



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**INTERIM APPLICATION (L) NO.5452 OF 2025
IN
COMMERCIAL SUIT (L) NO.39332 OF 2024**

1. M/s. Kamla Landmarc Real Estate
Holding Private Limited
A private Limited Company, incorporated
under the Companies Act, having its
address at – Shantivimal Building,
Ground Floor, Sir P. M. Road, Ville Parle
East, Mumbai – 400057.
2. Jitendra Ramesh Jain
An adult Indian Inhabitant, having
address at Shantivimal Building,
Ground Floor, Sir P. M. Road, Ville
Parle East, Mumbai – 400057.
3. Jinendra Ramesh Jain
An adult Indian Inhabitant, having
address at Shantivimal Building,
Ground Floor, Sir P. M. Road, Ville
Parle East, Mumbai – 400057.

...Applicants

IN THE MATTER BETWEEN:

1. M/s. Image Developer
A Partnership Firm, registered under
the provisions of Indian Partnership
Act 1932 having its address at 704,
Shukra Shopping Centre, Gaushala
Lane, Malad East, Mumbai – 400 097.
2. M/s. Segment Developers Pvt. Ltd.
A Private Limited Company,
incorporated under the Companies
Act 1956, having its address at CTS
No.161, 161/1 & 2, Sethia Pride,
Opp. Poisar Metro Station, Kandivali
East, Mumbai – 400 101.

...Plaintiffs

Versus

1. M/s. Kamla Landmarc Real Estate Holding Private Limited
A private Limited Company, incorporated under the Companies Act, having its address at – Shantivimal Building, Ground Floor, Sir P. M. Road, Ville Parle East, Mumbai – 400057.
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3. Jinendra Ramesh Jain
An adult Indian Inhabitant, having address at Shantivimal Building, Ground Floor, Sir P. M. Road, Ville Parle East, Mumbai – 400057.
4. Dilipkumar Jain
An adult Indian Inhabitant, having address at Shantivimal Building, Ground Floor, Sir P .M. Road, Vile Parle East, Mumbai – 400 057.
5. Vikaskumar C. Jain
An adult Indian Inhabitant, having address at Shantivimal Building, Ground Floor, Sir P .M. Road, Vile Parle East, Mumbai – 400 057.
6. M/s Moral Mercantile LLP
A Limited Liability Partnership Firm, registered under the provisions of LLP Act 2008, having address at 401, Parekh Market, Opera House, Mumbai – 400 004.
7. M/s Sailee Developers Pvt. Ltd.
A Private Limited Company, incorporated under the Provisions of the Companies Act,

1956, and having its address at A/004,
Prathamesh Horizon, New MIIB Colony,
Gorai Road, Borivali (W), Mumbai – 400 091.

8. M/s. Divine Developers
A Partnership Firm, registered under the
provisions of Indian Partnership Act 1932,
having address at A-37/346, MIG Colony,
Near Anand Bazar, Gandhi Nagar, Bandra
(E), Mumbai – 400 051.
 9. Purshottam Gobindram Bansi
An adult Indian Inhabitant and partner
of Defendant No.8, having at address at
A-37/346, MIG Colony, Near Anand Bazar,
Gandhi Nagar, Bandra (E),
Mumbai – 400 051.
 10. Jashree Purshottam Bansi
An adult Indian Inhabitant and
partner of Defendant No.8, having
at address at A-37/346, MIG Colony,
Near Anand Bazar, Gandhi Nagar,
Bandra (E), Mumbai – 400 051.
 11. Sanjay Hirji Savla
An adult Indian Inhabitant and
partner of Defendant No.8, having
at address at A- 37/346, MIG Colony,
Near Anand Bazar, Gandhi Nagar,
Bandra (E), Mumbai-400 051.
 12. The Gorai Road Ashtavinayak Nagar
Co-op. Hsg. Societies Union Ltd.
A federal society registered under
the provisions of Maharashtra
Co-operative Act, 1960.
 13. Maharashtra Housing & Area
Development Authority
Griha Nirman Bhavan, Kalanagar,
Bandra East, Mumbai – 400 051
- ...Defendants

WITH
COMMERCIAL SUIT (L) NO.39332 OF 2024
WITH
INTERIM APPLICATION (L) NO.39463 OF 2024

1. M/s. Image Developer
A Partnership Firm, registered under
the provisions of Indian Partnership
Act 1932 having its address at 704,
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2. M/s. Segment Developers Pvt. Ltd.
A Private Limited Company,
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 13. Maharashtra Housing & Area
Development Authority
Griha Nirman Bhavan, Kalanagar,
Bandra East, Mumbai – 400 051 ...Defendants
-

Mr. Ashish Kamat, Senior Advocate a/w Ms. Pooja Kane i/by
Mr. Jitendra Jain for Applicants in IAL/5452/24 & Defendant Nos.1 to 3
in COMSL/39332/24.

