



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL JURISDICTION

INTERIM APPLICATION (L) NO.16800 OF 2025
IN
COMM SUIT (L) NO.8617 OF 2025

JITENDRA
SHANKAR
NIJASURE

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IIFL Finance Ltd. & Ors. ... Applicant /
Ori. Defendant
No.1.

Gundecha Estates Pvt. Ltd. ...Plaintiff

Versus

IIFL Finance Ltd. & Ors. ...Defendants

WITH
INTERIM APPLICATION (L) NO.17138 OF 2025
IN

COMM SUIT (L) NO.8617 OF 2025

Phoenix ARC Private Ltd. ... Applicant /
Ori. Defendant
No.8

Gundecha Estates Pvt. Ltd. ...Plaintiff

Versus

IIFL Finance Ltd. & Ors. ...Defendants

Mr. Aspi Chinoy, Senior Counsel, Mr. Aditya Miskita, Mr. Arun Panickar and Mr. Vinay Nair for the Plaintiff and Applicant in Interim Application (L) No.8659 of 2025.

Mr. Ashish Kamat, Senior Counsel and Mr. Apoorva Kulkarni, i/b. Mr. Ashwin Pimpale for Defendant No.1 / Applicant in IAL No.16800 of 2025.

Mr. Nishant Chotani with Mr. Vipul Patel i/b. Haresh Mehta and Co. for Defendant Nos.2 to 7.

Mr. Gaurav Joshi, Senior Counsel with Ms. Chitra Rentala, Mr.

Parikshith K and Ms. Priyanka Vishnoi i/b. Trilegal for Defendant No.8 / Applicant in IAL No.17138 of 2025.

CORAM : R.I. CHAGLA J.
DATE : 17TH JULY, 2025.

ORDER :

1. By the Interim Applications, the Applicant / Defendant No.1 and Applicant / Defendant No.8 are seeking rejection of the Plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 for non-compliance of the requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 (“the 2015 Act”).

2. The Commercial Suit has been filed by the Plaintiff inter alia seeking a declaration that the Indenture of Mortgage dated 31st March, 2022 and the Assignment Agreement dated 29th June, 2024 are *null and void ab initio*.

3. The Applicants by the present Interim Applications have submitted that there is no urgency in the matter warranting exemption from non-compliance with Section 12A of the 2015 Act. In view thereof the Suit is liable to be dismissed. Certain relevant facts

are necessary to be referred to and are as under:-

(i) On 1st February, 2006, the Development Agreement was executed whereunder the Defendant No.2 granted the Plaintiff development rights in respect of portion of land admeasuring 18,007.56 sq. mts. Situated at D.N. Nagar, Taluka Andheri (Land) i.e. Sub Plot 'C', admeasuring 8088.81 Sq. mts. ("Suit property"). It is pertinent to note that under the Development Agreement, the Plaintiff was required to construct on the Suit property a building by utilizing FSI of 19,600 sq. mts and was entitled to 48% of the total FSI available for construction of the said building.

(ii) An Indenture of Mortgage was executed on 31st March, 2022 between Defendant Nos.1 to 7 to secure the obligations of Defendant No.2 under a loan agreement dated 1st January, 2022, whereby Defendant No.1 had agreed to advance loan facilities aggregating to INR 215 Crores to Defendant No.2 ("Loan Agreement"). Under the Indenture of Mortgage, the entire land (including the Suit property) is mortgaged along with various other properties.

It is pertinent to note that the said Indenture of Mortgage specifically excludes the interest of the Plaintiff from the pervue of the mortgage over the land.

(iii) The Term Sheet was executed on 20th September, 2023 between the Plaintiff and Defendant No.2 to revise and supplement the understanding of the parties under the Development Agreement. It is pertinent to note that the Plaintiff has categorically admitted that the Plaintiff was aware of the Indenture of Mortgage at the time of execution of the Term Sheet, i.e. since September, 2023. The Term Sheet allows the creation of encumbrance / mortgage in favour of third parties in terms of Clause 12(g) of the Term Sheet and acknowledges the existence of the Loan Agreement. Further, the Term Sheet accepts the rights of the Defendant No.1 under the Indenture of Mortgage by providing in Clause 6(II) that the said Term Sheet is valid subject to NOC from Defendant No.1.

