IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
COMMERCIAL FIRST APPEAL NO. 15 OF 2026

High Point Supply Company LLC }
(through Mr. Gary Thomas, CEO/Owner) }
286 Meadow View Parkway, }
Erie, CO 80516 (USA) } … **Appellant**

V/s.

Agati Healthcare Private Limited }
having its head office at: }
Shivshankar Tower, }
Shop-2, Plot-23, 24 & 46 to 50 Sector -1, }
Sanpada, Navi Mumbai – 400705, }
Maharashtra, India } … **Respondent**

Mr. Simil Purohit, Senior Counsel a/w Mr. Ameya Gokhale, Ms. Kriti Kalyani, Mr. Chintan Gandhi, Mr. Abhishek Mookherjee i/b Shardul Amarchand Mangaldas & Co. for Appellant.

Mr. Shanay Shah a/w Mr. Vivek Sharma a/w Mr. A. A. Kapadia i/b Sujit Lahoti and Associates for Respondent.

CORAM : R.I. CHAGLA AND
FARHAN P. DUBASH, JJ.

RESERVED ON : 9th JUNE 2026
PRONOUNCED ON : 5th AUGUST 2026

JUDGMENT (Per Farhan P. Dubash, J.):

1. The Commercial First Appeal challenges an order dated 9th December 2025 (hereinafter referred to as ***"impugned order"***) passed by the Trial Court allowing the application taken out by the Respondent / original Defendant under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (hereinafter referred to as ***"Code"***). By the impugned order, the plaint filed by the Appellant / original Plaintiff came to be rejected on the ground of non-compliance with the provisions of Section 12-A (1) of the Commercial Courts Act, 2015, namely, pre-institutional mediation.

2. Before considering the rival submissions, it would be appropriate to briefly set out the facts, to the extent necessary. The same are as under:

   a) The Appellant is a US-based delivery company that is stated to collaborate with small to medium-sized businesses across the world and provides them with a market base in the United States of America (hereinafter referred to as ***"USA"***). The Respondent is an Indian company, stated to be engaged in the business of collecting, processing and manufacturing Colostrum powder (hereinafter referred to as ***"product"***), which is the powder made out of the first milk extracted from a cow after it has given birth to a calf.

   b) Pursuant to email communication exchanged between the parties, on 26th June 2023, they entered into an Exclusive Distribution

Agreement (hereinafter referred to as ***"the EDA"***) in respect of the product, whereunder the Appellant was appointed as its exclusive distributor in the North American market, for a three-year term effective until June 2026. The parties agreed that their relationship under the EDA would be governed by the laws of the State of Colorado, USA.

c) The EDA carved out an 'Exclusivity Exception' clause permitting the Respondent to continue supplying the product to one of its existing customer, namely, 'Pantheryx', with whom the Respondent was stated to have been doing business since many years. However, parties agreed that in the event of a change of control at Pantheryx, its successor or any new owner / acquirer would not be entitled to continue purchasing the product directly from the Respondent and would have to purchase the product through the Appellant. The relevant portion/clause of the EDA reads thus:

> *"a) Exclusivity Exception: Company has indicated an existing customer relationship exists with Pantheryx. As such, under this Scope provision, Company is granted an exception to continue working directly with Pantheryx so long as they continue to purchase directly from Company under their current agreement.*
>
> *1. If Pantheryx fails to substantially comply with the terms of it's current supply agreement with Company for 12 consecutive months or fails to order product for 3 consecutive months, the contract terminates and Pantheryx must purchase from Distributor.*
>
> *2. The Parties further agree that in the event there is a change of control (defined as more than 50% change in ownership or voting control) at Pantheryx, Company would not provide consent to transfer the existing agreement. As such, the successor to Pantheryx or any*

new owner/ acquirer would be required to purchase Products directly from Distributor and would no longer be considered an Exception to this Scope provision 1.3."

d) Pursuant to the execution of the EDA, the Appellant is stated to have placed a purchase order dated 24th August 2023 for 4,200 kilograms of the 70:30 variant of the product. However, according to the Appellant, the Respondent failed to supply the product within the stipulated delivery period of November-December 2023. The Appellant further contends that the Respondent also thereafter failed to supply a modified 60:20 variant of the product.

e) The Appellant contends that during the subsistence of the EDA, it discovered, through one of its customers, that the Respondent was contemporaneously supplying the product to a company, namely, 'Glanbia Nutritionals' (hereinafter referred to as ***"Glanbia"***), despite having contractually granted exclusivity in distribution of the product to the Appellant, thereby breaching the said Exclusivity Exception contained in the EDA.

