said two documents, as referred to above of **February** and **March 2025,** since the defendant has contemplated to sale its property and informed the plaintiff in writing, the same has given rise to the contemplation of the plaintiff for an urgent interim relief and hence, the plaintiff prayed for

dispensation of the requirement for pre-litigation mediation as provided under Section 12A of the CC Act.

24. *The Hon'ble Supreme Court* ***In the matter of: Yamini Manohar (Supra)*** had observed as under:-

> *"**6.** The words used in Section 12-A of the CC Act are – " A suit which does not contemplate any urgent interim relief, wherein the word "contemplate" connotes to deliberate and consider. Further, the legal position that the plaint can be rejected and not entertained reflects application of mind by the Court Viz. the requirement of "Urgent interim relief".*
> ***7**. In the present case, it is an accepted fact that an urgent interim relief has been prayed for and the condition that the plaint "Contemplates" an urgent interim relief is satisfied. Therefore, the impugned judgment/ order of the Delhi High Court dated 8-5-2023, which upholds the order of the District Judge (Commercial Court)-01, South District at Saket, New Delhi dated 6-2-2023, rejecting the application under Order 7 Rule 11 of the Code, is correct and in accordance with law.*
> ***34**. The use of the words "Contemplate any urgent interim relief" as used in Section 12(1) of the Commercial Courts Act, 2015 are used to qualify the category of a suit. This is determined solely on the frame of the plaint and the relief sought. The plaintiff is the sole determinant of the pleadings in the suit and the relief sought.*
> ***35**. This Court is of the view that the question whether a suit involves any urgent interim relief is to be determined solely on the basis of the pleadings and the relief(s) sought by the plaintiff. If a plaintiff seeks any urgent interim relief, the suit cannot be dismissed on the ground that the plaintiff has not exhausted the pre-institution remedy of mediation as contemplated under Section 12-A(1) of the Commercial Courts Act, 2015."*

25. The Hon'ble Division Bench ***In the matter of: Shristi Infrastructure Development Corporation Limited Vs. Sarga Hotel Private Limited & Anr.(Supra)*** had observed, inter alia, as under:-

> "*Say the plaint discloses a simple money suit, but it is likely that on notice of it, the defendant might start disposing of some of his assets to defeat the decree that might be passed against him. So, the plaintiff may "contemplate" the urgent relief of an attachment before judgment but need not plead it in the plaint, as the cause of action has not arisen at the time of institution of the suit.*
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> *Please note the wording of 12A(1). The legislature does not mention "plaint". It uses the word "suit". It employs the word "contemplation". Hence it avoids such words as "averments or statements in the plaint". In other words, the legislature does not say that from the statements or averments in the plaint urgent reliefs obtainable by the plaintiff should be apparent. I would interpret the Section as suggesting that if at the time of presentation of the plaint before the judge from the averment in the plaint and an affidavit to be filed by the plaintiff it would appear that in the contemplation of the plaintiff a situation for urgent relief might arise in the period when mediation has to be undergone, the Court may allow the plaintiff to institute the suit without mediation.*
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> *On the basis of the declaration that urgent relief is contemplated, the plaintiff should be allowed to present the plaint. The court should not ordinarily interfere with such assertion unless it is shown to be palpably erroneous or mala fide. Once, the plaintiff is allowed to file a suit without pre-litigation mediation the discretion of the Court should not be allowed to be interfered with at a later stage. Otherwise the proceedings are likely to become very dilatory. Even after filing of the suit the parties can be referred to mediation, if the facts so warrant.*
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> *In this case, although the claim in monetary, there is a pleading that since the defendant is incurring heavy losses some urgent interim relief may be sought by the plaintiff. The learned judge should have accepted this*

averment and allowed the plaintiff to institute the suit without Section 12A pre-litigation mediation requirement. Instead of that the learned judge has tried to probe the nature, ambit and merits of the claim which at that stage was wholly unnecessary.
For all those reasons the impugned judgment and order cannot stand. I hold that the impugned order is appealable. I further hold that the learned judge by the impugned order ought not to have refused the section 12A dispensation sought. We grant such dispensation and direct the learned Court below to hear out the suit as expeditiously as possible."

26. The expression '***contemplate any urgent interim relief***' used under Section 12(1) of the CC Act shall qualify the plaintiff, if pleaded in the plaint, to pray for dispensation of the requirement for pre-litigation mediation under Section 12A of the Act.

27. Furthermore, the subsequent order dated May 6, 2025 shows that after dispensation of the process for pre-litigation mediation, though an interim order of injunction was passed against the defendant dated April 16, 2025, learned Counsel for the defendant submitted that the defendant had already executed a registered deed on **March 26, 2025** in respect of the subject immovable property.

28. It matters little, whether ultimately the plaintiff would succeed on its prayer for interim relief or with its suit on merit, what matters is that the averments in the plaint should show a contemplation by the plaintiff for an urgent interim relief,

which in the considered and firm view of this Court is there in the plaint as it appears prima facie.

29. In view of the forgoing reasons and discussions, this Court is of the firm view that, there is no reason to recall the order dated **April 16, 2025** under which the Coordinate Bench has dispensed with the requirement for pre-litigation mediation in terms of Section 12A of the Act.

30. The instant application **IA No. GA-COM/3/2025** is devoid of any merit and stands **dismissed**, without any order as to costs.

(ANIRUDDHA ROY, J.)

DB/mg