

Dated: 07.06.2028

1. Heard, the learned counsel for Plaintiff. Perused the averments in the plaint and documents.

2. A petition is filed by the petitioner/plaintiff seeking exemption from approaching the pre-institution mediation under s.12A of the Commercial Courts Act, 2015. Heard the petitioner counsel and perused the materials on record.

3. Though there is no necessity for the petitioner/plaintiff to file an application seeking exemption, since an application is filed along with the suit, the said is taken up for hearing and for adjudication on merits.

4. It is the case of the petitioner/plaintiff that the present suit is filed by the petitioner/plaintiff based on a tripartite agreement dated 30.09.2019 among the plaintiff and the defendants 1 and 2. According to the plaintiff, the 1st defendant is the owner of the brand name NICOLS “Black & Gold French Brandy VSOP”. The said brand has presence in the State of Karnataka, Andhra Pradesh,

Puducherry and in various states except Tamil Nadu. The plaintiff conveyed his desire to act as a franchisee and also promised to liaise with the government authorities for completion of label registration and label approval. The plaintiff firm was also incharge of the marketing and promotion of the brand. As per the tripartite agreement, the franchisee agreed to permit the 2nd defendant to use the trademark and brand name exclusively for the State of Tamil Nadu. All the three parties acted as per the tripartite agreement.

5. The original letter of exchange provided that the payment should be made from the plaintiff firm to the 1st defendant on supply of the premium brandy mixture. However, since the said modality of payment did not conform to the statutory rules and regulations. Hence, a change of modality was suggested and it was agreed that the 2nd defendant would purchase the premium brandy mixture as per requirement on agreed rates. It was further agreed that the 2nd defendant shall make payments to the 1st defendant. In this regard a

..3..

supplemental agreement was entered into on 03.11.2020. It is the case of the plaintiff that taking advantage of certain subsequent events, the 1st defendant terminated the contract citing breach of terms of the agreement by way of email dated 28.02.2023. The plaintiff would state that the termination of the agreement was without any basis and in clear breach of the terms of the agreement.

6. The learned counsel for the plaintiff would submit that it is now learnt that the 1st defendant has entered into fresh franchise agreement with a third party and also applied for fresh permit and brand registration. Hence, it is stated that there is a requirement of urgent interim relief. It is further stated that the attempts of the plaintiff to settle the matter amicably ended in a failure and therefore, the chances of settlement through mediation is also very slim. Interim applications have been filed seeking an injunction against the 1st defendant to restrain him from processing licence for the brand name by adding or removing any

..4..

words.

7. The detailed submissions of the learned counsel for the plaintiff relating to facts have been considered and the records are perused. The learned counsel for the plaintiff would also rely upon the decision in Yamini Manohar v. T.K.D. Keethi reported in 2023 LiveLaw (SC) 906 and the decision of the Hon'ble High Court of Madras in Shahi Exports Ltd. v. Gold Star Line Limited and others dated 09.08.2021 in A. No. 35 of 2021 in C.S. No. 669 of 2019 to support his contentions. The said decisions are also taken into consideration.

8. The remit of this court in the present petition is only to decide whether the plaint and the interim application actually disclose a need for any urgent relief as claimed by the plaintiff or whether the same is only a camouflage or disguise to bypass the statutory mandate of pre-litigation. In this regard, the observations of the Hon'ble Supreme Court in the case of Yamini Manohar v. T.K.D. Keethi reported in 2023 LiveLaw (SC) 906 is relevant and the observations are extracted as follows for ready

reference.

“33. This Court also finds it difficult to accept that a commercial court is required to determine whether the urgent interim reliefs ought to have been claimed in a suit for determining whether the same is hit by the bar of Section 12A(1) of the Commercial Courts Act, 2015. The question whether a plaintiff desires any urgent relief is to be decided solely by the plaintiff while instituting a suit. The court may or may not accede to such a request for an urgent interim relief. But that it not relevant to determine whether the plaintiff was required to exhaust the remedy of pre-institution mediation. The question whether a suit involves any urgent interim relief is not contingent on whether the court accedes to the plaintiff's request for interim relief.

34. The use of the words "contemplate any urgent interim relief" as used in Section 12(1) of the Commercial Courts Act, 2015 are used to qualify the category of a suit. This is determined solely on the frame of the plaint and the relief sought. The plaintiff is the sole determinant of the

pleadings in the suit and the relief sought.

35. This Court is of the view that the question whether a suit involves any urgent interim relief is to be determined solely on the basis of the pleadings and the relief(s) sought by the plaintiff. If a plaintiff seeks any urgent interim relief, the suit cannot be dismissed on the ground that the plaintiff has not exhausted the pre-institution remedy of mediation as contemplated under Section 12A(1) of the Commercial Courts Act, 2015.

7. 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 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.

8. 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."

9. A perusal of the above observations would show that the right of the plaintiff to file a suit along with an urgent interim application and to seek exemption from the pre-institution mediation is not an absolute right. In the present case, it is the case of the plaintiff that the tripartite agreement was terminated by the 1st defendant unilaterally on 26.04.2023. It is to be

noted that the legal notice for the claim was given by the plaintiff on 14.09.2023 and the reply was given on 12.10.2023. While so, the present suit was filed on 29.03.2024. The suit is filed based on the tripartite agreement and the termination of the said agreement by the 1st defendant. In the present case, it is relevant to note that the plaintiff has not raised any claim for damages. The suit is filed for a declaration that the termination letter dated 26.04.2023 is void and non-est in law. Further reliefs for permanent injunction is also prayed for. Though the entire cause of action took place in 2023, the suit was chosen to be filed only in 2024. Though it is stated that the 1st defendant is attempting to enter into a contract, the said averments are vague and bereft of material particulars and as a result do not prima facie disclose any immediate urgency. While so, there is no further material to show the immediate necessity for an urgent relief as claimed for and therefore, the contentions regarding the need for an urgent interim relief only appears to be a camouflage or a guise to bypass the

statutory mandate of s.12A of the Commercial Courts Act, 2015. Further, it is relevant to note that the contention that the parties already tried to settle the issue in vain or that there was a slim possibility of settlement cannot be a ground to bypass the statutory mandate.

10. For the foregoing reasons, this Court finds that the petitioner/plaintiff is not entitled to seek exemption from following the statutory mandate under S.12A of the Commercial Courts Act, 2015. Since the plaint is unnumbered, the plaint is ordered to be returned for compliance of s.12A of the Commercial Courts Act, 2015.

**District Judge,
Commercial Court,
Egmore, Chennai - 08.**