

IN THE PRINCIPAL COMMERCIAL COURT AT EGMORE, CHENNAI.

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

Monday, the 28th day of April, 2025.

C.O.S. SR. No. 396/2025

Aaranya Cine Combines,
Represented by its Proprietor,
Mrs.R.Madhumathi,
carrying on business at
Plot No. A12, Srinivasa Arcade,
No. 1/2, Arunachalam Road,
Saligramam, Chennai – 600 093.

...Plaintiff

-Vs-

1. Cosmos Entertainment,
Represented by its Proprietor Mr.J.Phanindra Kumar,
Office at
New No. 5, Plot No.3,
Easwari Chinni Dale,
Vidyodhaya Main Road,
T.Nagar, Chennai – 600 017.

2. Tamil Film Producers Council,
Represented by its Secretary,
Film Chamber Compound, 4th Floor,
No. 606, Anna Salai,
Chennai – 600 006.

3. Qube Cinema,
No. 42, Dr.Ranga Road,
Mylapore, Chennai – 600 004.

4. Gemini Industries and Imaging Pvt Ltd.,
Represented by its Authorised Signatory,
Laboratory Department,
No.28, New Bangaru Colony,
West, K.K.Nagar, Chennai – 600 078.

5. UFO Digital Cinema,
No. 178, 3 & 4 Kumaran Colony Main Road,

Kumaran Colony,
Vadapalani,
Chennai – 600 026.

6. PXD,
Prasad Extreme Digital Cinema Network Pvt Ltd.,
No. 28, Arunachalam Road,
Saligramam,
Chennai – 600 093.

...Defendants

This suit came before me for final hearing on 28.04.2025 in the presence of M/s.S.John Josh, P.Saravanan, the learned counsel for the plaintiff.

ORDER

Plaint filed under Order VII Rule 1 and 2 C.P.C. read with Section 2(1)(c)(i) of the Commercial Courts Act, 2015 for recovery of a sum of Rs.36,70,032.88/- (Rupees Thirty Six Lakhs Seventy Thousand Thirty Two and Eighty Eight Paise only) along with interests and costs; for permanent injunction restraining the defendants from releasing the film ‘Janaki v. State of Kerala’ and for costs.

2. Since the plaintiff did not comply with Section 12A of the Commercial Courts Act, 2015, the case is taken up for maintainability to ascertain if any urgent interim relief is contemplated by them. Heard the plaintiff counsel and perused the precedents relied upon.

3. It is the case of the plaintiff that a sum of Rs.63,00,000/- (Rupees Thirty Three Lakh only) was loaned to the 1st defendant for shooting the film Janaki v. State of Kerala. The plaintiff and the first defendant entered into an agreement dated 19.10.2022. The 1st defendant did not repay the amount inspite of reminders and requests. On 29.06.2024, the 1st defendant agreed to repay the said amount by giving a cheque for a sum of Rs.63,00,000/- (Rupees Thirty Three Lakh only) which was returned as funds insufficient. Thereafter, a legal notice dated 11.07.2024 was sent to the 1st defendant demanding repayment. The 1st defendant gave a reply on 17.07.2024. Thereafter, the plaintiff and the 1st defendant entered into a Memorandum of Compromise dated 30.08.2024, whereby it was agreed that a sum of

Rs.35,00,000/- (Rupees Thirty Five Lakh only) would be received as single and final payment towards all the claims of the plaintiff. The 1st defendant paid a sum of Rs.3,89,200/- (Rupees Three Lakh Eighty Nine Thousand and Two Hundred only) by way of cheque dated 31.10.2024 towards interest and accepted his liability to pay the sum of Rs.35,00,000/- (Rupees Thirty Five Lakh only). A letter dated 07.12.2024 was also sent admitting the liability. Thereafter no payment was forthcoming and hence the suit.

