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CIVIL

Upholding Plaints Seeking Urgent Relief Without Pre-Institution Mediation Barriers

AUTHOR Ishan Gambhir, Amisha Upadhyay

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In a recent judgment[i], the Hon'ble Bombay High Court ("**HC**"), dismissed an application filed under Order VII Rule 11 of the Code of Civil Procedure ("**CPC**"), by Chemco Plast ("**Defendant**") seeking rejection of a trademark infringement suit filed against it by Chemco Plastic Industries Pvt. Ltd ("**Plaintiff**"), as the Plaintiff had instituted the said suit without undergoing the mandatory mediation procedure as provided under section 12A of Commercial Courts Act, 2015 ("**CC**").

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The Brief History of the Suit filed by the Plaintiff

The Plaintiff had issued a Cease – and – Desist notice in September 2015 to the Defendant for infringing the word mark "**Chemco**" of which the Plaintiff is a proprietor. Following which another notice was issued in October 2015 to comply with the aforesaid Cease – and – Desist notice. The Defendant responded to the notice issued by the Plaintiff, primarily denying the allegations made by the Plaintiff with respect to the trademark infringement.

In May 2018 the Plaintiff preferred a police complaint against the Defendant for the infringement of its wordmark. In August 2023, the Plaintiff filed a Commercial Suit before the HC seeking relief of permanent and mandatory injunction, restraining the Defendant from infringing the registered wordmark of the Plaintiff.

The Defendant, thereby filed an application under Order VII Rule 11 of the CPC and, inter alia, raised a ground that since the Plaintiff did not exhaust the pre – institution mediation as required u/s 12A of the CC Act, the plaint ought to be rejected.

Submissions made by both the parties

The Defendant argued that the plaint in the instant case, does not even intend for any urgent interim reliefs and therefore, the Plaintiff was mandatorily required to exhaust the remedy of pre – institution mediation under u/s 12A of the CC Act before instituting the present suit. The Defendant submitted that the judgments of the Hon'ble Supreme Court ("**SC**") in the case of **Patil Automation Private Limited and others v. Rakheja Engineers Private Limited[ii]** and **Yamini Manohar vs. T.K.D. Keerthi** [iii] have categorically laid down that where urgent interim relief in a commercial suit is not contemplated, the requirement of u/s 12A of the CC Act, for exhausting the remedy of pre-institution mediation, is required to be mandatorily complied with. In the event of failure to do so, the plaint has to be rejected as being barred by law.

The Plaintiff to support its case submitted that the question as to whether urgent interim relief is contemplated, has to be assessed by the courts in the facts of the individual case. Additionally, it was submitted that the mandatory nature of u/s 12A of the CC Act cannot be denied, in the light of the plain language of the provision as also the law laid down by the SC in that context. Thus far, it was submitted that the question as to whether urgent interim relief is considered, has to be assessed from the point of view of the Plaintiff and on the basis of the pleadings in the plaint. It was further submitted that as per the law laid down by the Supreme Court, inter alia, in the case of **Midas Hygiene Industries Pvt. Ltd. v. Sudhir Bhatia and Ors**[iv], delay can be no defence for the Defendant to resist interim injunction or relief in such cases concerning intellectual property rights of the Plaintiff, canvassed on the basis of a registered trademark.

Observations made by the Hon'ble High Court

The HC observed that when the said judgment of the Hon'ble Delhi High Court was challenged before the SC, it was held by the SC in the case of **Yamini Manohar vs. TKD Keerthi (supra)** that in such cases, the limited exercise to be carried out by the commercial courts is to peruse the plaint, documents and the facts to examine as to whether the suit does "contemplate" urgent interim relief. It was specifically held that the Commercial Court should examine the nature and subject matter of the suit, the cause of action and the prayer for interim relief. It was held that such a prayer for interim relief should not be a disguise to not undergo the pre-meditation as prescribed u/s 12A of the CC Act. The facts and circumstances of the case are required to be considered holistically and from the stand point of the Plaintiff.

The HC further, opined that there is substance in the contention raised on behalf of the Plaintiff that in such cases concerning intellectual property rights, not only are the proprietary rights of the Plaintiff of concern to the court, but interests of the

consumers of the products, in question a mitigating factor to be considered. Consumers are likely to be duped if trademarks are misused and therefore, while considering such interim reliefs, the Courts are not merely protecting the statutory and common law rights of the Plaintiff, but the Courts are also protecting the interests of the consumers.

The HC found no evidence of deception or falsity in the Plaintiff's claims, stating that the details provided in the pleadings were coherent and consistent. The HC concluded that the Plaintiff had not engaged in deceptive practices to avoid mediation u/s 12A of the CC Act and in the light of the said circumstances that the application of the Defendant under Order VII Rule 11 of the CPC came to be dismissed.

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[i] Chemco Plastic Industries Pvt. Ltd v. Chemco Plast – Interim Application (L) 10014 of 2024.

[ii] [(2022) 10 SCC 1].

[iii] (2023 SCC Online SC 1382).

[iv] [(2004) 3 SCC 90].