

IN THE PRINCIPAL COMMERCIAL COURT AT EGMORE, CHENNAI.

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

Friday, the 14th day of March, 2025.

C.O.S. SR. No. 213/2025

M/s. EVERSHINE ENTERPRISES,
No.29/9, Thandavaraya Street, 2nd floor,
Old Washermenpet, Chennai – 600 021,
a sole Proprietorship concern Represented
herein by its Sole Proprietress Mrs. Vimala Joseph.

...Plaintiff

-Vs-

N.Devendheran Civil and Mechanical
Contractor,
No.410, Rajapalayam Village, Mangavaram Post,
Natham, Gummidipoondi Taluk,
Thiruvallur District, PIN 601 201.

...Defendant

This suit came before me for final hearing on 11.03.2025 in the presence of M/s.S.Chandrabose, Poornima Devi, the learned counsel for the plaintiff.

ORDER

The present suit is filed by the plaintiff for recovery of a sum of Rs. 15,21,958/- (Rupees Fifteen Lakh Twenty One Thousand Nine Hundred and Fifty Eight only) with interests and costs. The plaintiff seeks leave to file the suit without compliance of Section 12A of the Commercial Courts Act, 2015 on the ground that there is urgent interim relief contemplated and therefore, the plaintiff counsel was heard on the maintainability.

2. The case of the plaintiff in brief is as follows. The plaintiff is dealer/trader in paint and other related materials. The plaintiff sold and delivered goods to the defendant under various invoices for a total value of Rs.15,04,146/- (Rupees Fifteen Lakh Four Thousand One Hundred and Forty Six only). Though the defendant

promised to make the payments only part payments to the extent of Rs.2,90,000/- (Rupees Two Lakh and Ninety Thousand only) was paid. Hence, as on 10.02.2025, there is a due of Rs.15,21,958/- (Rupees Fifteen Lakh Twenty One Thousand Nine Hundred and Fifty Eight only) from the defendant. Though a cheque was issued by the defendant towards payment, the same was returned for want of sufficient funds on 19.09.2024. It is stated that defendant is making efforts to dispose the property described in the schedule to the attachment before judgment petition and therefore, there since an urgent relief is contemplated, it is not necessary to comply with Section 12A of the Commercial Courts Act, 2015.

3. The learned counsel for the plaintiff would contend that he has reliable information that the defendant is trying to dispose his property. Further, he would point out that the plaintiff has reliable information that the defendant obtained all the dues from his customer HPL Limited but has not paid due amounts to the plaintiff. It is stated that the defendant is making frantic attempts to sell his property. Hence, it is prayed that the suit be numbered without compliance of Section 12A of the Commercial Courts Act, 2015.

4. 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 Section 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 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.”

5. 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 Section 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.

6. 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."

7. 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, as per the plaint averments, it is seen that the last payment is said to have been made on 29.09.2024. The cheque issued by the defendant is said to have been returned for want of sufficient funds on 10.09.2024. While so, the present suit was filed only on 28.02.2025. There is no reason stated by the plaintiff as to why the plaintiff has not immediately taken steps to institute the pre-institution mediation or filed the suit immediately. While so, the averment relating to the urgency only appears to have been made to avoid the pre-institution mediation.

8. On an overall perusal of the plaint, it is seen that the delay in filing is attributable only to the plaintiff and he cannot be permitted to take advantage of his own wrong. Therefore, as per the dictum laid down by the Hon'ble High Court of

Madras, this court finds that the plaintiff has failed to show any contemplation of urgent interim relief which is sufficient to by pass the rigours of Section 12A of the Commercial Courts Act, 2015. Hence, the plaintiff cannot be permitted to avoid the procedure contemplated therein.

For the foregoing reasons, the plaint is ordered to be returned for compliance of Section 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 14th 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. 213/2025

Dated: 14.03.2025

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