



2025:DHC:6816



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **CS(COMM) 691/2025 and I.A. 16163/2025, I.A. 16164/2025, I.A. 16165/2025, I.A. 16167/2025, I.A. 17064/2025**

MYNA HOMES PRIVATE LIMITED

THROUGH AUTHORIZED SIGNATORY
HAVING REGISTERED ADDRESS AT:
C-9, MEZZANINE FLOOR MAIN MARKET,
VAS ANT VIHAR, NEW DELHI – 110006

...PLAINTIFF

(Through: Mr. Ankur Mahindroo, Mr. Mohit Dagar and Mr. Rohan Taneja, Advs.)

versus

PREETI BANSAL

WIFE OF MR. VINOD BANSAL

RESIDENT OF:

J-2 / 14 DLF PHASE-2
SECTOR 25 GURUGRAM,
HARYANA – 122002

...DEFENDANT NO.1

MR. VINOD BANSAL

RESIDENT OF:

J-2/14 DLF PHASE-2
SECTOR 25 GURUGRAM
HARYANA- 122002

...DEFENDANT NO. 2

MR. SUBHI BANSAL

SON OF MR. VINOD BANSAL

RESIDENT OF: J-2/14, DLF PHASE-2,
SECTOR 25, GURUGRAM,
HARYANA – 122002

...DEFENDANT NO.3



2025:DHC:6816



MR. VINAY KUMAR MITTAL
SON OF SHRI SURESH PAUL MITTAL
RESIDENCE OF:
H. NO. 102/2, MALL ROAD,
MAJOR GURDIYAL SINGH ROAD,
LUDHIANA, PUNJAB-141001

...DEFENDANT NO.4

MR. VIPIN GUPTA
SON OF SHRI RAM MEHAR GUPTA,
RESIDENCE NOT KNOWN

...DEFENDANT NO.5

UNION BANK OF INDIA
THROUGH AUTHORIZED SIGNATORY
HAVING BRANCH OFFICE AT:
10184, ARYA SAMAJ ROAD,
KAROL BAGH, NEW DELHI - 110005
HAVING ASSET RECOVERY BRANCH' AT:
26/28-D, CONNAUGHT PLACE,
NEW DELHI - 110001

ALSO AT: M-35, FIRST FLOOR,
OUTER CIRCLE, CONNAUGHT PLACE,
NEW DELHI - 110001.

...DEFENDANT NO.6

*(Through: Mr. Siddharth Yadav, Sr. Adv with Mr. Anuj Chauhan,
Mr. Pradeep Yadav and Mr. Sunil Yadav, Advs for D-1, 2 and 3.)*

%

Reserved on: 22.07.2025

Pronounced on: 11.08.2025

JUDGMENT

I.A. 16164/2025 (BY THE PLAINTIFF- FOR EXEMPTION FROM PRE-INSTITUTION MEDIATION UNDER SECTION 12A CCA, 2015)

The instant application has been filed by the Plaintiff seeking



exemption from pre-institution mediation envisaged under Section 12 A of the Commercial Courts Act, 2015 (*hereinafter referred to as the 'Act'*).

2. The instant civil suit is for various reliefs, *inter alia*, seeking specific performance of a collaboration agreement dated 03.06.2015 (*hereinafter referred to as the 'agreement'*).

Brief facts

3. In May 2015, the Plaintiff is stated to have been approached by defendant Nos. 1 and 2 with a proposal to reconstruct a property situated at U-29, Green Park Main, New Delhi (*hereinafter referred to as the 'suit property'*). As per a mutual understanding, the Plaintiff was to demolish and reconstruct the entire property, post which the Ground Floor and First Floor would be owned by the Plaintiff, while the Second and Third Floors would belong to Defendant No. 1.

4. Subsequently, the agreement was executed between the Plaintiff and Defendant No. 1, formalizing the terms of the proposed redevelopment. Along with the agreement, Defendant No. 1 executed various supporting documents, including General Power of Attorney, Special Power of Attorney, Affidavit, and Will in favour of the Plaintiff to enable necessary approvals and permissions from the concerned authorities. In furtherance thereto, the Plaintiff paid a sum of INR 1.2 Crores and took possession of the property.

5. However, as per the Plaintiff's case, it later came to light that Defendant No. 1 had also agreed the Second Floor of the same property to one Mrs. Kusum Srivastava. Further complications arose when Defendant



No. 6 i.e., Union Bank of India (*hereinafter referred to as the 'Bank'*) issued a legal notice alleging that the suit property was mortgaged with it and that the bank was in possession of the original title documents. The Plaintiff responded, asserting its *bona fide* possession and development of the property based on the agreement.

6. The Plaintiff subsequently filed police complaints against Defendants No. 1 and 2, alleging offences related to cheating and conspiracy. In connection with the same issues, FIR No. 0125/2016 was registered at Safdarjung Enclave Police Station under Sections 406 and 420 of Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*). Meanwhile, the Bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*hereinafter referred to as 'SARFAESI Act'*) against Defendant Nos. 1 to 3, issuing notices under Sections 13(2) and 13(4) of the SARFAESI Act and seeking possession of the suit property. It was only upon the visit of the Bank's officials to the property that the Plaintiff came to know about the aforementioned notices.

