

# **Non Compliance of Sec 12A of Commercial Court Act will lead to dismissal of suit: Calcutta High Court**

SKIPPER LIMITED

**...Plaintiff**

BEGUM SAKINA KHATOON & ORS.

**...Defendant**

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**Case No: IA GA NO.2 of 2022 In CS 195 of 2022**

**Date of Judgement: 20 December 2023**

**Judges:**

Arindam Mukherjee, J

**For Appellant: Mr. Shounak Mukhopadhyay, Ms. Madhurima Das, Ms. Ankita Choudhury, Mr. Shreyan Bhattacharya .....Advocates**

**For Respondent: Mr. Mr. Sankarsan Sarkar , Mr. Rites Goel, Mr. Ritoban Sarkar, Mr. Tanvi Luhariwala**

**Facts:**

Suit filed by Skipper Limited (plaintiff) against Prabha Infrastructure Private Limited (defendant) for recovery of

unpaid price of goods sold and delivered. Plaintiff sought leave under Section 12A of the Commercial Courts Act, 2015 to dispense with pre-institution mediation requirement on the ground that it intends to seek urgent interim relief. Defendant filed application for rejection of plaint and dismissal of suit on the ground that the plaint does not disclose any material to dispense with mandatory mediation or show any prima facie case for urgent interim relief

### **Court's Opinions:**

Provisions of Section 12A are mandatory. Plaintiff's contemplation of urgent interim relief to bypass Section 12A must be borne out from averments in plaint and is subject to Court's satisfaction. On holistic reading of plaint, no statement made to satisfy contemplation of any urgent interim relief or even prima facie case to allow bypassing Section 12A. Averments made only to wriggle out of mandatory mediation requirement. Clever drafting cannot bypass statutory mandate. Power of Court at admission stage is limited to scrutinize averments for dispensation from Section 12A. Not satisfied with statements supporting urgency. Leave to dispense Section 12A recalled. Plaint rejected and suit dismissed.

### **Referred Laws and Sections:**

Section 12A of the Commercial Courts Act, 2015  
Order 7 Rule 11 of the Code of Civil Procedure, 1908  
Judgments in Patil Automation Pvt. Ltd v. Rakheja Engineers Pvt. Ltd and Yamini Manohar v. T.K.D Keerthi