(iv) A Writ Petition was filed on 18th April, 2024 by the Plaintiff herein being No.2338 of 2024 challenging a letter dated 14th March, 2024 issued by the State of Maharashtra directing the

Slum Rehabilitation Authority to appoint Defendant No.1 and its sister concern IIFL Facilities Services Ltd., as Developer and Co-Developers under an Amnesty Scheme replacing Defendant No.2 as the Developer.

It is pertinent to note that by an Order dated 22nd April, 2024, this Court granted ad-interim relief staying the effect / operation of the said impugned letter, which is operative till date. In paragraph 37 of the Writ Petition, the Plaintiff has referred to the Indenture of Mortgage and categorically stated that the rights of the Plaintiff are protected in the Indenture of Mortgage.

(v) Defendant No.1 addressed a letter dated 13th May, 2024 to Defendant Nos.2 to 7 (with a copy to the Plaintiff) seeking clarification on the remittance of the INR 5 Crores from the Plaintiff under the Term Sheet. Defendant No.1 asserted that on account of the fraudulent acts of Defendant Nos.2 to 7, wrongful loss has been caused to Defendant No.1. Further, the Plaintiff was informed of a second Indenture of Mortgage between inter alia Defendant No.2 and IDBI Trusteeship Services Ltd.

(vi) An Assignment Agreement dated 29th June, 2024 was executed whereby the rights and entitlements of Defendant No.1 inter alia under the loan agreement were assigned to Defendant No.8.

(vii) The captioned Commercial Suit and the Interim Application was filed on 17th March, 2025 – 18th March, 2025.

4. Mr. Ashish Kamat, the learned Senior Counsel appearing for the Applicant / Defendant No.1 has submitted that there is complete lack of urgency in the Plaintiffs case. He has submitted that from the Plaint itself it is evident that the Plaintiff had knowledge of the Indenture of Mortgage since September, 2023, when the Term Sheet was executed to record the revised understanding as regards the Development Agreement. He has referred to the paragraph 8 (o), 8(p) of the Plaint read with Exhibit D to the Plaint.

5. Mr. Kamat has submitted that the Plaintiff has consented to the creation of mortgage and other third party rights under the Term Sheet and taken note of the loan availed from Defendant No.1. He has referred to Clause 12(g) of the Term Sheet at pages 138 – 139

of the Plaintiff.

6. Mr. Kamat has submitted that the Plaintiff recognized the rights of Defendant No.1 under the Indenture of Mortgage by agreeing that the Term Sheet is valid subject to NOC from Defendant No.1. He has in this context referred to Clause 6(II) of the Term Sheet at page 132 of the Plaintiff.

7. Mr Kamat has submitted that although the Plaintiff has had knowledge of the aforementioned documents from September, 2023, the Plaintiff chose not to initiate any proceedings. The Commercial Suit is only filed in March, 2025 after a period of 16 months.

8. Mr. Kamat has submitted that even post the filing of the Suit, conduct of the Plaintiff demonstrates the lack of any urgency. The Suit was filed on 17th March, 2025 and was moved for ad-interim reliefs only on 2nd May, 2025. He has placed reliance upon Order dated 2nd May, 2025 passed by this Court whereby this Court directed that the pleadings to be completed and stood over the matter to 10th June, 2025.

9. Mr. Kamat has submitted that in view of, there being no urgency for grant of any interim reliefs in relation to the Indenture of Mortgage, the Plaintiff cannot circumvent the mandatory provision of pre institution mediation under Section 12-A of the 2015 Act.

10. Mr. Kamat has submitted that the Plaintiff has taken inconsistent and contradictory positions in relation to the Indenture of Mortgage. He has referred to the Writ Petition filed by the Plaintiff in April, 2024, whereby the Plaintiff has categorically stated that the Indenture of Mortgage which has been executed in March, 2022 protects the Plaintiffs entitlement. He has in this context placed reliance on paragraph 195 of the Writ Petition.

