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The High Court Of Madhya Pradesh,
Bench At Indore

Case No.	M.A. No.1269/2021
Parties Name	<i>Curewin Pharmaceuticals Pvt. Ltd</i> vs. <i>Curewin Hylico Pharma Pvt. Ltd.</i>
Date of Judgment	01/07/2021
Bench Constituted	<u>Division Bench:</u> Justice Sujoy Paul Justice Anil Verma
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	Yes
Name of counsels for parties	Shri Vijayesh Atre, Advocate for the appellent. Shri Pramod Nair, Advocate for the respondent.
Law laid down	<p>1) Section 12-A of Commercial Courts Act, 2015- The provision is clear and unambiguous that a suit which is not pregnant with any such interim relief under the act cannot be instituted unless the plaintiff exhausts the remedy of pre-institutional mediation (para no.11).</p> <p>2) Section 12-A of Commercial Courts Act, 2015- The purpose of insertion of section 12-A is to encourage the parties to try and resolve their disputes amicably in mediation process. But Commercial Court Act is a procedural law. The procedural law prescribes procedure to facilitate the justice. It should not be construed in manner to strangle the litigant on hyper technical grounds.</p> <p>3) Cause of Action- The cause of action is held to be “bundle of facts”. The Court needs to examine and ascertain the material which</p>

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	became basis for the cause of action. 4) Practice and Procedure- The commercial Court was under an obligation to examine the plaint averments and documents meticulously in order to examine whether a cause of action which shows urgency for interim relief is available or not. Non-suiting a litigant has a drastic effect on his business. The commercial Court must examine the plaint averments and documents with accuracy and precision. Since certain relevant pleadings of plaint and documents has escaped notice of commercial Court without expressing any opinion on the merits, the matter is remitted back to said Court.
Significant paragraph numbers	11 to 15.

ORDER
(01.07.2021)

Sujoy Paul, J.

1) This Miscellaneous Appeal filed under Order 43 Rule 1(r) of Code of Civil Procedure, 1908 assails the order of commercial Court dated 08.03.2021, whereby the Court below has non-suited the appellant for not fulfilling the statutory requirements under section 12-A of the Commercial Courts Act, 2015.

2) In nutshell, the stand of learned counsel for the appellant is that the appellant is a private limited company and has copyright to use a product namely “Enerzy”. The respondent no.1 is unauthorizedly using the said product. The appellant instituted the suit under Order 8 Rule 1 of the CPC read with section 55 of the Copyright Act, 1959, which was registered as

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case no.8656/2021. Alongwith the said suit, the appellant filed an application for interim relief and yet another application under section 12-A of the Commercial Courts Act. The commercial Court by order dated 08.03.2021, dismissed the suit by holding that as per the appellant's own saying, the cause of action have arisen in July, 2020 and 18th August, 2020. The suit was instituted on 04.03.2021 i.e after six months from the date, the cause of action had originally arisen. Perusal of plaint shows that there exists no urgency and hence interference is not warranted.

3) Learned counsel for the appellant submits that the commercial Court has mainly assigned three reasons for not entertaining the suit:-

i) There was no cause of action after 18th August, 2020, whereas the suit was instituted on 04.03.2021. In absence of any such cause of action and existence of urgency, the suit was not maintainable.

ii) The appellant/plaintiff has directly approached the Court whereas in the factual backdrop of this matter, he should have adopted the alternative dispute resolution method through 'institutional mediation'. Putting it differently, the opinion of commercial Court was that if there exists no causes of action after 04.03.2021, there was no reason, why the plaintiff has not adopted the institutional mediation facility.

iii) In absence of urgency and for not adopting institutional mediation, the suit is not maintainable as per section 12-A of Commercial Courts Act.

4) Criticizing the said order, learned counsel for the appellant submits that the commercial Court was required to examine the plaint averments and documents in their totality. There are continuous cause of action and the product in question

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was being sold by the defendant without any authority. This causes financial harm to the appellant and has a potential to harm the public at large. The necessary ingredients were very much available in the plaint and commercial Court had erred in rejecting the plaint on the ground that the appellant has failed to avail the remedy of the pre-institutional mediation.