f) Thereafter, on 1st October 2024, in order to safeguard its contractual rights, the Appellant is stated to have addressed a communication/letter dated 1st October 2024, intimating Glanbia about the provisions of the EDA that was executed with the Respondent. It is stated that as per the information available in the public domain and as per the knowledge of the Appellant, Glanbia had acquired Pantheryx in or around November 2023.

g) In the meanwhile, the Respondent addressed a legal notice dated 23rd October 2024, informing the Appellant that the EDA would stand terminated with effect from 23rd November 2024, interalia, on the ground that the Appellant's communication/letter dated 1st October 2024 to Glanbia had damaged the Respondent's reputation and caused it loss of business. Thus, the Appellant was stated to have breached the EDA on account of failure on its part in discharging its obligations thereunder.

h) The Appellant responded denying the allegations and instead contending that the Respondent had failed to fulfill its obligations under the EDA.

i) Since the EDA was governed by the laws of the State of Colorado, the Appellant is stated to have sought an affidavit from an expert on Colorado law. Accordingly, an affidavit dated 20th January 2025 came to be executed by Mr. Chad Williams, Esq., who opined that the Appellant was not only entitled to seek specific performance of the EDA but also entitled to seek damages for its contractual breaches from the Respondent.

j) As a result, the local advocates of the Appellant took some time in the preparation and finalisation of the plaint and the accompanying interim application seeking urgent interim/ad-interim reliefs, the drafts of which were stated to have been forwarded to the Appellant, for their approval sometime on/about 6th – 7th February 2025. The drafts were thereafter revised upon receipt of the Respondent's letter dated 14th February 2025.

k) In these circumstances, the Appellant contends that the plaint and interim application came to be executed and attested by a notary public in the USA on/about 1st March 2025, after which, they were dispatched to its local advocates in Mumbai, India, through the United States Postal Service on 8th March 2025.

l) Ultimately, the plaint and interim application came to be e-filed on/about 13th April 2025, after which, the present suit was registered on 18th April 2025. The plaint, interalia, seeks specific performance of the EDA, together with a declaration that its termination is non est, *void ab initio* and bad in law, and accordingly, for it to be quashed and set aside. In addition, the Appellant also seeks damages and compensation in respect of the losses that are stated to have been suffered by them on account of the Respondent's breach of the EDA. The Appellant also seeks an order of injunction restraining the Respondent from breaching the EDA and from entering into any arrangement, directly or indirectly, with any third party for the supply of the product in North America, together with a further order directing the Respondent to effect all sales and distribution of the product in the North American region only through it.

m) Sometime on/about 2nd July 2025, the Respondent preferred an application under Order VII Rule 11(d) of the Code, seeking rejection of the plaint. The said interim application was vehemently opposed by the Appellant, notwithstanding which, the Trial Court passed the impugned order on 9th December 2025.

n) By the impugned order, the Trial Court allowed the interim application and held that the provisions of Section 12-A of the Commercial Courts Act, 2015 (**"the CC Act"**) were mandatory and that the Appellant had failed to establish any genuine urgency justifying exemption from pre-institution mediation. In addition, the Trial Court also held that the pleadings regarding 'urgency' were vague and unsupported by particulars and that the dispute essentially concerned quantifiable commercial losses, capable of monetary compensation. The Trial Court further held that the prayers for interim injunction and preservation of exclusivity were merely a 'camouflage' to bypass the statutory mediation requirement prescribed under Section 12-A of the CC Act. Consequently, the plaint filed by the Appellant was rejected.

o) Aggrieved thereby, the Appellant has preferred the present Commercial First Appeal.

SUBMISSIONS OF THE APPELLANT

3. Mr. Simil Purohit, learned Senior Counsel who appears on behalf of the Appellant, submits that the impugned order is contrary to the provisions of Section 12-A of the CC Act and proceeds on an erroneous assumption that pre-institution mediation is an absolute pre-condition to the institution of every commercial suit. He contends that the Trial Court failed to consider whether the present suit contemplated urgent interim/ad-interim reliefs so as to fall within the statutory exception contained in the said section.

4. He accordingly argues that in the present case, the Trial Court's decision to non-suit the Appellant is based on an erroneous and hyper-technical interpretation of the provisions of Section 12-A of the CC Act and further based on a selective reading of the plaint. He contends that the interim application was also filed by the Appellant and despite clear pleadings of urgency, the Trial Court has erroneously proceeded to reject the plaint. He submits that such finding amounts to a manifest error of law and a miscarriage of justice. In doing so, Mr. Purohit contends that the Trial Court has wrongly confined itself to only paragraph nos. 78 and 79 of the plaint and paragraph no. 17 of the interim application instead of reading the plaint/pleadings as a whole.

