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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (LODGING) NO. 10014 OF 2024

Chemco Plast … Applicant/Defendant

In the matter between:
Chemco Plastic Industries Pvt. Ltd. … Plaintiff
vs.
Chemco Plast … Defendant

WITH
INTERIM APPLICATION (LODGING) NO. 23077 OF 2023
IN
COMMERCIAL IP SUIT NO. 80 OF 2024

Mr. Rashmin Khandekar a/w. Mr. Anand Mohan, Ms. Maitri Asher and Mr. Ishaan K. Paranjape, i/b. W. S. Kane & Co. for applicant/defendant in IAL/10014/2024.

Dr. Veerendra Tulzapurkar, Senior Advocate, a/w. Mr. Hiren Kamod, Mr. Pratik Pawar, Mr. Siddhesh Pradhan, Ms. Meher Misri and Mr. Anees Patel, i/b. J. Sagar Associates for plaintiff in COMIP/80/2024, applicant in IAL/23077/2023 and respondent in IAL/10014/2024.

CORAM : MANISH PITALE, J
RESERVED ON : 18th APRIL, 2024
PRONOUNCED ON : 10th JUNE, 2024

JUDGMENT

. By this application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), the defendant seeks rejection of plaint on the short ground of non-compliance of section 12-A of the Commercial Courts Act, 2015, on the part of the plaintiff. It is the case of the defendant that since a perusal of the plaint itself shows that the present suit does not contemplate

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any urgent interim relief, the plaintiff ought to have first exhausted the remedy of pre-institution mediation as per section 12-A of the said Act, before instituting the present suit. According to the defendant, the requirement of section 12-A of the said Act is mandatory in nature and hence, the present application ought to be allowed, thereby rejecting the plaint.

2. The plaintiff has filed the present commercial suit, praying for relief of permanent and mandatory injunction, restraining the defendant from infringing the registered trademark of the plaintiff and also, from passing off its goods as those of the plaintiff. Alongwith the aforesaid prayers, the plaintiff has also prayed for interim reliefs in the plaint as well as in a separate application for grant of interim reliefs.

3. The pleadings in the application for interim reliefs were completed, but since the defendant filed the present application for rejection of plaint, this Court has taken up the said application for consideration, before considering the application for interim reliefs. If the contentions raised on behalf of the defendant are accepted, the plaint itself would be rejected and there would be no question of considering the application for interim reliefs moved on behalf of the plaintiff.

4. In support of the instant application, Mr. Rashmin Khandekar, learned counsel appearing for the applicant/defendant submitted that by accepting the contents of the plaint in its entirety and particularly, paragraph No. 20 pertaining to cause of action, it becomes evident that the plaint in the present case, does not even contemplate urgent interim reliefs and therefore, the plaintiff was mandatorily required to exhaust the remedy of pre-

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institution mediation under Section 12-A of the said Act before instituting the present suit. Since the plaintiff failed to do so, on this short ground itself, the application of the defendant deserves to be allowed and the plaint deserves to be rejected.

5. It was submitted that in the present case, the plaint itself proceeds on the basis that the cause of action for the plaintiff first arose in or around September 2015. It is the case of the plaintiff that on 19.09.2015, it issued a cease and desist notice to the defendant. A further notice dated 12.10.2015 was also issued on behalf of the plaintiff to the defendant for compliance with the earlier cease and desist notice dated 19.09.2015. On 14.10.2015, the defendant issued a response letter denying the allegations made by the plaintiff. According to the learned counsel for the defendant, the plaintiff became aware, as far back as in October 2015, about the stand of the defendant and if the plaintiff really desired urgent interim reliefs, the suit ought to have been filed immediately thereafter. Instead, the plaintiff chose not to take any action in the matter. It was only in May 2018 that the plaintiff chose to file a police complaint against the defendant for alleged infringement of its mark. Even at this stage, the plaintiff chose not to initiate any civil action against the defendant. The criminal proceedings have remained pending and after about 8 years of accrual of cause of action, the plaintiff chose to file the instant suit in August 2023.