Mr. Simil Purohit, Senior Advocate a/w Mr. Samir B. i/by Mr. Sanjeev
Singh & Mr. Ritesh Singh for plaintiffs/Applicants in COMSL/39332/24
with IAL/39463/24.

Mr. Piyush Raheja a/w Ms. Tanisha Choudhary & Mr. Ishaan Choudhary
i/by IC Legal for Defendant No.6 in COMSL/39332/24.

Adv. Sharmili Mhatre i/by Mhatre Law Associates for Defendant No.7 in
in COMSL/39332/24.

CORAM : Jitendra Jain, J.

Reserved on : 16 September 2025

Pronounced on : 19 September 2025

JUDGMENT:-

1. This application is taken by defendant nos.1 to 3 in the
original suit praying for rejection of the plaint under Order VII Rule
11(d) read with Section 151 of the Code of Civil Procedure, 1908 (CPC)
for contravention of the provisions of Section 12-A of the Commercial

Courts Act, 2015 (CC Act) and also on the ground that the suit is barred by limitation.

Prequel:-

2. The transaction under consideration is a development agreement executed on 7 May 1995 between defendant no.12- Federation of societies and defendant no.7 for re-development of the property.

3. As per the supplementary agreement, defendant no.7 was required to provide new flats to the existing members of the society and utilise the remaining development potential for profit. On 24 June 1997, few more societies became member of defendant no.12 and consequently, the members of the new societies were also entitled to the flats.

4. On 29 June 2006, plaintiff no.2 and defendant no.7 and other persons formed a partnership firm, plaintiff no.1, for development rights of the above property. On 15 March 2010, a deed of assignment of development rights was executed between the plaintiffs and defendant nos.1 to 5 on various terms and conditions specified therein. The consideration fixed was Rs.44.87 crores payable in installments along with other obligations including allotment of flats to the existing members of the society.

5. It is the case of the plaintiffs that on 5 December 2023, defendants nos.1 to 5 in breach of the above assignment agreement unlawfully executed a collusive agreement with defendant no.6 for assignment of rights over the property without fulfilling the obligations under the deed of assignment. Therefore, on 19 January 2024, plaintiffs

issued a termination notice to defendant nos.1 to 5 terminating the 2010 deed of assignment for various breaches including non-payment of the agreed consideration and failure to allot flats to members. On 1 March 2024, the said notice was replied by disputing the validity of the termination. On 21 October 2024, plaintiffs issued notices under Section 164 of the Maharashtra Co-operative Societies Act, 1960 (MCS Act) and Section 173 of the Maharashtra Housing and Area Development Act, 1976 (MHADA Act) requesting them to refrain from granting any permissions or approvals for development of property by defendant nos.1 to 6.

6. It is on the above backdrop that the present Commercial Suit (L) No.39332 of 2024 came to be filed on 30 November 2024.

7. In the Suit in paragraphs 36, 39 and 40, the plaintiffs have sought to explain why the pre-institution mediation as contemplated under Section 12-A of the CC Act has not been complied with. These paragraphs read as under :-

“36. The cause of action for filing the present suit arose in Mumbai in January 2024, when the Plaintiff visited the suit property and discovered Defendant No. 6's name displayed on the site. Subsequently, upon searching the records at the office of the sub-registrar through their Advocate, the Plaintiff found and obtained a copy of the purported registered agreement dated 05/12/2023. This was the first time the Plaintiff became aware of the execution of the agreement dated 05/12/2023. Therefore, the present suit is well within the period of limitation.