5. Mr. Purohit invites our attention to the reliefs sought in the present suit and interim application and contends that such reliefs are ex-facie of an urgent nature and could not have awaited the completion of pre-institution mediation. He adds that one such relief seeks a disclosure on the part of the Respondent, of the volume and value of all sales effected directly or indirectly by it, in the North American market, which reliefs, he asserts, is absolutely necessary in order to determine the full extent of the breaches committed by it and necessary to be brought on record for ascertaining the quantum of loss and damages suffered by the Appellant.

6. Mr. Purohit adds that the impugned order proceeds on an erroneous premise that the mere possibility of monetary compensation negates the need for urgent interim relief. Such a finding, he contends, is not only

contrary to the reliefs sought in the present suit but the settled position of law in cases involving breach of negative covenants and exclusivity clauses. On the contrary, he submits that the test is whether the plaint, on its own averments, discloses a need for urgent interim protection. To this, he adds that the possibility of damages, by itself, does not extinguish the need for an injunction since the pleaded injury includes loss of market share, goodwill, customer relationships and competitive position, all of which, are difficult to quantify in monetary terms.

7. Mr. Purohit submits that the delay, if at all any, between the termination notice and the institution of the present suit has been adequately explained. In support, he points out that the Appellant is a foreign entity, whose promoter is a citizen of the USA, and since the EDA is governed by the laws of Colorado, the Appellant engaged an expert on Colorado laws who has also filed an affidavit in that regard, which he contends is necessary to assist the Trial Court in determining the dispute raised in the present suit. He therefore submits that the Trial Court has erroneously construed such intervening period as being inconsistent with the urgency pleaded in the plaint.

8. He contends that in the present case, the urgency was not only pleaded in the plaint but was also demonstrated by his clients' conduct, both prior to and after the filing of the present suit. In support, he points out that the fact that the Trial Court had issued notice and directed listing of the interim application during the court vacation, by itself, at least prima facie demonstrates that there was some urgency in the matter.

9. Mr. Purohit submits that the Trial Court has fundamentally misconstrued the mandate of Section 12-A of the CC Act and points out that though the Hon'ble Supreme Court in ***Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.***[1] held its provisions to be mandatory, the impugned order fails to appreciate that the same decision also preserves the statutory exception for suits contemplating urgent interim/ad-interim reliefs.

10. Mr. Purohit further submits that the Trial Court has also erroneously gone into the merits of the Appellant's contentions and claims and passed the impugned order on the basis thereof, which clearly lies beyond its scope. He argues that the refusal of ad-interim / interim reliefs cannot, by itself, justify rejection of the plaint. Instead, he contends, the correct test is whether, on a holistic reading of the plaint and the cause of action from the plaintiff's standpoint, urgent interim reliefs were contemplated. In this regard, he relies upon the decision of this Court in ***Buildcon Sethia Construction v. Dipti Coop. Housing Society Ltd.***[2]

11. Mr. Purohit submits that the plaint and the Interim Application, read as a whole, disclose a continuing breach of the EDA by the Respondent, including, interalia, the supply of the product to Glanbia during the subsistence of the EDA, the subsequent termination notice addressed by the Respondent and its subsequent correspondence, the last of which being letter dated 14th February 2025, and its continued refusal to abide by the EDA, constitute a continuing cause of action to the Appellant requiring immediate judicial intervention. He submits that the Trial Court

1 (2022) 10 SCC 1
2 2025 SCC Online Bom 4958

failed to appreciate this crucial aspect whilst passing the impugned order. In support, he places reliance upon the decision of the Supreme Court in ***Novenco Building and Industry A/S v. Xero Energy Engineering Solutions Pvt. Ltd.***[3]

12. Instead, Mr. Purohit submits that the Trial Court has erroneously considered the decision in ***Patil Automation*** (supra) and has also failed to consider subsequent decisions of the Hon'ble Supreme Court on the scope and interpretation of Section 12-A of the CC Act, in ***Dhanbad Fuels (P) Ltd. v. Union of India***[4] and ***Novenco Building and Industry A/S*** (supra) which require examination of the pleadings and supporting documents for determining whether urgent interim reliefs are genuinely contemplated by also considering the immediacy of the peril, likelihood of irreparable harm, risk of loss of rights, and whether delay would render the final relief, ineffective. He argues that the phrase *"contemplates urgent interim relief"* contained in the said section requires a purposive and liberal construction, particularly when the present suit seeks to restrain a continuing breach of contractual obligations, preservation of commercial rights pending adjudication, and prevention of acts that would otherwise render the ultimate judgment ineffective.