6. It is submitted on behalf of the defendant that the plaintiff took a conscious decision and chose the remedy under criminal law and that too in May 2018, despite having issued the cease and desist notice to the defendant as far back as in September 2015. The criminal proceedings remained pending and it is casually stated in the plaint that since the said proceedings

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had not reached any conclusion, as also for the reason that the cause of action in such cases accrues on each event of such infringement and passing off, the plaintiff has chosen to now approach this Court by filing the suit in August 2023.

7. It was submitted that in the face of the pleadings in the plaint itself, it was evident that the plaintiff had no case for urgent interim reliefs. It was submitted that the plaintiff having chosen to institute the present suit almost 8 years after accrual of cause of action, cannot be permitted to bypass the mandatory requirement of section 12-A of the said Act. It was submitted that the judgments of the Supreme Court in the case of *Patil Automation Private Limited and others vs. Rakheja Engineers Private Limited* [**(2022) 10 SCC 1**] and *Yamini Manohar vs. T.K.D. Keerthi* (**2023 SCC OnLine SC 1382**), have categorically laid down that where urgent interim relief in a commercial suit is not contemplated, the requirement of section 12-A of the said Act, for exhausting the remedy of pre-institution mediation, is required to be mandatorily complied with. In the event of failure to do so, the plaint has to be rejected as being barred by law.

8. The learned counsel appearing for the defendant placed reliance on the judgments of the Madras High Court in the case of *K. Varathan vs. Prakash Babu Nakundhi Reddy* [**judgment and order dated 13.10.2022 passed in C.S. (Comm. Div.) No.202 of 2022**] and *A. D. Padmasingh Issac and others vs. Karaikudi Achi Mess and another* [**judgment and order dated 23.11.2022 passed in C.S. (Comm. Div.) No.192 of 2022**] as also judgments of Calcutta High Court in the case of *Srmb Srijan Private Limited vs. B. S. Sponge Pvt. Limited* [**judgment and order dated 02.08.2023 passed in C.S. No.151 of 2023**] and *Indian Explosives Pvt. Ltd. vs. Ideal Detonators Pvt.*

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Ltd. and others (2023 SCC OnLine Cal 1944), to contend that the plaintiff is expected to act with promptitude in matters where it claims "contemplation" of urgent interim reliefs. Delay in approaching the Court is a relevant factor to assess the aspect as to whether the plaintiff can be said to be genuinely contemplating urgent interim reliefs. It was submitted that the plaintiff cannot casually file a suit after a long period of time of accrual of cause of action and to mechanically claim urgent interim reliefs, only because the subject matter of the suit pertains to alleged violation of intellectual property rights. It was submitted that if the plaintiff in the present case is allowed to pursue the present suit alongwith the application for interim reliefs, it would be a mockery of section 12-A of the said Act.

9. It was submitted that the Supreme Court, this Court and various High Courts have frowned upon the tendency of the plaintiffs to bypass the mandatory requirement of section 12-A of the said Act by clever drafting. In the present case, it is submitted that even if the contents of the plaint are accepted as it is alongwith the documents filed therewith, it becomes evident that there cannot be any urgent interim relief contemplated by the plaintiff and therefore, the present application ought to be allowed and the plaint must be rejected. It is submitted that in the facts and circumstances of the present case, the plaintiff is mandatorily required to exhaust the remedy of pre-institution mediation under section 12-A of the said Act, before instituting the suit. On this basis, it is submitted that this Court may allow the present application.

