

OCD-2

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

**AD-COM/5/2026
(Old No.APOT/141/2025)**

GOODFAITH HOLDING PRIVATE LIMITED

-VERSUS-

M/s. SUPREME WOOD PRODUCTYS PRIVATE LIMITED

BEFORE:

HON'BLE JUSTICE DEBANGSU BASAK

-A N D-

HON'BLE JUSTICE MD. SHABBAR RASHIDI

For the Appellant : *Mr. Suman Dutt, Sr. Adv.*
Mr. Aurin Chakraborty, Adv.
Mr. Anil Choudhury, Adv.

For the Respondent : *Mr. Nirmalya Dasgupta, Adv.*
Ms. Bhawna Parasramka, Adv.

HEARD ON : 15.07.2026

DELIVERED ON : 15.07.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against the judgment and decree dated April 29, 2025 passed in IA No.GA/2/2021 and GA/3/2021 in CS-COM/312/2024.
2. By the impugned judgment and decree learned Single Judge dismissed the suit filed by the appellant on the ground of the appellant did not

contemplate any urgent interim relief at the time of institution of the suit. The learned Single Judge recalled the order dated September 16, 2021 granting leave under Section 12A of the Commercial Courts Act, 2015.

3. Learned senior Advocate appearing for the appellant submits that, the appellant filed a suit for recovery of money lent and advanced. The suit was filed on September 10, 2021. On an application filed under Section 12A of the Act of 2015 being GA/1/2021, learned Trial Judge granted leave under Section 12A of the Act of 2015. Writ of summons of the suit was served upon the defendant on September 28, 2021. The Court was closed for the Puja Vacation between the period from October 9, 2021 and November 7, 2021.
4. Learned senior Advocate appearing for the appellant submits that, the respondent filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 on November 11, 2021 being GA/2/2021. Appellant filed an application for injunction on November 22, 2021 being GA/3/2021.
5. Learned senior Advocate appearing for the appellant submits that, there is a distinction between leave under Section 12A of the Act of 2015 being obtained with that of no leave at all being obtained while instituting the suit. He submits that, there is no time-line prescribed for seeking urgent interim relief, under the Act of 2015. According to him, plaintiff may disclose requirement of urgent interim relief. The plaintiff need not file an application seeking urgent interim relief simultaneously with the filing of the plaint. In a given situation, the plaintiff may be required to obtain

various other informations after filing of the suit in order to apply for urgent interim relief. In such a scenario, it cannot be said that the plaintiff did not require urgent interim relief.

6. Learned senior Advocate appearing for the appellant relies upon **AIR 2021 Cal 190 (Laxmi Polyfab Pvt. Ltd. vs. Eden Realty Ventures Pvt. Ltd. & Anr.)**. He submits that, **Laxmi Polyfab Pvt. Ltd. (supra)** recognized Section 12A of the Act of 2015 to be mandatory. He submits that, **Laxmi Polyfab Pvt. Ltd. (supra)** was noted in **(2022) 10 SCC 1 (Patil Automation Pvt. Ltd. & Ors. vs. Rakheja Engineers Pvt. Ltd.)**. Referring to **Laxmi Polyfab Pvt. Ltd. (supra)** and **Patil Automation Pvt. Ltd. & Ors. (supra)**, learned senior advocate appearing for the appellant submits that, both prescribe a cut-off date beyond which if a suit is filed in the commercial division without obtaining leave under Section 12A of the Act of 2015, such suit is required to be rejected. Both held that, Section 12A of the Act of 2015 is mandatory.
7. Learned senior Advocate appearing for the appellant refers to **(2025) 9 SCC 424 (Dhanbad Fuels Pvt. Ltd. vs. Union of India & Anr.)** and **(2026) 4 SCC 815 (Novenco Building and Industry A/S vs. Xero Energy Engineering Solutions Pvt. Ltd. & Anr.)** on the proposition that Section 12A of the Act of 2015 is mandatory. He submits that, **Dhanbad Fuels Pvt. Ltd. (supra)** kept the suit pending and directed the parties to undertake mediation. He submits that, such a procedure may be applied in the facts and circumstances of the present case also.

