

Legal Issues in ‘Pre Litigation Mediation’

Topic: ‘Whether the requirement of pre-litigation mediation is mandatory in cases seeking urgent interim relief?’

Relevant Legal Provisions

Section 12A of the Commercial Courts Act, 2015

“Pre-Institution Mediation and Settlement.—

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

Relevant Legal Provisions (Contd.)

Section 80(2) of Code of Civil Procedure, 1908

“Notice.—

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit: Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

Relevant Legal Provisions (Cont.)

❖ *Order VII Rule 11 of Code of Civil Procedure, 1908*

“Rejection of plaint.—

The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff...;*

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

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

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

Relevant Judicial Decisions

❖ Yamini Manohar Vs. T.K.D. Keerthi [CRP-IPD No.4/2023]- (Supreme Court, October 13, 2023)

8. “...it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyze Section 12A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The proposition that the commercial courts do have a role, albeit a limited one, should be accepted, otherwise it would be up to the plaintiff alone to decide whether to resort to the procedure under Section 12A of the CC Act. An ‘absolute and unfettered right’ approach is not justified if the pre-institution mediation under Section 12A of the CC Act is mandatory, as held by this Court in Patil Automation Private Limited (supra). The words ‘contemplate any urgent interim relief’ in Section 12A(1) of the CC Act, with reference to the suit, should be read as conferring power on the court to be satisfied. They suggest that the suit must “contemplate”, which means the plaint, documents and facts should show and indicate the need for an urgent interim relief.”

Relevant Judicial Decisions (Contd.)

❖ Patil Automation Private Limited vs. Rakheja Engineers Private Limited [(2022) 10 SC] (Supreme Court, 17 August, 2022)

43. “...the conclusion is inevitable that the right of suit itself will fructify only when the conditions in Section 12A are fulfilled. Treating the provision as procedural, also, the result cannot be different. Any other view would remove the basis for treating Section 80(1) of the CPC as mandatory.” (Emphasis supplied).

54. “At this juncture, it must be immediately noticed that the Law-giver has, in Section 12A, provided for pre-institution mediation only in suits, which do not contemplate any urgent interim relief. Therefore, pre-institution mediation shas been mandated only in a class of suits. We say this for the reason that in suits which contemplate urgent interim relief, the Law-giver has carefully vouch-safed immediate access to justice as contemplated ordinarily through the courts. The carving out of a class of suits and selecting them for compulsory mediation, harmonises with the attainment of the object of the law. The load on the Judges is lightened. They can concentrate on matters where urgent interim relief is contemplated and, on other matters, which already crowd their dockets.”

Relevant Judicial Decisions (Contd.)

❖ **Patil Automation Private Limited vs. Rakheja Engineers Private Limited [(2022) 10 SC] (Supreme Court, 17 August, 2022)**

55. In other words, the suit under the Act which does not contemplate urgent interim relief is like a suit covered by Section 80(1) of the CPC which does not project the need for any urgent or interim relief

72. The object of the Act and the Amending Act of 2018, unerringly point to at least partly foisting compulsory mediation on a plaintiff who does not contemplate urgent interim relief. The provision has been contemplated only with reference to plaintiffs who do not contemplate urgent interim relief.

7

Relevant Judicial Decisions (Contd.)

❖ **Chandra Kishore Chaurasia vs. R.A. Perfumery Works Private Limited [2022/DHC/004454] (Delhi High Court, 27 October, 2022)**

33. *“This Court also finds it difficult to accept that a commercial court is required to determine whether the urgent interim reliefs ought to have been claimed in a suit for determining whether the same is hit by the bar of Section 12A(1) of the Commercial Courts Act, 2015. The question whether a plaintiff desires any urgent relief is to be decided solely by the plaintiff while instituting a suit. The court may or may not accede to such a request for an urgent interim relief. But that it not relevant to determine whether the plaintiff was required to exhaust the remedy of pre-institution mediation. The question whether a suit involves any urgent interim relief is not contingent on whether the court accedes to the plaintiff’s request for interim relief.”*

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.”*

Relevant Judicial Decisions (Contd.)