11. Mr. Kamat has submitted that the Plaintiff has now in March, 2025 filed the captioned Commercial Suit seeking a declaration that the Indenture of Mortgage is null and void basis a bald averment that the Indenture of Mortgage affects the rights of the Plaintiff, without providing any cogent reasoning or evidence for the same. He has submitted that this is a clear case of lack of bonafides, as the Plaintiff is seeking to urge a false / disguised case and / or dressed up case of urgency to wrongfully bypass the statutory

compliance in terms of Section 12A of the 2015 Act.

12. Mr. Kamat has submitted that the pre institution mediation under Section 12A of the 2015 Act is mandatory with a limited exception for Suits which contemplate urgent interim relief. He has submitted that the Plaintiff in the present case has failed to make out a case for urgent interim relief. He has placed reliance upon judgment of the Supreme Court in *Patil Automation (P) Ltd. Vs. Rakheja Engineers (P) Ltd.*,¹ paragraphs 42 and 99.

13. Mr. Kamat has submitted that it is well settled that a prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the 2015 Act. He has in this context placed reliance upon *Ekta Housing Private Ltd. V/s. Shraddha Shelters Private Ltd.*,² paragraphs 51,58,68 and 69.

14. Mr. Kamat has submitted that the only ground taken in the Commercial Suit and the Interim Application is that the alleged settlement talks have failed and that there is allegedly collusion and connivance between the Defendants to defeat Plaintiff's rights. He

1 2024 SCC Online Bom 3538

2 2024 SCC OnLine Bom

has submitted that as a matter of principle, settlement talks and / or failure thereof can never be the basis to wriggle out of compliance under Section 12A of the 2015 Act. He has submitted that urgency can never be determined on the basis of commencement or end of settlement talks particularly when it is not the Plaintiff's pleaded case that there was any assurance that during such period, any dealings based on the documents would not take place. He has submitted that only acts of the Defendants which imminently endanger the Plaintiff's right are required to be taken into consideration and are relevant in considering whether the pre institution mediation under Section 12A of the 2015 Act requires to be giving go by to. He has submitted that the Plaintiff is singularly lacking in such pleadings.

15. Mr. Kamat has submitted that the Commercial Suit has failed to provide any particulars, factual averments or documents in support of the case of urgency. The statements in the Plaintiff are mere bald averments used as a disguise to wriggle out of the requirement under Section 12A. He has submitted that the cause of action having arisen on 31st March, 2022 and 19th August, 2024, both of which are much prior to the filing of the Commercial Suit on 17th March, 2025. The Plaintiff has not sought circulation or listing of the

Commercial Suit and Interim Application before 2nd May, 2025 and which further evidences that from the Plaintiff's own conduct there is no 'urgency' contemplated by the Plaintiff.

16. Mr. Kamat has submitted that mere filing of an application for interim relief is not enough. There is a requirement for providing particulars in support of the same. Clever drafting cannot be used to bypass the mandatory requirement under Section 12A of the 2015 Act. He has placed reliance upon the judgment in the case of *Skipper Ltd. V/s. Prabha Infra (P) Ltd.*³, paragraphs 7 and 9.

17. Mr. Kamat has submitted that the word "contemplate" in Section 12A does not mean in the "opinion of the Plaintiff". He has in this context placed reliance upon *Future Corporate Resources (P) Ltd. Vs. Edelweiss Special Opportunities Fund*⁴ at paragraph 42. He has submitted that the Commercial Court must examine the subject matter of the Suit, cause of action and prayer for interim relief. In this context he has relied upon *Yamini Manohar Vs. TKD Keerthi*⁵,

3 2023 SCC OnLine Cal 5482.

4 2022 SCC OnLine Bom 3744.

5 (2024) 5 SCC 815.

paragraph 10.

18. Mr. Kamat has submitted that a Plaint bypassing the requirement of pre-institution mediation under Section 12A in the absence of urgent interim relief must be rejected under Order VII Rule 11 on an application made or suo moto by the Court. He has placed reliance upon *Patil Automation (Supra)* and *Skipper Ltd. (Supra)* in this context.

