IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **14.09.2022**

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S(Comm. Div.)No.185 of 2022
and
O.A.Nos.554 to 556 of 2022
and
A.No.3780 of 2022

M/s.Micro Labs Limited
Represented by its General Manager - Legal
Mr.Ashok Kumar G
having office at
No.31, Race Course Road,
Bengaluru - 560 001
Karnataka. .. Plaintiff

Vs.

Mr.A.Santhosh
Proprietor
M/s.Life Gain Pharma
Having office at No.34, New No.43,
First Floor, Ayya Maligai,
Choolaimedu High Road,
Choolaimedu, Chenani-600 094
Tamil Nadu. .. Defendant

This Civil Suit is preferred, under Order IV Rule 1 of the Original Side Rules 1994 read with Order VII Rule 1 of CPC and Sections 27, 28, 29, 134 & 135 of the Trade Marks Act, 1999 and Sections 51, 55 and 62

of the Copyright Act, 1957 and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act No.4 of 2016 to

(a) A permanent injunction restraining the defendant, its manufacturers, distributors, stockists, servants, agents, wholesalers, retailers, legal representatives or any other person claiming under it from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations infringing the trademark 'AVAS' of the plaintiff registered under No.963813 in class 5 by use of deceptively similar trademark 'AVASLIP' or any mark identical or similar to plaintiff's registered trademark 'AVAS' in any manner whatsoever;

(b) A permanent injunction restraining the defendant, its manufacturers, distributors, stockists, servants, agents, wholesalers, retailers, legal representatives or any other person claiming under it from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations under the trademark 'AVASLIP' or any other trademark that is identical to and / or deceptively similar to the plaintiff's trademark 'AVAS' and / or use similar packaging as that of the plaintiff's products so as to pass off their medicinal preparations as and for the medicinal preparations of the plaintiff in any manner whatsoever;

(c) A permanent injunction restraining the defendant by themselves, their servants, agents, men, distributors or anyone claiming through them from committing acts of copyright infringement by making

substantial reproduction of the plaintiff's copyright in the artistic work 'AVAS' label by use of deceptively similar colour scheme, get up and layout for their 'AVASLIP' labels or in any manner whatsoever;

(d) The defendant be ordered to pay to the plaintiff a sum of Rs.50,00,000/- as liquidated damages for committing acts of infringement against plaintiff's registered trademark so as to pass off its products as and for the plaintiff's products;

(e) The defendant be ordered and decreed to deliver up for destruction to the plaintiff all the products, preparations, packaging either filled or empty, dyes, blocks, labels, brochures, leaflets, pamphlets, hand bills, hoardings, wall posters, calendars, carry bags, stationery items and such other sales promotional materials bearing and / or containing the impugned trademark 'AVASLIP';

(f) A preliminary decree be passed in favour of the plaintiff directing the defendant to render accounts of profits made by it by use of the identical / deceptively similar trademark 'AVASLIP' or any mark identical / deceptively similar to the trademark of the plaintiff 'AVAS' and a final decree be passed in favour of the plaintiff for the amount of profits found to have been made by the defendants after the latter has rendered accounts;

(g) Directing the defendant to pay to the plaintiff the costs to the suit;

For Plaintiff : Ms.Shamilee Rajkumar

JUDGMENT

Captioned suit has been presented in this Court on 22.08.2022 with prayers *inter alia* for injunction qua a 'registered trademark of the plaintiff being Trademark 'AVAS' ' [hereinafter 'said mark' for the sake of convenience and clarity] bearing registration No.963813 in class 5 i.e., Pharmaceutical and Medicinal Preparations.

2. It is the case of the plaintiff that the defendant is using a deceptively similar trademark i.e., 'AVASLIP' [hereinafter 'alleged offending mark' for the sake of convenience and clarity] for their pharmaceutical products.

3. To be noted, it is also alleged that there is copyright infringement owing to alleged substantial reproduction of the plaintiff's copyright in the artistic work AVAS qua AVASLIP i.e., said mark qua alleged offending mark.