❖ **Chandra Kishore Chaurasia vs. R.A. Perfumery Works Private Limited [2022/DHC/004454] (Delhi High Court, 27 October, 2022)**

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 12A(1) of the Commercial Courts Act, 2015.* ”

37. “*This Court is unable to accept that it is necessary for a court to read in any procedure in Section 12A of the Commercial Courts Act, 2015, which makes it mandatory for a plaintiff to file an application to seek leave of the court for filing a suit without exhausting the remedy of pre-institution mediation, irrespective of whether the plaintiff seeks urgent interim relief or not.*”

39. “*...compulsory mediation is foisted only on a plaintiff who does not contemplate urgent interim relief. It is implicit that it is only the plaintiff, that can contemplate the relief that it seeks in a suit. And, pre-institution mediation is necessary only in cases where a plaintiff does not contemplate urgent interim relief.*”

Relevant Judicial Decisions (Contd.)

Kaulchand H Jogani vs Shree Vardhan Investment And 6 Ors [(2023) 1 Bom CR 63] (Bombay High Court, November 10, 2022)

28. *In my view, if the said outlet is construed too loosely in the sense that mere filing of an application for interim relief, howsoever unjustified and unwarranted it may be, would take the suit out of the purview of Section 12A, it may run counter to the legislative object. The interdict contained in Section 12A can be easily circumvented by filing an application for interim relief without their being any reason or basis therefor. Such an interpretation may not advance the legislative object.*

29. *“The Parliament, it seems, has designedly used the expression, “a suit, which does contemplate any urgent interim relief”. This phrase cannot be interchangeably used with the expression, “where the plaintiff seeks an urgent interim relief. The test would be whether the suit does contemplate an urgent interim relief.”*

Relevant Judicial Decisions (Contd.)

Kaulchand H Jogani vs Shree Vardhan Investment And 6 Ors [(2023) 1 Bom CR 63] (Bombay High Court, November 10, 2022)

30. *In a given case, the Court may be justified in embarking upon an inquiry as to whether there is an element of justifiability in the claim for urgent interim relief or such a prayer is a mere subterfuge to overcome the bar under Section 12A. At the same time, the scope of such an inquiry would be extremely narrow. Such an inquiry cannot partake the character of determination of the prayer for interim relief on merits. It cannot be urged that if the Court is disinclined to grant interim relief then the justifiability of the institution of the suit, without pre-institution mediation, can itself be questioned. Therefore, the Court may be called upon to steer clear of two extremes.*
31. *In my considered view, the proper course would be to asses whether there are elements which prima facie indicate that the suit may contemplate an urgent interim relief irrespective of the fact as to whether the plaintiff eventually succeeds in getting the interim relief. In a worst case scenario, where an application for interim relief is presented without there being any justification whatsoever for the same, to simply overcome the bar under Section 12A, the Court may be justified in recording a finding that the suit in effect does not contemplate any urgent interim relief and then the institution of the suit would be in teeth of Section 12A notwithstanding a formal application.*

Relevant Judicial Decisions (Contd.)

Odisha Slurry Pipeline Infrastructure Ltd. & Anr. V. IDBI Bank Ltd [F.M.A.T 360 of 2022 With CAN 1 of 2022]
(Calcutta High Court, December 9, 2022)

“What can be reasonably deciphered from the said provision that if the suit contemplates any urgent interim relief it served the purposes and cannot be said to be bad defective and/or invalid as the pre- institution mediation has not been exhausted. Does it mean that mere seeking an urgent interim relief suffice the purpose or the Court may apply its mind to find out whether there exists a circumstances for such urgent interim relief? The aforesaid section is silent in this regard simply because one of the reliefs claimed in the plaint uses the expression 'urgent interim reliefs' is sufficient enough to confirm the legislative mandate even if such urgent interim reliefs appears to be farcical and intended to avoid the rigour of Section 12A of the Act. The urgent interim relief is an expression of wide import and difficult to give exhaustive meaning...there is no impediment on the part of the Court at the time of presentation the plaint to apply to its mind to find out whether it involves any urgent interim reliefs.”

Relevant Judicial Decisions (Contd.)

