

**COMMERCIAL COURT, EGMORE, CHENNAI - 08.**

**Present : Tmt. Deepthi Arivunithi, M.L.,  
District Judge**

**Monday, the 10<sup>th</sup> day of June 2024.**

**C.O.S. S.R. No. 30/2024**

**M/s. Worldtron Logistics International Private Limited,**  
4<sup>th</sup> Floor, Corporation Door No. 190,  
Old 758A, Flat No. 47,  
Mount Chambers, Anna Salai,  
Chennai - 600 002.  
Rep. by its General Manager,  
Mrs. C. Sargunam,

**... Plaintiff**

**-Vs.-**

**M/s. Nirvana Hammocks Private Limited,**  
No. 142, Mambakkam Main Road,  
Vengai Vasal, Medavakkam,  
Kanchipuram,  
Tamil Nadu - 600 100.  
Rep. by its Director,

**... Defendant**

**Counsel for plaintiff:** M/s. S. Vasudevan, K. Krishnaswamy, R. Vetrivel,  
M. Deeptha Devi, L. Sai Prashanth

**ORDER, DATED: 10.06.2024**

1. The present suit is filed by the plaintiff for recovery of a sum of Rs.28,25,668.92 and for future interests and costs against the sole defendant. The suit was filed without compliance of s.12A of the Commercial Courts Act, 2015. Due to non-compliance of the mandatory provision, the present suit was taken up for hearing for the purpose of determining whether the claim for urgent interim relief by the plaintiff is justified or not.

2. Heard the learned counsel for the plaintiff. The learned counsel for the plaintiff would primarily contend that the plaintiff being the dominus litus, he is the person who has to determine whether there is a necessity for urgent interim relief or not. It is further contended that since the present case is filed along with an interim application seeking urgent relief, the exemption ought to be granted under s.12A of the Commercial Courts Act, 2015. To buttress his contention, the learned counsel for the plaintiff would rely upon the decisions 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 A. No. 6381 of 2023 in C.S. (Comm. Div.) No. 227 of 2023 dated 02.01.2024.

3. The short facts necessary for the purpose of this order is set out as follows. The plaintiff is a freight forwarding agent providing services of transport of cargo from any place in India to all over the world and also from anywhere in the world to India. The defendant approached the plaintiff to avail the services of the plaintiff in freight forwarding and customs clearance of the defendant's cargo containing hammocks as and when the defendant imports the same into india. The plaintiff was appointed as the freight forwarding agent on a shipment to shipment basis. The quotations for the each shipment was given through e-mail and was confirmed by the defendant by e-mail. On acceptance, the plaintiff rendered its services. According to the plaintiff, after having availed its services, the defendant has failed to make payments towards 20 invoices dated between 21.10.2021 and 03.02.2022. In respect of 14 invoices only part payments were made. Thus, a total of Rs.20,29,007.42 remained due from the defendant. In view of this issue, the plaintiff decided to hold the last container in March 2022 after which the defendant chose not to engage the services of the plaintiff.

4. Though the plaintiff made requests for payment from March to July 2022, the payment was not made by the defendant. In this regard a legal notice was sent on 16.08.2022 and a reply dated 16.08.2022 was given agreeing to pay the amount but

imposing a condition that the container detention charges must be waived. The parties tried to resolve the issue by holding mediation talks between them on 25.07.2022 and 20.08.2022. However, it was not fruitful. A notice was demand under the Insolvency and Bankruptcy Code, 2016 was also sent and a reply was given on 03.01.2023 raising untenable grounds. Since the defendant agreed to resolve the issue by way of discussion, a meeting was held on 28.03.2023 which was not fruitful. On these grounds, the suit was filed for recovery of the money claim.

5. Though the learned counsel for the plaintiff seeks exemption under s.12A of the Commercial Courts Act, 2015, in para 26 an attempt is made to state that there was a pre-litigation mediation and compliance of s.12A of the Commercial Courts Act, 2015. It is relevant to note that even as per the averments, the discussions were held between the parties and not before the mediator as contemplated under s.12A of the Commercial Courts Act, 2015. Therefore, from the averments itself, it is apparent that the plaintiff never approached a mediator under the act or the rules framed thereunder.

6. Now, it has to be seen whether the plaintiff is justified in bypassing the procedure contemplated under s.12A of the Commercial Courts Act, 2015. In this regard, the learned counsel for the plaintiff has relied on the decision of the Hon'ble Supreme Court in the case of Yamini Manohar v. T K.D. Keethi reported in 2023 LiveLaw (SC) 906 and the observations relied upon 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.”*

7. A perusal of the above observations no doubt shows that the plaintiff is the dominus litus of the suit and therefore, the best person to determine the urgency of the case. However, this court also has the duty to check and ensure that the attempt is not one to defeat the object/intent behind the enactment of s.12A of the Commercial Courts Act, 2015. It is also to be seen whether the plaint, documents and facts show and indicate the need for an urgent interim relief.

8. Having the above principles in mind, this Court has carefully gone through the averments in the plaint. A perusal of the plaint would show that the last exchange of notice between the parties was on 03.01.2023 and 28.03.2023. Even according to the plaintiff, the last meeting held between the parties was on 28.03.2023. While so, the plaint was filed on 04.11.2023. It is also relevant to observe that there nothing in the plaint to show that there is any urgency due to which the s.12A of the Commercial Courts Act, 2015 is sought to be bypassed. Even in the application filed for attachment before judgment it is only mentioned that the defendant is fast secreting its assets. The said averment is vague and bereft of material particulars. While taking note of this averment, this court is conscious of the fact that the averments ought not to be viewed in a manner as to whether the grant or otherwise of the interim relief is justified or not. The averment is being taken into consideration only to see whether there is any urgency that is disclosed in the plaint or the petition such as to contemplate an urgent interim relief. In the absence of any other material to show that an urgent interim relief was contemplated, 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, which cannot be permitted as per the decision of the Hon'ble Supreme Court in the case of Yamini Manohar v. T K.D. Keethi reported in 2023 LiveLaw (SC) 906 and Patil Automation Private Limited v. Rakheja Engineers Private Limited reported in 2022 SCC Online SC 1028. 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.

9. For the foregoing reasons, this Tribunal 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.

Dictated to Steno-typist, typed by him, corrected and pronounced by me in the open Court this the 10<sup>th</sup> day of June 2024.

**District Judge,  
Commercial Court,  
Egmore, Chennai - 600 008.**

Draft/Fair/ Order of

**C.O.S. S.R.No.**

**30/2024**

**Dated: 10.06.2024**

Commercial Court,

Egmore,

Chennai - 08.