4. The learned counsel for the plaintiff would contend that there is urgency since the defendants are likely to release the movie during the summer holidays. It is contended that if the movie is released without securing their claim, then great prejudice would be caused to the plaintiff. It is further contended that the urgency is apparent from the announcement of the movie release which is filed as a document. Hence, that the requirement of Section 12A of the Commercial Courts Act, 2015 be dispensed with and the suit may be taken on file. Reliance is placed on the decision of the Hon'ble High Court of Madras dated 13.10.2022 in C.S. (Comm. Div) No. 202 of 2022 in O.A. No. 612 of 2022 and A. No. 4280 of 2022 to support his contention.

5. The learned counsel for the plaintiff would contend that this court cannot go into the merits of the interim application filed by him at this stage. With regard what could be the factors to be taken into consideration while permitting an exemption from compliance of Section 12A of the Commercial Courts Act, 2015, it is found relevant to take note of the Hon'ble Supreme Court in the case of Yamini Manohar v. T.D.K. Keerthi reported in 2023 SCC Online SC 1382. The observations which are found relevant are extracted hereunder 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.

9. 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.

10. 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.”

6. 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. Further, it is for the plaintiff to satisfy this court that there is indeed an urgent interim relief contemplated in the present suit.

7. The Hon’ble High Court in the order dated 13.10.2022 in C.S. (Comm.Div.) No. 202 of 2022 [K. Varathan Vs. Mr.Prakash Babu Nakundhi Reddy] has interpreted the words ‘contemplate urgent interim relief’ and has observed as follows.

“15. A careful perusal of the aforementioned definitions / descriptions bring to light that a plaintiff should think carefully about possibility of a thing happening. The thinking process should be profound and thoughtful, such thinking process should lead the plaintiff to believe that prompt action (not attributable to plaintiff’s own doing) is demanded or the matter requires immediate attention and needs to be dealt with immediately and that it is so immediate that time consumed in exhausting the remedy of pre institution mediation that will lead to wrong or injury which the plaintiff in law and equity should not be made to stand and suffer. To put it differently, a relief for the time being which is temporary or provisional is so imperative that possible wrong or injury will overtake the process of exhausting remedy of pre institution mediation.

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.' There will be a little more elaboration on this infra i.e., there will be little more discussion on the parameters and explanation of the term 'contemplate' and expression 'urgent interim relief' elsewhere infra in this common judgment / common order.'"

8. Based on the principles laid down above, the facts of the present case is to be looked into to find out whether the plaintiff contemplates any urgent interim relief. The suit is for recovery of money based on a Memorandum of compromise dated 30.08.2024. The urgency stated is the possible release of a movie titled 'Janaki v. State of Kerala' during the summer holidays. Reliance is placed on the letter dated 07.12.2024, whereby the 1st defendant promises to make payment on or before 30.01.2025. Further reliance is placed on the news published in Cinema Express website on 26.01.2025, where it is stated that the film is to be released during summer holidays. It is not the case of the plaintiff that they came to know about the news only in April 2025. From the documents, it is apparent the cause of action for claiming the relief arose in January 2025 itself. While so, admittedly, the plaintiff has filed the present suit only on 23.04.2025. While so, it is apparent that the urgency has arisen only due to the act of the plaintiff herein. The learned counsel for the plaintiff would contend that there was already a compromise between the parties and therefore, it is similar to pre-institution mediation. However, such a contention does

not merit consideration. Section 12 A of the Commercial Courts Act, 2015 cannot be frustrated for the mere reason that the plaintiff feels the exercise may be futile.

9. In the present case, since the urgency has arisen due to the lax attitude shown by the plaintiff in initiating the action, he cannot take advantage of his own action. Suffice it to state that if the plaintiff had initiated prompt action, there would have been sufficient time for compliance of Section 12A of the Commercial Courts Act, 2015. The urgency has arisen only due to the negligence of the plaintiff and therefore, the plaintiff cannot take advantage of the same. As such, this court finds that 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 Section 12A of the Commercial Courts Act, 2015.

For the foregoing reasons, this court finds that the petitioner/plaintiff is not entitled to seek exemption from Section 12A of the Commercial Courts Act, 2015 which mandates pre-institution mediation. Since the plaint is unnumbered, 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 28th day of April, 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. 396/2025

Dated: 28.04.2025

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