10. On the other hand, Dr. Veerendra Tulzapurkar, learned senior counsel appearing for the plaintiff submitted that the question as to whether urgent interim relief is contemplated, has to be assessed by the Court in the facts of

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the individual case. It was submitted that the mandatory nature of section 12-A of the said Act cannot be denied, in the light of the plain language of the provision as also the law laid down by the Supreme Court in that context. Yet, it was submitted that the question as to whether urgent interim relief is contemplated, has to be assessed from the point of view of the plaintiff and on the basis of the pleadings in the plaint. According to the learned senior counsel appearing for the plaintiff, the contents of the plaint in the present case are sufficient to indicate contemplation of urgent interim reliefs on the part of the plaintiff.

11. It was submitted that if the question of alleged delay on the part of the plaintiff in approaching the Court and the aspect of acquiescence on its part is considered and discussed by this Court, it would amount to entering into the merits of the claim of urgent interim reliefs of the plaintiff, which cannot be gone into by this Court at this stage. The learned senior counsel appearing for the plaintiff submitted that the suit of the plaintiff in the case of **Patil Automation Private Limited and others vs. Rakheja Engineers Private Limited** (*supra*) was essentially a suit for recovery of amounts alongwith interest. It was in the context of the facts of the said case that the Supreme Court deliberated upon the question as to whether the requirement of section 12-A of the said Act was mandatory. It was emphasized that in the present case, the plaintiff is concerned with intellectual property rights and violation of such rights by the defendant. In such cases, apart from the proprietary rights of the plaintiff being violated, the rights of the consumers are also relevant and urgency is not only in the context of the intellectual property rights of the plaintiff being protected, but the public at large also being protected from the confusion likely to be created by the impugned mark of the defendant used on the impugned products. In this context,

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reliance was placed on judgment of the Supreme Court in the case of *Laxmikant Patel vs. Chetanbhai Shah and another* [**(2002) 3 SCC 65**] and judgment of the Delhi High Court in the case of *Bolt Technology OU vs. Ujoy Technology Private Limited and others* (**judgment and order dated 29.08.2022 passed in CS (COMM) No.582 of 2022**).

12. It was further submitted that in the case of **Yamini Manohar vs. T.K.D. Keerthi** (*supra*), the Supreme Court emphasized upon the word "contemplate" used in section 12-A of the said Act. It was laid down that the plaint, documents and facts of the individual case should show and indicate the need for urgent interim relief, emphasizing that this was the precise and limited exercise that the commercial courts are expected to undertake while deciding as to whether a suit can be entertained without exhausting the remedy of pre-institution mediation, as contemplated under section 12-A of the said Act. Much emphasis was placed on the judgment of the Delhi High Court in the case of *Yamini Manohar vs. TKD Keerthi* (**2023 SCC OnLine Del 2653**), which was confirmed by the said judgment of the Supreme Court. Reliance was also placed on the judgment of the Delhi High Court in the case of *Dr. Reddys Laboratories Limited vs. Smart Laboratories Pvt. Ltd.* (**2023 SCC OnLine Del 7276**) to contend that urgent interim reliefs are necessarily contemplated in intellectual property suits, where the goodwill and reputation of the plaintiff is likely to be damaged and a registered mark is claimed to have been infringed.

13. In this context, it was submitted that the alleged delay on the part of the plaintiff in filing the suit, can be of no relevance as any enquiry in that regard would necessarily require the Court to get into the merits of the entitlement of the plaintiff for grant of interim reliefs. It was submitted that

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as per the law laid down by the Supreme Court, *inter alia*, in the case of *Midas Hygiene Industries Pvt. Ltd. vs. Sudhir Bhatia and others* [**(2004) 3 SCC 90**], delay can be no defence for the defendant to resist interim injunction or relief in such cases concerning intellectual property rights of the plaintiff, canvassed on the basis of a registered trademark. It was submitted that therefore, the present application ought to be dismissed, so that the application for interim reliefs, wherein pleadings are already complete, can be taken up for consideration urgently by this Court.

14. In the present case, since rival submissions have been made in the context of section 12-A of the aforesaid Act, it would be appropriate to refer to the said provision. Section 12-A of the said Act 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 purposes 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:

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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).]"

