

(2025) 04 CAL CK 0914

In the Calcutta High Court, Original Side

Case No : G.A. (COM) No. 2 Of 2024 In CS (COM) No. 568 Of 2024

Maresh Thakur

APPELLANT

Vs

Om Prakash Bhartia & Ors

RESPONDENT

Date of Decision : 08-04-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 7 Rule 11
Commercial Courts Act, 2015 — Section 12A, 12A(1), 12A(2)

Citation : (2025) 04 CAL CK 0914

Hon'ble Judges : Krishna Rao, J

Bench : Single Bench

Advocate : Suparna Mukherjee, Ratul Das, Diptomoy Talukder, Tushar Kanti Hare, D. Ghosh, T. Talukder, Archita Chel, Gopal Pahari, Mandeep Kaur, Piyali Kulari, Sakya Sen, Uttam Sharma, Debjit Mukherjee, S. Chatterjee, Lalratan Mondal, K. Bhattacharya, Udaynarayan Betal, Mriganka Patra, Arindam Paul, Puja Rajbhar

Final Decision : Dismissed

Judgement

Krishna Rao, J

1. The defendant nos. 3, 4 and 5 have filed this application being G.A. (Com) No. 2 of 2024 praying for revocation of leave granted under Section 12A of the Commercial Courts Act, 2015 and for dismissal of suit.

2. Mr. Sakya Sen, Learned Senior Advocate representing the defendant nos. 3, 4 and 5 submits that the averments in the plaint read with the documents annexed with the plaint reveals that the plaintiff did not contemplate any urgent interim relief.

3. Mr. Sen referred paragraphs 13, 14 and 15 of the plaint and submits that on being refused by the defendant nos. 1 and 2 for execution of conveyance deed, the plaintiff has previously filed a suit being C.S. No. 231 of 2023 but subsequently the same was withdrawn on 24th January, 2024 with the liberty to

file afresh on the same cause of action. He submits that the cause of action pleaded in the present plaint up to paragraph 18 were the part of cause of action pleaded in the earlier suit. He submits that in the present suit, the plaintiff has referred to a complaint dated 28th February, 2024 filed by the plaintiff apprehending dispossession from unknown person and not against any of the defendants in the present suit, thus there is no cause of action against the present defendants.

4. Mr. Sen submits that the plaintiff expresses the apprehension that the joint owners are proceeding with completion of formalities for obtaining the sanction plan but the cause of action as already pleaded in the previous paragraphs had arisen in the year 2021 and 2023 when the request of the plaintiff for execution of conveyance has been rejected by the defendants by a letter dated 12th May, 2023.

5. Mr. Sen submits that the plaintiff has pleaded that the defendants are trying to construct multistoried building and relies upon the documents which relates to the year 2023. The documents of the year 2023 cannot give urgency for dispensation of Section 12A of the Commercial Courts Act, 2015 as earlier suit filed by the plaintiff for the same cause of action was withdrawn in the month of January, 2024.

6. Mr. Sen submits that there is no averment with regard to any recent refusal of execution of Deed of Conveyance. He submits that the cause of action of the plaintiff arisen in the first week of December, 2014, which according to the plaintiff has continued till 10th April, and 3rd October, 2023, thus there is no contemplation of any urgent relief. He submits that the plaintiff has withdrawn the previous suit in the month of January, 2024 and the present suit is filed on 5th March, 2024, therefore, the plaintiff has waited for considerable period of time within which the plaintiff could have been exhausted the remedy of mediation.

7. Mr. Sen submits that for urgent relief, the plaintiff has relied upon the complaint that some unknown persons threatened the plaintiff to disposes the plaintiff from the suit property but the said complaint does not discloses the name of the defendant herein.

8. Mr. Sen relied upon the judgment in the case of Yamini Manohar Vs. TKD Keerthi reported in (2024) 5 SCC 815 and submitted that by a clever drafting, the plaintiff is not entitled to bypass the statutory mandate of Section 12A of the Commercial Courts Act, 2015. He submits that the contemplation of urgent interim relief has to be understood and must be apparent from the pleadings in the plaint and the documents.