7. In response, the Plaintiff addressed a letter to the Bank asserting its lawful possession arising out of the collaboration agreement and later filed an application under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal (*hereinafter referred to as the 'DRT'*). The said application was dismissed, and the Plaintiff preferred an appeal under Section 18 of the SARFAESI Act before the Debt Recovery Appellate Tribunal (*hereinafter referred to as the 'DRAT'*). The Plaintiff issued notices to Defendants No. 1 to 3 and the Bank.



8. During the pendency of the appeal, as per the Plaintiff's case, unknown persons approached the Plaintiff with a letter purportedly evidencing that a One-Time Settlement between Defendants No. 1 to 3 and the Bank. The Plaintiff continued to prosecute its appeal and also issued notices to prevent third-party interests in the suit property. A public notice was issued on behalf of Defendants No. 4 and 5 expressing interest in purchasing the suit property, to which the Plaintiff raised objections. Subsequently, the Plaintiff received intimation from the Sub-Registrar that Defendant No. 1 had attempted to execute a sale deed in favour of Defendant No. 4.

9. It is under the aforementioned circumstances, the Plaintiff has approached this Court by way of the instant suit.

10. This matter was earlier called out on 11.07.2025. The Court directed for issuance of notice to the Defendants on applications bearing no. I.A. 16163/2025 (*for ex-parte ad interim injunction*) and I.A. 16164/2025 (*for exemption from pre-institution mediation under section 12A CCA, 2015*).

11. The pleadings are completed with respect to the aforementioned applications *qua* the Defendant nos. 1, 2, and 3. Arguments were advanced on the said applications.

Submissions

12. Mr. Ankur Mahindro, learned counsel for the Plaintiff, submitted that Defendant No.1 has acknowledged the execution of the agreement before various authorities. He contended that the said agreement has neither been rescinded nor cancelled. According to him, the Plaintiff has consistently



demonstrated readiness and willingness to execute the sale deed in his favour and continues to do so. He pointed out that by the time the superstructure was completed, Defendant No.6 had already started objecting to the title documents pertaining to the suit property.

13. He further submits that the initial objection was raised as early as on 19.08.2015, casting doubts on the *bona fides* of Defendant No.1. He argues that Defendant No.1 failed to disclose in the agreement that the title documents were under mortgage with the Bank. He stated that on 26.09.2016, the Bank took possession of the suit property, which, as per his knowledge, remains with the Bank to date.

14. Learned counsel also drew the Court's attention to a sequence of dates and events post-2015 to show that the Plaintiff has been actively pursuing remedies before the DRT and DRAT.

15. He asserted that due to the fraudulent acts of Defendant Nos. 1 and 2, the Plaintiff was compelled to initiate criminal proceedings. An FIR bearing No. 0126/16 was registered under Sections 406 and 420 of IPC against the said Defendants.

16. He further submitted that paragraph 50 of the plaint clarifies that the cause of action arose on 29.05.2025 when a public notice was issued by the counsel for Defendant Nos. 4 and 5, expressing their intent to purchase the suit property. In response, it is contended, the Plaintiff promptly objected and notified the concerned party about the existing collaboration agreement between the Plaintiff and Defendant No.1. He also stated that a legal notice was issued to Defendant Nos. 1 to 3, asserting the Plaintiff's rights and



objecting to any third-party transfer.

17. Learned counsel also submitted that a notice was sent to the concerned Sub-Registrar's office, requesting that no document be registered contrary to the terms of the agreement. Furthermore, Mr. Mahindro additionally referred to the balance sheets placed on record, which reflect that despite the completion of the superstructure, the Plaintiff maintained a balance exceeding INR. 7 crores, indicating the financial capability of the Plaintiff to proceed with the construction and execution of the sale deed. He highlighted that the agreement does not stipulate a specific date for execution of the sale deed, and that the delay was due to various legal impediments, all attributable to the Defendants. He relied upon the decision of this Court in *Grovv India v. Balbir Singh*¹, specifically referring to paragraphs 5, 6, 14, 21, and 73 of the judgment. He argues that the factual matrix of the present case closely resembles that of *Grovv India*.

18. Learned counsel also defended the challenge to the maintainability of the suit despite the absence of pre-institution mediation under Section 12A of the Act, by asserting that urgent interim relief sought herein is essential to avoid frustration of the entire cause of action.

19. He emphasized that a sale deed has already been executed behind the Plaintiff's back and has been presented for registration. Should the said sale deed be registered, he averred, it would entirely defeat the purpose of filing the civil suit. He relied upon the decisions of the Supreme Court in *Patil*

¹ 2021 SCC Online Del 4783



*Automation v. Rakheja Engineers*², *Yamini Manohar v. T.K.D.*³, and *M/s Dhanbad Fuels Pvt. Ltd. v. Union of India & Anr.*⁴, arguing that the Supreme Court has held that a suit is undoubtedly maintainable where urgent relief is genuinely sought.

20. He further contended that in the present case, urgent interim relief has been sought on the basis of substantial material, and therefore, the suit should not be dismissed merely for non-compliance of Section 12A of the Act.

21. *Per contra*, Mr. Siddharth Yadav, learned senior counsel for Defendant Nos. 1, 2, and 3, submitted that the Plaintiff has taken inconsistent positions in the plaint. He argued that although the Plaintiff claims to have completed construction of the entire building, the photographs on record show that only the superstructure was constructed. He further asserted that for over a decade, from 2015 to 2025, the Plaintiff has failed to demonstrate readiness and willingness to execute the sale deed.

