

2025 LiveLaw (SC) 1027

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SANJAY KUMAR; J., ALOK ARADHE; J.
S.L.P. (C) NO. 2753 OF 2025; OCTOBER 27, 2025

NOVENCO BUILDING AND INDUSTRY A/S

versus

XERO ENERGY ENGINEERING SOLUTIONS PRIVATE LTD. & ANR.

Commercial Courts Act, 2015 – Section 12A – Pre-Institution Mediation and Settlement – Interpretation of the expression ‘contemplates any urgent interim relief’ in the context of Intellectual Property (IP) infringement suits – Held, requirement of pre-institution mediation under Section 12A of the Commercial Courts Act cannot be mechanically applied in cases involving continuing infringement of intellectual property rights, such as trademark violations - Insisting on mediation before filing a suit in such situations would effectively leave the plaintiff without a remedy, allowing the infringer to continue profiting under the cover of procedural formalities - The provision was never intended to produce such an “anomalous result - Scope of “urgency” under Section 12A - when a case involves ongoing infringement, the element of urgency must be assessed in light of the continuing injury and the public interest in preventing deception - Mere delay in filing a suit does not by itself negate the urgency of relief, so long as the infringement is ongoing - The court cannot be unmindful of the public interest element in IP disputes, which involves preventing confusion in the market and protecting consumers from deception, which further imparts a colour of immediacy to the reliefs sought.

Commercial Courts Act, 2015 – Section 12A – Legal Test for rejection of plaint and adjudication of interim relief – Held, the Court is required to look at the plaint, pleadings, and supporting documents to decide whether urgent interim relief is genuinely contemplated - includes looking for the immediacy of the peril, irreparable harm, or where delay would render eventual relief ineffective - The court is not concerned with the merits of the urgent relief; if the relief sought seems to be plausibly urgent from the standpoint of the plaintiff, the requirement under Section 12A can be dispensed with - A proforma or anticipatory prayer for urgent relief used as a device to skip mediation will be ignored and the court can require the parties to comply with Section 12A of the Act - Appeal allowed. [Relied on *Midas Hygiene Industries Private Ltd. & Anr. v. Sudhir Bhatia & Ors.* (2004) 3 SCC 90; Paras 15-27]

For Petitioner(s): Mr. Gaurav Pachnanda, Sr. Adv. Mr. Pankaj Soni, Adv. Mr. Vineet Rohilla, Adv. Ms. Shradha Karol, Adv. Mr. Rohit Rangi, Adv. Mr. Debashish Banerjee, Adv. Mr. Ankush Verma, Adv. Mr. Tanveer Malhotra, Adv. Ms. Vaishali Joshi, Adv. Ms. Gurneet Kaur, Adv. Mr. Udbhau Gady, Adv. Mr. Rohit Lochav, Adv. Mr. Vikrant Narayan Vasudeva, AOR.

For Respondent(s): Mr. Shadan Farasat, Sr. Adv. Mr. Abhishek Babbar, Adv. Mr. Harshit Anand, Adv. Mr. Yash S. Vijay, AOR Mr. Shikhar Aggarwal, Adv.

J U D G M E N T

ALOK ARADHE, J.

Leave granted.

2. The appeal calls for determination of the expression 'contemplates any urgent interim relief' in Section 12A of the Commercial Courts Act, 2015 (hereinafter, referred to as 'the Act') in its application to an action for infringement of intellectual property rights.

3. This appeal is directed against the judgment dated 13.11.2024 in Commercial Appeal No. 1 of 2024 passed by Division Bench of the High Court of Himachal Pradesh, by which it has dismissed the appeal of the appellant and has affirmed the order dated 28.08.2024 in Commercial Suit No. 13 of 2024 by a learned Single Judge, rejecting the plaint of the appellant for non-compliance with Section 12A of the Act.

FACTUAL MATRIX:-

4. Facts giving rise to filing of this appeal can be summarised as under: -

The appellant is a Danish company incorporated under the laws of Denmark. The appellant is engaged in manufacture of highly efficient industrial fans, marketed under the Brand 'Novenco ZerAx'. According to the appellant, the said brand was developed after an investment of approximately 3.66 million euros between 2007 and 2015. The appellant secured several patents and design registrations to secure its innovation in India and abroad.

5. A dealership agreement was executed on 01.09.2017 between the appellant and respondent No.1, Xero Energy Engineering Solutions Pvt. Ltd., Hyderabad (hereinafter, referred to as 'Xero Energy'), for marketing and sale of Novenco ZerAx fans across India. According to the appellant, Xero Energy's Director, in violation of distribution agreement, incorporated respondent No.2, Aeronaut Fans Industry Pvt. Ltd. (hereinafter, referred to as 'Aeronaut Fans'), for manufacture and sale of identical fans under deceptively similar name and appearance. The appellant discovered sometime in July, 2022 that Xero Energy started marketing competing products.