39. The Defendants appear to be in the process of taking steps to create third party rights and/or deal with the Suit property and the premises constructed thereon. In these circumstances, the Plaintiff humbly submits that the Plaintiff is entitled to grant of urgent ad-interim and/or interim reliefs failing which irreparable harm, loss and injury will be caused to the Plaintiff. The Plaintiff therefore submits that the Plaintiff is exempted from the requirement of exhausting the remedy of mediation prior to institution of the

present suit. The Plaintiff therefore submits that the present suit is maintainable as per the provisions of Section 12 A of the Commercial Courts Act, 2015. The Plaintiffs, however, undertakes that, if at any juncture of the said matter, this Hon'ble Court directs that the parties may attempt to resolve their disputes in mediation, the plaintiffs will be ready and willing to explore the possibility of settlement through mediation.

40. *The dispute in the present suit arises out of a commercial dispute. The present dispute classifies as a "Commercial Dispute" within the meaning of Section 2 (xvii) of the Commercial Courts Act, 2015 and the suit is filed as a commercial suit. The Plaintiffs are also seeking urgent reliefs in the present case in order to protect its rights and interests and are also filing interim application seeking ad-interim and interim reliefs. It is respectfully submitted that owing to the nature of the suit and the reliefs that are prayed, the Plaintiff is entitled to institute this suit without being required to pursue the remedy of pre-institution mediation as contemplated under Section 12-A of the Commercial Courts Act."*

Submissions of Defendant Nos.1 to 3:-

8. Mr. Kamat, learned senior counsel for defendant nos.1 to 3 stated that the plaintiffs have sought termination of assignment agreement dated 15 March 2010 and deed of confirmation dated 19 November 2010 and also sought for a declaration that termination letter is legal and valid. He stated that on a perusal of paragraphs 36, 39 and 40 of the plaint, it cannot be said that the plaintiffs can claim exemption from compliance of Section 12-A by filing suit without exhausting pre-litigation mediation. He submitted that the suit was filed on 30 November 2024 and the first time it was circulated on 31 January 2025. He further relied upon the order dated 7 February 2025 giving defendants time to file reply on the ground that the agreement in respect of which breach was alleged is of the year 2010 and payment thereunder was to be made by 2017. Mr. Kamat, relied upon paragraph 4(a)(i) to (vi) of the reply dated 20 February 2025 of defendant nos.1 to 3 opposing Interim Application (L) No.39463 of 2024 and submitted

that the case does not fall within the exception. He further submitted that urgency has to be examined on the date of institution. He submitted that since the breach of 2010 agreement is alleged, last payment of which was due in 2017 and the termination notice is dated 19 January 2024 and the suit has been filed on 30 November 2024 and thereafter moved for the first time on 31 January 2025, no case is made out for non-compliance of Section 12-A of the CC Act. He relied upon the following decisions in support of his submissions:-

- (i) *Ekta Housing Private Limited vs. Shraddha Shelters Private Limited*¹ paras 7, 46, 51, 58, 68 and 69
- (ii) *Future Corporate Resources Private Limited vs. Edelweiss Special Opportunities Fund*² para 43
- (iii) *Yamini Manohar vs. TKD Keerthi*³ paras 6, 10, 11 and 12
- (iv) *Patil Automation Private Limited vs. Rakheja Engineers Private Limited*⁴ paras 32 to 48, 75, 83, 92 and 94.3 and 113
- (v) *Dhanbad Fuels Private Limited vs. Union of India & Anr.*⁵ Paras 38 to 44
- (vi) *IIFL Finance Limited vs. Gundecha Estates Pvt. Ltd.*⁶ Paras 45 to 59
- (vii) *NTPC vs. Tech Data Advanced Solutions (I) Pvt. Ltd.*⁷

9. He, therefore, prayed for dismissal of the suit for non-compliance of Section 12-A of the CC Act.

Submissions of the Plaintiffs:-

10. Per contra, Mr. Purohit, learned senior counsel for the original plaintiffs opposed the application for dismissal of the plaint for rejection