5) During the course of hearing, learned counsel for the appellant placed reliance on the judgments of Bombay High Court in *Ganga Taro Vazirani Vs. Deepak Raheja reported in 2021 SCC OnLine Bom 195* and judgment of Telangana High Court in *M/s MK Food Products Vs. SH Food Products passed in CRP No.3690/2018*. It is urged that the purpose of inserting section 12-A in the act is to encourage the parties to settle their dispute through mediation but in a case where there exists urgency, there is no bar or embargo to entertain the suit directly. In this case, the cause of action was not limited upto 04.03.2021, indeed, it continued thereafter and therefore, the commercial Court was not justified in non-suiting the appellant on the ground that there exists no special cause of action after 04.03.2021. To attack this finding, heavy reliance is placed on the police complaint dated 23.11.2020, wherein the appellant requested the police authority to collect the *Enerzy* Powder which is being illegally sold by the defendant/company. Later on, the appellant himself could lay his hands on one such invoice dated 09.02.2021, which shows that the defendant is indulging in selling this product unauthorizedly. All these events are “part of cause of action” and shows urgency and continuous harm to the appellant. The commercial Court has erred in non-suiting the appellant.

6) Shri Pramod Nair, learned counsel for the respondent no.1 supported the impugned order of commercial Court and urged

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that section 12(3) of the Commercial Court Act prescribes a statutory limitation for completion of mediation process. The period prescribed is only three months. Nothing prevented the appellant to follow the said process. Since the appellant has miserably failed to follow the said process, necessary ingredients for directly entertaining the suit could not be satisfied and by impugned order, the appellant was rightly non-suited.

7) It is noteworthy that learned counsel for the parties raised certain facts and ground, which relates to the merits of the case and at this stage, we are not inclined to enter into those factual aspect.

8) No other point is pressed by the learned counsel for the parties.

9) We have heard learned counsel for the parties at length.

10) Before dealing with rival contentions advanced at the bar, it is apposite to reproduce Sec.12-A of the Act of 1915:-

“12A. Pre-Institution Mediation and Settlement.--(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.”

(emphasis supplied)

11) The provision is clear and unambiguous, which shows that a suit which does not contemplate any urgent interim relief under this Act cannot be instituted unless the plaintiff exhausts the remedy of pre-institution mediation.

12) We are in respectful agreement with the view taken by the Bombay High Court in the case of *Ganga Taro Vaziran* (supra), wherein it was clearly held that the purpose of Sec.12A of the Act appears to be that parties should try and resolve their

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dispute amicably in mediation process before coming to the Court. The Commercial Courts Act is a procedural law. The procedural law prescribes procedure to facilitate justice. It should not be construed in a manner to strangle a litigant on hyper technical grounds. The question before us is whether the Commercial Court has rightly passed the impugned order dated 8/3/2021 or not.

13) As pointed out by Shri Atre, the order contains mainly three reasons because of which appellant has been non-suited. No doubt, the appellant has specifically pleaded about cause of action, wherein July 2020 and 18th August 2020 are mentioned as dates when cause of action had arisen. However, the meaning of expression 'cause of action' is not unknown to legal fraternity. The 'cause of action' is held to be "bundle of facts". (See *Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust (2012) 8 SCC 706*). The relevant portion reads as under:-

"13. While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action"."

(Emphasis Supplied)

14) Thus, in order to gather whether there exists a recent cause of action, a cause of action which shows urgency, the entire plaint averments and documents are required to be seen meticulously. In the instant case, it was pointed out that the relevant documents including police complaint and the invoice are of recent past. The said documents bears such dates which

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are subsequent to 18th August, 2020. However, these documents and averments on the strength of which these documents were filed were not taken care of by Court below.

15) Non-suiting a litigant has a drastic effect on his business. Thus, in a case of this nature, the commercial Court was expected to examine the plaint averments and documents with accuracy and precision. We find substance in the argument of Shri Atre that certain relevant pleadings of plaint and documents, which could have been of some assistance to the appellant escaped notice of Court below. In this backdrop, we deem it proper to set aside the order dated 8/3/2021 and restore the case in the file of Commercial Court with further direction to re-hear the parties and decide the application afresh. Since both the parties entered appearance before this Court, we deem it proper to fix a date of hearing to save the time. The matter before Commercial Court is restored for next date of hearing i.e. **12/7/2021**. The parties shall appear before the said Court on the said date and for this purpose, no notices will be required to be issued to the parties.

16) The appeal is **disposed of** without expressing any opinion on the merits of the case.

(Sujoy Paul)
Judge

(Anil Verma)
Judge

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