4. Ms.Shamilee Rajkumar, learned counsel for the plaintiff is before this Court.

5. A careful perusal of the plaint averments and plaint documents makes it clear that the plaintiff has issued a Cease and Desist Notice dated 28.04.2022 [plaint document No.14]. A further perusal of this cease and desist notice makes it clear that it has been dispatched by India Post on 29.04.2022. The track consignment report has been downloaded from the official website and filed along with plaint document No.14. This track consignment download demonstrates that the cease and desist notice has been served on the noticee on 30.04.2022 itself.

6. This plaint averments (pleadings) make it clear that nothing happened between 30.04.2022 and 22.08.2022 i.e., the date when the cease and desist notice was served on the noticee (defendant) and the date of presentation of the plaint nearly after four months thereafter.

7. This takes this Court to Section 12-A of 'The Commercial Courts Act, 2015 (4 of 2016)' [hereinafter 'said Act' for the sake of convenience and clarity] which 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, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purpose of pre-institution mediation.

(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).'

8. When the said Act kicked in on and from 23.10.2015, there was no Section 12-A but the same was brought into the Statute book on and from 03.05.2018. After Section 12-A of the said Act kicked in on 03.05.2018, the Central Government in exercise of its powers under sub section (2) of section 12-A made a notification being notification No.S.O.3232(E) dated 03.07.2018 notifying the authorities under the Legal Services Authorities Act, 1987. On the same day, i.e., on 03.07.2018, in exercise of its powers under sub-section (2) of section 21A (rule making power) read with sub-section (1) of section 12-A of said Act, Central Government also made a set of rules captioned 'The Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018' (hereinafter 'said Rules') wherein and whereby elaborate procedure has been laid for adhering to Section 12-A before presentation of plaint / institution of suit. Thereafter a conundrum of sorts erupted as different High Courts took different views as to whether Section 12-A of said Act is mandatory or directory.

9. This question traveled to Hon'ble Supreme Court *inter alia* from a matter in Chandigarh vide ***Patil Automation case law*** [***Patil***

Automation Private Limited and Others vs. Rakheja Engineers Private Limited reported in ***2022 SCC OnLine SC 1028***]. Hon'ble Supreme Court has now put to rest the aforementioned conundrum and made it clear that Section 12-A of said Act is mandatory and it has also been held that the consequence will follow. The reasons have also been elucidatively explained by Hon'ble Supreme Court in paragraph No.58 of ***Patil Automation case law*** which reads as follows:

> ***'58.*** *Since, Section 12A also contemplated the making of Rules to give effect to the scheme of pre-litigation mediation. The Rules were promptly made and published on 03.07.2018. Rule 3 elaborately provides for the manner in which the mediation process is initiated. It contemplates that a party, to a commercial dispute, may make an application to the Authority. This Rule speaks about a party. Section 12A declares that the plaintiff must exhaust the remedy of pre-litigation mediation. What, apparently is required is that the Suit cannot be filed except after the remedy of pre-litigation mediation, contemplated under the Act and the Rules, is attempted and exhausted. What Rule 3(1) provides is the form in which the application is to be made, viz., Form-I, as specified in Schedule-I. The making of the Form can be by online transmission or by post or by hand. The view expressed by the High Court of Madras that the use of the word 'may', detracts from the mandatory flavour of Section*

12A is clearly untenable. Section 12A is part of the parent enactment. Rule 3, being a subordinate legislation, must be interpreted harmoniously, in the first place, with the parent enactment. That apart, on a proper understanding of Rule 3, there is really no conflict between Section 12A and Rule 3. Rule 3 only gives a discretion to the applicant, in regard to the mode of making the application. So understood, we are of the clear view that, if Section 12A is otherwise mandatory, Rule 3(1) can only be understood as providing three different modes for making the application, contemplated in Section 12A(1). As to whether the application must be made, must depend upon, among other things, upon the peremptory nature of the language employed in section 12A(1). Rule 3 further contemplates that the Authority, which again, has been clearly defined as the Authority notified by the Central Government under Section 12A(2), has to issue a notice to the opposite party to appear and to give his consent to participate within the time as provided in Rule 3(2). Should there be no response, a final notice is to be given again in the manner articulated in Rule 3(2). Should there be again no response by the notice remaining unacknowledged or upon there being refusal to participate, the mediation process becomes what is described, a non-starter. The Authority then makes a report in Form-III, which is called a Non-Starter Report. The copy of the Report is served on the applicant and the respondent. There is a provision for accommodating the request of the opposite party appearing and seeking time,