19. Mr. Kamat has submitted that in a recent judgment of the Supreme Court in *Dhanbad Fuels Pvt. Ltd. Vs. Union of India*⁶, the Supreme Court has held that any Suit instituted after 20th August, 2022, without complying with Section 12A of the 2015 Act must meet with rejection under Order VII Rule 11, either on an application by the Defendant or suo moto by the Court.

20. Mr. Kamat has submitted that the additional Affidavit filed by the Plaintiff on 16th June, 2025 ought not to be taken on record. He has submitted that the two page additional Affidavit tendered by the Plaintiff, after the matter was part heard on 10th

⁶ (2025) SCC OnLine SC 1129.

June, 2024 seeking to place on record that the settlement negotiations between the parties were ongoing till March, 2025, is clearly an afterthought and evidences that the Plaintiff by his own conduct admits that the Plaintiff per se does not demonstrate any 'urgency'.

21. Mr. Kamat has submitted that the additional Affidavit filed by the Plaintiff during the arguments in the matter and without providing any adequate explanation and seeking leave of this Court ought not to be taken into consideration. He has submitted that the attempt to file the same makes it plain that the Plaintiff itself is inadequate and does not make out a case under Section 12A of the 2015 Act.

22. Mr. Kamat has submitted that the case under Section 12A has to be found in the Plaintiff itself and at the time of institution of the Suit. The additional affidavit has been tendered *post facto*. He has submitted that the additional Affidavit is not a pleading, and in view of Order VI Rule 1 of the CPC, only the Plaintiff and the Written Statement are pleadings. He has submitted that in any event the additional Affidavit only relates to purported settlement talks as

submitted above and does not form a legal basis to make out a case for urgency. He has placed reliance upon *Ekta Housing (Supra)* wherein this Court has held that a case for urgent interim relief to seek exemption from the pre-institution mediation must be made out by the Plaintiff only based on the pleadings in the Plaint and the documents in support of the Plaint.

23. Mr. Kamat has submitted that the Plaintiff has failed to satisfy a case for 'urgency' to bypass the mandatory provision of pre-institution mediation under Section 12A of the 2015 Act and accordingly, the present Commercial Suit and the Interim Application are liable to be dismissed.

24. Mr. Gaurav Joshi, the learned Senior Counsel appearing for the Defendant No.8 has adopted the submissions of Mr. Kamat.

25. Mr. Joshi has in addition submitted that the Plaintiff has taken the ground that the alleged settlement talks have failed in the Plaint and that there is collusion between the Defendants to encroach upon the rights of the Plaintiff. He has submitted that failure of settlement talks cannot be the basis to bypass the mandate of Section

12A of the 2015 Act. He has submitted that if the Plaintiff is allowed to evade the pre-institution mediation under the garb of alleged failed settlement talks, it will serve as a dangerous precedent for all ingenious Plaintiffs to be able to bypass the requirement of Section 12A of the 2015 Act and the legislative aim will stand defeated. He has submitted that the settlement talks are not relevant in determination of urgency and only actions of the Defendants which are prejudicial to the rights of the Plaintiff are relevant. He has submitted that the Plaintiff has failed to aver in its pleadings in any form or manner, that the Defendant No.8 may act in any manner which is prejudicial to the rights of the Plaintiff.

26. Mr. Joshi has submitted that the Plaintiff has failed to provide any particulars, documents which show that the Plaintiff's rights are in jeopardy warranting urgent interim relief. He has submitted that the Plaintiff's case is based on plain averments not supported by any evidence or cogent reasoning. He has submitted that the cause of action has admittedly arisen on 31st March, 2022 and 19th August, 2024, both of which are much prior to the filing of the Commercial Suit on 17th March, 2025.

27. Mr. Joshi has submitted that the additional Affidavit filed by the Plaintiff on 16th June, 2025 ought not to be taken on record as the matter was part heard on 10th June, 2024. Mere filing of the additional Affidavit shows that the Plaintiff admits that there is no urgency. The additional Affidavit does not seek to place on record any new development and / or event.