15. The Supreme Court in the case of **Patil Automation Private Limited and others vs. Rakheja Engineers Private Limited** (*supra*) deliberated upon the nature of requirement of pre-institution mediation under section 12-A of the said Act. After taking into consideration the judgments of various High Courts, the Supreme Court held that the purpose of inserting section 12-A in the said Act, by way of amendment in the year 2018, was to compulsorily require parties to explore settlement through mediation, even before instituting the suit in cases where urgent interim relief was not contemplated. The Statement of Objects and Reasons for bringing about the amendment was taken into consideration and it was emphasized that the mechanism of mediation to identify workable solution in commercial matters, was sought to be encouraged, so that the Courts already over-burdened with litigations, were not burdened further. It was held that any reluctance on the part of the Court to give section 12-A of the Act, a mandatory interpretation, would result in defeating the object and intention of the Parliament. Hence, section 12-A of the said Act was held to be mandatory in its operation. But, in the facts and circumstances of the said case, the Supreme Court did not consider it necessary to interpret the word "contemplate" used in section 12-A of the said Act.

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16. In the case of *Deepak Raheja vs. Ganga Taro Vazirani* (**2021 SCC OnLine Bom 3124**), a Division Bench of this Court had also held section 12-A of the said Act to be mandatory and it was held that the Court could not proceed on the basis that since the parties had attempted negotiations by themselves and they had failed, it would be futile to send the parties for mediation. The role of a trained mediator was emphasized upon and it was held that the Courts ought to proceed on the basis that compliance with the mandatory requirement under section 12-A of the said Act, was necessary. It was also recognized in the aforesaid judgment of the Supreme Court in the case of **Patil Automation Private Limited and others vs. Rakheja Engineers Private Limited** (*supra*) that if an application under Order VII Rule 11 of the CPC was to be allowed on the ground that due to non-compliance of section 12-A of the said Act, the plaint was barred by law, after compliance with section 12-A of the said Act, a fresh suit could certainly be instituted.

17. In the judgments of the Madras High Court in the cases of **K. Varathan vs. Prakash Babu Nakundhi Reddy** (*supra*) and **A. D. Padmasingh Issac and others vs. Karaikudi Achi Mess and another** (*supra*), the Court has undertaken a detailed discussion on the true purport of the expression "urgent interim relief" in the context of the word "contemplate" used in section 12-A of the said Act. In the said judgment, reference is made to the dictionary meanings of the words "contemplate", "urgent", "interim" and "relief". Thereupon, the Court has emphasized upon the prayer for interim relief being a product of profound thinking about the possibility of the happening, high standard of showing the requirement of prompt action and also, the injury that would be suffered by the plaintiff unless such urgent interim relief was granted.

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18. The Calcutta High Court, in its judgments in the cases of **Srmb Srijan Private Limited vs. B. S. Sponge Pvt. Limited** (*supra*) and **Indian Explosives Pvt. Ltd. vs. Ideal Detonators Pvt. Ltd. and others** (*supra*), emphasized on the delay on the part of the plaintiff, of more than 5 years since the alleged act of misappropriation of infringing material, as a relevant factor in the context of the plaintiff contemplating urgent interim relief.

19. A perusal of the judgment of the Delhi High Court in the case of **Bolt Technology OU vs. Ujoy Technology Private Limited and others** (*supra*) shows that in the context of alleged infringement of intellectual property rights, it was held that even though the plaintiff had not exhausted the remedy of pre-institution mediation, the plaint could not be thrown out under section 12-A of the said Act. In the said case, it was found that in response to the legal notice issued by the plaintiff, the defendants not only denied the claims of the plaintiff, but also stated that the legal notice was frivolous. On this basis, the Court found that the material on record sufficiently demonstrated that the defendants were, in no way, interested in an amicable resolution of the disputes, the conduct of the defendants not being in the spirit of finding an amicable resolution, let alone mediation. On this basis, it was held that the objection raised on behalf of the defendant by relying upon section 12-A of the said Act, was of no consequence.