9. Mr. Sen relied upon the judgment in the case of Proactive Ship Management Private Limited Vs. Owners and Parties Interested in the Vessel Green Ocean reported in 2024 SCC OnLine Cal 1838 and submitted that leave granted under Section 12A of the Commercial Courts Act, 2025 subsequently can be revoked.

10. Mrs. Suparna Mukherjee, Learned Senior Advocate representing the plaintiff submits that the defendant nos. 3, 4 and 5 have not made out any case of the previous suit or its effect on the cause of action being the same as that of the previous suit. She submits that the defendants herein are not entitled to raise any new plea without specific pleadings in the application. She submits that as the said plea is not raised in their application, the plaintiff could not get an opportunity to deal with the allegation of the defendants. In support of her submissions, she has relied upon the judgment in the case of National Textile Corporation Limited vs. Nareshkumar Badrikumar Jagad reported in (2011) 12 SCC 695 and submitted that it is settled law that reliefs not founded in pleading should not be granted.

11. Mrs. Mukherjee submits that while adjudication of an application for rejection of plaint, it is only the plaint and documents are to be considered. The defense in the written statement cannot be considered while deciding the application for rejection of plaint. In support of her submissions, she has relied upon the judgement the case of Eldeco Housing and Industries Limited vs. Ashok Vidyarthi & Ors. reported in 2023 SCC OnLine SC 1612.

12. Mrs. Mukherjee submits that the submissions made by the defendants is contrary to the case pleaded in their application. She submits that as per the provisions of Section 12A of the Commercial Courts Act, 2015 the only requirement for dispensation is that in the plaint there should be pleadings which contemplate urgent interim relief. In the present case, with regard to the contemplation of urgent reliefs, the statements made in paragraphs 18 and 20 are to be read holistically. She submits that the defendants have not dealt with the complaint and have not considered that the plaintiff has specifically averred that the plaintiff recently came to know that the defendants are taking steps for obtaining sanction plan prior to filing of the suit.

13. Mrs. Mukherjee submits that merely because in the complaint does not identify the miscreant or the accused made before the police authority with respect to the suit property it cannot be said that contemplation of urgent relief is not applicable. She submits that the plaint cannot be rejected because the contemplation of urgent interim reliefs in respect of some of the defendants have been prayed for and not against all the defendants.

14. Mrs. Mukherjee relied upon the following judgments and submits that the Hon'ble Supreme Court, the Hon'ble Division Bench and Single Judge's Bench have set out grounds for consideration of contemplation of urgent relief:

"i. Yamini Manohar vs. TKD Keerthi reported in (2024) 5 SCC 815.

ii. Shristi Infrastructure Development Corporation Limited vs. Sarga Hotel Private Limited reported in 2024 SCC OnLine Cal 7817.

iii. Gavrill Metal Private Limited vs. Maira Fabricators Private Limited reported in 2023 SCC OnLine Cal 2443.

iv. Baynee Industries vs. Rajiv Rosha reported in 2024 SCC OnLine Cal 7590.

v. Duvarthim Visadahyum International Cooperation Strategies S.R.L. vs. Apocalypse Steel and Power Limited & Ors.”

15. Relying upon the above mentioned judgments, the Learned Counsel for the plaintiff submits that the scope of inference with the revocation of leave under Section 12A of the Commercial Courts Act, 2015 is limited. She submits that the grounds as alleged in the present application by the defendants, there is no scope for revocation of the leave for dispensation granted by this Court.

16. Mrs. Mukherjee relied upon paragraphs 3, 4 and 7 of agreement with the defendant nos. 1 and 2 as Directors of Dream Homes Private Limited (Presently known as Kanhaiya Realtors Private Limited) and seven Deed of Conveyances wherein the defendant no.1 was the authorized representative and Director of the defendant no.3 in between 2014 to 2019. The plaintiff has further relied upon the list of shareholders for the defendant no.3 for the Financial Year 2019-2020 and 2020-2021 wherein the defendant nos.1 and 2 had resigned as Directors and continued to be shareholders of the defendant no. 3.

17. Mrs. Mukherjee submits that the plaintiff has specifically pleaded a case of fraud being perpetrated by the defendant nos. 1, 2, 3, 4 and 5 in respect of change of Directors and shareholding of the defendant no.3 behind the back of the of the plaintiff which the plaintiff has specifically pleaded in the plaint.

