

IN THE PRINCIPAL COMMERCIAL COURT AT EGMORE, CHENNAI.

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

Friday, the 20th day of September, 2024.

**I.A. No. 02/2024
in
C.O.S. S.R. No. 609/2024**

P. Cheran,
S/o. Pandian,
Aged about 60 years,
Residing at 119, 3A,
3rd Floor, KG Retreat Apartments,
G.N. Chetty Road,
T. Nagar, Chennai 600 017.

... Petitioner / Plaintiff

-Vs.-

1. GOS Entertainment Private Limited,
Represented by its Director,
10/1A, Rajathi Apartement,
South Boag Road,
T. Nagar, Chennai - 600 017.

2. Novi Digital Entertainment Private Limited,
Represented by its Director,
Star House Urmi Estate,
95, Ganapatrao Kadam Marg,
Lower Parel West, Mumbai,
Maharashtra 400 013.

... Respondents / Defendants

**Counsel for Plaintiff: M/s. S. Elambharathi, A. Senthil Nathan, K. Sunitha, and
K. Raveendran**

O R D E R

Petition filed under s.12A of the Commercial Courts Act, 2015 seeking exemption from the mandatory pre-institution mediation filed by the petitioner/plaintiff.

2. Heard the plaintiff counsel and perused the materials on record.

3. The present suit is filed by the petitioner/plaintiff seeking recovery of a sum of Rs.39,00,000/- towards agreed consideration for the service rendered by the plaintiff as an Artist for a Tamil Web series titled “Goli Soda Rising’ and for a permanent injunction restraining the defendants from releasing of the 4th episode and further episodes of the Tamil Web series and for costs.

4. The learned counsel for the plaintiff would place heavy reliance upon the Artist Agreement, which is the contract entered into between the plaintiff and the defendants, to contend that the defendants are due and liable to pay the suit claim amount. In this regard, the attention of this court is directed to clause 2.6 of the said agreement, which reads as follows.

“2.6. The company shall not be obligated to use the services of Artist or the works or to complete production or exhibit or otherwise exploit any of the Audio Visual Content in which the services may have been provided. The company shall fully discharge its obligations by payment to Artist of the fees as due and payable under the terms of this Agreement.”

5. Initially, upon placing reliance on the said clause, it was contended that the Artist, in this case, the Plaintiff had rights over the series and therefore, the series cannot be released without discharging the full payment as per the said clause. However, a bare perusal of the above clause would show that there is no right conferred on the artist in respect of the web series. While observing so, it is also to be noted that the company has committed itself to discharge full payment as per the terms of this agreement. The present suit is therefore, laid upon the written contract between the parties, whereby, the defendants agreed to make certain payments to the plaintiff for offering his services. According to the plaintiff, a sum of Rs.39,00,000/- remains due and outstanding.

6. The only point that arises for consideration in the present case is whether any urgent interim relief is contemplated in the present suit to entitle the plaintiff to by pass the pre-institution mediation, which is mandatory as per s.12A of the Commercial Courts Act, 2015. The petitioner/plaintiff has contended that the web series was launched on 13.09.2024 and three episodes were already released. If

further episodes were released then the amount due to the petitioner/plaintiff will be unable to be recovered and therefore that there is an imminent urgency in the present suit. According to the petitioner/plaintiff, the other episodes are likely to be released any moment and therefore, unless the interest of the petitioner/plaintiff is safeguarded, he would be unable to recover the dues.

7. In this regard, this court finds it relevant to advert to 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.”

8. 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.

9. With regard to the meaning to be assigned to the expression ‘contemplation of urgent interim relief’, this court finds it relevant to advert to the decision of the Hon’ble High Court of Madras in the case of *K. Varathan v. Mr. Prakash Babu*

Nakundhi Reddy in C.S. (Comm) No. 202 of 2022 dated 13.10.2022, wherein it was laid down as follows.

“16. This Commercial Division having explained the expression 'contemplation of urgent interim relief' deems it appropriate to make an adumbration of parameters / tests and they are as follows:

(a)whether the prayer for interim relief is a product of profound thinking carefully about the possibility of the happening;

(b)whether the matter demands prompt action and that promptitude is of such nature that exhausting the remedy of pre institution mediation without any intervention in the mean time can lead to a irreversible situation, i.e., a situation where one cannot put the clock back;

(c)where the urgency is of plaintiff's own doing, if that be so the plaintiff cannot take advantage of its own doing;

(d)high standard is required to establish the requirement of this prompt action (urgency);

(e)plaintiff should be on fair ground in urging urgency and an interim measure;

(f)actual or apprehended wrong or injury should be so imminent that the plaintiff should be able to satisfy the court that plaintiff should not be made to stand and suffer the same.