20. In the case of **Yamini Manohar vs. TKD Keerthi** (*supra*), the Delhi High Court found that although the plaintiff had issued cease and desist notice on 06.11.2020 and the suit was eventually instituted on 26.03.2022, it could not be said that the plaintiff was not contemplating urgent interim relief. It was emphasized that the question as to whether the suit involves any urgent

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interim relief, has to be determined solely on the basis of the pleadings and the reliefs sought by the plaintiff in the plaint.

21. When the said judgment of the Delhi High Court was challenged before the Supreme Court, it was held by the Supreme Court in the case of **Yamini Manohar vs. TKD Keerthi** (*supra*) that in such cases, the limited exercise to be carried out by the commercial courts is to peruse the plaint, documents and the facts to examine as to whether the suit does "contemplate" urgent interim relief. It was specifically held that the commercial court should examine the nature and subject matter of the suit, the cause of action and the prayer for interim relief. It was held that such a prayer for interim relief should not be a disguise or mask to wriggle out of and get over 12-A of the said Act. The facts and circumstances of the case are required to be considered holistically and from the stand point of the plaintiff. The relevant portion of the said judgment of the Supreme Court reads as follows:

> "9. We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine the nature and the subject matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad-interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order VII, Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order VII, Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely, (i) *prima facie*

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case, (ii) irreparable harm and injury, and (iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.

10. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyze Section 12A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when 'deception' and 'falsity' is apparent or established. The proposition that the commercial courts do have a role, albeit a limited one, should be accepted, otherwise it would be up to the plaintiff alone to decide whether to resort to the procedure under Section 12A of the CC Act. An 'absolute and unfettered right' approach is not justified if the pre-institution mediation under Section 12A of the CC Act is mandatory, as held by this Court in Patil Automation Private Limited (supra). The words 'contemplate any urgent interim relief in Section 12A(1) of the CC 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 the 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 CC Act is not defeated."

22. The Delhi High Court in the case of **Dr. Reddys Laboratories Limited vs. Smart Laboratories Pvt. Ltd.** (*supra*) took into consideration the said judgment of the Supreme Court in the case of **Yamini Manohar vs. TKD Keerthi** (*supra*) and held as follows:

"37. In essence, what the Supreme Court has held in the afore-extracted paras from Yamini Manohar, is that Commercial

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> Courts must be vigilant to ensure that, by artful drafting, or creation of artificial urgency where no such urgency exists, a plaintiff is not allowed to bypass Section 12A of the Commercial Courts Act. The use of the words "deception" and "falsity" are indicative of the intent of the Supreme Court in holding as it does. Subterfuge and stratagem must not be permitted to be used as a resort to escape Section 12A. Ultimately, what matters is, as the Supreme Court has clearly held, "the plaint, documents and facts". The matter has, nonetheless, to be examined from the standpoint of the plaintiff. If a plaintiff, in its plaint, seeks urgent interim relief, the Commercial Court must, therefore, ordinarily defer to the request of the plaintiff. However, if it is seen that, by practising deception or falsehood, or by cleverly worded in the plaint in such a manner as to make it appear that urgent interim relief is necessary, though the plaint, in the light of the facts and the documents which a company or, does not in fact reflect such urgency, the plaintiff would necessarily have to be relegated to exhausting, in the first instance, the remedy of pre-institution mediation."

23. It was further held in the said judgment by the Delhi High Court that the commercial courts cannot blindly or mechanically allow dispensation of requirement of pre-institution mediation, so that artificial grounds of urgency are not created, only to avoid the mandatory requirement of section 12-A of the said Act.

