



2025:DHC:7310



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 66/2024, I.A. 1749/2024, I.A. 1751/2024 & I.A. 5476/2025**

Date of Decision: 13.08.2025

IN THE MATTER OF:

MR. RAKESH MEDIRATTA,
SON OF LATE SH.O.P. MEDIRATTA,
RESIDENT OF C-55, RAJOURI GARDEN,
NEW DELHI-110027

.....Plaintiff

Through: Mr. Yogesh Jagia, Mr. Amit Sood and
Mr. Mohit Gupta, Advs.

versus

ASIAN HOTELS (NORTH) LIMITED
HAVING ITS REGISTERED OFFICE AT:
DISTRICT CENTRE, BHIKAJI CAMA PLACE,
M.G. MARG, NEW DELHI-110066.

MR. SHIV KUMAR JATIA
EX-DIRECTOR, M/S. ASIAN HOTELS (NORTH) LTD.
HAVING ITS REGISTERED OFFICE AT:
DISTRICT CENTRE, BHIKAJI CAMA PLACE,
M.G. MARG, NEW DELHI-110066

.....Defendants

Through: Mr. Akshit Mago, Adv.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT**PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

The instant commercial civil suit has been filed by the plaintiff for



specific performance of a Space Buyer Agreement dated 18.07.2017 and various other reliefs.

2. Mr. Akshit Mago, learned counsel appearing for the defendants, submits that the facts of the case would clearly manifest that no urgent relief is contemplated in the plaint and that the plaintiff is only trying to create an illusion of urgency to wriggle out from the rigours of the purposes of Section 12 A of the Commercial Courts Act, 2015 (*hereinafter referred to as 'the Act'*). He submits that if the plaintiff is permitted to do so, the mandate of the said provision would be frustrated.

3. He points out that the plaint itself, in paragraph no. 43, discloses that the cause of action for the present suit arose on 21.02.2020, whereas, the suit has been instituted in the year 2024. He, therefore, submits that even assuming that the cause of action continued and was subsisting at the time of filing the suit, there was an inordinate delay in approaching the Court, which would nullify any claim of urgency put forth by the plaintiff. He, therefore, prays that the instant civil suit be dismissed on account of non-compliance with the mandatory provisions of Section 12A of the Act.

4. He further submits that post-institution mediation is not warranted under the said provision, and the suit, without any pre-institution mediation, would not be maintainable. Reliance is placed on the decision of the Supreme Court in the case of **Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd**¹ and the decision of this Court in the case of **M/s Exclusive Capital Limited v. Clover Media Private Limited**.² To substantiate the contention.

¹ 2022 SCC OnLine SC 1028

² 2025:DHC:6513



5. *Per contra*, Mr. Yogesh Jagia, learned counsel appearing for the plaintiff, controverts the said submissions, and states that in the instant case, as per the directions passed by this Court, mediation was attempted, but the same did not positively fructify.

6. He submits that although the cause of action had arisen in the year 2020, however, on account of COVID-19, the civil suit could only be filed in the year 2024. He submits that provisions of Section 12A do not require the pre-institution mediation in cases where urgent interim relief is contemplated.

7. He has taken this Court through various facts to indicate that despite an agreement and satisfactory fulfilment of obligations by the plaintiff, the defendants are not complying with the terms of the agreement and, therefore, the plaintiff has prayed for the interim relief restraining the defendants from creating third party rights in the interregnum. He further submits that while adjudicating on the maintainability of a commercial suit without pre-institution mediation, the aspect as to whether the plaintiff will eventually succeed in his application for interim relief cannot be considered. Learned counsel for the plaintiff places reliance on the decision in ***Chandra Kishore Chaurasia v. R.A. Perfumery Works Limited***³ in support of the said submission.