subject to the date being not later than ten days from the date of request of the parties. If, in such a case, there is failure to appear by the opposite party, again a non-starter report in Form-III has to be made. If, on the other hand, where both parties appear, gives consent, the Authority is to assign the matter to a Mediator and also to assign a date. The period of mediation being three months and the possibility of an extension by two months, with the consent of both sides, is the subject matter of Rule 3. The role of the Mediator is carved out in Rule 5 to be one to facilitate the voluntary resolution of the dispute and assist the parties in reaching a settlement. Rule 6 provides for authority with the party to either appear personally or through his duly authorised representative or counsel. The significance of being represented by counsel in pre-litigation mediation, cannot but be underlined. Apart from the fact that the Legislature must be treated as aware, that, both, public interest, as also the interest of the parties, lies in an expeditious disposal of, what is described as, commercial litigation, with a sublime goal of fostering the highest economic interests of the nation, allowing the Counsel to appear before the Mediator is intended to facilitate in arriving at a settlement, which is legally valid and otherwise just. We have noticed that a settlement arrived at in pre-litigation mediation under Section 12A, is to be treated as an award under Section 30(4) of the Arbitration and Conciliation Act. Section 30(4) of the Arbitration and Conciliation Act, 1996, reads as follows:

"30(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute." '

10. Paragraph No.64 of ***Patil Automation case law*** is also of relevance and the same reads as follows:

'64. Under Section 12A, all that is provided is, a cooling period wherein the parties are to be referred for mediation at the hands of skilled Mediators. While on mediation, we may notice the following views expressed by this Court in the judgment reported in Vikram Bakshi v. Sonia Khosla (Dead) by Legal Representatives:

"16. According to us it would have been more appropriate for the parties to at least agree to resort to mediation as provided under Section 89 CPC and make an endeavour to find amicable solution of the dispute, agreeable to both the parties. One of the aims of mediation is to find an early resolution of the dispute. The sooner the dispute is resolved the better for all the parties concerned, in particular, and the society, in general. For parties, dispute not only strains the relationship but also destroys it. And, so far as society is concerned it affects its peace. So what is required is resolution of dispute at the earliest possible opportunity and via such a mechanism where the relationship between individual goes on in a healthy manner. Warren Burger, once said:

"The obligation of the legal profession is ... to serve as healers of human conflict ... we should provide mechanisms that can produce an acceptable result in shortest possible time, with the least possible expense and with a minimum of stress on the participants. That is what justice is all about."

MEDIATION is one such mechanism which has been statutorily brought into place in our justice system. It is one of the methods of alternative dispute resolution and resolves the dispute in a way that is private, fast and economical. It is a process in which a neutral intervenor assists two or more negotiating parties to identify matters of concern, develop a better understanding of their situation, and based upon that improved understanding, develop mutually acceptable proposals to resolve those concerns. It embraces the philosophy of democratic decision-making [Alfin, et al., Mediation Theory & Practice (2nd Edn., 2006) Lexis Nexis].

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19. This Bench is of firm opinion that mediation is a new dimension of access to justice. As it is one of the best forms, if not the best, of conflict resolution. The concept of Justice in mediation is advanced in the oeuvres of Professors Stulberg, Love, Hyman, and Menkel-Meadow (Self-Determination Theorists). Their definition of justice is drawn primarily from the exercise of party self-determination. They are hopeful about the magic that can occur when people open up honestly and empathetically about their needs and fears in uninhibited

private discussion. And, as thinkers, these jurists are optimistic that the magnanimity of the human spirit can conquer structural imbalances and resource constraints.