24. Having referred to the judgments relied upon by the rival parties and upon perusal of the above-quoted section 12-A of the said Act, this Court finds that each individual case has to be appreciated on the basis of the pleadings in the plaint and the reliefs sought by the plaintiff. The mandatory nature of the requirement of first exhausting the remedy of pre-institution mediation under section 12-A of the said Act, has been specifically laid down by the Supreme Court in the case of **Patil Automation Private Limited and others vs. Rakheja Engineers Private Limited** (*supra*). The said provision

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itself carves out an exception from compliance with the mandatory requirement of pre-institution mediation in cases where the suit contemplates urgent interim reliefs. It has been emphasized by the Supreme Court in the case of **Yamini Manohar vs. TKD Keerthi** (*supra*) that the question as to whether urgent interim relief is contemplated, has to be analyzed from the point of view of the plaintiff on the basis of the contents of the plaint and the documents filed therewith. If the plaintiff is found to have indulged in deception or falsity by use of clever drafting, only to create an illusion of urgent interim relief, the Court would insist upon compliance with the mandatory requirement of pre-institution mediation under section 12-A of the said Act, by rejecting such a plaint. It is significant that in the above-quoted portion of the judgment of the Supreme Court in the case of **Yamini Manohar vs. TKD Keerthi** (*supra*), it is emphasized that the facts and circumstances of the case have to be considered holistically from the stand point of the plaintiff and further that non-grant of interim relief at ad-interim stage will not justify rejection of the plaint under Order VII Rule 11 of the CPC. This clearly indicates that the Court, at such a stage, while considering as to whether a plaint deserves to be rejected for non-compliance with section 12-A of the said Act, necessarily undertakes a limited exercise to appreciate the plaint, documents and facts in order to reach a conclusion as to whether the plaint or the suit does "contemplate" urgent interim relief. The Court obviously cannot enter into the merits of the matter as to the entitlement of the plaintiff for grant of such interim relief.

25. In this context, this Court has perused the plaint and the documents filed on behalf of the plaintiff. As per settled law, the Court, while exercising power under Order VII Rule 11 of the CPC, is required to peruse only the plaint and documents filed therewith, to reach a conclusion as to whether

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the plaint deserves to be rejected on any of the grounds provided under Order VII Rule 11 of the CPC. In the present case, the defendant claims that the plaint deserves to be rejected as being barred by section 12-A of the said Act. The contention of the defendant can be accepted only if this Court, on a reading of the plaint, concludes that from the stand point of the plaintiff, it cannot be said that the plaintiff does "contemplate" urgent interim reliefs in the face of the pleadings in the plaint.

26. A perusal of the plaint shows that the plaintiff heavily relies upon its registered trademark "CHEMCO". The plaintiff has pleaded and placed on record sufficient documents to show that it has registration for the said mark in classes 11, 16, 20, 21 and 22, claiming user since the year 1973. The pleadings also give details of the goodwill earned by the plaintiff over the years as also the statement of is turnover, etc. The plaintiff claims that due to long, extensive, continuous and uninterrupted use of its registered trademark, the plaintiff has earned reputation in the market, which would be diluted in the absence of interim reliefs.

27. The plaintiff has specifically stated that in September 2015 itself, it first came to know about the impugned marks being used by the defendant on its goods, which allegedly infringe the registered trademark of the plaintiff. Allegations are also made in respect of the tort of passing off against the defendant. The plaintiff has given details as to the manner in which the defendant has been submitting applications to the trademark registry for registration of the impugned marks that allegedly infringe the registered trademark of the plaintiff. The plaintiff has stated in detail how the defendant has abandoned some of the applications and as to the manner in which the plaintiff has opposed some applications moved by the defendant

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before the trademark registry. The plaintiff has stated in detail as to the statements of opposition filed by the plaintiff, as also counter statements on behalf of the defendant and the fact that the opposition proceedings are pending before the trademark registry.