13. On the aforesaid basis, Mr. Purohit submits that the impugned order is unsustainable and liable to be interfered with and set aside by this Court.

---

3 (2026) 4 SCC 815
4 (2025) 9 SCC 424

SUBMISSIONS OF THE RESPONDENT

14. *Per contra,* Mr. Shanay Shah, learned Counsel who appears on behalf of the Respondent, supports the impugned order and submits that Section 12-A of the CC Act engrafts a mandatory pre-condition to the institution of every commercial suit, save and except those which genuinely contemplate urgent interim reliefs. He submits that the present suit does not fall within and/or satisfy the said statutory exception and, as a result, the Trial Court rightly rejected the plaint. In support, he too relies upon the decisions of the Hon'ble Supreme Court in ***Patil Automation*** (supra) and ***Dhanbad*** (supra) and also the decision of this Court in ***Gundecha Estates Pvt. Ltd. v. IIFL Finance Ltd. & Ors.***[5]

15. Mr. Shah submits that the Appellant has failed to establish any genuine urgency warranting exemption from pre-institution mediation. According to him, the Appellant remained inactive for several months after receipt of the termination notice dated 23rd October 2024 and instituted the present suit only on 13th April 2025 even though the plaint is affirmed on 21st February 2025. He therefore submits that such conduct is wholly inconsistent with the case of urgent reliefs claimed by the Appellant. In support, reliance is placed upon the decisions of this Court in ***Image Developer v. Kamla Landmarc Real Estate Holding (P) Ltd.***[6] and ***IIFL Home Finance Ltd. v. Paramvir Developers Pvt. Ltd.***[7].

5 Order dated 17th July 2025 passed in Interim Application (L) No.16800 Of 2025 in Commercial Suit (L) No.8617 Of 2025
6 2025 SCC Online Bom 3284
7 2026 SCC Online Bom 3858

16. He submits that the explanation offered by the Appellant seeking to justify the delay in instituting the present suit, namely, time consumed in obtaining expert legal opinion, preparation of pleadings, execution, attestation by notary public and dispatch of executed pleadings/documents from the USA, cannot, by itself, create urgency where none otherwise existed. He therefore contends that the urgent interim reliefs sought by the Appellant in the plaint are nothing but a disguise to get over the bar contemplated under Section 12-A of the CC Act. He therefore submits that the delay on the part of the Appellant in filing the present suit, clearly reflects its conduct and the Trial Court has correctly taken that into consideration whilst passing the impugned order.

17. Mr. Shah also submits that the averments in the plaint and interim application contain mere general assertions regarding urgency, irreparable injury, balance of convenience and prima facie case, without disclosing any specific facts demonstrating why the dispute could not first, be referred to pre-institution mediation. According to him, mere use of expressions such as *"urgent interim relief"* or *"irreparable harm"* by the Appellant in the plaint is insufficient to attract the statutory exception under Section 12-A of the CC Act. In this regard, he places reliance upon the decision of the Hon'ble Supreme Court in ***Yamini Manohar v. T.K.D. Keerthi*** [8].

18. He submits that the dispute, in substance, arises out of an alleged breach of a commercial supply and distribution agreement, the consequences of which, are primarily financial in nature and capable of quantification. In

8 (2024) 5 SCC 815

fact, he points out that in the plaint, the Appellant has also claimed refund of the amounts paid by it towards the purchase order with interest thereon, reimbursement of laboratory testing and shipping expenses, damages for loss of business opportunities, loss of sales margins and reputational harm, thereby, clearly demonstrating that the alleged injury is compensable in monetary terms. Therefore, he submits that no case was made out for urgent interim reliefs in the plaint.

19. He further submits that the prayers seeking specific performance, injunction restraining further breach of the EDA, and disclosure of sales are merely ancillary to the principal monetary reliefs / claims made in the plaint and have been so made solely to create an appearance of urgency and to bypass the mandatory requirement of pre-institution mediation. According to Mr. Shah, the Court is required to examine the substance of the plaint rather than the form of the reliefs claimed therein whilst determining whether the suit genuinely contemplates urgent interim reliefs or merely seeks to circumvent the statutory requirement of pre-institution mediation.

