



2026:DHC:2395



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

Date of decision: 19th MARCH, 2026

IN THE MATTER OF:

+ **CS(COMM) 634/2023**

XCEPT MEDIA PRIVATE LIMITED

.....Plaintiff

Through: Mr. Nishant Anand, Ms. Gunjan Bansal, Mr. Tarun Choudhary, Mr. Yashwant Singh Khatri, Advs.

versus

M/S ETHINOS DIGITAL MARKETING PVT. LTD. & ANR.

.....Defendants

Through: *Appearance not given*

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

CS(COMM) 634/2023 & I.A. 17622/2023, I.A. 7274/2024, I.A. 17623/2023

1. I.A. 17623/2023 has been filed by the Plaintiff under Section 12A of the Commercial Courts Act, 2015, seeking exemption from undergoing pre-institution mediation and settlement.
2. The Suit is one for recovery of Rs. 6,09,05,795/-.
3. It is the case of the Plaintiff that it is engaged in the business of Digital Marketing Services since 2016 and provides Digital Marketing solutions to its customers. The Defendants approached the Plaintiff for providing campaign services for its clients, namely, M/s Cholamandalam MS General Insurance.



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4. It is stated that on the instructions of the Defendants, the Plaintiffs rendered its campaign services on a monthly basis to M/s Cholamandalam MS General Insurance and subsequent invoices were being raised.
5. Paragraph No.8 of the plaint indicates the dates on which the invoices were raised and the amounts payable under the invoices.
6. It is stated that despite numerous reminders and requests, payments have not been made by the Defendants to the Plaintiffs and on the date when the Plaint was filed, a sum of Rs. 6,09,05,795/- was due and payable.
7. Undoubtedly, the present suit is a commercial suit.
8. Though an application under Order XXXVIII Rule 5 was filed, it was withdrawn on 13.09.2023 with liberty to file a fresh application if the need so arises, meaning thereby no urgent relief was contemplated.
9. In the opinion of this Court, since no urgent relief was contemplated, the Plaintiff cannot be exempted from the relief of Section 12A of the Commercial Courts Act, 2015. In the opinion of this Court, a money suit is the best suit which should be attempted to be settled through mediation and which is the purport of Section 12A of the Commercial Courts Act, 2015.
10. It is pertinent to mention that the Apex Court in Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1 has discussed the mandatory nature of Section 12A of the CC Act. Relevant portion of the said judgment reads 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.

99.2. *It is an undeniable reality that courts in India are reeling under an extraordinary docket explosion. Mediation, as an alternative dispute mechanism, has been identified as a workable solution in commercial matters. In other words, the cases under the Act lend themselves to be resolved through mediation. Nobody has an absolute right to file a civil suit. A civil suit can be barred absolutely or the bar may operate unless certain conditions are fulfilled. Cases in point, which amply illustrate this principle, are Section 80CPC and Section 69 of the Partnership Act.*

99.3. *The language used in Section 12-A, which includes the word “shall”, certainly, goes a long way to assist the Court to hold that the provision is mandatory. The entire procedure for carrying out the mediation, has been spelt out in the Rules. The parties are free to engage counsel during mediation. The expenses, as far as the fee payable to the mediator, is concerned, is limited to a one-time fee, which appears to be reasonable, particularly, having regard to the fact that it is to be shared equally. A trained mediator can work wonders.*

99.4. *Mediation must be perceived as a new mechanism of access to justice. We have already highlighted its benefits. Any reluctance on the part of the Court to give Section 12-A, a mandatory interpretation, would result in defeating the object and intention of Parliament. The fact that the mediation can become a non-starter, cannot be a reason to hold the provision not mandatory. Apparently, the value*



judgment of the lawgiver is to give the provision, a modicum of voluntariness for the defendant, whereas, the plaintiff, who approaches the court, must, necessarily, resort to it. Section 12-A elevates the settlement under the Act and the Rules to an award within the meaning of Section 30(4) of the Arbitration Act, giving it meaningful enforceability. The period spent in mediation is excluded for the purpose of limitation. The Act confers power to order costs based on conduct of the parties.

100. In the cases before us, the suits do not contemplate urgent interim relief. As to what should happen in suits which do contemplate urgent interim relief or rather the meaning of the word “contemplate” or urgent interim relief, we need not dwell upon it. The other aspect raised about the word “contemplate” is that there can be attempts to bypass the statutory mediation under Section 12-A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis. Section 80(2)CPC permits the suit to be filed where urgent interim relief is sought by seeking the leave of the court. The proviso to Section 80(2) contemplates that the court shall, if, after hearing the parties, is satisfied that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to the court after compliance. Our attention is drawn to the fact that Section 12-A does not contemplate such a procedure. This is a matter which may engage attention of the lawmaker. Again, we reiterate that these are not issues which arise for our consideration. In the fact of the cases admittedly there is no urgent interim relief contemplated in the plaints in question.