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19.3. Professor Carrie Menkel-Meadow presents a related point of view in making the case that settlement has a political and ethical economy of its own and writes:

"Justice, it is often claimed, emerges only when lawyers and their clients argue over its meaning, and, in turn, some authoritative figure or body pronounces on its meaning, such as in the canonical cases of the late twentieth century ... For many years now, I have suggested that there are other components to the achievement of justice. Most notably, I refer to the process by which we seek justice (party participation and empowerment, consensus rather than compromise or command) and the particular types of outcomes that might help to achieve it (not binary win-lose solutions, but creative, pie-expanding or even shared solutions)." '

[Emphasis supplied]

11. The clincher is paragraph Nos.74, 75, 76, 77 and 78 of ***Patil Automation case law*** which read as follows:

'74. *Section 12A of the Act provides for mediation. This is a provision, which was inserted as per the Amending Act (Act 28 of 2018) enacted in the year 2018 and it came into*

force w.e.f. 03.05.2018. By the said amendment, in fact, Chapter IIIA was inserted and Section 12A is the sole Section in the said Chapter. A plain reading of Section 12A makes the following position clear:

The Law-giver has declared that if a Suit under the Act does not 'contemplate' any urgent interim relief, then, it cannot be instituted unless the plaintiff seeks pre-litigation mediation. The pre-institution mediation is to be done in the manner, procedure, which is to be prescribed by the Central Government. The pre-litigation mediation is to be completed within a period of three months from the date of the application made by the plaintiff under Sub-Section (1) [See Section 12A sub-Section (3)]. The period of three months can, however, be extended for a period of two months provided there is consent to the same by the parties [See the first proviso to Section 12A sub-Section (3)]. By the second proviso, the Legislature has taken care to provide that the period, during which the parties remained occupied with the pre-litigation mediation, is not to be reckoned for the purpose of computing the period of limitation under the Limitation Act, 1963. As to what would happen, if the parties arrive at the settlement, is provided for in Section 12A sub-Section (4). The settlement is to be reduced into writing and signed by the parties to the dispute and the Mediator. The effectiveness of a settlement arrived at in the course of the pre-institution mediation contemplated in Section 12A, has been dealt with in Section 12A sub-Section (5). Parliament

has accorded the settlement, 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. Spread over five sub-Sections, this standalone Section in Chapter IIIA, no doubt, supported by the Rules, in our view, substantially manifests a definite scheme to effectively deal with the perceived urgent problem of acute clogging of the justice delivery system, which had to be de-congested. Section 12A cannot be perceived as merely intended to reach quicker justice, and what is more, on terms, which are mutually acceptable to the parties concerned. Even, more importantly, it was to produce a vital and significant effect on the very interest of the nation. We have perused the Statement of Objects and Reasons. To attract foreign capital by enhancing its rather low standard in the ease of doing business, it was and is still necessary to showcase an efficient and quick justice delivery system in commercial matters. In fact, India, which was ranked at 142 out of 189 countries, in the Ease of Doing Business Index, in 2015, climbed-up to only 130 in the year 2016. By 2020, India stood at the 63rd position.

***75.** Order VII Rule 11 declares that the plaint can be rejected on 6 grounds. They include failure to disclose the cause of action, and where the suit appears from the statement in the plaint to be barred. We are concerned in these cases with the latter. Order VII Rule 12 provides that when a plaint is rejected, an order to that effect with reasons*

must be recorded. Order VII Rule 13 provides that rejection of the plaint mentioned in Order VII Rule 11 does not by itself preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Order VII deals with various aspects about what is to be pleaded in a plaint, the documents that should accompany and other details. Order IV Rule 1 provides that a suit is instituted by presentation of the plaint to the court or such officer as the court appoints. By virtue of Order IV Rule 1(3), a plaint is to be deemed as duly instituted only when it complies with the requirements under Order VI and Order VII. Order V Rule 1 declares that when a suit has been duly instituted, a summon may be issued to the defendant to answer the claim on a date specified therein. There are other details in the Order with which we are not to be detained. We have referred to these rules to prepare the stage for considering the question as to whether the power under Order VII Rule 11 is to be exercised only on an application by the defendant and the stage at which it can be exercised. In Patasibai v. Ratanlal, one of the specific contentions was that there was no specific objection for rejecting of the plaint taken earlier. In the facts of the case, the Court observed as under:

"13. On the admitted facts appearing from the record itself, learned counsel for the respondent, was unable to show that all or any of these averments in the plaint disclose a cause of action giving rise to a triable issue. In fact, Shri Salve was unable to dispute the inevitable consequence that the plaint

was liable to be rejected under Order VII Rule 11, CPC on these averments. All that Shri Salve contended was that the court did not in fact reject the plaint under Order VII Rule 11, CPC and summons having been issued, the trial must proceed. In our opinion, it makes no difference that the trial court failed to perform its duty and proceeded to issue summons without carefully reading the plaint and the High Court also overlooked this fatal defect. Since the plaint suffers from this fatal defect, the mere issuance of summons by the trial court does not require that the trial should proceed even when no triable issue is shown to arise. Permitting the continuance of such a suit is tantamount to licensing frivolous and vexatious litigation. This cannot be done."