28. The plaintiff has also given details of the criminal complaint filed against the defendant and the manner in which the criminal proceedings have proceeded. Considering the details regarding the proceedings of opposition undertaken by the plaintiff before the trademark registry and the criminal proceedings initiated against the defendant, this Court finds that the plaintiff cannot be said to have indulged in any clever drafting, deception or falsehood to create a false narrative, while praying for interim reliefs. In fact, the aforesaid details have been stated in chronological order from September 2015 onwards, till the filing of the suit in August 2023.

29. A perusal of paragraph No.20 of the plaint would show that the plaintiff has summarized the actions undertaken by it against the defendant from September 2015 onwards till the filing of the suit. The cease and desist notice was issued on 19.09.2015, with a follow-up notice on 12.10.2015, to which the defendant gave its response on 14.10.2015. In the said response dated 14.10.2015, the defendant vehemently denied the claims of the plaintiff and indicated that the defendant intended to continue using the impugned marks, also threatening that the defendant would undertake trademark invalidation proceedings against the plaintiff. Thereafter, the plaintiff chose to oppose the applications filed by the defendant for registration of its impugned mark. The pleadings show that some of the applications were abandoned by the defendant, while in one such application, opposition proceedings initiated by the plaintiff are still pending

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before the trademark registry.

30. The plaintiff has also given details of the manner in which criminal complaints have been filed against the defendant and that such proceedings are also pending.

31. It is also an admitted position that the present suit eventually came to be filed in August 2023. In the plaint as well as the application for interim relief, the plaintiff has indeed pleaded as to the dilution of its mark and the loss it is suffering due to the impugned marks being used by the defendant. There can be no doubt about the fact that in cases pertaining to intellectual property rights, the cause of action arises on each occasion that the impugned mark is used by the defendant. In this context, much emphasis is placed on behalf of the defendant about the delay on the part of the plaintiff in approaching this Court. It is to be appreciated that the question of delay and the related question of alleged acquiescence on the part of the plaintiff, are matters concerning the merits of the grant or refusal of interim reliefs to the plaintiff. At this stage, this Court is not expected to and shall not enter into the said enquiry. The limited question is, as to whether on the basis of the pleadings in the plaint, this Court can reach a conclusion that the plaintiff does indeed contemplate urgent interim relief.

32. This Court is of the opinion that the aforesaid aspect of contemplation of urgent interim reliefs by the plaintiff has to be holistically examined from the stand point of the plaintiff on the basis of the pleadings in the plaint. In the present case, it cannot be said that the plaintiff has indulged in clever drafting or falsity or deception, for the reason that the plaintiff has clearly stated the chronology of events from September 2015 onwards, as also the

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fact that the impugned trademark of the defendant and impugned goods first came to the knowledge of the plaintiff in September 2015. There are pleadings on record to show as to what steps the plaintiff took after issuing cease and desist notice and also after receiving the response of the defendant in October 2015. It was found that applications for registration of the impugned marks of the defendant were abandoned and in the context of one such application filed by the defendant on 12.01.2019, opposition proceedings have been undertaken, wherein the trademark registry is considering the rival stands. It is also placed on record as to the manner in which the criminal complaint was initiated by the plaintiff and the status of the said proceeding. It cannot be said in the facts and circumstances of the present case that the plaintiff has suppressed any fact from this Court or that it has indulged in deception or falsity while claiming interim relief.

33. This Court is of the opinion that the fact that more than 8 years elapsed between September 2015 to August 2023, cannot be a ground to *ipso facto* conclude that the plaintiff cannot be said to contemplate urgent interim reliefs in the facts and circumstances of the present case. The plaintiff is claiming interim reliefs on the basis of its registered trademark. It has placed on record facts and data pertaining to its reputation and goodwill earned over a long period of time. There is substance in the contention raised on behalf of the plaintiff that the contemplation of urgent interim relief has to be seen in the context of the subject matter of the suit, which pertains to intellectual property rights. The question of delay and its effect on entitlement of interim relief to the plaintiff, cannot be relevant for the limited enquiry of finding as to whether on the basis of the material on record, the plaintiff can indeed contemplate urgent interim relief.