18. Mrs. Mukherjee submits that the Memorandum of Understanding dated 7th April, 2021 entered between the plaintiff and the defendant nos.1, 2 and 3 along with the others joint owners of the Khanna Property as witness whereof, the defendant no.6 has filed an affidavit in support of the representations and agreement between the plaintiff and the defendant nos. 1and 2.

19. Mrs. Mukherjee submits that provisions of rejection of plaint cannot be invoked for nondisclosure of cause of action in respect of some of the defendants who may be proper parties and necessary parties to the suit.

20. The first issue raised by the defendant nos. 3, 4 and 5 is that there is no cause of action against the defendants herein. It is the contention of the defendants that as per the case made out by the plaintiff, the plaintiff entered into an oral Memorandum of Understanding with the defendant nos.1 and 2 for purchase of the 6 cottahs of land out of total area of 39 Cottahs, 3 Chittaks and 8 Square Feet though the defendant nos.1 and 2 are not the owners of the property and the same belongs to the defendant no.3 along with defendant nos. 6 and 7. It is also the contention of the defendants herein that the plaintiff has neither entered into any agreement with the defendant nos. 3, 4 and 5 and nor has made any payment to the defendants herein.

21. On 21st February, 2019, the defendant no. 7, the defendant no.6 and the defendant no.3 through the defendant no.1 have entered into an Agreement with the defendant no. 10 wherein it is admitted that the defendant no.3 is having

25% share, the defendant no.6 having 36.50% share and the defendant no. 7 having 38.50% share in the land measuring an area of 39 Cottahs, 3 Chittacks and 8 Sq. Ft. in premises No. 242A, Acharya Prafulla Chandra Road, Kolkata – 700 004.

22. In the Power of Attorney dated 21st February, 2019, the defendant no.1 has signed as Director of the Defendant no.3. In all seven deeds, the defendant no.3 is one of the signatory which involves the property in question.

23. In paragraph 15 of the Affidavit-in-Opposition filed by the defendant no.6 in connection with G.A. (Com) No. 1 of 2024, the defendant no.6 has stated that the defendant no.6 came to know from the defendant no.11 that a joint meeting was held in presence of the persons whose name has been mentioned in the Memorandum of Understanding dated 7th April, 2021 between the defendant no.1 and the defendant no.2 with the plaintiff. The defendant no.6 further stated that he came to know from the defendant no.11 that the defendant nos. 1 and 2 assure for arranging registration of 3 Cottahs of land in the premises No. 242A, APC Road, Kolkata – 700 004 in favour of the plaintiff through the defendant nos. 3, 4 and 5.

24. The defendant no.10 in his Affidavit-in-Opposition in G.A. (Com) No. 1 of 2024 stated that he was present in the meeting held sometimes in the year 2022 at the residence of the defendant no.11 in presence of Gajanan Munka, Surendra Agarwal, Nikunj Bharatia and Anil Lath wherein the decision to hand over 3 kathas of land to the plaintiff was taken. The defendant no. 10 further stated that the defendant no.10 personally handed over the said 3 kathas of land in favour of the plaintiff from the possession of Rahul Plywood Centre.

25. In paragraph 31 of the plaint, the plaintiff has given details how the cause of action for filing of the suit arose. In the case of Eldeco Housing and Industries Limited Vs. Ashok Vidyarthi and Others reported in 2023 SCC OnLine SC 1612, the Hon'ble Supreme Court held that:

"23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

26. This in the case of Baynee Industries Vs. Rajiv Rosha reported in 2024 SCC

OnLine Cal 7590 held that :

"25. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII, Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint."

27. The plaintiff has made out a case that the defendant nos.1 and 2 are the Directors of Bhartia Group of Companies now known as Kanhaiya Realtors Private Limited and sometimes in the month of December 2014, the defendant nos. 1 and 2 have offered for sale of 6 cottahs of land situated at premises No. 242A, Acharya Prafulla Chandra Road, Kolkata at a price of Rs. 2,25,00,000/- by showing seven deeds of conveyances. As per request made by the defendant nos. 1 and 2, the plaintiff in full faith paid an amount of Rs. 1,95,00,000/-. Subsequently, as per request of the defendant nos.1 and 2, the plaintiff has further paid an amount of Rs. 30,00,000/- by way of two cheques in favour of the defendant no. 9 on 11th October, 2017.