(Emphasis supplied)

***76.** On a consideration of the scheme of the Orders IV, V and VII of the CPC, we arrive at the following conclusions:*

(A) A suit is commenced by presentation of a plaint. The date of the presentation in terms of Section 3(2) of the Limitation Act is the date of presentation for the purpose of the said Act. By virtue of Order IV Rule 1 (3), institution of the plaint, however, is complete only when the plaint is in conformity with the requirement of Order VI and Order VII.

(B) When the court decides the question as to issue of summons under Order V Rule 1, what the court must consider is whether a suit has been duly instituted.

(C) Order VII Rule 11 does not provide that the court is to discharge its duty of rejecting the plaint only on an application. Order VII Rule 11 is, in fact, silent about any such requirement. Since summon is to be issued in a duly instituted suit, in a case where the plaint is barred under Order VII Rule 11(d), the stage begins at that time when the court can reject the plaint under Order VII Rule 11. No doubt it would take a clear case where the court is satisfied. The Court has to hear the plaintiff before it invokes its power besides giving reasons under Order VII Rule 12. In a clear case, where on allegations in the suit, it is found that the suit is barred by any law, as would be the case, where the plaintiff in a suit under the Act does not plead circumstances to take his case out of the requirement of Section 12A, the plaint should be rejected without issuing summons. Undoubtedly, on issuing summons it will be always open to the defendant to make an application as well under Order VII Rule 11. In other words, the power under Order VII Rule 11 is available to the court to be exercised suo motu.(See in this regard, the judgment of this Court in Madiraju Venkata Ramana Raju (supra).

***77.** Another area of debate has been about the distinction between the presentation of a plaint and institution of a suit. Section 3(2) of the Limitation Act, 1963, provides that for the purpose of the Limitation Act, a suit is instituted in the ordinary case, when the plaint is presented to the*

proper Officer. In the case of a pauper, the suit is instituted when his application to leave to sue as a pauper is made. Order IV Rule 1 of the CPC reads as follows:

"Order IV Rule 1. Suit to be commenced by plaint.—(1) Every suit shall be instituted by presenting a plaint in duplicate to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2)."

78. *Sub-Rule (3) of Order IV Rule 1 was inserted by Act 46 of 1999 w.e.f. 01.07.2002. Shri Sharath Chandran has drawn our attention to the Judgment of the High Court of Madras reported in Olympic Cards Limited v. Standard Chartered Bank. In the said case, the question, which arose was, whether there was an abandonment or withdrawal of suit within the meaning of Order XXIII Rule 1 of the CPC, which would operate as a bar to file a fresh suit. In this context, we notice the following discussion:*

"16. Rule (1) of Order 4 of C.P.C. provided for institution of Suits. Rules 3 & 4 of Order 4 contains the statutory prescription that the Plaint must comply with the essential requirements of a valid Plaint and then only the process of filing would culminate in the registration of a Suit. Rule 21 of Civil Rules of Practice contains the basic difference between

presentation and institution. There is no dispute that the date of filing the Plaint would be counted for the purpose of limitation. However, that does not mean that the Suit was validly instituted by filing the Plaint. The Plaint, which does not comply with the Rules contained in Orders 4 & 7, is not a valid Plaint. The Court will initially give a Diary Number indicating the presentation of Suit. In case the Plaint is returned, it would remain as a "returned Plaint" and not a "returned Suit". The act of numbering the Plaint and inclusion in the Register of Suits alone would constitute the institution of Suit. The stages prior to the registration of Suit are all preliminary in nature. The return of Plaint before registration is for the purpose of complying with certain defects pointed out by the Court. The further procedure after admitting of the Plaint is indicated in Rule 9 of Order 7. This provision shows that the Court would issue summons to the parties after admitting the Plaint and registering the Suit. Thereafter only the Defendants are coming on record, exception being their appearance by lodging caveat. Even after admitting the Plaint, the Court can return the Plaint on the ground of jurisdiction under Rule 10 of Order 7 of C.P.C. The fact that the Plaintiff/Petitioner served the Defendant/respondent the copies of Plaint/Petitions before filing the Suit/Petition would not amount to institution of Suit/filing Petition. It is only when the Court admits the Plaint, register it and enter it in the Suit register, it can be said that the Suit is validly instituted.