28. Mr. Joshi has submitted that as per Order XI Rule 1 of the CPC (as applicable to Commercial Suits) any additional documents, subsequent to the filing of the Suit can be filed only with the permission of the Court, within thirty days of filing of the Suit. The additional Affidavit has been tendered after the matter was part heard, without providing any adequate explanation and without seeking leave of this Court. He has submitted that the attempt to file the same makes it plain that the Plaint itself is inadequate and does not make out any case under Section 12A of the 2015 Act.

29. Mr. Joshi has supported the submissions of Mr. Kamat on the additional Affidavit not being a pleading in view of Order VI Rule 1 of the CPC. He has submitted that the Plaintiff only wishes to refer to the additional Affidavit to purport to the alleged failed settlements

talks which is not a ground to make a case for urgency. The case for urgent interim relief to seek exemption can only be made basis the pleadings and not by way of an additional Affidavit. He has also placed reliance upon the judgment in the case of *Ekta Housing Pvt. Ltd. (Supra)* in this context.

30. Mr. Joshi has submitted that the Plaintiff has failed to make out a satisfactory case for 'urgency' to bypass the mandatory provision of pre-institution mediation under Section 12A of the 2015 Act. Accordingly, the present Commercial Suit and the Interim Application are to be dismissed.

31. Mr. Aspi Chinoy, the learned Senior Counsel appearing for the Plaintiff has submitted that the captioned Interim Applications have been filed by the Applicant / Original Defendant No.1 and 8 under Order VII Rule 11 of the Code of Civil Procedure, 1908 seeking rejection of the Plaint inter alia on the ground that the Plaintiff has not complied with the requirement of Section 12A of the 2015 Act which mandatorily requires pre-institution mediation prior to filing of the Commercial Suit.

32. Mr. Chinoy has referred to Section 12A of the 2015 Act and in this context placed reliance upon the case of *Yamini Manohar (Supra)* which has laid down the nature and extent of scrutiny, when a Plaint is filed under the 2015 Act without complying with the requirement of pre-litigation mediation, with a prayer for an urgent interim relief. He has in particular placed reliance upon the paragraphs 10 and 11 of the said decision. He has submitted that the Supreme Court has held that the prayer for an urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the 2015 Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the Plaintiff. Further, camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The Supreme Court has accepted the proposition that the Commercial Courts do have a role, albeit a limited one.

33. Mr. Chinoy has placed reliance upon the judgment of this Court in *Novex Communications Private Ltd. Vs. Goregaon Sports Club*⁷ at paragraphs 7 and 8. He has submitted that this Court has

⁷ 2024 SCC OnLine Bom 3476.

held that in order to decide whether the Suit contemplates an urgent ad-interim relief for Section 12A, “a number of variables come into play, including the relative position of the parties, the developments in the intervening period and the conduct of the parties”.

34. Mr. Chinoy has submitted that when a Plaint is filed under the 2015 Act without complying with the requirement of pre-litigation mediation and based on a prayer for urgent interim relief, the Court has a limited role. The Court is required to consider the facts and circumstances of the case holistically from the standpoint of the Plaintiff, including the developments in the intervening period and the conduct of the parties and the Court can reject the Plaint only if it is apparent or established that the Plaintiffs’ prayer for urgent interim relief is deceptive and a falsity and has been made out only to bypass the statutory mandate of pre-litigation mediation.

35. Mr. Chinoy has submitted that in the present case, the Plaint seeks declaration and cancellation of the Mortgage Deed dated 31st March, 2022 executed between Defendant No.1 and Defendant Nos.2 to 7, insofar as it purports to cover the said property over which the Plaintiff has been granted development rights by the

Defendant No.2 and for an injunction restraining the Defendants from in any manner interfering with the Plaintiffs rights under the Agreement for grant of development rights to the Plaintiff. The Plaintiff also seeks urgent interim and ad-interim orders restraining the Defendants from acting pursuant to the Mortgage Deed dated 31st March, 2022 or from in any manner transferring or creating any third party rights in respect of the Suit property.

