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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 09th January, 2026

Date of Decision :16th January, 2026

+ **CM(M) 1762/2025, CM APPL. 57124/2025 & CM APPL. 70629/2025**

VANITA BATHLA

.....Petitioner

Through: Mr. Kirti Uppal and Mr. Anurag Ahluwalia, Senior Advocates with Mr. Ankit Banati, Mr. Umang Tyagi, Mr. Zuber Ali, Ms. Archisha Satyarthi and Mr. Siddharth Sharma, Advocates.

versus

SMT. SHASHI BAJAJ

.....Respondent

Through: Mr. Roshan Santhalia, Ms. Kavya Arora and Mr. Himanshu Kumar Pathak, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

ORDER

1. The present petition has been filed by the petitioner/defendant under Article 227 of the Constitution of India assailing the order dated 07th August, 2025 (hereinafter referred to as the “*Impugned Order*”) passed by the trial Court in CS (COMM) 364/2023, whereby the trial Court has rejected the plea raised by the petitioner alleging the non-compliance of the mandatory requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as the ‘*the Act*’) before filing of the suit.



2. Learned Senior Counsels on behalf the petitioner have argued that as the respondent has failed to exhaust the mandatory remedy of pre-institution mediation under Section 12A of the Act, and also that the suit does not disclose any case of “urgent interim relief”, so the plaint is liable to be rejected in accordance with law. The plaint in this respect is vague, non-specific, and a mere eyewash intended to circumvent the mandatory provisions of Section 12A of the Act. The application of the respondents seeking exemption from pre-institution mediation is still pending which shows that there is no “urgent interim relief” involved in the suit. It is further argued that *vide* order dated 15th April, 2023, the plaint in the suit bearing no. Civ DJ No. 159/2020 was returned on the ground that the dispute constituted a commercial dispute and was, therefore, required to be instituted before the Commercial Court and Consequently, pre-institution mediation was mandatory before instituting the suit in the Commercial Court.

Per Contra, learned Counsel for the respondent has argued that the trial Court has passed the impugned order after considering the material on record. There is no illegality or infirmity in the impugned order. The arguments of the petitioner are without any merit and the petition is liable to be dismissed.

3. I have heard the learned counsels for the parties. Record perused.

4. In brief, the case of the respondent/plaintiff as alleged in the plaint is that they are the owners of the suit property i.e., Shop No. A-3/264, Eastern Side, Ground Floor, admeasuring 750 sq. ft., situated at Paschim Vihar, Delhi, which was jointly purchased by Ms. Shashi Bajaj and Smt. Neelam Bajaj *vide* a sale deed dated 28th September, 2009. On the request of the petitioner/defendant, the respondent/plaintiff *vide* rent agreement dated 15th



April, 2015, leased out the suit property to the petitioner for a period of nine (09) years only, commencing from 1st May, 2015 till 30th April, 2024. As the petitioner began committing defaults in payment of rent, so the respondent in exercise of his rights as per Clause 5 of the rent agreement terminated the tenancy of the petitioner *vide* a legal notice dated 08th January, 2020. To the said notice the petitioner issued a frivolous reply fabricating a false story that the respondent had executed an agreement to sell dated 07th March, 2015 in favour of the petitioner for a total consideration of Rs.60,00,000/- (60 Lakhs). The petitioner has refused to vacate the suit property. Thereafter, the respondent has filed the present suit claiming the relief of possession of the suit property alongwith other reliefs.

4.1 Alongwith the plaint, the respondent has also filed an application under Order XXXIX Rule 1 and 2 of the CPC, in which it is prayed that *ex-parte ad-interim* injunction be granted to restrain the petitioner from alienating the suit property, creating any third-party interest and/or disposing of the suit property in any manner whatsoever till the disposal of the present suit.

4.2 It is pertinent to note that the suit was initially instituted by the respondent as an ordinary suit bearing no. Civ DJ No. 159/2020. In this suit *vide* order dated 15th April, 2023, the plaint was returned to the respondent under Order VII Rule 10 CPC to institute the same before the appropriate forum.

4.3 Furthermore, during the pendency of the civil suit bearing no. Civ DJ No. 159/2020 the trial Court referred this suit for mediation *vide* order dated 05th April, 2022 and the parties have participated in mediation. However, the mediation attempts eventually failed and the matter was



returned as 'Not Settled' vide mediation report dated 04th July, 2022.

5. To support his argument that the interim relief as sought by the respondent is not an "urgent interim relief", the petitioner has placed reliance on the judgment of a co-ordinate bench of this Hon'ble Court in ***Exclusive Capital Ltd. v. Clover Media Ltd. and Ors., 2025 SCC OnLine 5221***, which held as under:

"53. Thus, it is imperative that Courts remain vigilant against attempts by unscrupulous litigants to abuse the exemption under Section 12A by mechanically appending a plea for urgent interim relief as a façade to circumvent the statutory mandate of pre-institution mediation. Such conduct erodes the sanctity of the legislative framework and subverts the object of reducing the burden on Courts through alternative dispute resolution mechanisms. The prayer for urgent relief must be substantiated through specific pleadings and demonstrable facts and cannot be allowed to serve as a mere procedural ruse to escape mandatory compliance. Courts must rigorously assess the genuineness of the asserted urgency and reject suits where the plea for interim relief is palpably contrived or unsubstantiated. ...