17. It is, therefore, clear that any abandonment before the registration of Suit would not constitute withdrawal or abandonment of Suit within the meaning of Order 23, Rule 1, C.P.C., so as to operate as a legal bar for a subsequent Suit of the very same nature. It is only the withdrawal or abandonment during the currency of a Legal proceedings would preclude the Plaintiff to file a fresh Suit at a later point of time on the basis of the very same cause of action."

12. In the case on hand, as the suit has been presented nearly four months after the service of cease and desist notice and no steps qua Section 12-A of said Act was taken during this period, this Court is of the considered view that the plaint is liable for rejection owing to non-compliance of Section 12-A of said Act. To be noted, in ***Patil Automation*** case law, Section 12-A of said Act being mandatory is held to be prospective and the cut off is 20.08.2022. In the case on hand, the suit has been presented on 22.08.2022. Therefore, it is directly hit by ***Patil Automation*** principle**.**

13. In the case on hand, there is clear non compliance qua section 12-A. The reason is, the Cease and Desist notice is dated 28.04.2022 and

it was served on defendant on 30.04.2022 itself. Thereafter, the plaintiff had all the time in the world to take recourse to section 12-A but from the plaint averment and plaint documents, it is clear that plaintiff did not move its little finger in this direction. On the contrary, the plaintiff has allowed the matter to go into slumber, ie., a lull. After a lull and after going into slumber without taking any effort to take recourse to section 12-A, plaintiff has casually presented the captioned plaint in this Court on 22.08.2022 nearly four months later. Therefore, there is no doubt in the mind of this Commercial Division that it is a clear case of infraction of section 12-A and if ***Patil Automation*** principle is applied, it calls for rejection of plaint. In this regard, this Court reminds itself that Hon'ble Supreme Court in ***Patil Automation*** has made it clear that such rejection can be done suo motu by the Court (this Commercial Division in this case) without waiting for defendant to take out an application in this regard. This is captured in paragraph No.76 of ***Patil Automation*** case law which has been extracted and reproduced supra elsewhere in this order.

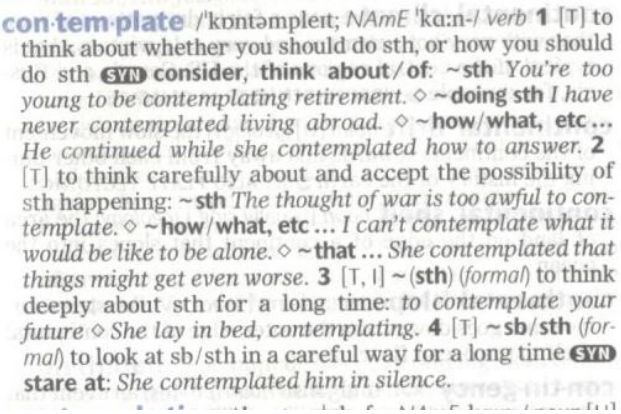
14. This also takes this Commercial Division to the Court Fee that has been paid by the plaintiff. In ***Patil Automation***, Hon'ble Supreme Court addressed itself to this Court fee issue also and has made it clear that plaintiff has to forego the court fee paid and has to come up with a fresh suit.

15. This Commercial Division reminds itself that Hon'ble Supreme Court in ***Patil Automation*** has articulated the distinction between 'presentation of plaint' and 'institution of suit'. Be that as it may, it has also been made clear that ***Patil Automation*** principle is prospective and the cut off date has also been prescribed as 20.08.2022. As 20.08.2022 is the cut off date, in the case on hand, the date of presentation itself is 22.08.2022 and therefore it is not necessary to enter into the nuanced area of distinction between presentation of plaint and institution of suit.