20. He argues that the Trial Court correctly adopted a holistic reading of the plaint and rightly concluded that no immediate or irreparable prejudice has been disclosed. Mr. Shah contends that the Trial Court was justified in holding that the pleadings relating to urgency were vague, unsupported by material particulars, and insufficient to invoke the exception contained in Section 12-A of the CC Act. In support, he relies upon the decisions of the Hon’ble Supreme Court in ***Patil Automation*** (supra), ***Dhanbad*** (supra) and of this Court in ***Gundecha Estates Pvt. Ltd.*** (supra) to contend that compliance with the said Section 12-A is mandatory and a plaint instituted without exhausting pre-institution mediation is liable to be rejected under Order VII Rule 11(d) of the Code unless the suit clearly falls within the narrow statutory exception relating to urgent interim reliefs contained therein.

21. Accordingly, Mr. Shah urges that the impugned order suffers no infirmities warranting interference and resultantly, seeks dismissal of the present Commercial First Appeal.

ANALYSIS, REASONS & FINDINGS

22. We have heard the learned Counsel appearing for the parties at considerable length and have perused the pleadings, the impugned order and the material placed on record. The controversy in the present Commercial First Appeal lies within a narrow compass. The principal question which falls for determination is whether the Trial Court was justified in rejecting the plaint under Order VII Rule 11(d) of the Code on the ground of non-compliance with Section 12-A(1) of the CC Act. Before examining the rival submissions, it would be apposite to reproduce Section 12-A(1), which reads thus:

> *"**12-A. 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."*

23. The enquiry before this Court is, therefore, a limited one. At this stage, this Court is not concerned with the merits of the Appellant's claim, nor with the question whether the Appellant is ultimately entitled to the interim reliefs sought in the suit. Equally, the Court is not required to determine whether the interim application deserves to be allowed. The only issue which falls for consideration is whether, upon a meaningful and holistic reading of the plaint together with the documents annexed thereto, the present suit can be said to *"contemplate urgent interim relief"* within the meaning of Section 12-A(1) of the CC Act, so as to attract the statutory exception to the requirement of pre-institution mediation.

24. It is now well settled that Section 12-A(1) engrafts a mandatory pre-condition to the institution of a commercial suit. In ***Patil Automation*** (supra), the Supreme Court authoritatively held that, save and except in cases falling within the statutory exception relating to urgent interim relief, compliance with Section 12-A is mandatory and that a plaint instituted in breach thereof is liable to be rejected under Order VII Rule 11 of the Code. At the same time, the Supreme Court expressly recognised that where a suit genuinely contemplates urgent interim relief, the statutory bar does not operate and the suit is maintainable notwithstanding the absence of pre-institution mediation.

25. Thereafter, the Supreme Court, in ***Yamini Manohar*** (supra), ***Dhanbad*** (supra) and ***Novenco*** (supra), and this Court in ***Buildcon*** (supra), ***Gundecha Estates*** (supra), ***Paramvir Developers*** (supra) and ***Image***

Developer (supra), have progressively elucidated the scope and ambit of Section 12-A(1) of the CC Act. These decisions do not lay down divergent principles. On the contrary, they consistently reaffirm the mandatory character of Section 12-A(1) while explaining the contours of the statutory exception relating to suits contemplating urgent interim relief and the nature of the enquiry which the Commercial Court is required to undertake while considering an objection founded upon non-compliance with the said provision. The cumulative legal position emerging from the aforesaid authorities may, for convenience, be summarized thus:

(i) **Section 12-A(1) engrafts a mandatory condition precedent to the institution of a commercial suit.** A commercial suit which does not contemplate urgent interim relief cannot be instituted unless the plaintiff first exhausts the remedy of pre-institution mediation. The provision is couched in negative language and embodies a legislative mandate intended to encourage consensual resolution of commercial disputes, reduce avoidable litigation and improve the efficiency of commercial adjudication. The requirement is therefore mandatory and non-compliance ordinarily entails rejection of the plaint, under Order VII Rule 11 of the Code.

(ii) **The only statutory exception is where the suit genuinely contemplates urgent interim relief.** Being an exception to the general rule of mandatory mediation, it is required to receive a strict construction and cannot be interpreted so broadly as to defeat the legislative mandate.

(iii) **The question whether a suit contemplates urgent interim relief is not determined solely by the plaintiff's drafting or subjective assertion.** The Commercial Court is the ultimate arbiter of whether the statutory exception is attracted. Although urgency must be examined from the standpoint of the plaintiff, the Court must independently scrutinize whether the plea of urgency is genuine or merely a device to evade the statutory mandate.