36. Mr. Chinoy has submitted that the basis for the Plaintiffs claiming urgent interim reliefs is set out in paragraphs 24 and 25 of the Plaintiff. It has been averred in paragraph 24 of the Plaintiff that the urgency to file the Suit arises as a result of collusion and connivance between the Defendants to defeat the Plaintiffs rights under the Development Agreement of 1st February, 2006 which became apparent on Defendant No.1's letter dated 13th May, 2024.

37. Mr. Chinoy has referred to paragraph 25 of the Plaintiff wherein it is averred that from a perusal of the chain of correspondence and settlement talks being failed, it is evident that the Defendants will collusively defeat the rights of the Plaintiffs to the Suit property, hence in view of the urgency necessitating interim

reliefs in the facts of the case.

38. Mr. Chinoy has submitted that the Plaintiff's case of collusion between the Defendants to defeat the Plaintiff's rights under the Development Agreement is neither apparent nor established to be false or deceptive. He has placed reliance upon the Applications under Order VII Rule 11 of the CPC wherein the Defendant Nos.1 and 8 have not even claimed / alleged that the Plaintiff's allegation of collusion between Defendant No.1 and Defendant Nos.2 to 7 is either false or deceptive.

39. Mr. Chinoy has submitted that the conduct of Defendant No.1 and Defendant Nos.2 to 7 supports the Plaintiff's case of collusion. The Defendant No.1 has filed an Affidavit in Reply to the Interim Application, but has not denied the case of collusion, and Defendant Nos.2 to 7 have not filed an Affidavit in the Interim Application denying the case of collusion.

40. Mr. Chinoy has submitted that the manner in which the Defendant No.2 had required the Plaintiff to pay the sum of Rs.5 Crores and thereafter the Defendant No.1 had addressed the letter

dated 13th May, 2024, objecting to such payment, without any response / demur from Defendant No.2, clearly indicated collusion.

41. Mr. Chinoy has submitted that it is well settled that the circumstances of the case have to be considered from the standpoint of the Plaintiff.

42. Mr. Chinoy has referred to the chain of correspondence commencing from 13th May, 2024, evidencing settlement talks, and the same having failed, necessitating urgent interim Orders.

43. Mr. Chinoy has submitted that the Defendant No.1 in its Order VII Rule 11 Application, has neither disputed the existence of the chain of correspondence, nor that settlement talks had taken place as recorded therein. The conduct of Defendant Nos.1 to 8 in the intervening period from May, 2024 to March, 2025, i.e. their taking no steps qua the Suit property during that period, clearly supports the Plaintiffs case of settlement talks. He has placed reliance upon *Novex Communications (Supra)* in this context.

44. Mr. Chinoy has submitted that if interim Orders are not

applied for / granted and the Defendant Nos.1 and 8 in collusion with Defendant Nos.2 to 7 in alleged exercise of their rights under the Mortgage Deed, purport to sell or transfer the Suit property to a third party grave prejudice will be caused to the Plaintiffs. He has accordingly submitted that the present Applications under Order VII Rule 11 of the CPC be rejected.

45. Having considered the rival submissions, in view of the present Applications being filed under Order VII Rule 11 for rejection of Plaintiff for non-compliance of the mandatory requirement of pre-institution mediation prior to filing of the Commercial Suit, it would be necessary to consider the averments in the Plaintiff read with documents annexed to the Plaintiff. The averments in the Plaintiff on urgency for seeking interim relief can be seen from paragraphs 24 and 25 of the Plaintiff, which read as under:-

“24. The cause of action for filing this Suit first arose on 31st March, 2022, when the Defendants entered into the impugned Deed and subsequently on 19th August, 2024, when the Impugned Assignment came to the knowledge of the Plaintiff. The urgency of file this Suit arises as a result of the collusion and connivance between the Defendants to defeat the Plaintiff’s rights to property under the registered Development Agreement which became apparent on

Defendant No.1's letter dated 13th May, 2024. Therefore, this Suit is filed within time and no part of the cause of action thereof is barred by the law of limitation.

25. A perusal of the chain of correspondences commencing from 13th May, 2024 and settlement talks being failed, it is evident that the Defendants will collusively defeat the rights of the Plaintiff to the Suit property and hence in view of the urgency necessitating interim reliefs in the facts of this case, the Plaintiffs have filed this Suit without exhausting remedy of pre-institution mediation under Section 12A of the Commercial Courts Act, 2022.

