



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



1. S.B. Civil Writ Petition No. 17462/2025

Smt. Shabbo W/o Shri Abdul Rahim, R/o Near Rasid Bhai Paper  
Wala, Kishorepura, Kota (Raj.)

----Petitioner

Versus

M/s. Sajni Mehndi Product, Owner / Proprietor Mohammed Yusuf  
R/o Near Mohammed Yusuf Idgah, Kishorepura, Ward No. 33,  
Sanjay Basti, Kota (Raj.)

----Respondent

Connected With

2. S.B. Civil Writ Petition No. 17461/2025

Smt. Shabbo W/o Shri Abdul Rahim, Resident Of Near Rasid Bhai  
Paper Wala, Kishorepura, Kota (Raj).

----Petitioner

Versus

M/s. Sajni Mehndi Product Owner/proprietor Mohammed Yusuf,  
Resident Of Near Mohammed Yusuf Idgah, Kishorepura, Ward  
No.33, Sanjay Basti, Kota (Raj).

----Respondent

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For Petitioner(s) : Mr. Shailesh Prakash Sharma with  
Mr. Manan Sharma  
For Respondent(s) : Mr. Sandeep Pathak with  
Ms. Shefali Sharma

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**HON'BLE MR. JUSTICE ANUROOP SINGHI**

**Order**

**REPORTABLE**

**27/01/2026**

1. The present writ petition(s) being S.B. Civil Writ Petition No. 17462/2025 has been filed assailing the order dated 04.10.2025 and S.B. Civil Writ Petition No. 17461/2025 has been filed assailing the order dated 16.10.2025, and as both the said



impugned orders were passed by the learned Commercial Court, Kota (Raj.) in pending Civil Suit No. 54/2023 (CNR No. RJKT1D0003732023) titled as M/s. Sajni Mehndi Product vs. Smt. Shabbo, with the consent of learned counsel for the parties, both the writ petitions are being heard together and are being decided by this order.

### **FACTUAL MATRIX**

2. Facts leading to filing of these writ petitions are that the respondent/non-applicant/plaintiff filed a civil suit against the petitioner/applicant/defendant for infringement and passing off of trademark, permanent injunction, damages and rendition of accounts. Along with the plaint, an application for temporary injunction was also filed.

3. On 18.05.2023, the petitioner/applicant/defendant filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as '**CPC**') seeking rejection of plaint, wherein, a specific objection with respect to the maintainability of the abovementioned suit and the same being barred by law on account of non-compliance with the mandatory provision of Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as '**the Act of 2015**') was raised. The said application under Order VII Rule 11 CPC, along with another application dated 07.07.2023, both were dismissed by the learned Commercial Court vide a common order dated 12.01.2024.

4. Being aggrieved by both the orders dated 12.01.2024, the petitioner/applicant/defendant approached this Court by filing S.B. Civil Writ Petition Nos. 1991/2024 and 6223/2024 which came to be disposed of vide a common order dated 05.12.2024, vide which





the petitioner/applicant/defendant was granted liberty to make a prayer before the learned Commercial Court for framing an issue as to what is the effect of non-adherence of mandatory provision of Section 12A of the Commercial Court Act by the plaintiff on the present suit. Taking basis of the said order, an application was filed by the petitioner/applicant/defendant for framing of the said issue which was dismissed by the learned Commercial Court.

5. Aggrieved by the said dismissal, the petitioner/applicant/defendant again knocked the doors of this Court by filing S.B. Civil Writ Petition No. 2545/2025, wherein, this Court while taking note of the facts and by referring to the judgment of the Hon'ble Supreme Court in the case of **Patil Automation Private Limited and Others v. Rakheja Engineers Private Limited** reported in **(2022) 10 SCC 1**, directed to frame the issue "As to what is the effect of non-adherence of mandatory provision of Section 12A of the Commercial Courts Act, 2015 by the plaintiff on the present suit?", and further directed to consider and decide the said issue as a preliminary issue after hearing both the parties with respect to the effect of non-compliance of Section 12A of the Act of 2015.

