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Delay in filing a suit does not preclude a plaintiff from seeking urgent interim relief without exhausting the requirement of pre-suit mediation under the Commercial Courts Act, 2015

JSA successfully represented *Chemco Plastic Industries Private Limited*¹ (“**Plaintiff-Respondent**”) before the Bombay High Court (“**Bombay HC**”), which has *inter alia* held that in deciding whether a plaintiff has sought urgent interim relief only to bypass the bar of compulsory pre-litigation mediation under Section 12-A of the Commercial Courts Act, 2015 (“**Commercial Courts Act**”), delay in seeking interim relief is not a factor.

Brief Facts

The Plaintiff-Respondent had filed a Commercial IP Suit seeking an injunction restraining M/s Chemco Plast (“**Defendant-Applicant**”) from infringing its registered trademark and passing off its goods as those of the Plaintiff (“**Suit**”). Along with the Suit, the Plaintiff also filed an interim application seeking urgent interim relief. The Defendant filed an interim application under Order VII Rule 11 of the Code of Civil Procedure, 1908 seeking rejection of the plaint on the ground that the Plaintiff had failed to comply with the mandatory provision of pre-suit mediation under Section 12-A of the Commercial Courts Act (“**Interim Application**”).

In support of its Interim Application, the Defendant-Applicant *inter alia* submitted that the: (a) Supreme Court of India (“**Supreme Court**”) in *Patil Automation Private Limited and Ors v. Rakheja Engineers Private Limited*² and *Yamini Manohar v. TKD Keerthi*³ (“**Yamini Manohar**”) has held that where urgent interim relief in a commercial suit is not contemplated, Section 12-A of the Commercial Courts Act which mandates pre-institution mediation is required to be complied with; (b) plaint did not contemplate urgent interim relief; and (c) delay in approaching the court is relevant to assess whether a plaintiff has contemplated urgent interim relief. The Defendant-Applicant argued that in the present case, the Suit did not contemplate any urgent interim relief as the same was filed 8 (eight) years after the Plaintiff-Respondent became aware of the cause of action.

The Plaintiff-Respondent *inter alia* submitted that: (a) the question of whether urgent interim relief is contemplated has to be ascertained on the basis of the pleadings in the plaint; (b) alleged delay in approaching the court is of no relevance as that would require the court to go into the merits, which could not be done at this stage; (c) as held in *Bolt Technology OU v. Ujoy Technology Private Limited and Ors*⁴, in cases concerning intellectual property rights (“**IPR**”), apart from the rights of the plaintiff, the rights of consumers/the public are relevant; and (d) the Supreme Court in *Yamini Manohar* laid down that the limited exercise to be undertaken by commercial courts in deciding whether a suit

¹ *Chemco Plast v. Chemco Plastic Industries Private Limited*. Interim Application (L) No. 10014 of 2024.

² (2022) 10 SCC 1

³ 2023 SCC OnLine SC 1382

⁴ CS (Comm) No. 582 of 2022

can be entertained without exhausting the remedy of pre-institution mediation under Section 12-A of the Commercial Courts Act is whether the plaint, documents, and facts of the case indicate a need for urgent interim relief. It was argued on behalf of the Plaintiff that in the present case, the plaint did in fact contemplate urgent interim relief.

Issue

Whether the plaint ought to be rejected as being barred for failure to comply with Section 12-A of the Commercial Courts Act?

Findings and Analysis

The Bombay HC dismissed the Interim Application and *inter alia* observed as follows:

1. while considering whether a plaint deserves to be rejected for non-compliance with Section 12-A of the Commercial Courts Act, the court necessarily undertakes a limited exercise to appreciate the plaint, documents, and facts to assess whether the plaint “contemplates” urgent interim relief;
2. the Plaintiff-Respondent has detailed the manner in which the Defendant-Applicant has refuted the rights of the Plaintiff-Respondent despite registered trademarks in favour of the Plaintiff-Respondent. In this context, the Plaintiff-Respondent has contemplated urgent interim relief while filing the Suit and the same cannot be rejected as being barred by Section 12-A of the Commercial Courts Act;
3. the question of delay and the related question of acquiescence on the part of the Plaintiff-Respondent are matters concerning the merits for the grant or refusal of interim relief. The court is not expected to enter into the merits of the matter at this stage; and
4. in cases pertaining to IPR infringement, the cause of action arises on each occasion that the impugned mark is used by the defendant.

Conclusion

This is the first judgment from the Bombay High Court on the interplay between seeking urgent interim relief in IPR matters and the requirement for pre-suit mediation under Section 12-A of the Commercial Courts Act.

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