1 2024 SCC OnLine Bom 3538

2 2022 SCC OnLine Bom 3744

3 (2024) 5 SCC 815

4 (2022) 10 SCC 1

5 2025 SCC OnLine SC 1129

6 Commercial Suit (L) No.8617 of 2025

7 IA(L) 33574 of 2022 dated 10-09-2025 (Bombay)

under Order VII Rule 11 of the CPC. He submitted that urgency has to be examined from the point of view of the plaintiffs. He submitted that the nature of suit is with respect to assignment of development rights against which defendants were to pay certain amounts and handover flats. He submitted that it was a conditional grant and failure to comply with the conditions of grant has resulted into termination. He further submitted, in the alternative, that the plaintiffs are unpaid sellers and under Section 55 of the Transfer of Property Act, 1882 has a statutory charge for the dues to be recovered under the agreement. He submitted that this is a continuous cause of action and, therefore, the plaintiffs were justified in filing the plaint without compliance of Section 12-A of the CC Act. He submitted that unless the conditions of the grant were satisfied defendant nos.1 to 3 could not have transferred the development rights and, therefore, sought to defend on the ground of continuous cause of action the filing of the suit without compliance of Section 12-A of the CC Act. Mr. Purohit, learned senior counsel also relied upon paragraphs 17 and 18 of the plaint for supporting his submission for non-compliance of Section 12-A and to seek exemption. Mr. Purohit, learned senior counsel relied upon the decision of Delhi High Court in the case of ***Exclusive Capital Limited vs. Clover Media Private Limited & Ors.***⁸ Mr. Purohit, learned senior counsel, therefore submitted that the application taken out by defendant nos.1 to 3 is to be dismissed.

11. Paragraphs 17 and 18 of the plaint read as under:-

“17. In summary, Defendants No. 1 to 5 have failed to fulfill their obligations as outlined in the Deed of Assignment of Development Rights dated 15/03/2010 and the Deed of Confirmation dated 19/11/2010. They have defaulted on the full and final consideration specified in clause 6(a) of the agreement with

⁸ 2025 SSC OnLine Del 5221

Plaintiff no. 2, as they remain in clear default for the consideration amount of Rs. 7,21,07,673/- along with interest at 15%. As of 31/10/2024, this amount totals Rs. 28,35,46,953/-, as detailed in the chart at Exhibit-F. Despite the explicit embargo and restrictions preventing Defendants No. 1 to 5 from assigning the benefits of the Deed of Assignment or creating any third-party rights without the full and final consideration to Plaintiff no. 2 or without Plaintiff no. 2's consent, Defendants No. 1 to 5, in collusion and conspiracy with one another, fraudulently and illegally executed the purported agreement dated 05/12/2023. This agreement is, on its face, illegal, void ab initio, and not binding upon Plaintiffs. Furthermore, Defendant No. 6 was well aware of the breaches and violations of the terms of the Deed of Assignment of Development Rights dated 15/03/2010 and the Deed of Confirmation dated 19/11/2010. Additionally, Defendant No. 6 is bound by the principle of caveat emptor and therefore is not entitled to any leniency or benefits arising from entering into an agreement dated 05/12/2023, which is in breach of the aforementioned Deeds.

18. *The Plaintiffs now learnt that the defendant no. 6 is negotiating with various other developers and final institution including NBFC/Banks to either raise the finance by mortgaging their purported right under the agreement dated 05/12/2023 and or trying to assign their purported right under the agreement dated 05/12/2023 and further illegally and unlawfully trying to create third party right and if the defendant no. 1 to 6 are successful in their said illegal and unlawful attempt to create third party right the same will create multiplicity of the proceeding and will further frustrate the right of the plaintiff and therefore the Plaintiff approached to this Hon'ble Court in grave urgency."*

Analysis and Conclusion:-

12. I have heard learned senior counsel for the applicants/defendant nos.1 to 3 and the plaintiffs. Other than what is recorded above, no other submissions have been canvassed by any of the parties.

13. Section 12-A(1) of the CC Act provides that a suit which **does not contemplate any urgent interim relief** shall not be instituted unless the plaintiffs exhaust the remedy of pre-litigation mediation. Section 12-A(3) provides that the process of mediation should be completed within a period of 120 days and can be further extended by a period of

60 days with the consent of the parties. The time taken for pre-litigation mediation is excluded for the purpose of limitation under the Limitation Act, 1963.

14. The objective of undergoing the process of pre-litigation mediation is to make an attempt to arrive at the settlement and expedite the resolution of the dispute between the parties by alternative dispute resolution mechanism. There is no dispute that the compliance of Section 12-A(1) of pre-litigation mediation is mandatory. The only exception is if any urgent interim relief is required as per the belief of the plaintiffs then they need not undergo the pre-litigation mediation. Whether the plaintiffs get any interim relief or not is not the criteria for deciding whether the exemption sought under Section 12-A(1) is justified or not. What is important is whether the plaintiffs contemplate any urgent interim relief which cannot wait during the time-frame and process of completion of mediation.