8. Learned Senior Advocate appearing for the appellant relies upon three decisions of this Hon'ble Court being **2024 SCC Online 2443 (Gavril Metal Pvt. Ltd. Vs. Maira Fabricators Pvt. Ltd.)**, **2024 SCC Online Cal 7817 (Shristi Infrastructure Development Corporation Limited Vs. Sarga Hotel Private Limited and Another)** and **2026:CHC-OS:117-DB (Unique Enterprenuers and Finance Limited and Anr. Vs. Really Agritech Private Limited and Anr.)** for the proposition that, Section 12A of the Act of 2015 needs to be applied in the facts and circumstances of each case. He submits that, Section 12A of the Act of 2015 is not an absolute bar. He submits that, in a given case, the plaint need not be accompanied with an application for urgent interim relief, if the fact scenario of such case permits the plaintiff to apply for urgent interim relief, after institution of the suit. Simplicitor on the ground of the plaint not being accompanied with an application for urgent interim relief, leave under Section 12A once obtained should not be revoked.
9. Learned Senior Advocate appearing for the appellant submits that, in the facts and circumstances of the present case, learned Court initially granted leave under Section 12A of the Act of 2015 on September 16, 2021. Learned Single Judge, thereafter, erred in revoking such leave by the impugned judgment and decree.
10. Respondent is represented.

11. Appellant as the plaintiff filed a suit for recovery of money lent and advanced against the defendant/respondent. Such suit was filed on September 10, 2021 and registered as CS-COM No. 312 of 2024.
12. Writ of summons of the suit filed by the appellant was served upon the respondent on September 28, 2021.
13. Appellant applied for and obtained leave under Section 12A of the Act of 2015 on September 16, 2021. In accordance with the calendar set by this Hon'ble Court, the Court was closed for the Puja Vacation between the period October 9, 2021 till November 7, 2021.
14. Respondent applied under Order VII Rule 11 of the Code of Civil Procedure, 1908 being GA/2/2021 on November 11, 2021. Thereafter, appellant applied for injunction by way of an application being GA/3/2025 on November 22, 2021.
15. Section 12A of the Act of 2015 is mandatory. ***Laxmi Polyfab Pvt. Ltd. (Supra)*** or ***Patil Automation Private Limited (Supra)***, ***Yamini Manohar (Supra)***, ***Dhanbad Fuels Private Limited (Supra)*** and ***Novenco Building and Industry A/S (Supra)*** held it to be so.
16. ***Laxmi Polyfab Pvt. Ltd. (Supra)*** prescribed that, suits filed on or after December 12, 2020 without obtaining leave under Section 12A of the Act of 2015 invited bar under Section 12A of the Act of 2015. This position was noted in paragraph 55 of ***Patil Automation Private Limited (Supra)***.

17. **Patil Automation Private Limited (Supra)** in paragraph 113 held as follows:-

“113. Having regard to all these circumstances, we would dispose of the matters in the following manner:

113.1. We declare that Section 12-A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order 7 Rule 11. This power can be exercised even suo motu by the court as explained earlier in the judgment. We, however, make this declaration effective from 20-08-2022 so that stakeholders concerned become sufficiently informed.

113.2. Still further, we however direct that in case complaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff.

113.3. Finally, if the plaint is filed, violating Section 12-A after the jurisdictional High Court has declared Section 12-A mandatory also, the plaintiff will not be entitled to the relief.”

18. In paragraph 113.3 of **Patil Automation Private Limited (Supra)**, Hon'ble Supreme Court held that, if the plaint is filed violating Section 12A of the Act of 2015 after the jurisdictional High Court declared Section 12A to be mandatory, the plaintiff will not be entitled to the relief. Insofar as this High Court is concerned, Section 12A of the Act of 2015 was held to be mandatory on April 7, 2021. The instant suit was

filed on September 10, 2021 which is beyond the date of delivery of the judgment in **Laxmi Polyfab Pvt. Ltd. (Supra)**.

19. **Patil Automation Private Limited (Supra)** was noted in **Yamini Manohar (Supra)**. **Yamini Manohar (Supra)** held that, the plaintiff does not have any absolute choice and right to bypass the mandatory provisions under Section 12A of the Act of 2015 by making a prayer for urgent interim relief. It held as follows:-

“12. The words “contemplate any urgent interim relief” in Section 12-A (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 12-A of the CC Act is not defeated.”

20. Both **Patil Automation Private Limited (Supra)** as well as **Yamini Manohar (Supra)** were noted in **Dhanbad Fuels Private Limited (Supra)**. **Dhanbad Fuels Private Limited (Supra)** held as follows:-

“71. In light of the aforesaid discussion, we summarise our findings as under:

71.1. The decision of this Court in Patil Automation lays down the correct position of law as regard Section 12-A of the 2015 Act by holding it to be mandatory in nature.