... 57. Section 12A of the Act fulfils this requirement by instituting a mandatory pre-institution mediation mechanism, which serves as a bypass and fast-track route for resolving disputes without occupying judicial time at the inception stage. The only exception to this route balances the right to immediate judicial intervention in genuinely urgent matters which may be proved by pleadings, cause of action etc.

58. To sum up, in determining whether a suit contemplates urgent interim relief, one pertinent consideration is whether the failure to grant such relief would render the plaintiff's application for injunction or the suit itself infructuous, or would create an irreversible or unalterable situation, thereby disabling the Court from restoring status quo ante



at the stage of adjudication of such application. This is one of the determinative factors, among others, including: (i) the origin and timeline of the cause of action, (ii) the timing and manner of the plaintiff's approach to the Court, and (iii) whether adherence to the pre-institution mediation mechanism under Section 12A would operate to the detriment or prejudice of the plaintiff."

5.1 As noted above, the respondent has filed the suit for possession of the suit property and an application under Order XXXIX Rule 1 and 2 of the CPC.

In the civil suit bearing no. Civ DJ No. 159/2020, the trial Court has passed the order dated 12th November, 2021 on the application under Order XXXIX Rule 1 and 2 of the CPC, which is reproduced as under:

"Plaintiff prays for application under Order 39 rule 1 and 2 CPC on which counsel for defendant submits that defendant will not create any third party right in the suit property bearing no. A-3/264, Eastern Side, Ground floor, Paschim Vihar, New Delhi-110063.

Statement of counsel for defendant recorded in this regard.

*In view of the statement, parties are directed to maintain status quo regarding the suit property till further directions of this court. Accordingly, **application under Order 39 rule 1 and 2 CPC stands disposed off. ...***

5.2 In the present suit the trial Court vide order dated 25th September, 2023 has passed the following interim order:

"Counsel for plaintiff has prayed for interim protection and it is pointed out that before return of plaint by the Ld. ADJ05/West/THC/Delhi, status quo order was passed on 12.11.2021.



I have perused the record. Considering the prayer made in the plaint and in interim application moved by plaintiff, it is ordered that status quo regarding the suit property be maintained till further orders."

5.3 Keeping in view the subject matter of the suit, nature of the relief in the suit and the interim orders as stated above granted by both the courts, this Court is of the view that the interim relief is an "urgent interim relief" as failure to grant the interim relief would make the main relief of possession as sought in the suit as infructuous and also leads to multiplicity of litigation.

6. Learned counsel for the respondent has relied upon the judgement of this Court in ***Aaone Developers Pvt. Ltd. v. Sabita Jha and Ors., 2025 SCC OnLine Del 42***, to show that pre-institution mediation is not required as the mediation has already taken place between the parties in the ordinary suit prior to the return of the plaint for institution of the plaint in the Commercial Court. In that judgement it has been held as under:

"26. Notably, when the suit was originally filed as an ordinary suit, there was no occasion for the plaintiff to resort to pre-institution mediation, as Section 12A of the Act is not applicable to the ordinary suits. However, before the conversion of suit to commercial suit on 22.03.2024, the matter was referred to the mediation, therefore, the mandatory requirement of pre-institution mediation stood complied with, since the object of compulsory pre-institution mediation is only to relieve the courts from avoidable litigation in commercial matters and the mediation, as an alternative dispute mechanism, has been identified as a workable solution for the said purpose.

27. Thus, the mediation having been resorted to prior to the conversion of ordinary suit to a commercial suit and that too on a joint request of the parties, which ended in as "not



settled", it does not lie in the mouth of the defendants to seek rejection of plaint and to burden the plaintiff to avail pre-institution mediation all over again and file a fresh suit thereafter."

This judgement is applicable to the facts of the present case as from the record it is clear that mediation has taken place between the parties in the suit Civ DJ No. 159/2020 at the request of the learned counsel for the parties and which has ended in as "*Not Settled*". Accordingly, the respondent cannot be burdened again to avail pre-institution mediation all over again and file a fresh suit thereafter.

7. The Hon'ble Supreme Court in the Judgement of ***Dhanbad fuels Private Limited v. Union of India, 2025 SCC OnLine SC 1129***, has settled the law relating to the scope of Section 12 A of the Act and has observed 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 regards 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 20-8-2022.

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 20-8-2022 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 20-8-2022 which are pending adjudication before the trial court, the court shall keep the suit in abeyance and refer the parties to time-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.”



As discussed above, the interim relief has been held to be “urgent interim relief”, so in view of this judgement leave of the court is not required to be obtained before filing a suit without complying with Section 12A of the Act. Accordingly, the filing of the application for exemption from pre-institution mediation by the respondent is of no relevance and does not in any way affect the institution of the suit in the Commercial Court without compliance of Section 12A of the Act.

8. In view of the foregoing discussions of facts and law, this Court does not find any infirmity or illegality in the impugned order dated 07th August, 2025 and the same is upheld. Accordingly, the present petition stands dismissed alongwith pending application(s), if any.

**RAJNEESH KUMAR GUPTA
JUDGE**

JANUARY 16, 2026/nd/isk