6. In compliance thereof, the Commercial Court on 12.05.2025 framed the above mentioned issue as preliminary issue No. 1-A. Thereafter, the petitioner/applicant/defendant filed an application dated 10.09.2025 for determining burden of proof of the respective parties and for seeking directions to lead evidence for adjudication of the said preliminary issue No.1-A. Learned Commercial Court vide its order dated 04.10.2025, rejected the said application by holding that as the issue pertaining to effect of





provision of Section 12A of the Act of 2015 is an issue of law, there is no necessity to lead evidence for adjudication of the same. Against the said order dated 04.10.2025, S.B. Civil Writ Petition No. 17462/2025 has been filed by the petitioner/applicant/defendant.

7. Subsequently, the Commercial Court proceeded to decide the preliminary Issue No. 1-A and vide order dated 16.10.2025 held that since a prayer for interim relief had been made by the respondent/non-applicant/plaintiff, the provision of Section 12A of the Act of 2015 would not be applicable to the present suit and its non-compliance would have no bearing on the case, which has led to filing of the present S.B. Civil Writ Petition No. 17461/2025 by the petitioner/applicant/defendant.

#### **SUBMISSIONS ON BEHALF OF PETITIONER**

8. Learned counsel for the petitioner/applicant/defendant, Mr. Shailesh Prakash Sharma, vehemently submits that by passing the impugned order dated 04.10.2025, so also the order dated 16.10.2025, the learned Commercial Court has miserably failed to consider and adhere to the directions issued by this Court in its orders dated 05.12.2024 (passed in S.B. Civil Writ Petition No.1991/2024 and S.B. Civil Writ Petition No.6223/2024) and 18.02.2025 (passed in S.B. Civil Writ Petition No.2545/2025). Learned counsel submits that in both the said orders, a specific direction was issued to the learned Commercial Court to frame an issue with respect to the non-compliance of provision of Section 12A of the Act of 2015.

9. Learned counsel submits that this Court further went ahead to mandate that the learned Commercial Court was required to





consider and decide the same as a preliminary issue after hearing both the parties. In light of the fact that a specific direction was issued by this Court, the learned Commercial Court was left with no option but to decide the said preliminary issue after leading evidence, which undisputedly in the present case, it has failed to do and this very fact by itself makes the impugned orders dated 04.10.2025 and 16.10.2025 bad in law.

10. Learned counsel for the petitioner/applicant/defendant also argues that the prayer for interim relief as sought by the respondent/non-applicant/plaintiff in its application for temporary injunction is merely a camouflage and an exercise to avoid applicability of Section 12A of the Act of 2015, which, if permitted, would certainly defeat the object of the mediation proceedings as required to be carried out by adhering to the provision of Section 12A of the Act of 2015. Thus, it is prayed that the impugned orders dated 04.10.2025, so also, dated 16.10.2025 be set aside and the issue with respect to the effect of non-adherence of the mandatory provision of the Act of 2015 be duly considered and decided afresh as a preliminary issue after leading evidence for the same and consequently, the present writ petition(s) be allowed.

#### **SUBMISSIONS ON BEHALF OF RESPONDENT**

11. *E-converso*, Mr. Sandeep Pathak, learned counsel for the respondent/non-applicant/plaintiff submits that the orders dated 04.10.2025 and 16.10.2025 have been passed after due consideration of the provision of Section 12A of the Act of 2015. Learned counsel submits that once an application seeking temporary injunction has been filed along with the plaint, the





applicability of the Section 12A of the Act of 2015 is not attracted, as is evident from a bare perusal of Section 12A of the Act of 2015 which specifically provides that it is only when a suit does not contemplate any urgent interim relief, then it cannot be instituted without exhausting the remedy of pre-institution mediation, but since in the case in hand an urgent interim relief has already been prayed for by filing an application seeking temporary injunction along with the civil suit, the said provision is not applicable.