28. Subsequently, the plaintiff came to know that the defendant nos. 1 and 2 have committed fraud upon the plaintiff and to settle the issue a meeting was held on 5th April, 2021 wherein the defendant nos.1, 2, one Mr. Kalu Babu, Anil Kumar Lath i.e. defendant no.11 and other co-owners of the scheduled property were present and it was decided that the plaintiff would be entitled to 3 cottahs of land out of total 6 cottahs for a total sum of Rs. 1,95,00,000/- and the balance amount of Rs. 30,00,000/- would be refunded to the plaintiff. It was also decided that the defendant nos.1 and 2 would make necessary arrangement for registration of Deed of Conveyance with respect to 3 Cottahs of land in premises No. 242A at A.P.C. Road, Kolkata – 700 004. On 7th April, 2021, a Memorandum of Understanding was also entered between the plaintiff and defendant nos.1 and 2.

29. Taking into consideration of the plaint as a whole, this Court finds that the plaintiff has elaborately explained the cause of action to file the present suit and thus it cannot be said that the plaint does not discloses cause of action.

30. The next contention raised by the defendant nos. 3 4 and 5 in the present

application that the earlier suit was withdrawn by the plaintiff on 24th January, 2024 and the present suit was filed by the plaintiff on 5th March, 2024 and the plaintiff has waited considerable period of time within which the remedy of mediation could have been exhausted.

31. On 19th March, 2024, the plaint filed by the plaintiff was admitted subject to scrutiny by the department. On the same day, this Court granted leave under Clause 12 of the Letters Patent and also dispensed with the provisions of Section 12A of the Commercial Courts Act, 2015.

32. Previously the plaintiff has filed a suit being C.S. No. 231 of 2023 against the defendants but on 24th January, 2024, the plaintiff has withdrawn the suit with the liberty to file afresh on the self-same cause of action. After withdrawal of the said suit, the plaintiff has filed the present suit on 5th March, 2024. The earlier suit was not before the Commercial Division. The said suit was filed before the Ordinary Original Civil Jurisdiction.

33. Section 12A of the Commercial Courts Act, 2015 reads as follows:

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

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

NOTIFICATION

Noti. No. S.O. 3232 (E), dated July 3, 2018.- In exercise of the powers conferred by sub-section (2) of Section 12-A of the Commercial Courts Act, 2015, the Central Government hereby authorizes the State Authority and District Authority constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purpose of pre-institution mediation and settlement under Chapter IIIA of the Commercial Courts Act, 2015.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:

Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).

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

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section

(4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).].”

34. In paragraph 25 of the plaint, the plaintiff has made an averment for dispensation of leave under Section 12A of the Commercial Courts Act, 2015 which reads as follows:

“25. Under the facts and circumstances, it is most humbly submitted before this Hon'ble Court that the plaintiff be exempted from the requirement of Section 12A of the Commercial Courts Act, 2015 to exhaust the remedy of pre-institution mediation as the plaintiff most humbly prays before this Hon'ble Court that in the instant facts and circumstances, there is an urgency for immediate order of injunctions to prevent multiplicity of judicial proceedings.”

35. The plaintiff to obtain dispensation of the requirement of Section 12A of the Commercial Courts Act, 2015, has made following averments in paragraphs 18 and 20 in the plaint which reads as follows:

“18. The Plaintiff states that on and from the first week of February, 2024 the plaintiff was confronted with unwarranted harassments from unknown/unidentified men with their sole motive to disposes him from the Schedule - B property such actions took place on various occasions thereafter. Subsequently, the plaintiff while under the constant threat of being forcefully evicted from the Schedule B property by the local miscreants lodged a complaint before the Burtolla Police Station on 28.02.2024 elaborately intimating about the prevailing situation. Photocopy of the complaint dated 28.02.2024 is annexed hereto and marked as "N".