15. Although, it is the plaintiffs' view which has to be considered whether any urgent relief is contemplated or not at the time of filing the plaint, however, the facts prior to the filing of the plaint, the relief sought in the plaint and the subsequent conduct of the plaintiffs post filing of the suit should be examined whether the belief which plaintiffs had for dispensing with the mandatory requirement under Section 12-A(1) is *bona fide* or not.

16. In the instant case before me and as per the relief sought in the plaint, termination notice of which the declaration is sought is of 19 January 2024 and the plaint is instituted on 30 November 2024, ie. after 10 months. Furthermore, the deed of assignment and confirmation of which termination notice is given is of 2010. In paragraph 36 of the plaint, the plaintiffs state that in January 2024 they discovered the

name of defendant no.6 displayed on the site and subsequently upon searching the records obtained a copy of the registered agreement dated 5 December 2023 by which they became aware that defendant nos.1 to 5 had assigned the rights to defendant no.6. Paragraph 36 thereafter concludes that the present suit is well within the period of limitation. Therefore, the plea of the plaintiffs to seek exemption from compliance of Section 12-A of the CC Act cannot be accepted as paragraph 36 is only *qua* period of limitation. In any case, no details of various dates have been given after January 2024 till the filing of the present suit for seeking exemption under Section 12-A(1). Paragraph 36 in any case does not contemplate that the plaintiffs were in need of urgent relief so as to claim exemption under Section 12-A of the CC Act. The statement in paragraph 36 is also incorrect because in the letter of termination dated 19 January 2024, plaintiffs have themselves referred to agreement of 5 December 2023 between the defendants nos.1 to 5 and 6 and therefore to say that subsequent to termination they became aware cannot be accepted. Except bald statements, no other details are given in the said paragraph which would entitle them to seek exemption from compliance of pre-litigation mediation.

17. In paragraph 39, a bald averment is made that the defendants are in the process of taking steps to create third party rights to deal with the suit property and, therefore, urgent relief is sought though in termination letter of 19 January 2024 breach of 2010 agreement was already alleged. However, after filing the suit on 30 November 2024, the plaintiffs did not move the Court for any urgent relief. This conduct of the plaintiffs of not moving the Court for any urgent relief till 31 January 2025 clearly indicates that though they had filed the interim application on 30 November 2024, i.e. on the date of filing the suit, the apprehension that non-compliance of Section 12-A would result into

defendants creating third-party rights cannot be accepted. On the contrary in paragraph 39, the plaintiffs have stated that they are not averse to explore the possibility of settlement through mediation. This clearly shows that the plaintiffs did not have any *bona fide* belief of claiming any urgent relief for seeking exemption under Section 12-A of the CC Act. It is also important to note that in paragraph 36, the plaintiffs had already stated that they came to know of the assignment agreement between defendant no.1 to 5 and 6 after January 2024 (although without giving any details of the dates). If that be so, in the absence of any other material that further rights would be created and therefore urgent relief is sought and consequently non-compliance of Section 12-A is justified, also cannot be accepted. The bald statement made without any basis cannot be a ground for seeking or for justifying the filing of the suit without undergoing the mandatory procedure of pre-litigation mediation.

18. The averments made in the plaint to justify non-compliance of Section 12-A that post January 2024, defendant no.6 was going to create third party rights is also to be rejected because according to January 2024 termination letter the plaintiffs have stated that transaction in favour of defendant no.6 vide 2023 agreement itself is in breach of 2010 agreement. Therefore, in my view, even this justification is to be rejected.

19. In my view, if the plaintiffs were in a dire need of urgent relief then nothing stopped them from filing the suit immediately after January 2024 and seeking the relief immediately after filing the suit. It is also not the case of the plaintiffs that they attempted to move the Court for urgent ex-parte/ad-interim relief and the Court was unable to grant the circulation.