22. Mr. Yadav highlighted a material non-disclosure by the Plaintiff, specifically, the fact that the matter had reached the Supreme Court and the SLP against the DRAT order was dismissed on 29.03.2019. He contended that any surviving cause of action should have been pursued at that time.

23. He further questioned as to what refrained the Plaintiff from filing a civil suit immediately after failing to secure relief from the DRT, DRAT,

² (2022) 10 SCC 1

³ (2024) 5 SCC 815

⁴ 2025 SCC OnLine SC 1129



and Supreme Court. He also referred to the applications filed before the DRAT, where similar reliefs were sought, arguing that having been failed there, the Plaintiff is attempting to re-agitate the same issues through this civil suit.

24. According to him, the Plaintiff has not produced a single document from 2015 to 2025 to prove his continuous readiness and willingness to perform his part of the agreement. He contended that the urgency claimed by the Plaintiff is contrived and unsustainable. He also argued that specific performance is not warranted at this stage, and if at all, the Plaintiff is entitled to any relief, it would be limited to recovery for any damages to be proven during the course of the trial.

25. Mr. Yadav drew the attention of the Court to the agreement, which required the Plaintiff to complete construction within 15 months of either the handover of possession or the sanction of building plans. He stated that possession was handed over on 03.06.2015, and building plans were sanctioned on 30.06.2015. According to him, even considering 30.06.2015 as the relevant date, the 15-month period expired on 30.09.2016. He averred that construction was not completed by the time the Bank took over possession on 26.09.2018. Thus, according to him, the Plaintiff is making repeated, unsuccessful attempts to obstruct the legitimate enjoyment of the property by its rightful owner. He further contended that a proper reading of the decision of the Supreme Court relied upon by the Plaintiff reinforces the mandatory nature of Section 12A of the Act and exhibits that Courts should not entertain suits merely on the basis of illusory urgency.



26. He particularly referred to paragraphs 11 and 12 of the decision in *Yamini Manohar*, arguing that Section 12A (1) of the Act requires the suit to "*contemplate urgent relief*", meaning thereby that the pleadings and documents must clearly reflect the need for such relief, something that is absent in the present case.

27. He also referred to paragraph 62 of the decision in *Dhanbad* and additionally relies on the decision in W.P.(C) 2039/2025 dated 19.02.2025 titled *Renewflex Recycling v. Facilitation Centre Rohini Courts*⁵.

28. Learned senior counsel also submitted that the sale deed has already been executed. He states that a categorical statement to that effect has been made in the order dated 11.07.2025.

29. He also contended that the Plaintiff cannot maintain this suit without complying with the mandatory provisions of Section 12A of the Act. He also argued that no relief can be granted under Order XXXIX Rule 1 & 2 of CPC, and accordingly, sought for dismissal of the suit.

30. I have heard learned counsel for the parties and have perused the record.

Legal explication of section 12A of the Act

31. The legal position with respect to the scope of Section 12A is no longer *res integra*. The Supreme Court, on various occasions, has considered the question of whether the statutory pre-litigation mediation envisaged

⁵ 2025 SCC OnLine Del 978



under Section 12A of the Act is a compulsory provision or not.

32. The Supreme Court in *Patil Automation (P) Ltd.* has held that Section 12A of the Act cannot be defined as a mere procedural law. It was also held that the scope of the Act, as amended in 2018, by which Section 12A was inserted, would make it untenable that legislature intended not to accord the said provision a mandatory flavour and any other interpretation would not only be in the teeth of the express language used but would also result rendering the object of the provision otiose. The relevant extracts of the decision of the Supreme Court in *Patil Automation Private Ltd.*, read as under:-

“99.1. The Act did not originally contain Section 12-A. It is by amendment in the year 2018 that Section 12-A was inserted. The Statement of Objects and Reasons are explicit that Section 12-A was contemplated as compulsory. The object of the Act and the Amending Act of 2018, unerringly point to at least partly foisting compulsory mediation on a Plaintiff who does not contemplate urgent interim relief. The provision has been contemplated only with reference to Plaintiffs who do not contemplate urgent interim relief. The legislature has taken care to expressly exclude the period undergone during mediation for reckoning limitation under the Limitation Act, 1963. The object is clear.

113.1. We declare that Section 12-A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order 7 Rule 11. This power can be exercised even suo motu by the Court as explained earlier in the judgment. We, however, make this declaration effective from 20-8-2022 so that stakeholders concerned become sufficiently informed.”(emphasis supplied)

33. While discussing the purview of the exception carved out in Section 12A regarding contemplation of urgent interim relief, the Supreme Court in *Yamini Manohar*, has held that the language used in the provision to the



effect "*contemplate any urgent interim relief*" stipulates the discretion of the Court to examine the plaint, cause of action, and documents attached thereto, to determine whether there arises an urgent relief or not. Paragraph No.12 of the aforesaid decision reads as under:-

"12. The words "contemplate any urgent interim relief" in Section 12-A(1) of the CC Act, with reference to the suit, should be read as conferring power on the Court to be satisfied. They suggest that the suit must "contemplate", which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and ensure that the legislative object/intent behind the enactment of Section 12-A of the CC Act is not defeated."