8. I have considered the submissions made by learned counsel appearing for the parties and have perused the record.

9. Section 12 A (1) of the Act, which is relevant to the present proceedings reads as under:

“12A. Pre-Institution Mediation and Settlement—(1) A suit, which does

³ 2022:DHC:4454-DB



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.”

10. A perusal of the said provision indicates that the requirement of pre-institution mediation does not apply to cases which contemplate an urgent interim relief under the Act. Therefore, the question to be determined by the Court herein is whether the present suit contemplates any urgent interim relief, so as not to attract the mandate of pre-institution mediation.

11. The position maintained by the plaintiff is that since they have filed an application for interim relief, the instant suit contemplates urgency.

12. The aspect as to whether a prayer for interim injunction, itself, tantamounts to contemplation of urgent interim relief for the purpose of Section 12 A of the Act, has been extensively considered by this Court in the case of ***Exclusive Capital***. In paragraph No.58 of the said decision, the Court has held as under:

“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.”

13. Thus, there can be various factors to determine whether a suit contemplates urgent interim relief, and few of them have been delineated in the aforesaid decision. Such factors may include, (i) the origin and the timeline of the cause of action, ii) the timing and the manner of the



plaintiff's approach to the Court. iii) whether adherence to the pre-institution mediation mechanism under Section 12A of the Act would operate to the detriment or prejudice of the plaintiff, and (v) whether failure to grant such relief would render the plaintiff's application for injunction or the suit itself as infructuous or would create an irreversible or unalterable situation, thereby disabling the Court from restoring *status quo* at the stage of adjudication of such application.

14. Furthermore, in paragraph No.77 of the said decision, the Court has held as under:

“77. More importantly, the mere filing of an application under Order XXXIX Rules 1 and 2 of the CPC, reiterating the relief of declaration on assertions of forgery or fabrication, without specific and cogent pleadings of imminent or irreversible harm, cannot by itself be construed as seeking “urgent relief” for the purposes of bypassing the mandatory pre-institution mediation contemplated under Section 12A of Act. It is trite law, as seen from the aforementioned decisions, that the grant of an interim injunction and the contemplation of urgent relief for the purpose of an application seeking exemption from the mandate of Section 12A are materially distinct. An application seeking exemption from pre-litigation mediation under Section 12A must be independently assessed on its own merits and not conflated with the filing of an interlocutory application. In the present case, the Plaintiff has failed to plead or demonstrate any immediate or irreversible action that threatens to alter its legal status or cause irreparable harm in the interregnum so as to justify exemption under the statutory scheme. Even if the plaintiff manages to make out a case for interim relief, it does not ipso facto make out a case for exemption from the mandate of Section 12A, as the threshold required for the latter is materially distinct.”

15. It is also pertinent to note that the legislative intent behind Section 12A of the Act has also been discussed *in extenso* in the said decision. The Court has considered the phraseology of Section 12A of the Act and has given due emphasis to each of the words used therein. In paragraph No.38, the term ‘*urgent*’ has been discussed and it has been held that the Court must



remain vigilant against attempts to circumvent the legislative intent through a superficial plea of urgency, and is duty bound to assess whether the claimed exigency with respect to rigours of the judicial scrutiny is a *bona fide* invocation of the proviso rather than an attempt to evade compliance with the mandatory pre-institution mediation framework. The invocation of the term '*urgent*' within the proviso of Section 12A of the Act is held to contemplate a narrow class of situations where the plaintiff is confronted with such imminent and irreparable peril to their rights or interests that adherence to the pre-institution mediation process would be not only unreasonable or unjust but might also defeat the ends of justice. The narrow scope of exemption has also to be understood from an inherent understanding that all interim reliefs are primarily premised on a sense of urgency. Although the Court held that desire for an urgent relief is implicit in any prayer for interim relief, it further held that the legislative usage of the word '*urgent*' along with '*interim relief*' is intended to indicate an immediate threat to the rights of the plaintiff, something that could potentially defeat the right, if the intervention of the Court is not made at the earliest opportunity. This may not always be the case with other interim reliefs.

