

Session 1

Pre-Institution Mediation & Settlement

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, authorize the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority authorized 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).

‘Commercial Courts Act, 2015 (Act 4 of 2016)’ [‘CCA’ for brevity] came into effect on and from 23.10.2015 (without Section 12A) but Section 12A was inserted by way of an amendment on and from 03.05.2018 after operating CCA for a little over two and half years.

Central Government notification under Section 12A(2) :

Notification No.S.O.3232(E), **dated 03.07.2018.**

The Central Government authorizes the State Authority and District Authority constituted under the Legal Services Authorities Act, 1987 (39 of 1987) for the purposes of pre-institution mediation and settlement.

Rules (under subordinate legislation) under Section 12A(1) read with Section 21A of CCA:

The Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018.

This Rule consists of 12 Rules provides for time bound mediation.

Different High Courts took different views on the question of whether Section 12A is mandatory or directory

Delhi	Mintergraph Systems Private Limited v Hitachi Systems Private Limited, Order dated 28.10.2021 passed in CS (Comm) 185 of 2019	Mandatory	Suit to be kept in abeyance till pre-litigation mediation is completed
Bombay	Deepak Raheja v Ganga Taro Vazirani (2021 SCC Online 3124)	Mandatory	Suit directed to be kept in abeyance till pre-litigation mediation is completed
Calcutta	A. Terai Overseas Private Limited v Kejriwal Sugar Agencies Private Limited , 2020 SCC Online 1591	Mandatory	Suit dismissed
	B. Amit Motorcycles v Axis Bank Limited GA 3 of 2019 in C.S 217 of 2018 (dated 15.12.2020)	Mandatory	Suit dismissed
	C. Dhanbad Fuels Ltd v Union of Inda (2021 SCC Online Cal 429)	Mandatory	Suit to be kept in abeyance

This led to a conundrum of sorts

On 17.08.2022, in Patil Automation Private Limited and Others -Vs- Rakheja Engineers Private Limited, reported in 2022 SCC OnLine SC 1028 rendered by Hon'ble Supreme Court, Section 12A of CCA conundrum was put to rest *interalia* by holding

(1) Section 12A of CCA is mandatory – Paragraph 92

(2) A plaint can be rejected suo moto by a Court for non-compliance with Section 12A – Paragraphs 75 & 76

(3) While rejecting the plaint, there shall be no refund of Court fee – Paragraphs 84 & 91

(4) A window which says suits in which *urgent interim relief/s* order is/are *contemplated* - Paragraph 81

Bolt Technology OU
-Vs.-
Ujoy Technology Private Limited and another
reported in (2022) SCC OnLine Del 2639
dated 29.08.2022

In a IPR suit, noticee/defendant sent a reply claiming Rs.5 crores for alleged harassment by issuing cease and desist notice and claimed legal expenses also.

Delhi High Court said Section 12A can be given a go by.

Retail Royalty Company & Another
-Vs.-
Nirbhay Marg New Broadcast Private Limited

Order
dated 01.09.2022
made in
C.S(Comm).No.601 of 2022

Application for dispensing with Section 12A was entertained

**Mohamed Aboobacker Chank Lungi Pvt. Ltd.,
Vs.
Revathy Textiles and others**

**C.S(Comm. Div.)No.208 of 2022
&
A.Nos. 4296 and 4297 of 2022
&
O.A.Nos.626 to 628 of 2022**

Order dated 27.09.2022

**Madras High Court has rejected the plaint and explained
'contemplation'.**

**K. Varathan
Vs.
Prakash Babu Nakundhi Reddy
C.S. (Comm.Div.) No. 202 of 2022
&
O.A. No. 612 of 2022 & Application No. 4280
of 2022
in
C.S. (Comm.Div.) No. 202 of 2022
Order dated 13.10.2022**

Madras High Court rejected the plaint, explained 'contemplation' and the expression 'urgent interim relief'

**Arvind Gupta
Vs.
Punjab National Bank**

C.S. (Comm.Div.) No. 216 of 2022

&

O.A.No.666 of 2022

in

C.S. (Comm.Div.) No. 216 of 2022

Order dated 10.11.2022

A jurisdictional fact should precede the suit and there can be no ex post facto jurisdictional fact.

Unreported Order

Dated 05.12.2022

In

O.A.Nos.603 to 606 of 2022

&

A.No.4055 of 2022

In

C.S.(Comm.Div) No.200 of 2022

Another Hon'ble Single Judge of Madras High Court has held in this case that as the plaintiff has filed an application under Order XXXIX Rule 1 of CPC, it cannot be said that the plaintiff did not contemplate urgent relief and therefore, it cannot be said that the suit is '*not maintainable*'.