12. Learned counsel further submits that the issue with respect to the applicability or non-applicability of Section 12A of the Act of 2015 is no more *res integra* in view of the recent pronouncement of the Hon'ble Supreme Court in the case of **Novenco Building And Industry A/S. Versus Xero Energy Engineering Solutions Private Ltd. & Anr.** reported in **2025 SCC Online SC 2278**, wherein it has been held that mere delay in institution of a suit by itself does not negate urgency when the infringement is continuous and undisputedly in the present case, the respondent/non-applicant/plaintiff has prayed for an urgent interim relief on the ground of continuing infringement being made by petitioner/applicant/defendant.

13. Learned counsel submits that a bare perusal of the orders dated 04.10.2025 and 16.10.2025 reveals that the directions as issued by this Court in its order dated 05.12.2024 and 18.02.2025 have been duly considered and followed by the learned Commercial Court while passing both the orders under challenge. The order dated 16.10.2025 records a specific finding that mere delay in filing the civil suit alongwith an application for temporary injunction cannot result into an interpretation that no urgent





interim relief is contemplated, and thus, merely on the said ground, it cannot be said that provision of Section 12A of the Act of 2015 is applicable, and the said finding recorded by the learned Commercial Court deserves no interference.

14. Learned counsel for the respondent/non-applicant/plaintiff also submits that as the objection *qua* the applicability of Section 12A of the Act of 2015 was raised in the application filed by the petitioner/applicant/defendant under Order VII Rule 11 CPC, the adjudication of such objection under no circumstances can travel beyond the plaint and the interpretation as given by the petitioner/applicant/defendant to the earlier orders of this Court is in teeth with the settled principle of law.

15. Lastly, the learned counsel for the respondent/non-applicant/plaintiff submits that the judgment of the Hon'ble Supreme Court in the case of **Novenco Building (supra)** has reversed the finding recorded by the Hon'ble High Court of Himachal Pradesh in **Novenco Building & Industry A/S Versus Xero Energy Engineering Solutions Private Limited and Another** reported in **2024 SCC OnLine HP 5795**, which was relied upon by the learned counsel for the petitioner/applicant/defendant in the written submissions filed by him before the learned Commercial Court, and thus, the very basis of the submissions so made by the learned counsel for the petitioner/applicant/defendant falls flat. Thus, it is prayed that both the writ petitions deserve to be dismissed.





## ANALYSIS AND FINDINGS

16. Heard learned counsel for the parties, perused the record and also the judgments relied upon.

17. The sum and substance of the challenge raised in the writ petitions is that the objection *qua* the applicability of Section 12A of the Act of 2015 in the application filed under Order VII Rule 11 CPC should have been adjudicated by the learned Commercial Court after framing an issue *qua* the same and hearing both the parties, which would necessarily mean that the said issue was required to be decided by the learned Commercial Court only after leading evidence and not in the manner as has been done by the learned Commercial Court. If the said argument made by learned counsel for the petitioner/applicant/defendant is accepted as it is, it would result in a situation wherein for adjudication of an application filed by the petitioner/applicant/defendant under Order VII Rule 11 CPC, leading of evidence would be required, which in the considered opinion of this Court is absolutely contrary and against the law as laid down in a series of judgments by the Hon'ble Supreme Court, wherein, in unequivocal terms it has been so held that for the purpose of consideration and adjudication of an application under Order VII Rule 11 CPC, it is the plaint alone which has to be considered and nothing beyond that. Reliance is placed upon the judgment of the Hon'ble Supreme Court in the case of ***Eldeco Housing and Industries versus Ashok Vidharthi And Others*** reported in ***2024 (11) SCC 503***, wherein it has been held that for deciding an application under Order VII Rule 11 CPC, only the averments in the plaint would be relevant





and no amount of evidence can be looked into. Relevant paras 16-18 and 25 of the said judgment reads as under:

" **16.** *In Kamala v. K.T. Eshwara Sa [(2008) 12 SCC 661], this Court opined that for invoking clause (d) of Order 7 Rule 11CPC, only the averments in the plaint would be relevant. For this purpose, there cannot be any addition or subtraction. No amount of evidence can be looked into. The issue on merits of the matter would not be within the realm of the Court at that stage. The Court at that stage would not consider any evidence or enter a disputed question of fact of law. Relevant paragraphs thereof are extracted below: (SCC pp. 668-69, paras 21-25)*

"21. *Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.*





22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.