16. In ***Patil Automation***, the Supreme Court examined whether any attempt at mediation between the parties to a commercial suit, post its institution would satisfy the mandate under Section 12 A of the Act. In paragraph No.88 of the decision, the Court held as under:

“88. We may immediately draw a parallel between Sections 80(1)CPC and 12-A of the Act. In Section 12-A also, the bar of institution of the suit is applicable only in a case in which plaintiff does not contemplate urgent interim relief. The situation is akin to what is contemplated in Section 80(1)CPC. In other words, the suit under the Act which does



not contemplate urgent interim relief is like a suit covered by Section 80(1)CPC which does not project the need for any urgent or interim relief. In regard to a suit covered under Section 12-A of the Commercial Courts Act, namely, in a suit where interim relief is not contemplated, there can be no substantial compliance by way of post institution reference to mediation. The argument of the plaintiff overlooks the object apart from the language used besides the design and scheme of the law. It will, if accepted, lead to courts also spending their invaluable time on such matters which follow from adjournments, objections and hearings. There is no need to adopt such a course.”

17. A bare reading of the said paragraph would indicate that in cases where no urgent interim relief is contemplated, post-institution reference to mediation cannot be held to be substantial compliance of the requirements under the Act.

18. The law in respect of exemption from pre-institution mediation under Section 12A of the Act, upon appreciation of the aforesaid decisions, can be summarised as follows:

- 18.1. Pre-institution mediation is the rule in respect of commercial suits, and exemption from the same is the exception.
- 18.2. Such exemption from pre-institution mediation may only be sought where the suit contemplates urgent immediate relief under the Act.
- 18.3. While a formal application for exemption from pre-institution mediation is not necessary, the Court must necessarily be satisfied that the suit contemplates urgent interim relief under the Act.
- 18.4. 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.

- 18.5. Other factors that the Court must keep in mind for the said purpose include, but are not restricted to (i) the origin and the timeline of the cause of action, ii) the timing and the manner of the plaintiff's approach to the Court, and iii) whether adherence to the pre-institution mediation mechanism under Section 12A of the Act would operate to the detriment or prejudice of the plaintiff.
- 18.6. Courts must be cautious when determining whether a suit contemplates urgent relief, keeping in mind the legislative intent behind the Act and Section 12A therein.
- 18.7. Courts are duty bound to assess whether the claimed exigency with respect to rigours of the judicial scrutiny is a *bona fide* invocation of the proviso rather than an attempt to evade compliance with the mandatory pre-institution mediation framework.
- 18.8. Post-institution mediation is not contemplated under Section 12A of the Act, and thus, does would not satisfy the mandate under the said provision.
19. Upon the conspectus of the aforesaid delineation of law, the facts of the present case are required to be appreciated.
20. The facts of the case indicate that the cause of action in the instant case had arisen on 21.02.2020 when defendant No.1-company allegedly breached the terms of the Space Buyer Agreement and did not make the payment of commitment charges for the month of December, 2019 and January 2020 and delayed the interest on payment.
21. Various dates on which the subsequent causes of action have arisen have been stated in the plaint. It is specifically stated that the cause of action



continued in his favour up to 29.01.2022. Paragraph No.43 of the plaint is extracted as under:

“43. That the cause of action to file present suit firstly arose in favour of the plaintiff and against the defendants on 21/02/20 when upon the defendant no.1 company in breach of the terms of space buyer agreements did not made payment of commitment charges for the month of December 2019 and January, 2020 and the interest on delay in making payments, the plaintiff issued notice to the defendants and to Mr. Deepak Gupta manager finance of the defendant no. 1 company and the defendants in partial discharge of its obligations made payment of commitment charges for the month of December 2019 but did not made payment for the month of January 2020 and that of the interest payment. The cause of action in favour of the plaintiff and against the defendants continued and again arose 10/03/20 when the commitment charges for the month of February 2020 became due but same were not paid and the defendant no 1 company again breached the terms of the space buyer agreements. The cause of action in favour of the plaintiff and against the defendants continued and again arose 20/03/20 when the Plaintiff yet again issue demand notice to the defendant no.1 company, demanding payment of commitment charges payable under the space buyer agreements along with interest however the defendant no.1 company deliberately did not make good the requisitions made in the said demand notice and neither replied to said notice which amounts to admission on part of the defendants of their liability. Thereafter cause of action continued in favour of the Plaintiff and again arose on each due date when the commitment charges in terms of space buyer agreements become due however the defendants in breach of the terms of space buyer agreements did not made payment of the same. The cause of action continued and again arose in favor of the plaintiff on 04/ 07 /20 when the Plaintiff failing to receive response to demand notice dated 20/03/20 (supra), after effecting advance service filed petition filed under section 9 of IBC Code before NCLT, New Delhi, with a prayer to initiate insolvency proceedings against the Defendant No.1 company on its failure to pay admitted debt against the commitment charges, as agreed under Space Buyer Agreements. Thereafter cause of action continued and again arose in favour of the plaintiffs and against the defendants on each due date when the commitment charges in terms of space buyer agreements became due however the Defendant no.1 company in breach of the terms of space buyer agreements did not made payment of the same. The cause of action continued and again arose when immediately on receipt of advance service of appeal filed by the plaintiff before National Company Law Appellate Tribunal, New Delhi on 16/12/20, the



defendant no. 1 company as a counter blast and with the malafide intention to threaten the Plaintiff and to coerce him to give up his claim of commitment charges under the terms of the space buyer agreement, issued two demand notices both dated 21/12/20 under each of the space buyer agreements making illegal demands though the defendants continued with breach of the terms of space buyer agreements. The cause of action continued and again arose in favour of the plaintiff and against defendants when the plaintiff on 29 / 12/20 lodged a complaint with EOW, P.S. Mandir Marg, against inter-alia, the defendants on account of commission of offenses of cheating, criminal breach of trust and criminal conspiracy by not making payment of commitment charges under the terms of the space buyer agreements. The cause of action continued in favour of the plaintiff and again arose on 04/01/21 when National Company Law Appellate Tribunal, New Delhi firstly took up the appeal filed by the Plaintiff for hearing and issued notice to defendant no. I company herein who is arrayed as respondent in the said appeal. The cause of action continued and again arose on 14/01/21 when the plaintiff sent a common reply to the two alleged demand notices dated 21/ 12/20 (supra) denying the contentions raised therein and putting the defendant no. I company to notice to discharge its obligations under the space buyer agreements and reiterated that the plaintiff is ready and willing to make payment of balance amount of sale consideration in discharge of his obligations under the space buyer grants. However, there was no response to the reply of the plaintiff despite receipt of the same on 14/01/21 and the defendant no., I company continued with the breach of the terms of space buyer agreements. The cause of action continued in favour of the plaintiff and again arose on 15/ 01 /21 when the plaintiff on becoming apprehensive about the malafide intentions of the defendants and their nefarious motives of cheating the plaintiff of his hard earned money, in order to protect his rights filed civil suit before this Hon 'ble Court inter-alia, against the defendants herein, who were arrayed as defendants in the said suit, titled; "Sh. Rakesh Mediratta vs. Asian Hotels (North) Ltd. & Ors." bearing C.S. (Comm.) No. 50 of 2021 with prayer inter-alia, recovery of commitment charges under the space buyer agreements and for permanent and mandatory injunction etc., the copy of which was served on the defendants. The cause of action continued and again arose on 22/01/21 when the defendant no. I company in pursuance to its mendacious motives of causing wrongful loss to the plaintiff and wrongful gain to itself and to scuttle the cause of action for which the plaintiff filed above-mentioned civil suit bearing CS(Comm) No. 50 /2021 before this Hon 'ble Court issued two termination notices both dated 22/01 /21 illegally and malafidely terminating each of the space buyer agreements though the defendants continued with their breach of the terms of space buyer agreements and as such refused performance