(iv) **The enquiry under Section 12-A(1) is a limited threshold jurisdictional examination / enquiry and not an adjudication on merits.** The Court is not required to determine whether the plaintiff is ultimately entitled to interim relief or whether the application for interim relief deserves to be allowed. The enquiry is confined to determining whether the suit genuinely contemplated urgent interim relief when it was instituted.

(v) **The exercise must be undertaken objectively upon a holistic consideration of the plaint and the surrounding circumstances.** In deciding whether the statutory exception applies, the Court may examine the plaint as a whole, the documents annexed thereto, the nature of the dispute, the cause of action, the reliefs claimed and the attendant facts and circumstances existing on the date of institution of the suit. No single circumstance is conclusive.

(vi) **The existence of urgency must be judged with reference to the date of institution of the suit.** Subsequent events neither create nor extinguish the statutory exception. The relevant enquiry is whether, at the time the suit was instituted, there existed a bona fide need for immediate judicial intervention which could not reasonably await completion of the mediation process.

(vii) **The burden lies upon the plaintiff to establish a bona fide factual foundation for claiming exemption.** Mere formal pleadings, bald assertions of urgency or a mechanical prayer for interim relief are insufficient. The plaint itself must disclose specific facts demonstrating that immediate judicial intervention was indispensable and that the plaintiff could not reasonably have awaited the statutory period prescribed for mediation. Mere formal pleadings or bald assertions of urgency do not suffice.

(viii) **Equally, the Court must remain vigilant against attempts to camouflage ordinary commercial disputes as urgent matters.** A colourable or cleverly drafted prayer for interim relief cannot be used as a means to circumvent the statutory mandate of Section 12-A(1). The Court is entitled to reject the plea where the asserted urgency is illusory, contrived or unsupported by the pleaded facts and accompanying material.

(ix) **The plaintiff's conduct constitutes a relevant indicator of the genuineness of the plea of urgency.** In assessing bona fides, the Court may consider, interalia, the chronology of events, the interval between the accrual of the cause of action and institution of the suit, the promptness with which interim relief was sought after institution, prior knowledge of the alleged infringement or threatened action, and whether the plaintiff's conduct is consistent with the asserted need for immediate judicial intervention. None of these factors is decisive by itself, but all are relevant in evaluating whether the plea of urgency is genuine.

(x) **A continuing cause of action does not, by itself, dispense with compliance with Section 12-A(1).** Nevertheless, where the alleged wrong itself is continuing and immediate judicial intervention is necessary to prevent further invasion of the plaintiff's rights, the continuing nature of the wrong constitutes a relevant circumstance while evaluating the existence of urgency.

(xi) **The refusal of interim relief after institution does not retrospectively invalidate the institution of the suit.** Where the Court is satisfied that the suit genuinely contemplated urgent interim relief when instituted, the subsequent refusal of ad-interim / interim relief on merits, does not retrospectively render the suit defective for want of compliance with Section 12-A(1). Conversely, where the plea of urgency was never genuine, the plaintiff cannot avoid the statutory consequence merely because an application for interim relief accompanied the plaint.

(xii) **Lastly, the mandatory obligation under Section 12-A(1) presupposes the existence of an effective statutory mechanism for mediation.** Where compliance was impossible because such mechanism was unavailable, the law does not compel performance of an impossibility. That principle, however, does not dilute the mandatory character of Section 12-A(1) once the statutory mechanism has become operational.

26. The question, therefore, is not whether the Appellant has, in fact, established a prima facie case for grant of an injunction or whether the interim application ultimately deserves to be allowed. Nor is the enquiry directed towards determining whether damages would ultimately constitute an adequate remedy. The sole question which fell for consideration before the Trial Court was whether, upon a meaningful and holistic reading of the plaint, the documents annexed thereto and the attendant facts and circumstances existing on the date of institution of the suit, the Appellant had disclosed a bona fide factual foundation demonstrating that the suit genuinely contemplated urgent interim relief within the meaning of Section 12-A(1) of the CC Act. It is the correctness of the Trial Court's approach to this limited jurisdictional enquiry that falls for consideration in the present Appeal.

27. Applying the aforesaid principles to the facts of the present case, we are unable to concur with the conclusion reached by the Trial Court that the Appellant sought to invoke the exception contained in Section 12-A(1) of the CC Act merely by incorporating a routine prayer for interim relief. A meaningful reading of the plaint, as a whole, discloses that the dispute arises out of the EDA under which the Appellant claims an exclusive right to distribute the Respondent's products in the North American market until June 2026. The plaint further proceeds on the basis that, notwithstanding the subsistence of the said Agreement, the Respondent continued to supply the product directly to Glanbia in breach of the exclusivity covenant, purported to terminate the Agreement and thereafter persisted in denying its contractual obligations. Whether these allegations are ultimately established is a matter for trial. However, for the limited purpose of an enquiry under Section 12-A(1), they undoubtedly constitute the factual foundation upon which the Appellant asserts the necessity for immediate protective relief. The Trial Court, in our respectful view, erred in confining its consideration principally to paragraphs 78 and 79 of the plaint and paragraph 17 of the interim application, instead of evaluating the pleadings and the documents annexed thereto in their entirety, as the law mandates.