23. The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

24. It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.

25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained.”

(emphasis supplied)

**17.** Similar was the view expressed in *Shakti Bhog Food Industries Ltd. v. Central Bank of India*[*Shakti*





*Bhog Food Industries Ltd. v. Central Bank of India, (2020) 17 SCC 260 : (2021) 4 SCC (Civ) 286 : 2020 INSC 413] and Srihari Hanumandas Totala v. Hemant Vithal Kamat [Srihari Hanumandas Totala v. Hemant Vithal Kamat, (2021) 9 SCC 99 : (2021) 4 SCC (Civ) 489 : 2021 INSC 387] .*

**18.** *The law applicable for deciding an application under Order 7 Rule 11CPC was summed up by this Court in Dahiben v. Arvindbhai Kalyanji Bhanusali [Dahiben v. Arvindbhai Kalyanji Bhanusali, (2020) 7 SCC 366 : (2020) 4 SCC (Civ) 128 : 2020 INSC 450] . Relevant parts of para 23 thereof are extracted below: (SCC pp. 377-79)*

*"23. to 23.1.\*\*\**

*23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.*

*23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.*

*23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315] , this Court held that the whole purpose of conferment of powers under this provision is to*





ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words: (SCC p. 324, para 12)

'12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.'

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I. Assn. Ltd. v. M.V. Sea Success, (2004) 9 SCC 512] , read in conjunction with the documents relied upon, or whether the suit is barred by any law.

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23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.





23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I. Assn. Ltd. v. M.V. Sea Success* [*Liverpool & London S.P. & I. Assn. Ltd. v. M.V. Sea Success*, (2004) 9 SCC 512] which reads as: (SCC p. 562, para 139)

'139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.'

23.12. In *Hardesh Ores (P) Ltd. v. Hede & Co.* [*Hardesh Ores (P) Ltd. v. Hede & Co.*, (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely





*the form, which has to be looked into. The plaintiff has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijai Pratap Singh v. Dukh Haran Nath Singh, 1962 SCC OnLine SC 56 : AIR 1962 SC 267] .*

*23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11CPC.*

*23.14. The power under Order 7 Rule 11CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] . The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Rajmata Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] .*





23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint."

...

**25.** However, the fact remains that all the aforesaid documents, referred to by the respondent in support of his plea for rejection of the plaint, cannot be considered at this stage as these are not part of the record with the court filed along with the plaint. This is the stand taken by the respondent-defendant in the application filed under Order 7 Rule 11CPC. As noticed above, no amount of evidence or merits of the controversy can be examined at the stage of decision of the application under Order 7 Rule 11CPC. Hence, in our view, the impugned order [ Order dated 27-9-2021 [Ashok Vidyarthi v. Eldeco Housing & Industries Ltd., 2021 SCC OnLine All 1135].] of the High Court passed in the review application deserves to be set aside. Ordered accordingly. "

(emphasis supplied)

Reliance is also placed on a recent judgment of the Hon'ble Supreme Court in the case of **Karam Singh versus Amarjit Singh and Others** reported in **2025 SCC Online SC 2240**, para 15 of which reads as under:





**"15.** Before we assess the correctness of the impugned orders, we must remind ourselves of the basic principles governing rejection of a plaint under Order 7 Rule 11 of CPC. Here, the defendants seek rejection of plaint under clause (d) of Rule 11 (i.e., suit barred by law). Clause (d) makes it clear that while considering rejection of the plaint thereunder only the averments made in the plaint and nothing else is to be considered to find out whether the suit is barred by law. At this stage, the defense is not to be considered. Thus, whether the suit is barred by any law or not is to be determined on the basis of averments made in the plaint."