of their obligations under the space buyer agreements. The cause of action continued in favor of the plaintiff and again arose on 29/01/21 and thereafter during the time when civil suit bearing C.S. (Comm.) No. 50 of 21 (supra) was pending before this Hon'ble Court and the defendant no. 1 company stated that its willing to amicably resolve the dispute but the same turned out to be a ploy just to gain time to frustrate the cause of the Plaintiff. The cause of action continued in favour of the Plaintiff and again arose on each such date when the defendant no. 1 company continued to be in breach of the terms of space buyer agreements. The cause of action continued and again arose on each date when the appeal filed by the Plaintiff before National Company Law Appellate Tribunal, New Delhi was listed and the defendant no. 1 company entered its appearances in the said appeal. The cause of action in favor of the Plaintiff and against Defendant no.1 continues and is subsisting as on date of filing of present suit as the defendant no .1 company has deliberately avoided discharge of its agreed obligations under the space buyer agreements and has breached terms thereof and such has refused performance of their obligations under the space buyer agreements though the plaintiff is ready and willing to discharge his balance agreed obligations under the space buyer agreements. Further the defendant no.1 company continues to enjoy benefits of the hard-earned money of the plaintiff paid in terms of the space buyer agreements.”

22. A perusal of the same indicates that the instant suit could have been filed by the plaintiff, in the year 2020 itself, when a significant portion of the purported cause of action arose. Such delayed action on behalf of the plaintiff must operate against the plaintiff, when deciding whether the suit contemplates any urgent relief.

23. Even otherwise, if the relief claimed in the instant civil suit is considered in right perspective, it requires the Court to pass a decree in favour of the plaintiff and against the defendants for specific performance of Space Buyer Agreement dated 18.07.2017 directing defendant No.1-company to execute conveyance deed for commercial unit bearing No. UG-02 admeasuring 1167 sq. ft., situated on the upper ground floor in Block-A, New Tower at Hotel Hyatt Regency Bhikaji Cama Place, New Delhi-



110066. The same does not seem to contemplate much urgency.

24. Various other reliefs appear to have sought, however, they all seem to be ancillary and connected to this fundamental relief. The entire prayer in the civil suit is extracted as under:

“a) Pass a decree in favor of the Plaintiff and against the Defendants for specific performance of the Space Buyer Agreement dated 18/07/17 directing the Defendant no.1 company to execute conveyance deed for commercial unit bearing no.UG-02 admeasuring 1167 sq. ft situated on the upper ground floor in Block-A, New Tower at Hotel Hyatt Regency Bhikaji Cama Place, RK Puram New Delhi in favour of the plaintiff after complying with the conditions precedent agreed in the above mentioned space buyer agreement dated 18/07/17 with consequential relief.

b) Pass a decree in favor of the Plaintiff and against the Defendants for specific performance of the Space Buyer Agreement dated 16/08/17 directing the Defendant no.1 company to execute conveyance deed for commercial unit bearing no. UG-08 admeasuring 610 sq. ft., situated on the upper ground floor in Block-A, New Tower at Hotel Hyatt Regency Bhikaji Cama Place, RK Puram New Delhi in favour of the Plaintiff after complying with the conditions precedent agreed in the above mentioned space buyer agreement dated 16/08/17 with consequential relief.

c) Pass a decree of declaration declaring the two termination notices both dated 22/01/21 terminating the Space Buyer Agreement dated 18/07/17 (supra) and space buyer agreements 16/08/17 (supra) illegal, null and void and accordingly the termination of the said Space Buyer Agreements by the defendant no.1 company as illegal.