71.2. *As held in para 104 of the decision in Patil Automation, the declaration of the mandatory nature of Section 12-A of the 2015 Act relates back to the date of the amending Act.*

71.3. *As held in para 113.1 of the decision in Patil Automation, any suit which is instituted under the 2015 Act without complying with Section 12-A is liable to be rejected under Order 7 Rule 11. However, this declaration applies prospectively to suits instituted on or after 20-08-2022.*

71.4. *A suit which contemplates an urgent interim relief may be filed under the 2015 Act without first resorting to mediation as prescribed under Section 12-A of the 2015 Act.*

71.5. *Unlike Section 80(2) CPC, leave of the court is not required to be obtained before filing a suit without complying with Section 12-A of the 2015 Act.*

71.6. *The test for “urgent interim relief” is if on an examination of the nature and the subject-matter of the suit and the cause of action, the prayer of urgent interim relief by the plaintiff could be said to be contemplable when the matter is seen from the standpoint of the plaintiff.*

71.7. *The Courts must also be wary of the fact that the urgent interim relief must not be merely an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12-A of the 2015 Act.*

71.8. *Even if the urgent interim relief ultimately comes to be denied, the suit of the plaintiff may be proceeded with without compliance with Section 12-A if the test for “urgent interim relief” is satisfied notwithstanding the actual outcome on merits.*

71.9. *Suits instituted without complying with Section 12-A of the 2015 Act prior to 20-08-2022 cannot be rejected under Order 7 Rule 11 on the ground of non-compliance with*

Section 12-A unless they fall within the exceptions stipulated in paras 113.2 and 113.3 of the decision in Patil Automation.

71.10. *In suits instituted without complying with Section 12-A of the 2015 Act prior to 20-08-2022 which are pending adjudication before the trial court, the court shall keep the suit in abeyance and refer the parties to tim e-bound mediation in accordance with Section 12-A of the 2015 Act if an objection is raised by the defendant by filing an application under Order 7 Rule 11, or in cases where any of the parties expresses an intent to resolve the dispute by mediation.*

72. *Thus, the answer to the question formulated by us whether a suit filed without complying Section 12-A of the 2015 Act must be dismissed or be kept in abeyance with a direction to the parties to explore mediation is as follows:*

72.1. *If the suit is instituted on or after the date of the decision in Patil Automation i.e. 20-08-2022, without complying with Section 12-A of the 2015 Act, then it must meet with rejection under Order 7 Rule 11, either on an application by the defendant or suo motu by the court.*

72.2. *if the suit was instituted prior to 20-08-2022 without complying with Section 12-A of the 2015 Act, and the same does not fall within one of the exceptional categories as explained in para 55 of this judgment, then it would be open to the court to keep the suit in abeyance and direct the parties to explore the possibility of mediation in accordance with the 2015 Act, the PIMS Rules and the 2020 SOP.”*

21. **Novenco Building and Industry A/S (Supra)** considered **Dhanbad Fuels Private Limited (Supra)**, **Patil Automation Private Limited (Supra)** and **Yamini Manohar (Supra)**. It is of the following view:

“19. The legal test distilled from the aforesaid decisions for the purposes of rejection of the plaint and for adjudication of interim relief can be culled out as follows:

19.1. Section 12-A mandatorily requires pre-institution mediation for commercial suits, non-compliance of which would ordinarily render the plaint institutionally defective.

19.2. A plaintiff can be exempted from the requirement of Section 12-A only when the plaint and the documents attached with it clearly show a real need for urgent interim intervention. A wholesome reading of the plaint and the material annexed to the plaint ought to disclose the need for urgent relief.

19.3. The court must look at the plaint, pleading and supporting documents to decide whether urgent interim relief is genuinely contemplated. The court may also look for immediacy of the peril, irreparable harm, risk of losing rights/assets, statutory timelines, perishable subject-matter, or where delay would render eventual relief ineffective.

19.4. A pro forma or anticipatory prayer for urgent relief used as a device to skip mediation will be ignored and the court can require the parties to comply with Section 12-A of the Act.

19.5. The court is not concerned with the merits of the urgent relief, but if the relief sought seems to be plausibly urgent from the standpoint of the plaintiff the court can dispense with the requirement under Section 12-A of the Act.”