16. In ***Patil Automation***, more particularly paragraph 76 (extracted and reproduced elsewhere in this order / judgment) Hon'ble Supreme Court has made it clear that rejection of plaint can be done suo motu by the court concerned. This means that ultimate prerogative to examine the

term 'contemplate' occurring in sub section (1) of section 12A vests in this Commercial Division. In this view of the matter, it is made clear that merely because the plaintiff is dominus litis, an application claiming that urgent interim relief is required, would not by itself become compliance with section 12A of said Act. This Commercial Division should be convinced that interim relief is 'urgent' and a product of contemplation in every sense of the terms. In the case on hand, i.e., in the facts and circumstances of the instant case, as there has been a complete lull or in other words, as plaintiff has gone into slumber after issuing cease and desist notice dated 28.04.2022 (served on noticee / defendant on 30.04.2022) and thereafter suddenly woke up four months later and presented this plaint on 22.08.2022 (plaint presented on 22.08.2022, suit filed on 29.08.2022). In this view of the matter, this Commercial Division is convinced that though interim order has been sought for vide O.A.Nos.554 to 556 of 2022, it is neither urgent nor a product of contemplation. To be noted, the expression used in sub section (1) of section 12A is not merely 'interim relief', it is 'urgent interim relief'. This takes this Commercial Division to the term 'contemplate' deployed in sub section (1) of section 12A. This term has not been defined in said Act. It

has not been defined in The General Clauses Act, 1897. Therefore, this Commercial Division resorts to dictionary meaning of the term 'contemplate'. Scanned reproduction of 'New 9th Edition Oxford Advanced Learner's Dictionary' is as follows:



con·tem·plate /ˈkɒntəmpleɪt; *NAmE* ˈkɑːn-/ *verb* **1** [T] to think about whether you should do sth, or how you should do sth SYN **consider, think about/of**: **~sth** *You're too young to be contemplating retirement.* ◇ **~doing sth** *I have never contemplated living abroad.* ◇ **~how/what, etc ...** *He continued while she contemplated how to answer.* **2** [T] to think carefully about and accept the possibility of sth happening: **~sth** *The thought of war is too awful to contemplate.* ◇ **~how/what, etc ...** *I can't contemplate what it would be like to be alone.* ◇ **~that ...** *She contemplated that things might get even worse.* **3** [T, I] **~(sth)** *(formal)* to think deeply about sth for a long time: *to contemplate your future* ◇ *She lay in bed, contemplating.* **4** [T] **~sb/sth** *(formal)* to look at sb/sth in a careful way for a long time SYN **stare at**: *She contemplated him in silence.*

17. Therefore, a thought process which is not only detailed but profound too is a imperative ingredient of the term 'contemplate' deployed by Parliament in sub section (1) of section 12A and in the light of the lull / slumber of four months, this Commercial Division is convinced that applications with interim prayers have been filed absent contemplation and therefore, mere filing of applications for interim prayers do not save the plaintiff from the death knell consequence qua infraction of section 12A. To put it in very simple and short terms, deciding whether the interim relief sought for is urgent and a product of

'contemplation' is the prerogative of this Commercial Division when a plaint is tested for rejection qua infraction of section 12A of said Act and in the case on hand, the answer is in the negative.

18. Be that as it may, it is well open to the plaintiff to resort to Section 12-A of said Act and then come to this Commercial Division if so advised and if so desired. In this regard, all the rights and contentions of the plaintiff are preserved.

19. In this view of the matter, the plaint stands rejected albeit preserving all the rights and contentions of the plaintiff in the aforesaid manner. In other words, it is open to the plaintiff to come to this Court again on the same cause of action after complying with the requirements under Section 12-A of said Act. In the captioned Civil Suit plaint is rejected in the aforesaid manner. Consequently, all the applications are also disposed of as closed. There shall be no order as to costs.

14.09.2022

Index : Yes/No
Speaking/Non-speaking order

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M.SUNDAR, J.

mk

C.S(Comm. Div.)No.185 of 2022
and
O.A.Nos.554 to 556 of 2022
and
A.No.3780 of 2022

14.09.2022