20. Mr. Purohit, learned senior counsel for the plaintiffs has sought to justify non-compliance of Section 12-A on the ground that there is a breach of assignment agreement and since plaintiffs have not been paid the amount under the agreement they become an unpaid seller and the cause of action is continuous cause of action and, therefore, were justified in filing the suit without compliance of Section 12-A. In my view, this submission is more on merits and on the ground of limitation. Merely because as per the plaintiffs their cause of action is continuous cannot be a ground, moreso in the facts of the present case, to not comply with the provisions of Section 12-A of the CC Act. The decisions where continuous cause of action justifies non-compliance of Section 12-A are the cases where there were infringement of intellectual property rights. In my view, the case of the present plaintiffs do not fall in that category. The issue is not whether the cause of action is continuous or not. The issue to be examined for non-compliance of Section 12-A of the CC Act is whether the plaintiffs contemplated any urgent relief on the date of filing the suit. In my view, based on the facts which are recorded about pre-filing the suit and post- filing the suit, no case is made out by the plaintiffs to justify non-compliance of Section 12-A. The conduct of the plaintiffs pre and post filing of the suit and the prayer sought for alongwith the fact that except bald averments made in the plaint there is no serious attempt which would justify non-compliance of Section 12-A.

21. The mediation process under Section 12-A is required to be completed within 120 days from the date of application made by the plaintiffs. In the instant case, termination notice is dated 19 January 2024 and the suit is filed in November 2024, i.e. after 10 months. The first date on which the suit was moved after filing was 31 January 2025. Except in paragraph 36, 39 (which is also for ground of limitation) and

paragraph 40 there is no factual basis given by the plaintiffs which would justify filing of the plaint without compliance of Section 12-A of the CC Act.

22. Section 12A-(1) is worded negatively, thereby implying that the compliance has to be mandatorily followed. The phrase “....., which does not contemplate any urgent interim relief....., shall not be instituted”, would mean that the exemption from compliance of Section 12-A(1) can be claimed only if the plaintiffs show that there is a need for urgent interim relief. If the plaintiffs want to claim exemption from a mandatory compliance then they have to bring out their case within the exemption provision by specifically and expressly pleading the same in the suit. The said pleading for claiming exemption should be based on a strong foundation and not a bald statement. Whether the said foundation would entitle the plaintiffs to claim exemption has to be tested by the Court by considering various factors including the conduct of the plaintiffs prior to and post filing the suit. The plaint should contain the details which would indicate that the plaintiffs could not have waited for the period specified in Section 12-A(3) which is the period for completion of mediation process. It is to protect such type of plaintiffs where the situation requires non-compliance of Section 12-A(1) that an exception is carved out by the said provision. This would not mean that without any solid foundation being pleaded or averred in the plaint, the plaintiffs can seek exemption by making a bald averment.

23. The onus lies heavily on the plaintiffs seeking non-compliance of mandatory provision and same has to be pleaded by factual details with material and not by bald statement. The contemplation of urgent relief should get reflected in the plaint so that it can pass the test required by Section 12-A(1) of the CC Act and on failure of which consequence of rejection should follow. In the instant case, on a perusal

of the pleadings and more particularly with respect to paragraphs by which the exemption is sought, I do not find the plaintiffs having made out any case for filing the suit without compliance of pre-litigation mediation.

24. Turning to the judicial precedents, in my view, reliance placed by the learned senior counsel Mr. Kamat for defendant nos.1 to 3 on the decisions referred to hereinabove justifies their applicability to the facts of the present case and on its application, the plaintiffs have failed to make out any case for seeking exemption from compliance of Section 12-A of the CC Act which is mandatory in nature. The learned senior counsel for the plaintiffs has not made any attempt to distinguish the judgments relied upon by the defendants.

25. The reliance placed by Mr. Purohit on the decision of the Delhi High Court in the case of *Exclusive Capital Limited (supra)* would also support the submissions made by defendant nos.1 to 3. There is no dispute on the ratio laid down by all the judgments relied upon by both the counsel, but what is important is their applicability to the facts of the present case. In the present case, in my view, for the reason stated above, the plaintiffs have failed to make out the case for urgent relief which would have entitled them to file the present suit without compliance of Section 12-A of the CC Act. I do not wish to burden the present judgment by reproducing the various paragraphs of the decisions relied upon by both the counsel, since on the applicability of the ratio of those judgments, in my view, to the facts of the present case, no case is made out for non-compliance of Section 12-A.