34. In ***Yamini Manohar***, the Court emphasized that while the provision does not require express leave of the Court or an application for exemption, the pleadings and submissions must objectively demonstrate a genuine urgency. It was observed that the test is not whether the Court ultimately grants interim relief, but whether, from the standpoint of the Plaintiff, the nature of the suit and the cause of action justify an urgent prayer. The Supreme Court also cautioned against using the interim relief prayer as a camouflage to bypass mediation and emphasized the limited but essential gatekeeping role of the Commercial Courts to examine the authenticity of such pleas. It was also held that the phrase "*contemplate any urgent interim relief*" empowers the Court to examine if the relief is *bona fide* or merely a thoughtful strategy to evade statutory compliance.

35. Additionally, in ***Dhanbad***, the Supreme Court, reiterating the decision in ***Yamini Manohar***, explicitly reaffirmed that the mere use of the phrase "*urgent interim relief*" in a plaint, without substantiating material or factual



urgency, does not by itself entitle a Plaintiff to exemption from the mandatory pre-institution mediation requirement under Section 12A of the Act. The Court held that a bald assertion of urgency cannot be permitted to defeat the statutory mandate intended to reduce litigation through structured settlement opportunities. Paragraph nos. 42 to 44 are reproduced hereinbelow: -

“iii. How the expression “urgent interim relief” is to be construed

42. Further, it is also pertinent to note that Section 12A of the 2015 Act does not contemplate leave of the Court for filing a suit which contemplates an urgent interim relief, as is clear from the language and words used in the provision. The provision also does not necessarily require an application seeking exemption if a suit is being filed without pre-institution mediation. An application seeking waiver on account of urgent interim relief setting out grounds and reasons may allay a challenge and assist the court, but in the absence of any statutory mandate or rules made by the Central Government, an application per se is not a condition under Section 12A of the 2015 Act. Pleadings on record and oral submissions would be sufficient in ordinary course.

43. This Court in Yamini Manohar v. T.K.D. Keerthi reported in (2024)5 SCC 815 while interpreting the import of the expression “a suit which does not contemplate any urgent interim relief” used in Section 12A of the 2015 Act observed that 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 as regards the requirement of “urgent interim relief”. The Court further observed that the prayer of urgent interim relief should not act as a disguise to get over the bar contemplated under Section 12A. However, at the same time, the Court observed that the mere non-grant of the interim relief at the ad-interim stage, when the plaint is up for admission and examination would not justify the rejection of the plaint under Order VII Rule 11 of the CPC, as interim relief is at times also granted after issuance of notice. Further, even if after the conclusion of arguments on the aspect of interim relief, the same is denied on merits, that would not by itself justify the rejection of the plaint under Order VII Rule 11. The relevant observations from the



said decision are reproduced hereinbelow:

“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 Courts would examine the nature and the subject-matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12-A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the Plaintiff. Non-grant of interim relief at the ad interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order 7 Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order 7 Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely : (i) prima facie case, (ii) irreparable harm and injury, and (iii) balance of convenience. The fact that the Court issued notice and/or granted interim stay may indicate that the Court is inclined to entertain the plaint.

11. Having stated so, it is difficult to agree with the proposition that the Plaintiff has the absolute choice and right to paralyse Section 12-A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The proposition that the commercial courts do have a role, albeit a limited one, should be accepted, otherwise it would be up to the Plaintiff alone to decide whether to resort to the procedure under Section 12-A of the CC Act. An “absolute and unfettered right” approach is not justified if the pre-institution mediation under Section 12-A of the CC Act is mandatory, as held by this Court in Patil Automation [Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1 : (2023) 1 SCC(Civ) 545] .

12. The words “contemplate any urgent interim relief” in Section 12-A(1) of the CC Act, with reference to the suit, should be read as conferring power on the Court to be satisfied. They suggest that the suit must “contemplate”, which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the



precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and ensure that the legislative object/intent behind the enactment of Section 12-A of the CC Act is not defeated.”(Emphasis supplied)

44. Thus, it becomes clear from a perusal of the aforesaid decision that the test under Section 12A is not whether the prayer for the urgent interim relief actually comes to be allowed or not, but whether on an examination of the nature and the subject-matter of the suit and the cause of action, the prayer of urgent interim relief by the Plaintiff could be said to be contemplable when the matter is seen from the standpoint of the Plaintiff. Further, what is also to be kept in mind by the courts is that the urgent interim relief must not be merely an unfounded excuse by the Plaintiff to bypass the mandatory requirement of Section 12A of the 2015 Act.

45. In the case at hand indisputably, no urgent interim relief was prayed for at the time of the institution of the suit by the Union”

36. In *Renewflex Recycling*, the petitioner therein challenged the rejection of its commercial suit by the Registry on the ground of non-compliance with Section 12A of the Act despite having sent a mediation request to the respondent, which went unanswered. The Division Bench of this Court held that a legal notice or self-styled mediation attempt by a litigant does not satisfy the statutory requirement of pre-institution mediation under Section 12A, which mandates adherence to the prescribed legal framework involving authorised authorities. Reiterating the settled principle that statutory procedures must be followed strictly and exclusively in the manner prescribed, the Court found the petitioner’s submissions misconceived and dismissed the writ petition *in limine*. The relevant extract of the aforementioned decision reads as under:-



“11. Just so to dispel any unnecessary conjuring up of similar submissions, it would be apposite to extract Section 12A of the Commercial Courts Act which reads thus:

“12A. Pre-Institution Mediation and Settlement—(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the Plaintiff exhausts the remedy of pre institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987, the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the Plaintiff under sub-section (1): Provided that the period of mediation may be extended for a further period of two months with the consent of the parties: Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).”