46. From the aforementioned averments it is apparent that the Plaintiff's case is that the urgency to file the Suit had arisen as a result of the collusion and connivance between the Defendants to defeat the Plaintiff's rights to property under the registered Development Agreement which became apparent on Defendant No.1's letter dated 13th May, 2024. A perusal of the said letter shows that the Defendant No.1 had sought clarification on the remittance of the INR 5 Crores from the Plaintiff under the Term Sheet. Defendant No.1 had asserted that on account of the fraudulent acts of Defendant Nos.2 to 7, wrongful loss has been caused to Defendant No.1. This would prima facie be contrary to the assertion of the Plaintiff that the Defendant No.1 and Defendant Nos.2 to 7 are acting

in collusion and connivance between them. In any event, the said letter having been addressed on 13th May, 2024 and the present Commercial Suit having been filed on 17th March, 2025 i.e. over 10 months thereafter, considering that a copy of the said letter was marked to the Plaintiffs, in my view displays no urgency in seeking ad-interim / interim relief.

47. Further, in paragraph 25 of the Plaint, the Plaintiff has referred to settlement talks from 13th May, 2024 and the settlement talks having failed from which they state that it is evident that the Defendants will collusively defeat the rights of the Plaintiff to the Suit property, and thereby claiming urgency necessitating interim reliefs. I find much merit in the submission on behalf of Defendant Nos.1 and 8 that failure in settlement talks presuming there is such failure does not allow the Plaintiff to evade the pre-institution mediation. If the Plaintiff was allowed to do so, it will serve as a dangerous precedent for ingenious Plaintiffs to bypass the requirement of Section 12A of the 2015 Act and the legislative aim will stand defeated. Settlement talks are not relevant in determination of urgency and it is only the acts of the Defendant which are prejudicial to the rights of the Plaintiff that are relevant.

48. The Supreme Court has in *Yamini Manohar (Supra)* held that a prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the 2015 Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the Plaintiff. Further, the Supreme Court has held that the Plaintiff in making out a prayer for urgent interim relief cannot paralyze Section 12A of the 2015 Act. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The Supreme Court has accepted the proposition that the commercial Courts do have a role, albeit a limited one for considering the prayer for urgent interim relief.

49. Mr. Chinoy has relied upon the judgment of the Supreme Court in *Yamini Manohar (Supra)* in support of his contention that, the Court has a limited role and that it must consider the facts and circumstances holistically from the standpoint of the Plaintiff. He has also placed reliance upon the judgment of this Court in *Novex Communications Private Ltd. (Supra)* in support of his submission that the developments in the intervening period and the conduct of the parties are required to be considered in deciding whether the Suit

contemplates urgent ad-interim relief for bypassing Section 12A of 2015 Act.

50. The judgments in *Yamini Manohar (Supra)* and *Novex Communications Private Ltd. (Supra)* in my view supports the case of the Applicants herein. The Plaintiff has in the present case sought to bypass the statutory mandate of pre litigation mediation by placing reliance upon the alleged collusion and connivance of the Defendants which it has alleged defeats its rights to the property under the registered Development Agreement. I have from a perusal of the said letter dated 13th May, 2024, prima facie found there to be no collusion and / or connivance between the Defendants for defeating the Plaintiff's rights for the property under the registered Development Agreement. Thus, mere reference to the said letter and claiming urgency to file the Suit and seek ad-interim relief is in my view a camouflage and guise to bypass the statutory mandate of pre-litigation mediation particularly when the deception and falsity is apparent.

51. The judgment of this Court in *Novex Communications Private Ltd. (Supra)* was in context of an Intellectual Property Rights

(“IPR”) Suit where the consideration of the Court to determine delay is different from the consideration in other Commercial Suits. The violation of proprietary rights in IPR Suits are continuing and the Commercial Court in so determining would be guided by factors such as the variables coming into play, including the relative position of the parties, the developments in the intervening period and the conduct of the parties.