6. The appellant sent multiple communications to Xero Energy on 22.08.2022, 30.08.2022 and 14.10.2022 seeking clarification. However, no explanation was offered by Xero Energy. The appellant on 14.10.2022 terminated the dealership. Thereafter, it sent a cease-and-desist notice dated 23.12.2022 to Aeronaut Fans, who sent replies dated 01.02.2023 and 03.03.2023 to the notice. Aeronaut Fans filed a petition under Section 148A CPC before the Madras High Court and an email was sent on 15.05.2023 by counsel of Aeronaut Fans.

7. The technical expert of the appellant on 06.12.2023 inspected the fans installed by Aeronaut Fans at Cavendish Industries and Hero Moto Corp, Uttarakhand, and submitted his affidavit on 06.02.2024 confirming the infringement by Aeronaut Fans. The appellant thereafter obtained patent and design certificates in March-May, 2024.

8. The appellant on 04.06.2024 filed a commercial suit, namely, COMS No. 13 of 2024, before the High Court alleging infringement of its patent and design by the respondent. The appellant along with the plaint also filed an application under Order XXXIX Rules 1 and 2 seeking an ad interim injunction, and an application under Section 151 of the CPC seeking exemption from pre-institution mediation as mandated under Section 12A of the Act.

9. The respondents filed an application under Order VII Rule 10 of the CPC for return of the plaint and an application under Order VII Rule 11 for rejection of the plaint, *inter alia*, on the ground that no urgency was involved in the matter and noncompliance with Section 12A of the Act was fatal to the suit. The respondents also filed a reply to the application seeking injunction.

VIEWS OF HIGH COURT: -

10. The learned Single Judge of the High Court passed two separate orders on 28.08.2024. By the first order, the learned Single Judge rejected the plea for return of plaint. However, by the second order, the learned Single Judge held that (i) there was a delay of six months between the inspection of fans installed by Aeronaut Fans, in December 2023 and the filing of the suit in June, 2024, (ii) the plea of the appellant about urgency was not substantiated as the appellant had issued cease-and-desist notice as early as December 2022 and had adequate time to approach for mediation, (iii) pre-institution mediation under Section 12A of the Act is mandatory, unless urgent interim relief is sought *bonafide*, (iv) in the absence of genuine urgency, the plaint was liable to be rejected under Order VII Rule 11 of CPC. The learned Single Judge, therefore, allowed the application under Order VII Rule 11 of CPC and rejected the plaint.

11. The appellant preferred an appeal. A Division Bench of the High Court, by an order dated 13.11.2024, agreed with the reasons assigned by the learned Single Judge. The Division Bench, *inter alia*, held that delay between inspection of fans and filing of the commercial suit exhibits patent lack of urgency and exemption from requirement of compliance of the mandate contained in Section 12A of the Act cannot be claimed merely because interim reliefs were sought. It was further held that mere continuous infringement of intellectual property rights could not override the statutory mediation requirements. The Division Bench, however, clarified that the order of rejection of the plaint would not bar the appellant in case it chooses to comply with Section 12A of the Act and subject to the outcome of the mediation proceeding and if the cause of action still survives, it may institute a suit. Accordingly, the Division Bench dismissed the appeal. In the aforesaid factual background, this appeal arises for our consideration.

12. A Bench of this Court, by an order dated 07.02.2025, while entertaining the Special Leave Petition, directed the appellant to move a letter before the mediation centre attached to High Court of Himachal Pradesh, seeking appointment of a mediator and the respondents were directed to participate. It is stated before us that, on 23.06.2025 the mediation between the parties has failed.

SUBMISSIONS: -

13. Learned senior counsel for the appellant submitted that the learned Single Judge and the Division Bench of the High Court erred in not applying the correct test in deciding whether the appellant would be entitled to an interim injunction based on urgency involved in the facts of the case. It is further submitted that it ought to have been appreciated that the urgent interim relief was not sought to bypass the statutory mandate of prelitigation mediation. It is also submitted that the plaint along with the documents have to be read together to find out whether any urgent interim relief is correctly sought. It is contended that mere delay in filing the suit for infringement and injunction against continuing violation of intellectual property rights by itself is not a ground to decline the injunction against an infringer. In support of the aforesaid submissions, reliance has been placed on the decisions of this Court in **Midas Hygiene Industries Private Ltd. & Anr. v. Sudhir Bhatia & Ors.**¹ and **Yamini Manohar v. T.K.D. Keerthi**².

