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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 164/2022, I.A.Nos.4197-4200/2022, 6572/2022,**
13386/2022, 14931-33/2022
RAMACIVIL INDIA CONSTRUCTION PVT LTD

..... Plaintiff

Through: Mr.Jayant Mehta, Senior Advocate
with Mr.Shivanshu Kumar,
Mr.Abhishek Rautji, Mr.Srikanth
Varma, Advocates.

versus

NBCC INDIA LTD

..... Defendant

Through: Mr.Vipul Ganda, Ms.Amodini Raina,
Ms.Abhipsa Mohanty, Ms.Snigdha
Pal, Ms.Tanyya Hasija, Advocates.

+ **CS(COMM) 153/2023, I.A.Nos.5253-5259/2023**
NBCC (INDIA) LIMITED

..... Plaintiff

Through: Dr.Arun Mohan, Senior Advocate
with Mr.Vipul Ganda, Mr.Arvind
Bhatt, Ms.Ritika Choubey,
Ms.Swastika Singh, Ms.Amodini
Raina, Ms.Abhipsa Mohanty,
Ms.Snigdha Pal, Advocates with
Mr.Rahul Gupta, DM (Law).

versus

**RAMACIVIL INDIA CONSTRUCTION
PRIVATE LIMITED & ORS.**

..... Defendant

Through: Mr.Jayant Mehta, Senior Advocate
with Mr.Shivanshu Kumar,
Mr.Abhishek Rautji, Mr.Srikanth
Varma, Advocates for D1.
Mr.Abhimanyu Bhandrai, Advocate
for D2.
Mr.Vivek Singh, Advocate for D14.



CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **01.06.2023**

1. I.A.No.5253/2023 is filed by the applicant under Section 12A of Commercial Courts Act, 2015 seeking exemption from undergoing pre-institution mediation and settlement. I have heard the arguments advanced by the learned counsels present today. Though the defendant no.2 seeks time to file reply to this application but admittedly he has filed reply on behalf of defendant no.1 and had signed an affidavit annexed to such reply and has been appearing for the last few dates before this Court, hence I proceed to hear arguments advanced by the learned counsels.
2. The plaintiff has filed CS(COMM) 153/2023 for recovery of an amount of Rs.750 crores as damages against the contractor who constructed the RCC structures of building(s) at Sector 37D Gurugram, Haryana which has been discovered as a serious threat to human life. Images of such building(s) are annexed with the application and even more than 100 photos of the subject property has been filed showing its fallen *ceilings* in rooms; at stair cases, in toilets, in kitchen(s) etc. which allegedly pose serious threat to human life.
3. The RCC structure has also been termed by D12, the Disaster Management Authority as *unfit for human habitation* and the occupants were ordered to be evicted from the said structure and is now awaiting demolition.
4. The suit for recovery arises in a most unusual circumstance and the core question is of risk to human life on which there can be no mediation. The urgent interim relief for appointment of an expert committee was



required for scientific investigations, to collect evidence, and submit a report of safety of RCC structure. It is only once such report is received, the demolition process may commence.

5. It is submitted interim orders for appointment of an expert committee is to investigate and report cannot be delayed as there is risk of self collapse of the structure, hence in this situation pre institution mediation will serve no purpose.

6. It is submitted after expert committee has carried out investigations and submitted its report, an attempt to mediate the matter may serve some purpose.

7. The learned senior counsels for the defendants has vehemently opposed this application and submit this application cannot be allowed. Heard.

8. In *Chandra Kishore Chaurasia vs. R.A.Perfumery Works Private Ltd.* FAO (COMM) 128/2021 decided on 27.10.2022 it was held:

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

34. The use of the words “contemplate any urgent interim relief” as used in Section 12(1) of the Commercial Courts Act, 2015 are used to qualify the category of a suit. This is determined solely on the frame of the plaint and the relief sought. The plaintiff is the sole determinant of the plaint and the relief sought. The plaintiff is the sole determinant of the pleadings in the suit and the relief sought.

35. This Court is of the view that the question whether a suit involves any urgent interim relief is to be determined solely on the basis of the



pleadings and the relief(s) sought by the plaintiff. If a plaintiff seeks any urgent interim relief, the suit cannot be dismissed on the ground that the plaintiff has not exhausted the pre-institution remedy of mediation as contemplated under Section 12A(1) of the Commercial Courts Act, 2015.

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

38. In Patil Automation Private Limited and Ors. v. Rakheja Engineers Private Limited (supra), the Supreme Court had considered the import of Section 12A of the Commercial Courts Act, 2015 in the context of the suits, which did not contemplate any urgent interim relief.

It is relevant to refer to the following observations of the court:

“...The Act did not originally contain Section 12A. It is by amendment in the year 2018 that Section 12A was inserted. The Statement of Objects and Reasons are explicit that Section 12A 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...”

39. It is apparent from the above that the Supreme Court was also of the view that compulsory mediation is foisted only on a plaintiff who does not contemplate urgent interim relief. It is implicit that it is only the plaintiff, that can contemplate the relief that it seeks in a suit. And, pre-institution mediation is necessary only in cases where a plaintiff does not contemplate urgent interim relief.

40. In the present case, indisputably, the plaintiff has sought urgent interim reliefs. Thus, it is not necessary for him to have exhausted the remedy of pre-institution mediation as contemplated under Section 12A(1) of the Commercial Courts Act, 2015.”

9. An SLP (C) 8481/2023 was filed against above order but it was dismissed on 11.04.2023.

10. Considering the photographs filed on record depicting the dilapidated condition of building and since it poses a serious threat to human habitation, even to the passerbys and to the structures erected nearby, viz. a school and also in view of urgent prayers made in this applications, pre-mediation in these circumstance would not serve any purpose as there is nothing to



mediate in view of prayers *qua* demolition and considering the condition of building, thus the application is allowed. The plaintiff herein is allowed to file the suit without pre institution mediation.

11. The application stands disposed of.

CS(COMM) 164/2022, I.A.Nos.4197-4200/2022, 6572/2022, 13386/2022, 14931-33/2022 and CS(COMM) 153/2023, I.A.Nos.5254-5259/2023

12. Issue notice of CS(COMM) 153/2023 and I.A.Nos.5254-5259/2023 to the defendants. The learned counsels appearing on behalf of defendants accepts notice. Replies be filed to the suit as well as to the application(s) prior to the next date with an advance copies to the learned counsel for the plaintiff.

13. List on 27.07.2023.

YOGESH KHANNA, J.

JUNE 01, 2023

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