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34. In the case of **Yamini Manohar vs. TKD Keerthi** (*supra*), the Delhi High Court held in favour of the plaintiff despite the fact that the cease and desist notice was issued by the plaintiff on 06.11.2020 and the suit was eventually filed on 26.03.2022. The Supreme Court upheld the judgment of the Delhi High Court and in that context, specifically held that the Court is expected to conduct a limited exercise in such cases and that the contemplation of urgent interim relief has to be considered holistically from the stand point of the plaintiff, further holding that the plaint cannot be rejected under Order VII Rule 11 of the CPC, even if the interim relief is denied on merits post-arguments on examination of the three principles of *prima facie* case, irreparable harm and injury and balance of convenience. Thus, the time gap between the issuance of cease and desist notice and eventual filing of the suit, in itself, cannot lead to a conclusion that the plaintiff cannot contemplate urgent interim relief. The judgment of the Calcutta High Court in the case of **Indian Explosives Pvt. Ltd. vs. Ideal Detonators Pvt. Ltd. and others** (*supra*) can be said to have been rendered in the facts of the said case as it pertained to a suit filed by a company against its employees for alleged infringement of copyrights. In any case, the said judgment does not refer to the position of law clarified by the Supreme Court in the case of **Yamini Manohar vs. TKD Keerthi** (*supra*).

35. The judgment of the Madras High Court deliberated upon the meaning of the individual words “contemplate”, “urgent”, “interim” and “relief” used in section 12-A of the said Act. Even if the meanings of the said words discussed in the said judgments are taken into consideration and applied to the facts of the present case, this Court finds that the defendant is not justified in claiming that the plaintiff cannot be said to be contemplating urgent interim reliefs and that it must necessarily exhaust the remedy of pre-

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institution mediation.

36. The judgment of the Delhi High Court in the case of **Bolt Technology OU vs. Ujoy Technology Private Limited and others** (*supra*) has taken into consideration the fact that the stand of the defendant and its approach in the said case abundantly made it clear that the defendants themselves had refuted any possibility of amicable resolution through mediation and that in any case, the plaintiff had indeed contemplated urgent interim relief in the said case.

37. In the present case, the plaintiff has given details of the manner in which the defendant has been refuting the rights of the plaintiff, despite registered trademarks in favour of the plaintiff and in that context, this Court finds that the plaintiff has indeed contemplated urgent interim relief while filing the present suit.

38. There is substance in the contention raised on behalf of the plaintiff that in such cases concerning intellectual property rights, not only are the proprietary rights of the plaintiff of concern to the Court, but interests of consumers in the products in question are also relevant. Consumers are likely to be duped if marks are misused and therefore, while considering such interim reliefs, the Court is not merely protecting the statutory and common law rights of the plaintiff, but the Court is also protecting the interests of the consumers. As to whether the plaintiff in the facts of the present case, will be able to succeed on the touchstone of the *prima facie* case, irreparable harm and injury and balance of convenience, is a different matter because at this stage, while conducting the aforesaid limited exercise, this Court is not expected to enter into the merits of the matter.

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39. In any case, this Court finds that on the basis of the pleadings in the plaint, the documents filed therewith, as also on the basis of the pleadings in the application for interim reliefs, the plaintiff has indeed made out enough grounds to demonstrate that it does contemplate urgent interim reliefs, thereby showing that the plaint in the present case cannot be rejected as being barred by section 12-A of the aforesaid Act.

40. In view of the above, the contentions raised on behalf of the defendants are rejected. Accordingly, the application filed by the defendant under Order VII Rule 11 of CPC, is dismissed.

41. The application for interim reliefs i.e. Interim Application (Lodging) No.23077 of 2023 shall now be taken up for consideration after two weeks.

(MANISH PITALE, J)

Priya Kambli

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