28. The approach adopted by the Trial Court also, in our view, travels beyond the limited enquiry contemplated under Section 12-A(1). Instead of confining itself to determining whether the suit genuinely contemplated urgent interim relief from the Appellant's standpoint, the Trial Court proceeded to examine whether the Appellant would ultimately be entitled to an injunction and whether damages would constitute an adequate remedy. Such considerations are germane while adjudicating the interim application on its own merits. They do not arise while considering an application under Order VII Rule 11(d) of the Code founded upon alleged non-compliance with Section 12-A(1) of the CC Act. The enquiry at that stage is jurisdictional and not adjudicatory. The Court is required to ascertain only whether the plaint discloses a bona fide case for invoking the statutory exception and not whether such interim relief ultimately deserves to be granted.

29. Equally, we are unable to agree with the view of the Trial Court that the presence of monetary claims in the plaint necessarily negatives the existence of urgency. The Appellant has undoubtedly sought damages for the losses alleged to have been suffered on account of the Respondent's breaches. However, the substantive reliefs claimed are not confined to compensation alone. The plaint also seeks specific performance of the EDA, a declaration that the purported termination thereof is illegal, a perpetual injunction restraining further breaches of the exclusivity covenant, and disclosure of the sales allegedly effected in violation of the Agreement. The fact that a plaintiff seeks consequential monetary reliefs, in addition to equitable and injunctive reliefs, does not, by itself, justify the conclusion that the suit is one involving only compensable monetary claims or that it does not genuinely contemplate urgent interim relief within the meaning of Section 12-A(1) of the CC Act.

30. We also find substance in the Appellant's contention that the Trial Court failed to appreciate the nature of the contractual right asserted in the plaint. The exclusivity covenant constitutes the very substratum of the commercial arrangement between the parties. According to the Appellant, every sale effected by the Respondent directly in the North American market, otherwise than through the Appellant, constitutes a continuing infraction of that covenant and progressively erodes the exclusivity for which the parties had expressly contracted. These averments, if assumed to be correct for the limited purpose of the present enquiry, disclose an allegation of continuing invasion of the Appellant's contractual rights and not merely a completed breach giving rise to a claim for damages. Whether the Appellant ultimately succeeds in establishing such allegations is a matter for trial. At this stage, however, they cannot be discarded as incapable of furnishing a bona fide foundation for the plea that the suit genuinely contemplates urgent interim relief.

31. Considerable emphasis was placed by Mr. Shah on the interval between the issuance of the termination notice and the institution of the present suit. Undoubtedly, the chronology of events constitutes a relevant circumstance while examining the genuineness of the plea of urgency. However, as noticed earlier, it is only one of several factors which the Court is required to consider and cannot, by itself, be regarded as conclusive. The Appellant has placed on record an explanation that, having regard to the governing law of the Agreement, it was required to obtain an expert opinion on the applicable law of the State of Colorado, prepare the pleadings on that basis, have the plaint and interim application executed and notarized in the USA, and thereafter transmit the same to India for institution before the Commercial Court. Whether such explanation ultimately merits acceptance is not the issue presently before this Court. The relevant question is whether those circumstances necessarily render the plea of urgency illusory. In our considered view, they do not. At the highest, they constitute matters bearing upon the weight to be attached to the Appellant's explanation and cannot, by themselves, justify rejection of the plaint under Order VII Rule 11(d) of the Code.

32. Equally, we are unable to agree with the Trial Court that the prayers for interim relief constitute a mere camouflage to circumvent the requirement of pre-institution mediation. A finding of such nature necessarily postulates that the plea of urgency is demonstrably artificial, colourable or unsupported by the factual narrative contained in the plaint. In the present case, the plaint proceeds on the basis that the Respondent continued to act in breach of the exclusivity covenant, that the Agreement was wrongfully terminated, that the Respondent persisted in denying its contractual obligations, and that every continuing sale in the North American market outside the contractual arrangement further impaired the Appellant's contractual rights. These averments may ultimately be accepted or rejected upon trial. However, at the present stage, they cannot be characterized as inherently sham or devoid of factual foundation so as to warrant the conclusion that the Appellant invoked the statutory exception merely as a device to bypass Section 12-A(1) of the CC Act.