Applying the golden principle of interpretation, the provisions may be read in its most simple and unambiguous manner. **So read, it is apparent that the legislative intent is not to empower a litigant to supplant the process envisaged in Section 12A of the Act, by issuance of a legal notice calling for mediation or even supplement it. The plain reading does not suggest any such mode or method of initiating mediation proceedings. Infact, the intent appears to be to initiate the mediation process within the “statutory framework” so as to ensure that the commercial litigation is not protracted or prolonged unnecessarily.** The legal framework also envisages the mediation to commence and culminate within a stipulated period, thus indicating the



overarching control over the mediation process by the institution. In this context, it is of great significance to note sub-section (5) of Section 12A of the Act. It envisages and bestows a legal sanctity to the “settlement” arrived at by the parties contemplated under sub-section (4) of Section 12A of the Act by deeming the same to be an “award” under sub-W.P.(C) 2039/2025 Page 8 of 8 section (4) of Section 30 of the Arbitration and Conciliation Act, 1996, consequently empowering the “settlement” to be legally enforceable. This legal statutory framework can neither be supplanted nor even supplemented in the manner suggested by the learned counsel for the petitioner.

12. Ergo, from the above analysis of the provisions, it is apparent that the submissions of the petitioner are extraneous to the legislative framework and the intent of the Commercial Courts Act”

37. The Madras High Court, in a case titled as ***M/S Micro Labs Limited v. Mr. A. Santhosh***⁶, while rejecting the suit filed with a delay of four months, noted that such delay would reflect the absence of contemplation. It was further held that mere filing of applications for interim prayers does not save the Plaintiff from the death knell consequence qua infraction of Section 12A, rather it is the prerogative of the Court to decide whether the interim relief sought for is urgent and a product of 'contemplation'.

38. A similar view has been taken by the High Court of Jammu and Kashmir and Ladakh at Srinagar in the case of ***M/s Devyani International Limited v. Airport Authority of India and Others***⁷, reaching a conclusion that the Plaintiff does not have any absolute choice and unfettered right to paralyse Section 12A of the Act, by making a prayer for urgent interim relief without any emergent cause of action and imminent danger.

39. The High Court of Bombay in ***Future Corporate Resources (P) Ltd.***

⁶ C.S (Comm. Div.) No.185 of 2022 decision dated 14.09.2022



*v. Edelweiss Special Opportunities Fund*⁸, while mentioning that Section 12A was meant to accelerate disposal by providing a disposal mechanism that did not involve Courts, it does not permit a Plaintiff to bypass its provisions by merely filing an interim application. As per the said decision, the words “which does not contemplate” does not mean “in the opinion of the Plaintiff”. The Court emphasized that a Plaintiff may in a commercial cause contemplate very many things and may want even more but that is immaterial.

40. In *Indian Explosives (P) Ltd. v. Ideal Detonators (P) Ltd.*⁹, the Calcutta High Court took a view that the exercise of seeking dispensation cannot be made solely Plaintiff-centric and the same must withstand judicial discretion. The Court also cautioned about every Plaintiff having the formal averments in the plaint that the suit contemplates urgent interim reliefs simply to overcome the mediation process, as the same would render nugatory the entire purpose of mediation. The relevant paragraphs of the said decision read as under:-

“11. There may be urgency in any of the specified transactions enumerated in section 2(c) of the Act which defines “commercial dispute”. Urgency would vary from case to case. There can be no strait jacket formulae in such cases. Each case must be decided on its own facts. There must be pleadings to support the case of urgent interim reliefs. The Court at the time of presentation of the plaint has to be satisfied that there are averments which justify a case for urgent interim reliefs and for dispensation with the requirement of section 12A of the Act in the overall facts and circumstances. Ordinarily, at the stage of admission of the plaint, the defendant is not represented. However, a defendant has a right to question whether dispensation has been appropriately granted or not. This exercise may require the Court to re-examine the grant of

⁷ CS (OS) No. 01/2025

⁸ 2022 SCC OnLine Bom 3744

⁹ 2023 SCC OnLine Cal 1944



dispensation. The entire exercise of seeking dispensation under section 12A of the Act must be subject to judicial scrutiny.

12. The decision in Chandra Kishore Chaurasia v. R A Perfumery Works Private Limited, 2022 SCC OnLine Del 3529 cited on behalf of the Plaintiff is distinguishable and inapposite. In the said decision, the Court in a suit inter alia for infringement and passing off found the same to be maintainable in the light of averments in the plaint. It is true that the Plaintiff is dominus litis. However, the exercise of seeking dispensation cannot be made solely Plaintiff-centric. This exercise must withstand judicial discretion. Otherwise, it would lead to every Plaintiff having the formal averments in the plaint that the suit contemplates urgent interim reliefs simply to overcome the mediation process. This would render nugatory the entire purpose of mediation. The ultimate grant or refusal of the interim relief on merits is not the determining factor. The only question is whether on the basis of the averments made out in the plaint and the cause of action pleaded, there is a case for urgent interim reliefs.”