20. On one hand, the defendant nos.1 to 5 were refusing and/or delaying the execution of the deed of conveyance in favour of the plaintiff on one pretext or the other and on the other, the joint owners of the Schedule-A property through the defendant no.8 are surreptitiously proceeding with the completion of the formalities of obtaining all statutory clearances and finalization of the sanctioned plan for constructing the proposed high-rise building at the Schedule-A property. The plaintiff states that in the event the defendant no.8 succeeds in getting all the statutory clearances and obtaining the sanctioned plan in respect of the proposed high-rise multistoried building to be constructed in the Schedule-A property, the plaintiff will suffer further prejudice and loss.”

36. The defendant nos. 3, 4 and 5 in paragraph 9 of the application being G.A. No. 2 of 2024 have made the following statement for revocation of leave under Section 12A of the Commercial Courts Act, 2015:

"9. The request for execution of conveyance made by the plaintiff and the denial thereof being the last cause of action amongst the bundle of facts pleaded in the plaint as constituting the cause of action having arose upon receipt of the letter dated 12th May, 2023 it is apparent the plaintiff have chosen to wait for around ten (10) months to file the instant suit on before this Hon'ble Court on or around 5th March, 2024. It is thus evident from the averments in the plaint that there was no circumstance which necessitated any urgent interim relief to be claimed by the plaintiff in the instant suit. The plaintiff was therefore statutorily obliged to exhaust the remedy of pre-institution mediation in accordance with the manner and procedure as prescribed by the rules in terms of Section 12A of the Commercial Courts Act, 2015."

37. In the said paragraph, the defendant nos. 3, 4 and 5 have not made any averment/statement that the plaintiff after withdrawal of the previous suit has waited for considerable time within which the remedy of mediation could have been exhausted. In the case of National Textile Corporation Limited Vs. Nareshkumar Badrikumar Jagad and Others reported in (2011) 12 SCC 695, the Hon'ble Supreme Court held that:

"12. Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide Trojan & Co. v. Nagappa Chettiar], State of Maharashtra v. Hindustan Construction Co. Ltd. and Kalyan Singh Chouhan v. C.P. Joshi."

38. Considering the above, this Court finds that the defendant nos. 3, 4 and 5 have not raised the said issue in their application but only argued verbally and filed written notes by raising the said issue, thus this Court is of the view that the said issue cannot be decided as the same is not raised in the pleading and the plaintiff did not get an opportunity to deal with the said contention of the defendants.

39. As per the contention of the defendants that cause of action arose on 12th May, 2023 but the plaintiff has filed the suit on 5th March, 2024 after the period of 10 months, thus there is no circumstances which necessitated any urgent interim relief. The plaintiff has initially filed a suit being C.S. No. 231 of 2023 before the Non-Commercial Division and when the plaintiff realized that the suit filed by the plaintiff is commercial in nature, the plaintiff has withdrawn the suit on 24th January, 2024 with the liberty to file afresh on the same cause of action and the plaintiff has filed the present suit.

40. In paragraph 18 of the suit, the plaintiff has made out a case that on first week of February, 2024, the plaintiff was confronted with unwarranted harassments from unknown and unidentified men with the sole motive to disposes the plaintiff from the suit property. It is also stated that such action took place on various occasions and thereafter the plaintiff received constant threat of being forcefully evicted from the suit premises. In paragraph 20 of the plaint also the plaintiff has stated that by delaying the execution of Deed of Conveyance in favour of plaintiff, the defendant no. 8 is proceeding with completion of the formalities of obtaining all statutory clearances and finalization of the sanctioned plan for construction of high-rise building in the suit scheduled property.

41. In the case of Yamini Manohar Vs. T.K.D. Keerthi reported in 2023 SCC OnLine SC 1382, the Hon'ble Supreme Court held that:

"The words 'contemplate any urgent interim relief in Section 12A(1) of the Commercial Courts 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 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 12A of the Commercial Courts Act is not defeated."

42. In the case of Gavril Metal Pvt. Ltd. Vs. Maira Fabricators Pvt. Ltd. reported in 2023 SCC OnLine Cal 2443, the Division Bench of this Court held that:

"16. The legislature, in my opinion, has used the expression "contemplated" to express the intention that an interim relief may be required at the time of filing of the suit or may be required any time the defendant expresses an intention to do some act to defeat the decree to be passed.