33. We are also of the view that the Trial Court attached undue significance to the form of the pleadings relating to urgency instead of examining their substance. The fact that the averments regarding urgency are crystallized in the concluding paragraphs of the plaint and the interim application does not imply that the factual foundation for such urgency is confined to those paragraphs alone. The plaint is required to be read as a whole. The narrative preceding those averments sets out the contractual relationship between the parties, the alleged breaches of the exclusivity covenant, the acquisition of Pantheryx by Glanbia, the subsequent correspondence exchanged between the parties, the Respondent's termination notice and its continued refusal to perform the Agreement. It is this factual matrix which constitutes the foundation upon which the Appellant predicates its plea for immediate interlocutory protection. The Trial Court failed to undertake the holistic examination of the plaint mandated by the settled jurisprudence under Section 12-A(1) of the CC Act.

34. In our opinion, the impugned order also discloses a conflation of two distinct enquiries. The first enquiry, contemplated by Section 12-A(1), is jurisdictional in nature and is confined to determining whether the present suit genuinely contemplates urgent interim relief. The second concerns the grant or refusal of interim relief on merits, which necessarily involves consideration of the existence of a prima facie case, balance of convenience, irreparable injury and the adequacy of damages. The Trial Court, while considering the application under Order VII Rule 11(d) of the Code, entered upon matters falling within the latter enquiry and thereby effectively prejudged issues which properly arise for consideration while deciding the interim application. Such an approach is inconsistent with the limited scope of examination envisaged by Section 12-A(1) of the CC Act and the law laid down by the Supreme Court and this Court.

35. Having regard to the cumulative effect of the pleadings, the documents annexed thereto and the attendant circumstances existing on the date of institution of the suit, we are satisfied that the plaint discloses a bona fide factual foundation for the Appellant's assertion that immediate judicial intervention was necessary to preserve the contractual rights claimed under the EDA pending adjudication of the suit. Whether those rights ultimately deserve protection by way of interim or final relief is an altogether different matter. At this stage, it is sufficient to hold that the present suit cannot be characterized as one in which the plea of urgency is either illusory or merely colourable. Consequently, the statutory exception contained in Section 12-A(1) of the CC Act stood sufficiently invoked and the Trial Court was not justified in rejecting the plaint at the threshold.

36. We are, therefore, of the considered opinion that although the Trial Court correctly appreciated the mandatory nature of Section 12-A(1) of the CC Act, it fell into error in applying the settled principles governing the statutory exception relating to urgent interim relief. The impugned order proceeds upon an unduly restrictive reading of the plaint, accords determinative weight to considerations germane to the merits of the interim application, and thereby travels beyond the limited jurisdiction exercisable under Order VII Rule 11(d) of the Code. The order rejecting the plaint, therefore, cannot be sustained and deserves to be set aside. The question whether the Appellant is entitled to any interim relief shall necessarily fall for independent consideration by the Commercial Court on its own merits, uninfluenced by any observations contained either in the impugned order or in the present judgment.

37. The impugned order, therefore, suffers from a manifest error in the exercise of jurisdiction under Order VII Rule 11(d) of the Code and is liable to be quashed and set aside. Consequently, in the present case, non-compliance with Section 12-A(1) of the CC Act is justified, and the plaint cannot be rejected at the threshold on the ground of such non-compliance. Accordingly, the following order is passed:

:: <u>ORDER</u> ::

(i) The Commercial First Appeal is allowed.

(ii) The impugned order dated 9th December 2025 passed by the Trial Court rejecting the plaint under Order VII Rule 11(d) of the Code is set aside.

(iii) Commercial Suit No. 2 of 2025 is restored to the file of the Trial Court and shall proceed from the stage immediately preceding the passing of the impugned order.

(iv) The Trial Court shall proceed to consider and decide the Appellant's Interim Application on its own merits and in accordance with law, uninfluenced by any observations contained either in the impugned order or in the present judgment.

(v) All contentions of the parties on the merits of the suit and the Interim Application are expressly kept open.

(vi) The Commercial First Appeal is accordingly disposed of in the aforesaid terms. There shall be no order as to costs.

(FARHAN P. DUBASH, J.) **(R.I. CHAGLA, J.)**

Shubham Gadhavepatil

JYOTI PRAKASH PAWAR
Digitally signed by JYOTI PRAKASH PAWAR
Date: 2026.08.05 12:47:35 +0530