22. **Gavrill Metal Pvt. Ltd. (Supra)** and **Shristi Infrastructure Development Corporation Limited (Supra)** were rendered prior to **Dhanbad Fuels Private Limited (Supra)**. In **Shristi Infrastructure**

Development Corporation Limited (Supra), the suit was accompanied by an application for interim relief under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908. There, after institution of the suit, the plaintiff applied for dispensation of pre-institution mediation. The defendant in such suit, filed a caveat upon which, a notice was given to the defendants of the injunction application. On notice of the injunction application, the defendants filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 which was allowed by the learned Single Judge. On appeal, the Division Bench set aside such order of dismissal of the suit.

23. In **Unique Enterprenuers and Finance Limited and Anr. (Supra)**, Court found that, the plaintiff therein was aware of the wrongdoings of the defendants much prior to the filing of the suit. The plaintiffs did not undertake pre-institution mediation.
24. The authorities in the above, therefore, laid down the following:-
 - (i) Section 12A of the Act of 2015 is mandatory.
 - (ii) Suits filed without complying with Section 12A of the Act of 2015 or seeking leave under Section 12A of the Act of 2015, after the jurisdictional High Court declared Section 12A to be mandatory are required to be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908.

- (iii) So far as High Courts which did not declare Section 12A of the Act of 2015 to be mandatory prior to ***Patil Automation Private Limited (Supra)***, then, suits filed on or after August 20, 2022 are required to be rejected.
 - (iv) Suits filed up to the period when the jurisdictional High Court declared Section 12A of the Act of 2015 to be mandatory or ***Patil Automation Private Limited (Supra)*** did so, in such suits, the parties may be directed to undergo mandatory mediation [see ***Dhanbad Fuels Private Limited (Supra)***].
 - (v) Plaintiff must make out a case for urgent interim relief on the basis of the pleadings in the plaint and the documents disclosed therewith.
 - (vi) Plaintiff does not possess an absolute choice or right to negate pre-institution mediation by filing an application for urgent interim relief when, the plaintiff does not require one.
 - (vii) Perception of urgent interim relief is from the standpoint of the plaintiff.
 - (viii) It is of no consequence, if ultimately the plaintiff fails to obtain any interim relief after seeking urgent interim relief.
25. In respect of suits filed in the Commercial Division or in the Commercial Court, three jurisdictional facts must be established simultaneously for the Commercial Division or the Commercial Court to assume jurisdiction. The three jurisdictional facts are:

- (i) The subject matter of the suit, involves a commercial dispute within the meaning of the Act of 2015;
 - (ii) The value of the subject matter of the dispute involving a commercial dispute within the meaning of the Act of 2015 is of the specified value; and,
 - (iii) There is a pre-institution mediation or a requirement to dispense with pre-institution mediation, as the case may be.
26. Unless, all three jurisdictional facts are simultaneously satisfied, a Commercial Court or a Commercial Division cannot assume jurisdiction over the subject matter of the lis. This view of ours is supported by the observations made by the Hon'ble Supreme Court in ***Patil Automation Private Limited (Supra)***, ***Yamini Manohar (Supra)***, ***Dhanbad Fuels Private Limited (Supra)*** and ***Novenco Building and Industry A/S (Supra)***.
27. We are unable to agree with the contention of the appellant that, Section 12A of the Act of 2015 does not prescribe any timeline for the plaintiff to seek urgent interim relief. Section 12A of the Act of 2015 is absolute and mandatory. It requires the plaintiff to undertake pre-institution mediation unless, the plaintiff seeks urgent interim relief. Therefore, the urgency of the interim relief is at the point of institution of the suit. In the event, at the point of institution of the suit, the plaintiff does not contemplate any urgent interim relief then, the plaintiff is required to

undertake the pre-institution mediation in terms of the mandatory provisions of Section 12A of the Act of 2015.

28. In view of the discussions above, we find no ground to interfere with the impugned judgment and decree.
29. AD-COM/5/2026 is dismissed, without any order as to costs.
30. At this stage, learned Senior Advocate appearing for the appellant seeks leave under Order VII Rule 13 of the Code of Civil Procedure to file a fresh suit.
31. Since, we invoked Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 in view of the mandate Section 12A of the Act of 2015, in rejecting the plaint of the appellant as the plaintiff, the appellant is at liberty to file a fresh suit, if so advised. We hastened to add that, we did not decide on any of the issues including the issue of limitation in respect of the fresh suit, if filed by the appellant.

32. I agree.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)