52. In the present Commercial Suit, the Plaintiff as aforementioned is aggrieved by the purported collusion and connivance between the Defendants to defeat the Plaintiff’s rights to the property under the registered Development Agreement and for which they have sought the prayers in the Suit to declare the Indenture of Mortgage Deed dated 31st March, 2022 null and void and not binding on the Plaintiff and has sought for delivery and cancellation of the same by the Defendants and intimate the same to the Sub-Registrar of Assurances. Further, prayer is sought for declaring the Assignment Agreement dated 29th June, 2024 as null and void and not binding on the Plaintiff and the Plaintiff has sought for delivery and cancellation thereof by the Defendants and by intimating the same to the concerned Sub Registrar of Assurances.

The consequential prayer is for injunction restraining the Defendants from acting in furtherance of the purported Mortgage Deed dated 31st March, 2022 and Assignment Agreement dated 19th June, 2024.

53. The Plaintiff had knowledge of the Indenture of Mortgage as per the averment in the Plaint from September, 2023 when the Term Sheet was executed between the Plaintiff and Defendant No.2. This is evident from a reading of paragraphs 8(p) with 8(q) of the Plaint. Further, the Assignment Agreement according to the Plaintiff came to its knowledge on 19th August, 2024 when Defendant No.8 filed an Application before this Court in Writ Petition No.2338 of 2024. This is evident from a reading of paragraph 8(g) of the Plaint.

54. In spite of having knowledge in September 2023 and / or 19th August, 2024, the present Commercial Suit as well as Interim Application seeking interim relief has been filed in the March, 2025. Thus, there can be no urgency in seeking such ad-interim / interim relief to claim exemption from pre institution of mediation.

55. A case for urgent ad-interim relief / interim relief to seek

exemption from pre institution mediation can only be made basis the pleadings i.e. the Complaint and documents annexed to the Complaint as has been held by this Court in *Ekta Housing Private Ltd. (Supra)*.

56. I find much merit in the submissions of the Defendant Nos.1 and 8 that the additional Affidavit filed on 16th June, 2025 ought not to be taken on record and / or considered as it is clearly an afterthought and evidences that the Plaintiff by its own conduct *per se* does not demonstrate any “urgency”. The additional Affidavit does not seek to place on record any new development and / or event. The submission on behalf of Defendant No.8 that under Order XI Rule 1 of the CPC (as applicable to Commercial Suits), any additional documents, subsequent to the filing of the Suit can be filed only with permission of the Court, within 30 days of the filing of the Suit merits acceptance. Further, the fact of the additional Affidavit being tendered after the matter is part heard, without providing any adequate explanation and without seeking leave of this Court ought to be taken into account, also merits acceptance.

57. It has been held in *Skipper Ltd. (Supra)* that the Plaintiff cannot be allowed to bypass the mandatory requirement under

Section 12A through clever drafting. In the absence of urgent interim relief the Plaint must be rejected under Order VII Rule 11 as has been held by the Supreme Court in *Patil Automation (P) Ltd. (Supra)*. Further, in a recent decision of the Supreme Court in *Dhanbad Fuels Pvt. Ltd. (Supra)* following *Patil Automation (Supra)* it is held that non compliance of Section 12A of the 2015 Act must meet with rejection under Order VII Rule 11 of the CPC, either on an application of the Defendant or suo moto by the Court.

58. Accordingly, I find that the Plaintiff has failed to satisfy the case of 'urgency' to bypass the mandatory provision of pre institution mediation under Section 12A of the 2015 Act.

59. Accordingly, the Plaint filed in the present Commercial Suit is rejected under Order VII Rule 11 of the CPC.

60. The Plaintiff is at liberty to file a fresh Plaint in respect of the same cause of action after following the necessary procedure as mandated in Section 12A of the 2015 Act.

61. It is made clear that any observation on merits may have

been only made to decide these Applications. In the event, liberty as granted, is exercised, and a fresh Suit is filed after complying with mandatory requirement of Section 12A of the 2015 Act, the Suit shall be decided on its own merits, uninfluenced by any observations made in this Order.

62. The Interim Applications are disposed of in the above terms. There shall be no order as to costs.

[R.I. CHAGLA J.]