IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION

INTERIM APPLICATION NO. 808 OF 2024
IN
COMMERCIAL ADMIRALTY SUIT NO. 22 OF 2023

Gold Star Shipping Line Limited ...Applicant
In the matter between
HPRJ Agri Traders Pvt. Ltd. ...Plaintiff
V/s.
Star Shipping Services (India) Pvt. Ltd. & Ors. ...Defendants

WITH
INTERIM APPLICATION NO. 1947 OF 2024
IN
COMMERCIAL ADMIRALTY SUIT NO. 22 OF 2023

Mr. S. Venkiteswaran with Mr. Siddhanth Tuli and Mr. Prathamesh More for Applicant in IA-808-2024 and for Defendants No. 1,2 and 4 in Suit.
Mr. Prathamesh Kamat with Ms. Arpeeta Pawaskar i/b Renata Partners for the Applicant in IA-1947-2024 and Defendant No.3 in COMAS-22-2023.
Mr. Manoj Khatri with Mr. Arnab Ghosh for the Respondent/Plaintiff.

CORAM	:	ABHAY AHUJA, J.
RESERVED ON	:	24th APRIL, 2026
PRONOUNCED ON	:	3rd NOVEMBER, 2026

ORDER :

1. These Interim Applications viz. Interim Application No. 808 of 2024 filed by the Defendant No. 2 and Interim Application No. 1947 of 2024 filed by the Defendant No. 3 seek rejection of the Plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (the “CPC”) on the ground that the mandatory requirement of pre-institution

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mediation under Section 12A of the Commercial Courts Act, 2015 (the "Act") has not been complied with, and also that the Suit is barred by the law of limitation as provided under Article III of the Indian Carriage of Goods by Sea Act, 1925.

2. Mr. Venkiteswaran, learned Counsel appearing for the Applicant in Interim Application No. 808 of 2024 has submitted that the Applicant is the original Defendant No.2 in the captioned Commercial Admiralty Suit and was the ocean carrier who carried the cargo / consignment covered under Bill of Lading No. GOSUBOM6331344 dated 15th October, 2021 from Nhava Sheva, India to Qingdao Port, China.

3. Mr. Venkiteswaran has submitted that the Suit has been filed *inter-alia* praying for an order and decree against the Defendants jointly and/or severally for USD 160,827.77 with interest at the rate of 12% per annum under the contract of affreightment / carriage evidenced by the aforementioned Bill of Lading.

4. Mr. Venkiteswaran has submitted that the Commercial Admiralty Suit is barred by law in as much as the present Suit was instituted on 23rd February, 2023, admittedly, without the Plaintiff having complied with the mandatory pre-institution mediation as prescribed under Section 12A of the Act and as it is trite law that compliance of Section

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12A of the Act is mandatory and any Commercial Suit instituted in violation of the mandate of Section 12A of the Act is liable to be visited with rejection of the Plaint, the present Suit deserves to be rejected.

5. It has been submitted that the present Commercial Admiralty Suit was instituted on 23rd February 2023 and the Non-Starter Report bearing No. Mediation/2023/1989 dated 21st June, 2023 issued by the Main Mediation Centre, High Court of Judicature at Bombay, at Page No. 118 to the Plaint which was not originally filed, produced and annexed to the Plaint, itself demonstrates that the application for pre-institution mediation was filed on 17th April 2023, i.e., about 2 months after the Suit was instituted, and not prior thereto. It has been further submitted that from the averments made in the Plaint read with the Statement of Truth affirmed on 15th February 2023, there are no averment/s confirming compliance of the mandatory pre-Suit mediation and that paragraph No. 32A of the Plaint which deals with compliance of Section 12A of the Act, was not originally part of the Plaint as filed on 23rd February, 2023, and was inserted/added by hand by the Plaintiff's Advocate only on 19th July, 2023. That the Plaint is not in accordance with law and is contrary to the provisions of the Act, and is liable to be rejected as the manner in which Paragraph No. 32A has been inserted in the Plaint, i.e., by hand, is akin to carrying out an

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amendment to the Plaint which is not permitted for curing the defect of non-compliance of Section 12-A of the Act. That the Plaintiff ought to have withdrawn the Suit and filed a fresh Plaint after complying with Section 12-A of the Act and admittedly, the same has not been done in the present matter.