41. Recently, while considering some of the aforementioned decisions, this Court in *Exclusive Capital Ltd. v. Clover Media Pvt. Ltd. & Ors.*¹⁰, reaffirmed that the mandate of pre-institution mediation under Section 12A of the Act cannot be casually circumvented under the guise of seeking urgent interim relief. The Court held that the exception carved out in the proviso to Section 12A(1) must be interpreted narrowly and invoked only in cases where the Plaintiff demonstrably establishes a *bona fide*, immediate, and irreparable threat to its rights, one that cannot await the conclusion of the mediation process. It further clarified that the mere inclusion of prayers for interim relief under Order XXXIX Rules 1 and 2 of CPC, or the mechanical reproduction of urgency-related language, does not *ipso facto* entitle a party to exemption. Rather, the pleadings must reflect a specific and substantiated case of urgency, which must be scrutinized at the threshold. The Court affirmed that the legislative intent behind Section 12A is to

¹⁰ 2025 SCC OnLine Del 5221



reduce litigation and promote early settlement and ensure that this statutory mechanism is not diluted by illusory or strategic claims of urgency. The relevant extract reads as under: -

53. Thus, it is imperative that Courts remain vigilant against attempts by unscrupulous litigants to abuse the exemption under Section 12A by mechanically appending a plea for urgent interim relief as a façade to circumvent the statutory mandate of pre-institution mediation. Such conduct erodes the sanctity of the legislative framework and subverts the object of reducing the burden on Courts through alternative dispute resolution mechanisms. The prayer for urgent relief must be substantiated through specific pleadings and demonstrable facts and cannot be allowed to serve as a mere procedural ruse to escape mandatory compliance. Courts must rigorously assess the genuineness of the asserted urgency and reject suits where the plea for interim relief is palpably contrived or unsubstantiated.

54. As affirmed by the Supreme Court in Yamini Manohar, the invocation of urgency must transcend mere perfunctory allusions, and instead find expression through averments in the pleadings, which, when subjected to judicial scrutiny, disclose a bona fide and imminent necessity for protective relief at the threshold stage

55. Stepping back, it is important to remember why this pre-institution mediation provision exists. It merits mention that mediation, as a mechanism of alternative dispute resolution, plays a pivotal role in alleviating the burden of an overburdened judiciary while promoting efficient, amicable, and cost-effective resolution of disputes. It offers a collaborative platform where parties can engage in open dialogue with the assistance of a neutral facilitator, thereby preserving commercial relationships and fostering solutions that are mutually beneficial. Particularly, in commercial matters, mediation allows parties to retain control over the outcome without subjecting themselves to the adversarial rigour of litigation.

56. The significance of mediation lies not only in its procedural efficiency but also in its transformative potential to reshape the dispute resolution landscape. It serves the broader objective of access to justice by making dispute resolution more accessible and less intimidating, especially for smaller enterprises that may be discouraged by protracted Court proceedings.

57. Section 12A of the Act fulfills this requirement by instituting a mandatory pre-institution mediation mechanism, which serves as a bypass and fast-track route for resolving disputes without occupying judicial time at the inception stage. The only exception to this route balances the right to immediate judicial intervention in genuinely



urgent matters which may be proved by pleadings, cause of action etc.

58. To sum up, in determining whether a suit contemplates urgent interim relief, one pertinent consideration is whether the failure to grant such relief would render the Plaintiff's application for injunction or the suit itself infructuous, or would create an irreversible or unalterable situation, thereby disabling the Court from restoring status quo ante at the stage of adjudication of such application. This is one of the determinative factors, among others, including: (i) the origin and timeline of the cause of action, (ii) the timing and manner of the Plaintiff's approach to the Court, and (iii) whether adherence to the pre-institution mediation mechanism under Section 12A would operate to the detriment or prejudice of the Plaintiff.

59. The foregoing factors are only illustrative, and not exhaustive, parameters to be considered at the threshold while evaluating the maintainability of a suit without compliance with Section 12A, on the ground of urgency.

60. In this contextual backdrop, it becomes imperative upon the Commercial Court, while dealing with an application for exemption from pre-institution mediation, to determine whether a mere averment or prayer for an interim relief, is per se adequate to bypass the procedural mandate of Section 12A, or whether the expression 'contemplation of urgent interim relief' warrants a more elevated threshold of scrutiny to uphold and give effect to the salutary objectives underlying Section 12A. The adjudication as to whether the suit contemplates urgency has to be made under the facts and circumstances of each and every case."

42. Thus, the scheme of the statute mandates pre-institution mediation as a prerequisite to the institution of a commercial suit, subject only to cases involving genuine urgency or irretrievable prejudice.

A scrutiny of the facts

43. For the sake of clarity, the contents of the instant application are reproduced as under: -

"The Plaintiff has filed the accompanying suit seeking a decree of specific performance of the collaboration agreement dated 03/06/2015 executed between the Plaintiff and Defendant No. 1 with respect to property admeasuring 200 square yards, bearing number U-29, Green Park (Main), New Delhi – 110016 (hereinafter "suit property"). The Plaintiff is also seeking a decree of permanent injunction against the



Defendants thereby injuncting them from creating, transferring or purporting to create any third party rights, interests, lien, charge or encumbrance over the suit property in any manner whatsoever.