Odisha Slurry Pipeline Infrastructure Ltd. & Anr. V. IDBI Bank Ltd [F.M.A.T 360 of 2022 With CAN 1 of 2022] **1 (Bombay High Court, November 10, 2022)**

“Any other Course adopted by the Court would give a free handle to an unscrupulous plaintiff to override the mandatory provision of Section 12A by incorporating a relief which cannot be said to be an urgent interim reliefs nor the facts and circumstances or the cause of action pleaded in the plaint entitles the plaintiff to such relief on a bare reading of the averments made in the plaint. Often an application for urgent interim reliefs are filed in the suit and ultimately if the Court may not find any justification in passing such interim relief yet it would sub-serve the motive and the purpose of avoiding the pre-institution mediation as mandated under Section 12A of the Code. We do not find any restriction or a fetter in the language employed in the aforesaid section that the Court at the time of presentation of the plaint or even thereafter finds that it does not involve an urgent interim relief to reject the plaint and direct the plaintiff to exhaust the remedy under Section 12A of the Act.”

“The plaintiff has an autonomy in seeking a relief in the plaint and if an urgent interim reliefs are prayed for, the rigour of Section 12A of the Act so far as the mandatory requirement of pre-institution litigation is concerned, fulfils the conditions of the aforesaid provisions as any other interpretation in absence of amendments having brought thereto would be opposed to the legislative intendment and, therefore, it is left to the wisdom of the law maker to take a call by bringing a suitable amendment in the aforesaid Section”

Relevant Judicial Decisions (Contd.)

K. Varathan vs. Mr. Prakash Babu Nakundhi Reddy [C.S.(Comm.Div.) No. 202 of 2022] (Madras High Court October 13, 2022)

16. “This Commercial Division having explained the expression 'contemplation of urgent interim relief' deems it appropriate to make an adumbration of parameters / tests and they are as follows:

(a) whether the prayer for interim relief is a product of profound thinking carefully about the possibility of the happening;

(b) whether the matter demands prompt action and that promptitude is of such nature that exhausting the remedy of pre institution mediation without any intervention in the mean time can lead to a irreversible situation, i.e., a situation where one cannot put the clock back;

(c) where the urgency is of plaintiff's own doing, if that be so the plaintiff cannot take advantage of its own doing;

Relevant Judicial Decisions (Contd.)

K. Varathan vs. Mr. Prakash Babu Nakundhi Reddy [C.S.(Comm.Div.) No. 202 of 2022] (Madras High Court October 13, 2022)

(d) high standard is required to establish the requirement of this prompt action (urgency;

(e) plaintiff should be on fair ground in urging urgency and an interim measure;

(f) actual or apprehended wrong or injury should be so imminent that the plaintiff should be able to satisfy the court that plaintiff should not be made to stand and suffer the same.

17. It is made clear that the above adumbration is illustrative and not exhaustive...”

Relevant Judicial Decisions (Contd.)

Deepak Raheja vs Ganga Taro Vazirani [COMMERCIAL APPEAL (L) NO. 11950 OF 2021] (Bombay High Court, October 1, 2021)

34. “we hold that section 12A of the Act of 2015 is mandatory, and a commercial suit of specified value which does not contemplate any urgent interim relief under the Act of 2015, cannot not be instituted unless the plaintiff exhausts the remedy of pre- institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government. Considering the object and purpose of Section 12A of being rooted in the public interest, there is no question of it being waived by a party.”

Conclusion

- ❖ The interpretation of what constitutes "urgent interim relief" remains inconsistent across jurisdictions. Cases like Yamini Manohar and Chandra Kishore Chaurasia highlight the tension between plaintiff autonomy in framing reliefs and judicial oversight in assessing whether urgency is genuine or evasion of mediation.
- ❖ While the Supreme Court's recent ruling in Yamini Manohar has clarified that courts can scrutinize whether a suit genuinely "contemplates" urgent interim relief before exempting it from pre-institution mediation under Section 12A, divergence persists, especially in IP and commercial disputes where urgency is often claimed. The judgment underscores the need for consistent judicial standards and a robust mediation framework to balance procedural integrity with access to urgent relief.

Thank you!
Questions?

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18

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