18. At this stage it would be apposite to reproduce the relevant extract of the application filed by the petitioner/applicant/defendant under Order VII Rule 11 CPC read with Section 12A of the Act of 2015 seeking dismissal of the plaint which reads as under:

**"3.** यह की वादी ने जानबूझकर स्वेच्छा से स्टेच्यूटरी मेडिएशन जिसका मैडेटरी प्रावधान संस्थित करने से पहले मध्यस्थता और समझौता कमर्शियल कोर्ट्स एक्ट 2015 की धारा 12 ए में दिया गया है को बाईपास करने की नाकाम कोशिश वादी द्वारा की गई है इस कारण वादी डिफाल्टर है एवं वादी का वाद *barred by law* होने से इस स्टेज पर खारिज करने योग्य है।"





Also, provision of Order VII Rule 11(d), CPC which deals with rejection of the plaint on account of being barred by any law reads as under:

**"11. Rejection of plaint.**— *The plaint shall be rejected in the following cases:—*

(a) ...

(b) ...

(c) ...

(d) where the suit appears from the statement in the plaint to be barred by any law"

19. Thus, taking note of the provision of Order VII Rule 11(d) CPC, which makes it clear that while considering an application seeking rejection of the plaint, only the averments made in the plaint and nothing else is to be considered to find out whether the suit is barred by law, and taking guidance from the pronouncements of the Hon'ble Supreme Court, this Court has no hesitation in arriving at the conclusion that the learned Commercial Court was fully justified in deciding the application under Order VII Rule 11 CPC without leading evidence. Further, by no stretch of imagination an order passed or directions issued by this Court can be given such an interpretation which would have required the learned Commercial Court to travel beyond the plaint for adjudication of an application filed under Order VII Rule 11 CPC.

20. The direction so issued by this Court vide its orders dated 05.12.2024 and 18.02.2025 undoubtedly required the learned Commercial Court to frame a preliminary issue and to consider and decide the same after hearing both the parties, however, in





the considered opinion of this Court, by passing the order dated 16.10.2025, the learned Commercial Court has duly adhered to the directions so issued and it cannot be said that as evidence was not led for deciding the said issue, the order dated 16.10.2025 has been passed in defiance of the directions issued by this Court in its order dated 18.02.2025. It goes without saying that any interpretation of an order of this Court cannot be done in such a manner which results into an interpretation which runs contrary to the provisions of a statute and law settled by the Hon'ble Supreme Court and thus, the submission of learned counsel for the petitioner/applicant/defendant that deciding the issue without leading evidence was an error committed by the learned Commercial Court, cannot be accepted. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court in the case of **Shailesh Dhairyawan v. Mohan Balkrishna Lulla** reported in **(2016) 3 SCC 619**, relevant portion of which reads as under:

*"31. ... .The principle of "purposive interpretation" or "purposive construction" is based on the understanding that the court is supposed to attach that meaning to the provisions which serve the "purpose" behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the court is supposed to realise the goal that the legal text is designed to realise. As Aharon Barak puts it:*

*"Purposive interpretation is based on three components : language, purpose, and*





*discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language."*

21. Further, as the order dated 16.10.2025 specifically records that as an application seeking temporary injunction has been filed by the respondent/non-applicant/plaintiff in a suit for infringement of intellectual property rights, under no circumstances, any error can be found in the said order, more particularly, in view of the law laid down by Hon'ble Supreme Court in the case of **Novenco Building (supra)**, operative portion of which reads as under :