17. It is made clear that the above adumbration is illustrative and not exhaustive. It is also made clear that while applying the above tests / parameters, it should be borne in mind that it is not the case of testing whether the plaintiff is entitled to interim relief. The question is whether the plaintiff's prayer for interim relief is urgent as elucidated supra and as to whether it is a product of contemplation as explained supra. This means that there can be cases where a Commercial Division can hold that there are enough reasons for contemplation of urgent interim relief but may either order short notice (without giving interim relief before notice to other side) or put in place some other interim measure (such as status quo) without acceding to the exact interim relief that has been sought for by the plaintiff.”

10. The principles laid down would show that it is the duty of this court to ascertain if any urgent interim relief is contemplated and the same would not be dependent on whether or not this court exercises its discretion to grant the interim relief sought for.

11. Now, coming to the facts of the present case it is to be noted that the Artist Agreement was entered into between the parties on 22.09.2022. There is no time period stipulated in the agreement. The plaintiff has filed a set of e-mails showing communications between the parties. Upon perusal, it is seen that the issue of balance payments was conveyed by the petitioner/plaintiff vide his e-mail dated 28.02.2023. Thereafter, a mail dated 24.05.2024 was addressed to the plaintiff seeking further dates for completing the shooting. The legal notice calling upon the defendants to make payments was sent by the plaintiff on 04.09.2024. While so, the present suit is filed on 12.09.2024. During the course of arguments, the learned counsel would contend that an interim reply was sent by the defendants where the transaction was not denied by the defendants. However, the said document is not part of the court records and therefore, the same cannot be taken into consideration.

12. A perusal of the documents attached to the plaint would show that there was issue regarding payments since 2023. While so, the plaintiff has not taken any immediate action in that regard. Further, it is apparent that all the e-mail communications exchanged between the parties are not filed. When the issue of delay was put forth to the learned counsel for the plaintiff, he would submit that the delay was only due to assurances made by the defendants that payments would be released. On perusal of records, it is seen that there is no document to show that the defendant made periodical assurances to release payments as stated by the plaintiff.

13. On an overall perusal of the records, this court finds that the plaintiff has delayed approaching the court and therefore, he cannot take advantage of his own wrong. Now, therefore, merely because a few episodes of the series are released on 13.09.2024 and are likely to be released any moment cannot be considered as contemplation of urgent interim relief. As per the dictum laid down by the Hon'ble High Court of Madras, since the alleged urgency was caused due to the plaintiff's own doing, the plaintiff cannot be permitted to take advantage of the same. Thus, this court finds that the case of the petitioner/plaintiff fails to show any genuine cause for urgent interim relief, which is sufficient to by pass the rigours of s.12A of the Commercial Courts Act, 2015.

14. The learned counsel for the plaintiff has brought to notice of this court a decision of the Hon'ble High Court of Madras in respect of another similar case relating to the same web series where an order dated in O.A. No. 643 of 2024 dated 10.09.2024 was passed granting an interim relief to the petitioners therein. In view of the said contention, this court has carefully perused the order copy produced. Upon perusal it is seen that the facts of the said case stand on a completely different footing and therefore, the said decision cannot be applied to the facts of the present case.

15. Considering the facts and circumstances of this case, this court is of the considered opinion that the petitioner/plaintiff has failed to show any contemplation of an urgent interim relief. The urgency regarding the release of the web series is also attributable to the delay contributed by the petitioner/plaintiff and therefore, he cannot take advantage of the same. Suffice it to note that the petitioner/plaintiff has not made out any case for by-passing the mandatory requirement of s.12A of the Commercial Courts Act, 2015. For the foregoing reasons, this court finds that the present petition has to be dismissed.

In result, this petition is dismissed without costs. The plaint is ordered to be returned for compliance of pre-institution mediation as per Section 12A of the Commercial Courts Act, 2015.

Dictated to Steno-typist, typed by him directly, corrected and pronounced by me in the open Court this the 20th day of September 2024.

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

Petitioner side documents : Nil
Respondents side documents: Nil

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

Draft/Fair Order

I.A.No.2/2024

in

C.O.S.S.R.No. 609/2024

Dated: 20.09.2024

Principal Commercial Court,
Egmore, Chennai-8.