26. However, I may observe that the Delhi High Court in its recent decision in the case of *Exclusive Capital Limited (supra)* has summarised the whole law on this subject and also laid down guidelines

when a litigant seeks exemption from compliance of Section 12-A(1) of the CC Act. I wish to reproduce relevant paragraphs below:

- “16. A plain reading of the aforementioned Section would exhibit that if a commercial suit is filed without any urgent interim relief, the plaintiff must first attempt mediation. The mediation acts as a precondition to the institution of such a suit. The raison d'être of this provision lies in the broader legislative endeavour to streamline the resolution of commercial disputes and to promote early settlement, particularly in commercial relationships, where preserving business related engagements and finding business-oriented solutions can be beneficial in juxtaposition to the protracted litigation. The Statement of Objects and Reasons for the 2018 Amendment explicitly notes that the provision was brought in to improve the “ease of doing business” in India by providing a mechanism for speedy dispute resolution.*
- 19. Therefore, the legislative scheme of sub-section (1) of Section 12A is clear in its objective in fostering a culture of amicable settlement and reducing unnecessary litigation. In fact, the statute uses emphatic language in Section 12A(1), signaling a firm mandate. The underlying policy behind this legislative mandate is premised on sound economic wisdom that commercial disputes must be put to a quietus without unreasonable delay, as the protraction of such disputes directly affects the economic health and ease of doing business sentiment in any economy.*
- 22. Undisputedly, sub-section (1) to Section 12A carves out an exception to the otherwise mandatory requirement of pre-institution mediation and exempts from its ambit the suits wherein the plaintiff ‘contemplates urgent interim relief’. The lawmakers' intent to deliberately create this exception to cater to exigencies that warrant immediate judicial intervention is clear in recognizing that the rigours of mediation may, in such cases, defeat the ends of justice.*
- 23. It is, however, worth noting that the niche exception i.e., urgent interim relief, remains undefined in the provision. The legislative text does not spell out circumstances which would aid in assessing urgency contemplated by the litigant. Neither does the Act clearly stipulate conditions which would allow any litigant to claim exemption under the guise of “contemplation of urgent interim relief” i.e., those cases where waiting for mediation could cause irreparable harm due to the urgency of the situation. Thus, the central question which arises at this stage is whether a simple assertion of urgent interim relief is sufficient for a litigant to fall in the exception discussed above or the same is tempered by some*

pragmatic considerations. While the answer to this query is largely guided by the authoritative pronouncement of the Supreme Court in Yamini Manohar; however, for the sake of clarity, the Court deems it appropriate to first traverse through the meaning of the phrase “contemplates urgent interim relief” to ascertain the pith and substance of the provision.

- 29. Turning to the bare language of Section 12A of the Act, it is couched in a manner that it begins with a negative connotation, which says ‘a suit, which does not contemplate any urgent interim relief, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation’.*
- 33. Nonetheless, what bears more significance is the interpretation of the phrase “contemplate any urgent interim relief” employed in Section 12A(1) of the Act. At first blush, while applying the literal rule of interpretation, the expression may more closely resonate with what has been quixotically argued by the learned senior counsel for the plaintiff i.e., the provision contemplates only the existence of an urgent interim relief and nothing more. However, in the considered opinion of the Court, such an existence of urgency must be proved, certainly beyond plain assertions. To say the least, such an interpretation only provides a broad direction but does not draw a definitive roadmap to reach the intended destination without any detour. Put differently, the destination in the eyes of draftsmen was a mandatory pre-institution mediation in commercial suits with a dual objective to declog the Courts swamped with cases and to provide an efficient resolution of disputes involving commerce. Now, to allow the language of Section 12A to become clay in the hands of the interpreter i.e., the plaintiff herein, to be molded as it sees fit, would only militate against the legislative mandate behind such enactment. For such an interpretation gives a latitude to the plaintiff to skirt mediation with mere inclusion of a prayer for interim relief.*
- 34. Therefore, the phrase “contemplate any urgent interim relief” demands an elevated level of scrutiny as it is not a box to be checked at the plaintiff’s sole discretion. To strike a balance, though the urgency is viewed from the plaintiff’s perspective, but further scrutiny of the legitimacy of claim for exemption, by the Court, is crucial. This check-and-balance prevents abuse of process. In essence, the Court’s role in such cases is somewhat akin to a sentinel at the door of the Commercial Court; it checks the plaintiff’s “urgent” ticket. If the ticket (the claim of urgency) is valid, entry without mediation is allowed; if the ticket lacks genuineness, the plaintiff is rerouted to the mediation door.*

