



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

D.B. Civil Writ Petition No. 8710/2026

CNR: RJHC010341412026 | URN: CW / 15963U / 2026

M/s Kargval Enterprises Pvt. Ltd., Shop No. 269/1/1/1/1/3, 1019/1/1/2 And Opp. Prince PipesAnd Fitting, Village- Athal, Silvassa (DaddarAnd Nagar Haveli)- 396230 Through Its Director, Rajendra Agarwal, S/o Hanuman Prasad Agarwal, Aged 67 Years, R/o 406, 1St Cross, 6Th Main, Hal 2Nd Stage Indra Nagar, Bangalore, 560038.

-----Petitioner

Versus

M/s Vartika Engineering Company, G. 181B, Road Number-5, Madri Industrial Area, Udaipur Through Proprietor Smt. Seema Pareek W/o Balraj Pareek, Aged 51 Years, R/o Udaipur (Raj.).

-----Respondent

For Petitioner(s)	:	Ms. Deepika Purohit for Mr. Anuj Sahlot
For Respondent(s)	:	--

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT
Order(Oral)

Reportable

07/10/2026

Per: Arun Monga, J.

1. The petitioner, inter alia, seeks quashing of the order dated 14.10.2025 passed by the learned Commercial Court, Udaipur. By that order, the Commercial Court declined the petitioner's application under Order VII Rule 11 read with Section 151 CPC. The application sought rejection of the plaint. The ground was want of compliance with the mandatory provisions of Section 12A of the Commercial Courts Act, 2015 (for short, "the Act of 2015").
2. The facts lie in a narrow compass. The respondent is the plaintiff before the Commercial Court. It deals in pipes, pipe brackets, web cleats, nut bolts, bands, rubber sheets, colour profile proofing sheets



and other articles. It sued the petitioner, the defendant, for recovery of Rs. 27,46,353/- with interest at 18% per annum. Its case is that Rs. 21,32,262/- remains unpaid for goods supplied. This is despite a notice dated 18.01.2023.

2.1 Along with the plaint, the plaintiff moved an application under Order XXXIX Rules 1 and 2 read with Order XXXVIII Rule 5 and Section 151 CPC. It sought a bank guarantee or, in the alternative, attachment of the defendant's property. The plaintiff did not first resort to pre institution mediation under Section 12A of the Act of 2015. It came straight to the court on the plea that it needed urgent interim relief.

2.2 The defendant then moved an application under Order VII Rule 11 read with Section 151 CPC. It contended that the suit was barred by law for non compliance with Section 12A. It further contended that the interim application was only a device to get around mediation. Neither the plaint nor the application disclosed any real urgency. In the meantime, the matter went before the National Lok Adalat. There, the plaintiff withdrew its interim application.

2.3 By order dated 14.10.2025, the Commercial Court rejected the defendant's application. It held that the later withdrawal of the interim application did not mean that there was no urgency when the suit was filed.

2.4 Hence, this writ petition.

3. Learned counsel for the petitioner submits that the impugned order is contrary to law and to the record. The plaintiff moved the application under Order XXXVIII Rule 5 CPC only as a camouflage. Its real object was to avoid mandatory mediation under Section 12A. The plaintiff later withdrew it. No genuine urgency existed. The suit was, therefore, barred by law. The plaint was liable to be rejected under Order VII Rule 11(d) CPC. The trial court did not examine the nature of



the relief sought or the surrounding circumstances. In doing so, it committed a jurisdictional error.

3.1 Learned counsel relies on **Patil Automation Private Limited and Others v. Rakheja Engineers Private Limited¹** and **Yamini Manohar v. T.K.D. Keerthi²** and argues that in *Patil Automation*, pre institution mediation was held to be mandatory. The only exception is a suit that contemplates urgent interim relief.

3.2 Learned counsel argues that the Commercial court must decide whether the plaint, the documents and the facts show a genuine need for urgent interim relief. He urges that the court did not carry out this scrutiny.

4. We have heard learned counsel for the petitioner and perused the case file.

5. First and foremost, the relevant provision i.e. Section 12A of the Act of 2015 be seen, which reads as under :-

“Section 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.

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987, for the purposes of pre institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987, the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:

Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).”

¹2022 SCC OnLine SC 1028

²(2024) 5 SCC 815





6. At the outset, we accept the proposition of law urged for the petitioner. A prayer for urgent interim relief cannot be used as a mere device to escape Section 12A(1) of the Act of 2015 where no real urgency exists. With this principle in mind, we examine the facts of the present case.

7. Before we proceed further, it is apposite to notice the impugned order dated 14.10.2025. Its English translation reads as under:-

“Date: 14.10.2025

Advocate Shri Kailash Nagda appeared on behalf of the plaintiff.

Advocate Shri S.L. Agrawal appeared on behalf of the defendant.

The defendant, along with a list of documents, submitted in the present case copies of the application for temporary injunction filed by the plaintiff, the process issued by this Court in the said application, and the withdrawal order. The same were taken on record.