14. On the other hand, learned senior Counsel for the respondents, while inviting the attention of this Court to the order dated 07.02.2025 passed in this appeal submitted that,

¹ (2004) 3 SCC 90

² (2024) 5 SCC 815

it appears that the issue, which according to the court arises for consideration is whether the plaint, which did not contemplate urgent relief, should be rejected or be kept in abeyance. It is submitted that the learned Single Judge as well as the Division Bench have rightly found that the plaint does not make out any need for urgent relief. It is submitted that, in the plaint there is not a single word on the urgency. It is contended that the appellant had issued a cease-and-desist notice on 23.12.2022 and thereafter had filed the suit after a delay of one and half years, in June, 2024. It is pointed out that the suit was filed after four months of the submission of expert opinion. Therefore, there was no urgency to deviate from the mandatory statutory requirement under Section 12A of the Act. It is urged that mere filing of an application for interim relief does not *ipso-facto* indicate urgency and there is no material on record to suggest that appellant's patent is being violated. It is, therefore, submitted that the appeal is liable to be dismissed.

STATUORY PROVISION: -

15. Before dealing with the rival submissions canvassed on either side, we must take note of relevant statutory provision. The Act has been enacted, *inter alia*, with an object for early resolution of commercial disputes so as to create a positive image amongst the investors about our strong and responsive legal system and to facilitate ease of doing business. The Act was amended in the year 2018 by Act No. 28 of 2018. By the aforesaid amending Act, Section 12A was also incorporated with an object to provide for compulsory mediation before initiation of a suit where no urgent interim relief is contemplated.

16. Section 12A of the Act reads as under: -

“12A. 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, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 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).”]

Thus, the aim and object of Section 12A is to ensure that, before a commercial dispute is filed before the court, the alternative means of resolution of the dispute are adopted, so that only the most trying cases come before the courts.

PRECEDENT: -

17. The scope and ambit of Section 12A of the Act which makes pre-institution mediation mandatory for commercial disputes, except where the suit ‘contemplates any urgent interim reliefs’, has been considered in three recent decisions of this Court. In **Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.**³, a two-Judge Bench of this Court dealt with a case where a suit for recovery of money was filed without adherence to Section 12A of the Act. It was held that Section 12A of the Act is mandatory and any suit instituted in violation of the mandate contained in Section 12A of the Act must be visited with rejection of the plaint.

18. In **Yamini Manohar (supra)**, another two-Judge Bench of this Court laid down the criteria to judge whether the plaint contains a prayer for urgent interim relief, by taking into account the subject matter of the suit, the cause of action and the prayer for interim relief. It was further held that the facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff and the prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the Act. The scope and ambit of the words ‘contemplate any urgent interim relief’ in Section 12A of the Act, with reference to the suit, were also considered and it was held that the plaint, documents, and facts should show and indicate the need for urgent interim relief. It was further held that this is the precise and limited exercise that the Commercial Courts will undertake.

19. In **DHANBAD FUELS (P) LTD. v. UOI**⁴, another two-Judge Bench of this Court held that the test under Section 12A is not whether the prayer for urgent interim relief actually comes to be allowed or not, but whether on examination of the nature and the subject-matter of the suit and the cause of action, the prayer for urgent interim relief by the plaintiff could be said to be contemplable when the matter is seen from the standpoint of the plaintiff. It has been further held that the interim relief must not merely be an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12A of the Act.

20. The legal test distilled from the aforesaid decisions for the purposes of rejection of the plaint and for adjudication of interim relief can be culled out as follows:

- (i) Section 12A mandatorily requires pre-institution mediation for commercial suits, non-compliance of which would ordinarily render the plaint institutionally defective.
- (ii) A plaintiff can be exempted from the requirement of Section 12A only when the plaint and the documents attached with it clearly show a real need for urgent interim intervention. A wholesome reading of the plaint and the material annexed to the plaint ought to disclose the need for urgent relief.
- (iii) The court must look at the plaint, pleadings and supporting documents to decide whether urgent interim relief is genuinely contemplated. The court may also look for immediacy of the peril, irreparable harm, risk of losing rights/assets, statutory timelines, perishable subject-matter, or where delay would render eventual relief ineffective.
- (iv) A proforma or anticipatory prayer for urgent relief used as a device to skip mediation will be ignored and the court can require the parties to comply with Section 12A of the Act.
- (v) The court is not concerned with the merits of the urgent relief, but if the relief sought seems to be plausibly urgent from the standpoint of the plaintiff the court can dispense with the requirement under Section 12A of the Act.

³ (2022) 10 SCC 1

⁴ (2025) SCC Online SC 1129

ANALYSIS

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

⁵ Midas Hygiene Industries Private Ltd. & Anr. (supra)

CONCLUSION

26. For the reasons stated above, we hold that (i) In actions alleging continuing infringement of intellectual property rights, urgency must be assessed in the context of the ongoing injury and the public interest in preventing deception, (ii) Mere delay in institution of a suit by itself, does not negate urgency when the infringement is continuing.

27. For the aforementioned reasons, the impugned judgment dated 28.08.2024 of the learned Single Judge in Commercial Suit No. 13 of 2024 and the judgment dated 13.11.2024 of the Division Bench of the High Court in Commercial Appeal No.1 of 2024 are quashed and set aside. The Commercial Suit No. 13 of 2024 is restored to the file of the High Court to be proceeded with on merits in accordance with law.

28. The appeal is allowed.

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