36. *The legislative intent is clear that no commercial suit may be instituted without first undergoing the pre-institution mediation process, save and except in cases where the suit demonstrably contemplates any urgent interim relief. Post the incorporation of Section 12A, judicial forums have discerned a pattern wherein parties, under various pretexts, attempt to circumvent the statutory requirement of pre-institution mediation, thereby necessitating extensive judicial scrutiny into the question of whether the suit indeed contemplates urgent interim relief, which in turn occupies substantial judicial time. Consequently, exceptions start assuming the shape of norms, thereby striking at the root of the legislative intent behind the amendment.*
37. *It is noteworthy that the word “contemplate”, as employed in subsection (1) to Section 12A, is not to be construed as a mere ornamental language, but a term connoting that the plaintiff must, at the time of institution of the suit, has anticipated, or reasonably foreseen the need for an urgent interim relief. It entails a conscious application of mind to the factual substratum of the case, where the cause of action is so inherently exigent that any delay caused by the mediation process would cause irreparable prejudice. Such contemplation necessitates a demonstrable application of judicial mind to the factual substratum, from the standpoint of the plaintiff, revealing that the cause of action is so pervaded by exigency that the procedural detour of mediation would occasion grave and irreparable prejudice. The urgency contemplated must, therefore, be neither speculative nor presumptive, but must be anchored in specific factual predicates, discernible ex facie from the pleadings, cause of action as also the conduct of the plaintiff.*
38. *Additionally, the term “urgent” captures a situation of critical immediacy and exigency, where the plaintiff is genuinely precluded from awaiting the outcome of the mediation mechanism due to the impending risk of irretrievable harm. In the determination of urgency, time is of utmost essence. Simultaneously, “interim relief” pertains to a an interlocutory remedy aimed at preserving the substratum of the dispute, protecting legal and forestalling irreversible injury before the lis attains final adjudication. A bald or mechanical assertion of urgency, bereft of evidentiary underpinning, is insufficient to invoke the statutory exemption. Courts must remain vigilant against attempts to circumvent the legislative intent through superficial pleas of urgency, and are duty-bound to assess whether the claimed exigency withstands the rigours of judicial scrutiny as a bona fide invocation of the proviso rather than a stratagem to evade compliance with the mandatory pre-institution mediation framework.*

39. *Essentially, the invocation of the term “urgent” within the proviso to Section 12A of the Act contemplates a narrow class of situations wherein 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 could also be understood from an inherent understanding that all interim reliefs are primarily premised on a sense of urgency. A desire for an urgent relief is implicit in any prayer for interim relief. Despite so, the legislative usage of the word “urgent” along with “interim relief” is certainly 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, which may not always be the case with other interim reliefs.*
40. *Thus, a plain reading of the provision in tandem with the will of the legislature would evince that all suits knocking on the doors of Commercial Courts must, at the threshold, demonstrate one of two things - either that they have exhausted the remedy of pre-institution mediation, or that they fall within the urgent interim relief exception with a bona fide, substantiated urgency.*
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.*
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."*

27. In view of all the above reasons, the plaint is rejected under Order VII Rule 11 of the CPC on the limited ground of non-compliance of Section 12-A of the CC Act. However, I make it clear that I have not adjudicated upon the suit being barred by limitation although the application of defendant Nos.1 to 3 has made a prayer to that effect, but both the counsel have not made any submission since the main ground which was agitated before me is on non-compliance of Section 12-A of the CC Act and ground of limitation would arise only if the plaint is not rejected on ground of non-compliance of Section 12-A(1) of the CC Act.

28. If the plaintiffs file a fresh suit after compliance of Section 12-A of the CC Act then the parties would be entitled to raise all submissions other than the submission on Section 12-A of the CC Act. I

have not expressed any opinion on the merits of the suit and also on the limitation issue. There was difference of opinion between both the counsel as to entitlement of plaintiffs whether only cash or cash plus flats but I am not expressing any opinion on same. The Court appreciates the assistance of all the counsel in disposing the present application.

29. The Interim Application is allowed in terms of prayer clause (a) which reads as under:-

“(a) This Hon’ble Court be pleased to pass an order rejecting the Complaint under order VII Rule 11(d) read with Section 151 of the Code of Civil Procedure, 1908 as the plaintiffs have contravened provisions of Section 12A of the Commercial Courts Act, and thus barred thereunder;”

30. In view of the above, Interim Application (L) No. 39463 of 2024 and Commercial Suit (L) No. 39332 of 2024 would not survive and are disposed of.

[JITENDRA JAIN, J.]