*"21. Thus, the question whether a suit 'contemplates any urgent interim relief' needs to be examined on the touchstone of the aforementioned criteria. The issue which arises for consideration in this appeal is whether a suit alleging continuing infringement of patent and design rights, accompanied by a prayer for interim injunction, can be said to contemplate urgent relief within the meaning of Section 12A*





*of the Act, notwithstanding certain delay in its institution.*

**22.** *The subject matter of the present action is continuing infringement of intellectual property. Each act of manufacture, sale, or offer for sale of the infringing product constitutes a fresh wrong and recurring cause of action. It is well settled in law that mere delay in bringing an action does not legalise an infringement and the same cannot defeat the right of the proprietor to seek injunctive relief against the dishonest user. The appellant has pleaded that Xero Energy, its former distributor, has dishonestly appropriated its proprietary designs and patents to manufacture and market identical fans under deceptively similar name. The accompanying material demonstrates that such infringing activity is continuing and causing immediate and irreparable harm to the appellant's business reputation, goodwill and proprietary rights.*

**23.** *From the standpoint of the appellant, each day of continuing infringement aggravates injury to its intellectual property and erodes its market standing. The urgency, therefore, is inherent in the nature of the wrong and does not lie in the age of the cause but in the persistence of the peril. The court cannot be*





*unmindful of the fact that intellectual property disputes are not confined to the private realm. When imitation masquerades as innovation, it sows confusion among consumers, taints the market place and diminishes faith in the sanctity of the trade. The public interest, therefore, becomes the moral axis upon which the urgency turns. Therefore, the public interest element, need to prevent confusion in the market and to protect consumers from deception further imparts a colour of immediacy to the reliefs sought.*

**24.** *The appellant's prayer for injunction cannot be characterised as mere camouflage to evade mediation. It is a real grievance founded on the continuing nature of infringement and irreparable prejudice likely to be caused by the delay. The court must look beyond time lag and evaluate the substance of the plea for interim protection. The insistence of pre-institution mediation in a situation of ongoing infringement, in effect, would render the plaintiff remediless allowing the infringer to continue to profit under the protection of procedural formality. Section 12A of the Act was not intended to achieve such kind of anomalous result.*





**25.** *The learned Single Judge as well as the Division Bench of the High Court erred in construing the test for urgent relief enumerated in Section 12A of the Act, in as much as the courts have proceeded to examine the entitlement of the appellant to urgent relief based on the merits of the case rather than looking at the urgency as is evident from the plaint and the documents annexed thereto from the standpoint of the plaintiff. The High Court has proceeded on the premise that lapse of time between the appellant's discovery of infringement and filing of suit negated the element of urgency. Such an approach, in our considered view, is contrary to the principles laid down by the decisions of this Court. The High Court has also failed to take into account that the present action is one of the continuous infringement of intellectual property.*

**CONCLUSION**

**26.** *For the reasons stated above, we hold that*  
*(i) In actions alleging continuing infringement of intellectual property rights, urgency must be assessed in the context of the ongoing injury and the public interest in preventing deception,*  
*(ii) Mere delay in institution of a suit by itself, does not negate urgency when the infringement is continuing.*





*27. For the aforementioned reasons, the impugned judgment dated 28.08.2024 of the Id. Single Judge in Commercial Suit No. 13 of 2024 and the judgment dated 13.11.2024 of the Division Bench of the High Court in Commercial Appeal No.1 of 2024 are quashed and set aside. The Commercial Suit No. 13 of 2024 is restored to the file of the High Court to be proceeded with on merits in accordance with law."*

(emphasis supplied)

## **CONCLUSION**

22. Thus, taking note of the above facts, law applicable and judgments cited, this Court is of the considered opinion that the orders dated 04.10.2025 and 16.10.2025 passed by the learned Commercial Court, Kota (Raj.) deserve no interference and consequently, the writ petitions stand dismissed.

23. No order as to cost.

24. Pending application(s), if any, stands disposed of.

**(ANUROOP SINGHI),J**

Dipesh Chayal /27-28