17. So, the test, in my opinion, is not whether an urgent interim relief is immediately required but whether the averments in the plaint point to a situation where even before expiry of three months, the plaintiff may have the need to obtain interim relief."

43. In the case of Shristi Infrastructure Development Corporation Limited Vs. Sarga Hotel Private Limited and Another reported in 2024 SCC OnLine Cal 7817, the Hon'ble Division Bench of this Court held that:

"32. Please note the wording of 12A(1). The legislature does not mention "plaint". It uses the word "suit". It employs the word "contemplation". Hence it avoids such words as "averments or statements in the plaint". In other words, the legislature does not say that from the statements or averments in the plaint urgent reliefs obtainable by the plaintiff should be apparent. I would interpret the Section as suggesting that if at the time of presentation of the plaint before the

judge from the averment in the plaint and an affidavit to be filed by the plaintiff it would appear that in the contemplation of the plaintiff a situation for urgent relief might arise in the period when mediation has to be undergone, the court may allow the plaintiff to institute the suit without mediation.

33. On the basis of the declaration that urgent relief is contemplated, the plaintiff should be allowed to present the plaint. The court should not ordinarily interfere with such assertion unless it is shown to be palpably erroneous or mala fide. Once, the plaintiff is allowed to file a suit without pre-litigation mediation the discretion of the court should not be allowed to be interfered with at a later stage. Otherwise the proceedings are likely to become very dilatory. Even after filing of the suit the parties can be referred to mediation, if the facts so warrant."

44. Recently the Hon'ble Division Bench of this Court has passed a judgment in the FMAT No. 3 of 2025 in the case of Asa International India Microfinance Ltd. vs. Northern ARC Capital Ltd. & Anr. wherein the Hon'ble Court held that paragraphs 10 and 11:

"10. In this context, the legislative intent of the phrase "an urgent relief" and the expression "contemplate" are to be understood and applied.

11. Contemplation thus would not mean an instant immediacy but the prejudice and the irreparable loss and injury that the plaintiff is likely to suffer if the plaintiff is made to wait for pre-litigation mediation. The court has to examine whether the facts and circumstances justify a genuine apprehension as opposed to a camouflage of an irreparable injury the plaintiff is likely to suffer."

45. The plaintiff has filed the present suit before this Court with the prayer for urgent interim relief. The plaintiff has filed the suit for Specific performance of Contract. Though the cause of action as mentioned in the plaint arose since the month of December, 2014 till 3rd October, 2023 when the plaintiff has lastly issued notice to the defendants for execution of the conveyance deed. Subsequently, the plaintiff has filed the suit before the Ordinary Original Civil Jurisdiction of this Court but when the plaintiff realized that the nature of the suit is commercial, the plaintiff has withdrawn the suit on 24th January, 2024 with the liberty to file afresh and this suit is filed on 5th March, 2024. In the plaint, the plaintiff has made out a case that in the month of February, 2024 some unknown and unidentified persons have tried to disposes the plaintiff from the suit property and subsequently also threatened the plaintiff being forcibly evict the plaintiff from the suit property and the plaintiff has also made complaint to the police authority. The plaintiff has also made out a case for urgent interim relief on the allegation that the defendant no. 8 is proceeding with the completion of the formalities of obtaining all statutory clearances and finalization of the sanctioned plan for construction of high-rise building at the scheduled property.

46. Considering the above, this Court finds that it is the specific case of the plaintiff that the unknown persons are trying to disposes the plaintiff from the

suit property illegally and also obtaining clearance from authorities for finalization of sanction plan for construction of high-rise building and if the plaintiff will go for pre-institution mediation process, there is every chance that in the mean time, the defendants will dispose the plaintiff from the premises and will start raising construction over the suit property for which the plaintiff will suffer irreparable loss and injury.

47. This Court did not find any reasons to revoke the dispensation of Section 12A of the Commercial Courts Act, 2015 granted to the plaintiff at the time of presentation of plaint.

48. In view of the above, G.A. (Com) No. 2 of 2024 is dismissed.