d) Pass a decree of mandatory injunction in favour of the plaintiff and against the defendants thereby directing defendants to obtain all necessary permissions, NOC, etc. for executing the conveyance deed of the Suit Property i.e. commercial unit bearing nos. UG-02 admeasuring 1167 sq. ft. and UG-08 admeasuring 610 sq. ft. situated on the upper ground floor in Block -A, New Tower at Hotel Hyatt Regency, Bhikaji Cama Place, R.K. Puram, New Delhi in favour of the plaintiff or his nominee.

e) Pass a decree of permanent injunction in favor of the Plaintiff and against the Defendants and their agents, associates, nominees, etc. or any other person claiming through or under them for restraining them



from selling, alienating, mortgaging, parting with possession or creating any third party rights or interests in the Suit Property i.e. commercial unit nos. UG-02 admeasuring 1167 sq. ft. and UG-08 admeasuring 610 sq. ft. situated on the upper ground floor in Block-A, New Tower at Hotel Hyatt Regency, Bhikaji Cama Place, R.K. Puram, New Delhi save leasing of the suit property as agreed in the space buyer agreement dated 18/07/17 (supra) and the space buyer agreement dated 16/08/17 (supra).

f) Pass a decree of recovery in favour of the plaintiff and against the Defendants for an amount of Rs. 4,04,61,024/- (Rupees Four crore four lacs sixty one thousand and twenty four only) as arrears of commitment charges payable by the defendant for the period from January, 2020 to December, 2023, along with the interest@ 18% p.a. in discharge of their agreed obligations under the space buyer agreement dated 18/07/17 (supra) and space buyer agreement dated 16/08/17 (supra).

g) Pass a decree of mandatory injunction in favour of the plaintiff and against the defendant no.1 company thereby directing the defendant no.1 company to make payment of commitment charges till the execution of lease deed for the suit property in favour of the third party in letter and spirit of clause 16 of the space buyer agreement dated 18/07/17 (supra) and space buyer agreement dated 16/08/17 (supra).

h) Pass a decree of recovery in favour of the plaintiff and against the Defendants for an amount of Rs. 40, 128 /- (Rupees Forty thousand one hundred twenty eight only) as interest due on delayed payments of commitment charges prior to January 2020;

i) Pass a decree in favour of the plaintiff and against the defendants awarding damages/ compensation of Rs. 25,00,000 / - to the plaintiff on account of mental damages/ agony caused to the plaintiff due to the breach of contract by the defendants.

j) Award costs of the present suit in favor of the Plaintiff and against the Defendants.”

25. Besides the aforesaid, even if the application under Order XXXIX Rule 1 & 2 of the CPC is perused, it would indicate that the interim relief sought, is to the extent of directing the defendants not to create any third party interest in the suit property.

26. As reiterated hereinabove, this Court, in the case of **Exclusive**



Capital, has already held that the interim urgent relief should be of such nature, which, if not immediately granted, would lead to the situation becoming unalterable, and the Court at later stage, may not be able to grant the said relief.

27. In the instant case, the relief sought by the plaintiff cannot be construed to be such urgent interim relief, as to absolve the plaintiff from having to adhere to the mandatory provisions of Section 12A of the Act.

28. With regard to the decision of this Court in **Chandra Kishore Chaurasia**, relied on by the plaintiff, the Court held that 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. The said decision cannot be of much help to the plaintiff herein, since the Court has considered the present application, not on the plaintiff's likelihood of succeeding in his application for interim relief, but on the factors enumerated in the preceding paragraphs.

29. On due consideration of the facts and situation in the present case, the Court does not find that the present suit contemplates any urgent interim relief.

30. Accordingly, the civil suit along with pending applications stands dismissed.

31. Liberty is granted to the plaintiff to file a fresh civil suit after adhering to the provisions of Section 12A of the Act, and to request for set off of Court fees, in case a fresh suit is instituted.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 13, 2025/p/mj