The plaintiff did not wish to file a reply to the application under Order VII Rule 11 CPC, whereupon the right to file the reply was closed.

Arguments on the application were heard and the record was perused.

Learned counsel for the defendant contended that the reasons stated by the plaintiff in paragraph No. 11 of the plaint for not resorting to pre-litigation mediation prior to filing the suit are not satisfactory. The reasons are extremely vague in nature. After the amendment dated 03.05.2018 to Section 12A, resorting to pre-litigation mediation before filing a suit has become mandatory. From the language of the application for temporary injunction filed by the plaintiff/applicant, it is evident that the same has been filed merely to avoid pre-litigation mediation. The plaintiff/applicant also remained inactive during the proceedings relating to the said temporary injunction application before this Court. Having become indifferent, the plaintiff did not participate in the proceedings, and ultimately, the said application for temporary injunction was withdrawn through the Lok Adalat. On this basis, the suit filed by the plaintiff deserves to be dismissed. In support of the application, learned counsel for the defendant relied upon the following judicial precedents:

- 1. Santosh Kumar Gupta v. Inder Singh, AIR 2021 Allahabad 6.*
- 2. Glydus Wellness Products Limited v. Karnal Foods Pack Cluster Limited and Another, HHC 29474.*
- 3. Patil Automation Private Limited v. Rakheja Engineers Private Limited, the judgment passed by the Hon'ble Supreme Court in SLP (Civil) No. 5737/22, dated 17.08.2022.*
- 4. Rohitash Singh v. Prithvi Singh and Others, AIR 2009 Rajasthan 1.*
- 5. Salim Bhai and Others v. State of Maharashtra and Others, AIR 2003 SC 59.*





Learned counsel for the plaintiff contended that, since the suit was of an urgent nature, the plaintiff directly instituted the suit instead of resorting to pre-litigation mediation, owing to the circumstances contemplated under Section 12A. Along with the suit, an application for temporary injunction was also filed. The plaintiff has stated all these circumstances in the plaint itself. For this reason, the Court granted exemption under Section 12A and registered the suit. Thereafter, when the plaintiff no longer apprehended any transfer of the property, the plaintiff duly filed an application seeking withdrawal of the application for temporary injunction through the Lok Adalat. Hence, the application filed by the defendant deserves to be dismissed.

In my humble opinion, the plaintiff has stated in paragraph No. 11 of the plaint as follows:

“That, along with the present suit, an application for injunction and bank guarantee, being of an urgent nature, is being submitted; therefore, an application was not filed before the District Legal Services Authority, Udaipur, prior to institution of the suit.”

Along with the plaint, the plaintiff filed an application under Order XXXIX Rules 1 and 2 CPC, read with Order XXXVIII Rule 5 CPC and Section 151 CPC. The Court registered the suit and issued notices to the defendant.

During the hearing of the application for temporary injunction, the plaintiff, on 10.05.2025, filed an application stating that the plaintiff no longer apprehended that the opposite party would sell the property and, therefore, was withdrawing the application in the spirit of the Lok Adalat.

The fact that the application for temporary injunction was withdrawn at a subsequent stage after institution of the suit cannot lead to the conclusion that, at the time of institution of the suit, the plaintiff did not require urgent interim relief. The plaintiff has also submitted an affidavit in support of the plaint. The application for temporary injunction was filed along with an affidavit.

In view of all these circumstances, the judicial precedents relied upon by the defendant are not applicable to the facts of the present case. Accordingly, the application filed by the defendant, being liable to be dismissed, is hereby dismissed.

The record be put up for filing of the written statement on 01–03.11.2025.”

8. The position which emerges is this, viz. when the suit was filed, the plaintiff moved an application under Order XXXIX Rules 1 and 2 read with Order XXXVIII Rule 5 CPC. It apprehended that the defendant might dispose of its properties. That would frustrate recovery if the plaintiff succeeded in the suit. Later, the matter was referred to the Lok Adalat. A compromise appears to have been arrived at there. It allayed the plaintiff's fear that the defendant would defeat a money decree, should one be passed.





9. In these circumstances, since in the spirit of Lok Adalat, as noted by the learned Commercial Court, the plaintiff was well advised not to press the interim application filed with the suit, it cannot be judged afresh by what happens later. Urgency must be tested as on the date the suit is instituted. To turn the clock back on account of subsequent events would result in a travesty of justice. Take a case where the trial court, at a later stage, finds that no urgent relief was warranted. On the petitioner's logic, the defendant could then seek rejection of the plaint under Order VII Rule 11 CPC. The parties would be sent back to pre institution mediation under Section 12A. With respect, such a reading does not reflect the import and intent of the Legislature.

10. In view of the aforesaid observations, the appeal stands dismissed.

11. All pending applications stand disposed of.

(YOGENDRA KUMAR PUROHIT),J

(ARUN MONGA),J

3/Suraj Kumar