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104. On the findings we have entered, the impugned orders must be set aside and the applications under



Order 7 Rule 11 allowed. This would mean that the plaints must be rejected. Necessarily, this would involve the loss of the court fee paid by the plaintiffs in these cases. They would have to bring a fresh suit, no doubt after complying with Section 12-A, as permitted under Order 7 Rule 13. Moreover, the declaration of law by this Court would relate back to the date of the Amending Act of 2018.”

11. Further, the Apex Court in Yamini Manohar v. T.K.D. Keerthi, (2024) 5 SCC 815, while considering an application under Section 12A of the CC Act, has observed as under:

*“5. Section 12-A of the CC Act does not contemplate leave of the court, as is clear from the language and words used therein. Nor does the provision necessarily require an application seeking exemption. 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 12-A of the CC Act; pleadings on record and oral submissions would be sufficient.***

6. The words used in Section 12-A of the CC Act are — “A suit which does not contemplate any urgent interim relief”, wherein the word “contemplate” connotes to deliberate and consider. Further, the legal position that the plaint can be rejected and not entertained reflects application of mind by the court viz. the requirement of “urgent interim relief”.



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 court should 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.

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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)



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12. The Apex Court in Novenco Building & Industry v. Xero Energy Engineering Solutions (P) Ltd., **2025 SCC OnLine SC 2278** and more particularly Paragraph Nos.21 to 25 of the said Judgment which read as under:

“21. Thus, the question whether a suit ‘contemplates any urgent interim relief’ needs to be examined on the touchstone of the aforementioned criteria. The issue which arises for consideration in this appeal is whether a suit alleging continuing infringement of patent and design rights, accompanied by a prayer for interim injunction, can be said to contemplate urgent relief within the meaning of Section 12A of the Act, notwithstanding certain delay in its institution.

22. The subject matter of the present action is continuing infringement of intellectual property. Each act of manufacture, sale, or offer for sale of the infringing product constitutes a fresh wrong and recurring cause of action. It is well settled in law that mere delay in bringing an action does not legalise an infringement and the same cannot defeat the right of the proprietor to seek injunctive relief against the dishonest user⁵. The appellant has pleaded that Xero Energy, its former distributor, has dishonestly appropriated its proprietary designs and patents to manufacture and market identical fans under deceptively similar name. The accompanying material demonstrates that such infringing activity is continuing and causing immediate and irreparable harm to the appellant's business reputation, goodwill and proprietary rights.

23. From the standpoint of the appellant, each day of continuing infringement aggravates injury to its intellectual property and erodes its market standing. The urgency, therefore, is inherent in the nature of the



wrong and does not lie in the age of the cause but in the persistence of the peril. The court cannot be unmindful of the fact that intellectual property disputes are not confined to the private realm. When imitation masquerades as innovation, it sows confusion among consumers, taints the market place and diminishes faith in the sanctity of the trade. The public interest, therefore, becomes the moral axis upon which the urgency turns. Therefore, the public interest element, need to prevent confusion in the market and to protect consumers from deception further imparts a colour of immediacy to the reliefs sought.

24. The appellant's prayer for injunction cannot be characterised as mere camouflage to evade mediation. It is a real grievance founded on the continuing nature of infringement and irreparable prejudice likely to be caused by the delay. The court must look beyond time lag and evaluate the substance of the plea for interim protection. The insistence of pre-institution mediation in a situation of ongoing infringement, in effect, would render the plaintiff remediless allowing the infringer to continue to profit under the protection of procedural formality. Section 12A of the Act was not intended to achieve such kind of anomalous result.

25. The learned Single Judge as well as the Division Bench of the High Court erred in construing the test for urgent relief enumerated in Section 12A of the Act, in as much as the courts have proceeded to examine the entitlement of the appellant to urgent relief based on the merits of the case rather than looking at the urgency as is evident from the plaint and the documents annexed thereto from the standpoint of the plaintiff. The High Court has proceeded on the premise that lapse of time between the appellant's discovery of infringement and filing of suit negated the element of urgency. Such an approach, in our considered view, is contrary to the principles laid down by the decisions of this Court. The High Court has also failed to take into



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account that the present action is one of the continuous infringement of intellectual property.”

13. In view of the aforesaid judgments, this Court is inclined to dispose of the present suit and direct the parties to approach a mediation institution for the purpose of pre-institution mediation.

14. Liberty is granted to the Plaintiffs to file a fresh suit, in case the mediation fails.

15. Needless to state that the merit of Section 14 of the Limitation Act, 1963 is always available to the Plaintiffs between the time the suit was filed and the date on which the suit is disposed of.

16. Accordingly, the present suit is disposed of in the aforesaid terms. Pending Application(s), if any, also stand disposed of.

SUBRAMONIUM PRASAD, J

MARCH 19, 2026

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