2. The contents of the suit may kindly be read as part and parcel of the present application as the same have not been repeated herein for the sake brevity and convenience.3. The Plaintiff has preferred an application under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 seeking ad-interim reliefs in the form of restraining the Defendants from creating, transferring, or purporting to create third party rights, interests, lien, charge or encumbrance over the suit property.

4. The Plaintiff, pursuant to collaboration agreement executed with Defendant No.1 dated 03/06/2015, is entitled to ownership of ground and first floors of the suit property, along with proportionate rights in the stilt parking and land underneath, after constructing the multi-storied building on the suit property. The Plaintiff has even paid INR1,20,00,000 /- to the Defendant No. 1 and 2. Further, the Plaintiff has spent considerable amount in the construction of the suit property, thereby, constructing it to the point of near completion.

5. The said collaboration agreement is still subsisting and has not been rescinded by Defendant No. 1. The Plaintiff has always been willing and still willing and ready to perform its obligations as per the agreement i.e., complete construction on the suit property. As a result, the Defendant No. 1 is obligated to execute sale deed qua the two floors in favour of the Plaintiff.

6. However, the Defendant No. 1 – 2 in collusion with Defendant No. 4 – 5 are attempting to defeat the rights of the Plaintiff in the suit property. The Defendant No. 1 is attempting to transfer the rights, title and interests in the entire suit property in favour of Defendant No. 4 – 5. The same would prejudice the rights of the Plaintiff in the ground and first floor of the suit property.

7. The aforesaid nefarious plan of the Defendants is evident from the public notice dated 29.05.2025 issued on behalf of Defendant No. 4 – 5 conveying their intentions to purchase the suit property from Defendant No. 1. Further, letter dated 25.06.2025 of Sub-registrar received by Plaintiff on 05.07.2025 proves that the said Defendants have already tried registering a sale deed to that effect.

8. That if pre-institution mediation is directed to be instituted, It shall defeat the purpose of the suit as the Defendants will create third party rights in the suit property.

9. Thus, in order to protect the interests of the Plaintiff, the Plaintiff prays that it shall be exempted from complying with the requirements of Section 12A of the Commercial Courts Act, 2015.

10. The present application is being made bona fide and in the interest



of justice. Grave prejudice shall be caused to the Plaintiff in the even the present application is not allowed.

PRAYER

In view of the aforementioned facts and circumstances, it is most respectfully prayed that this Hon' ble Court may kindly be pleased to:

*-a) Grant exemption to the Plaintiff from instituting pre institution mediation under Section 12A of the Commercial Courts Act, 2015 ; and
b) Pass such other and further order(s) as this Hon ble Court may deem fit and proper in the facts and circumstances of the present case.”*

44. A perusal of the aforesaid indicates that the Plaintiff's plea for exemption is premised on the alleged clandestine execution and registration of a sale deed concerning the suit property, purportedly in violation of the agreement. It is contended by the Plaintiff that the purported sale deed was executed surreptitiously, without the Plaintiff's knowledge, and in a manner calculated to defeat the Plaintiff's vested rights under the agreement. The Plaintiff asserts that the transaction was carried out with oblique motives and seeks immediate intervention by the Court.

45. On the contrary, the defendants have categorically denied the existence of any real or imminent urgency warranting exemption from mediation.

46. On 21.07.2025, it was specifically brought to the attention of the Court by Mr. Yadav, learned counsel for the Defendants that the Plaintiff itself had initiated pre-institution mediation, which has subsequently been withdrawn.

47. As noted hereinabove, the pleadings and material on record have to be meticulously examined by the Commercial Court to see if the plaint contemplates any urgent relief. The cause of action, according to the



Plaintiff, arose on 29.05.2025 when the Plaintiff came to know about the Public notice issued by Defendant Nos 3 & 4. Paragraph 50 of the plaint reads as under: -

“50. That no date of performance was fixed under the collaboration agreement -dated 03/06/2015 and there has never been any refusal on the part of the Defendant No. 1 in respect of the rights of the Plaintiff under collaboration agreement dated 03/06/2015. In May, 2025 the Plaintiff was made aware that the Defendant No. 1 in connivance with the other Defendants, i.e. Defendants No. 2 to 6 is seeking to impinge upon the rights of the Plaintiff under collaboration agreement dated 03/06/2015 and thus, Plaintiff raised objections vide notices dated 29/05/2025 and 02/06/2025. Accordingly, cause of action arose in favour of the Plaintiff on 29/05/2025 and 02/06/2025. The cause of action is continuous, subsisting and recurring and the present suit is being instituted without delay and within the prescribed limitation period.”

48. A perusal of the aforesaid paragraph indicates that the Plaintiff avers that no specific date for performance was fixed under the Collaboration Agreement dated 03.06.2015, and further, there has never been any express or implied refusal on the part of Defendant No.1 concerning the rights of the Plaintiff under the said agreement, thus justifying the institution of the instant suit to be within the limitation prescribed for a suit of specific performance.

49. Furthermore, the Plaintiff asserts that it was only in the year 2025 that he became aware of the creation of third-party rights in the suit property, which accordingly gave rise to a cause of action and necessitated the urgency contemplated in the instant suit seeking specific performance of the agreement.

