

**IN THE PRINCIPAL COMMERCIAL COURT AT EGMORE, CHENNAI.**

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

**Friday, the 7<sup>th</sup> day of March, 2025.**

**C.O.S. SR. No. 100/2025**

DNSON Marine Pvt Ltd.,  
No.2, Dhanamal Nagar Extn,  
via Balakumaran Nagar, 'A' Block,  
Kolathur, Chennai – 600 099,  
Represented by its  
Managing Director, Mr.E.Jagan.

...Plaintiff

-Vs-

Garuda Mineralia Private Limited,  
(formerly known as Garuda Mud  
Drilling Chemicals Private Limited),  
Plot No.33B, Gajulamandyam Industrial Estate,  
Renigunta Mandal, Tirupathi Rural,  
Andhra Pradesh – 517 520,  
Rep. by its Director.

...Defendant

This suit came before me for final hearing on 07.03.2025 in the presence of M/s.S.Vasudevan, K.Krishnaswamy, R.Vetrivel, M.Deepthadevi, L.Sai Prashanth, V.Velvizhi, the learned counsel for the plaintiff.

**ORDER**

Plaint filed under Order VII rule 1 C.P.C. read with s.2(1)(c)(xviii) and s.6 of the Commercial Courts Act, for recovery of a sum of Rs.12,13,268.39/- together with interest at the rate of 18% per annum on the principal sum of Rs.11,01,380.23/- from the date of plaint till the date of realization and for costs.

2. Since the plaintiff has filed the present suit without complying with s.12A of the Commercial Courts Act, 2015, the case was taken up for hearing on maintainability. Heard the learned counsel for the plaintiff.

3. The plaintiff is in the business of ship broking and the defendant is said to have approached the plaintiff to procure a suitable cargo vessel for transporting two shipments from Chennai to Suriname and Guyana in South America. A vessel by name MV Progress from White Cloud Shipping Pte. Ltd., was arranged. The shipments were duly transported and the cargo arrived at the Port of Discharge on 01.07.2024. The defendant was liable to pay brokerage charges of 2.50% as per clause 35 of the fixture note out of which 1.25% was receivable by the plaintiff and 1.25% was payable to the broker of the vessel owner. An invoice dated 05.07.2024 was raised for the said charges which comes to Rs.11,01,380.23/-. In spite of the same, the defendant did not make the payment. A legal notice dated 13.08.2024 was sent in this regard. The suit is filed for recovery of the said amount.

4. The learned counsel for the plaintiff would state that the urgency was because the defendant who was the shipper and owner of the cargo in the Vessel Pacific Ocean – SQ1 and he was commencing loading operations and that it was the only security available to them. It is further contended that the said vessel left the port of Chennai subsequently and therefore, the attachment before judgment petition was rendered infructuous. Now, an application for interim injunction is filed seeking a direction to the garnishee which is the bank of the defendant to pay the suit claim amount to the plaintiff. It is further stated by the learned counsel for the plaintiff that the defendant is likely to remove the monies in the said account to evade the process of this court. On these grounds, it is prayed that there is an urgency and therefore, that the requirement of s.12A be waived and the suit be taken on file. Reliance is placed on the decision reported in (2024) 5 SCC 815 to support his contention.

5. 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 bypass the pre-institution mediation, which is mandatory as per s.12A of the Commercial Courts Act, 2015. 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 (2024) 5 SCC 815 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 plaintiff.*

*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 plaintiff, 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."*

6. 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 plaintiff, documents and facts show and indicate the need for an urgent interim relief.

7. 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."*

8. 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. In the present case, it is to be noted that the legal notice demanding the claim amount was sent by the plaintiff as early as in August 2024. While so, the present suit is filed only on 25.01.2025. It is not the case of the plaintiff that there was any cause for approaching the court in a belated manner. The learned counsel for the

plaintiff would state that the defendant is trying to evade the process of this court, there is no material produced in this regard. The learned counsel for the plaintiff would point out that the legal notice to the defendant was returned as company was closed. However, it is not known as to why immediate steps were not taken by the plaintiff. On an overall perusal of the records, this court finds that the plaintiff has delayed approaching the court and therefore, they cannot take advantage of their own wrong.

9. 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 bypass the rigours of s.12A of the Commercial Courts Act, 2015.

10. 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. For the foregoing reasons, this court finds that the plaint does not contemplate any urgent interim relief and therefore, the plaint is ordered to be returned for compliance of s.12A of the Commercial Courts Act, 2015.

Partly typed by me and partly dictated to Steno-typist, transcribed and typed by her, corrected and pronounced by me in the open Court this the 07<sup>th</sup> day of March, 2025.

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

**Plaintiff side Documents : Nil  
Defendant side Documents : Nil**

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

**Draft/Fair Order**

**C.O.S. SR. No. 100/2025**

**Dated: 07.03.2025**

**Principal Commercial Court,  
Egmore, Chennai – 8.**