50. It is pertinent to note that as per the terms of the agreement, the



Plaintiff undertook to complete the proposed construction within a period of 15 months from the date of receipt of the sanctioned building plan from the competent authorities, or from the date of delivery of vacant possession of the suit property to the builder, whichever event occurred later. The relevant clause of the agreement reads as under:-

“ That the Builder undertakes to complete the proposed building within a period of 15 (Fifteen) months from the date of the receipt of the sanctioned plan from the authorities concerned or from the date of vacant possession from the Owner to the Builder, whichever is later, subject to FORCE MAJEURE and further if delay is occasioned for any reason of any act or legislation or restriction, prohibition or restrained imposed by any Statutory Body and or Governmental Authority, no liability shall attach to the Builder.”

51. Further, it is an admitted position that the sanctioned building plan was obtained on 30.06.2015, and accordingly, the fifteen-month period would have expired on 30.09.2016. Notably, it is neither the Plaintiff's case that the construction was fully completed as on the date of the taking over of possession by the bank on 26.09.2016, nor is it pleaded that the project would have reached completion within a span of four days thereafter had such possession not been taken.

52. It is pertinent to note that essentially the agreement and the cause of action, stemming from the rights, if any, created by the agreement, date back to 03.06.2015, and the suit has been instituted nearly nine years thereafter. Undeniably, time was the essence of the agreement, and the same was not abided by the parties. On the contrary, the plaint discloses that the Plaintiff became aware of some third-party alienations and encumbrances in the year 2016 and actively pursued various legal remedies in different forums,



including the DRT and DRAT. Nothing precluded the Plaintiff from instituting a suit against the Defendants for specific performance of the agreement if the conduct of the Defendants was so prejudicial.

53. In terms of the Indian Contract Act, 1872, legal rights crystallize upon the execution and completion of contractual performance.

54. In these circumstances, the Plaintiff cannot now claim urgency of such a nature that would justify bypassing the mediation process. Further, it may also be noted that the facts reveal that the Plaintiff was well aware that third-party rights were being created by the Defendants long before it knocked on the doors of this Court.

55. Moreover, it is seen that the rights in the suit property had already been transferred to Defendant No. 4 even prior to the filing of the present suit.

56. The purported claim of extraordinary urgency, premised on the apprehension that the execution of the sale deed would prejudice the Plaintiff's rights, does not persuade this Court to exempt the Plaintiff from the mandatory requirement of pre-institution mediation under Section 12A of the Act. Thus, upon a comprehensive and careful scrutiny of the pleadings on record, including the prayer clause of application seeking exemption from the mandatory requirement of pre-institution mediation under Section 12A of the Act as well as the detailed reply filed by the contesting Defendants, this Court finds no sustainable basis to permit such exemption.



57. Notably, it is trite law that specific performance is a discretionary equitable remedy, and the Court, in appropriate cases, may not grant such relief even if a valid contract exists.

58. It is pertinent to note that specific performance may be refused where monetary compensation is an adequate remedy. Reference can be made to the decision of the Supreme Court in *Prakash Chandra v. Angadlal*¹¹ wherein it was held that the ordinary rule is that specific performance should be granted, but only when equitable considerations point to its refusal and the circumstances show that damages would constitute an adequate relief, denial is necessary.

59. Further, the Court must also be cognizant of the fact that performance of a contract is not the sole remedy that must necessarily be considered in such suits. It must also be borne in mind that the apprehension of urgency or adverse impact on the rights of the parties due to delay in enforcement does not automatically warrant the grant of any interim relief or an exemption from procedural mandates such as pre-institution mediation under Section 12A of the Act.

60. In any event, even if specific performance ultimately becomes untenable due to non-grant of any urgent interim relief, such a situation would not amount to an irreparable or irreversible injury. The law provides adequate remedies in the form of compensatory damages, the grant of which will depend upon the nature and sufficiency of evidence led by the parties during trial. Therefore, the ultimate relief, whether specific performance of

¹¹ (1979) 4 SCC 393



the agreement or an alternative remedy in the form of damages, shall necessarily be determined based on the evidence adduced and the equitable considerations prevailing at the time of adjudication.

61. The Court is thus of the considered view that the present exemption application appears to be an afterthought, stemming not from any emergent situation, but from the Plaintiff's longstanding dissatisfaction with the course of events that transpired nearly a decade ago. The chronology of events indicates a belated invocation of this Court's jurisdiction, falling short of demonstrating the kind of imminent or irreparable harm that would justify urgent interim intervention.

62. Accordingly, the Court finds that the threshold of urgency envisaged under Section 12A has not been met. The statutory requirement of pre-institution mediation not having been lawfully dispensed with, renders the present suit premature and not maintainable.

63. In view of the foregoing discussion, the application for exemption from pre-institution mediation is dismissed.

CS(COMM) 691/2025 and I.A. 16163/2025, I.A. 16165/2025, I.A. 16167/2025, I.A. 17064/2025

1. Accordingly, the suit, along with the pending applications, also stands rejected.

2. Needless to state that nothing said hereinabove shall be treated to be a finding on the merits of the case of the Plaintiff for succeeding in a suit of specific performance and damages.



2025:DHC:6816



3. The aforesaid findings, however, shall not preclude the Plaintiff from instituting a fresh suit in accordance with law, including seeking specific performance or damages upon following the due procedure laid down in Section 12A of the Act.

4. The date already fixed i.e., 18.09.2025, before the concerned Joint Registrar, stands cancelled.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 11, 2025
aks