6. It has been submitted that a bare perusal of the Plaint alongwith the documents produced and annexed thereto evidences that the captioned Commercial Suit was filed without complying with the mandatory provisions of Section 12A of the Act. That compliance of Section 12A of the Act by the Plaintiff, is not a mere procedural requirement but is mandatory and that this Applicant / Original Defendant No. 2 was not even served with any Mediation Notice. That, no case whatsoever has been made out in the Plaint for taking the present case within the exceptions of Section 12A of the Act, nor have any interim relief/s even been contemplated by the Plaintiff in the present case and accordingly, admittedly and by the Plaintiff's own showing and documents produced with and annexed to the Plaint, since there were no mediation proceedings between the Plaintiff and the Applicant, or for that matter even between the Plaintiff and any of the other Defendants before the institution of the present Suit therefore, in view of there being a clear admission of the pre-Suit

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mandatory mediation not being exhausted by the Plaintiff before instituting the Suit, the Plaint is liable to be and ought to be rejected and returned under Order VII Rule 11 (d) of the CPC as the procedure adopted by the Plaintiff is contrary to the law laid down by the Hon'ble Supreme Court, as well as to the provisions of the Act.

7. Secondly, it has been submitted that the captioned Suit is contrary to and barred by the provisions of the Indian Carriage of Goods by Sea Act, 1925, which applies to and governs the carriage of goods by ships from any port in India to any port outside India, i.e., export cargo. It has been submitted that it is well settled that an ocean carrier's liability in respect of any alleged loss or damage to cargo stands extinguished in law and by statute unless a Suit is brought within one year from the date of delivery of the cargo or the date when the goods should have been delivered. That the carrier stands entirely and fully absolved and discharged from any and all liability in respect of any and all losses/damages to cargo by reason of Article III (6) of the Indian Carriage of Goods by Sea Act, 1925.

8. Mr. Venkiteswaran has submitted that the Plaintiff's claim in the captioned Suit arises out of and is under the Bill of Lading No. GOSUBOM6331344 dated 15th October 2021 (which evidences the contract of affreightment/carriage) as entered between the Carrier viz.

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the Applicant and the Plaintiff, i.e., Merchant, named therein. That as per the said bill of lading (Exhibit D to the Plaint), the Plaintiff is the named Shipper, the Applicant/Original Defendant No. 2 is the carrier, one Qingdao Bestinland Special Industries Company Limited is the consignee /notified party, and the cargo was carried from Nhava Sheva, India, to Qingdao Port, China. The Plaintiff's cargo was carried by the Applicant, as the Carrier, and the cargo was delivered to the named consignee - Qingdao Bestinland Special Industries Company Limited, on 13th November 2021, as per the Plaintiff's own pleaded case.

9. It has been submitted that it is the Plaintiff's case in the Suit that there was an alleged mis-delivery of the cargo and/or wrongful delivery of the cargo to the named consignee at the port of discharge, and that there was an alleged breach of the contract of carriage, which is denied by the Applicant. That as per the Plaintiff's own pleading and showing (Paragraph Nos. 13, 14 and 22 of the Plaint), the cargo was allegedly wrongly delivered and/or mis-delivered to the named consignee on 13th November 2021 and therefore, the one year period as prescribed by law/statute expired on 13th November 2022, and from 13th November 2022 onwards, this Applicant, as the named Carrier, stood fully and absolutely discharged and released from any and all liability in respect of the alleged loss or damage to the Plaintiff's cargo, i.e., total

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extinction of the liability following upon an extinction of the right, and the Plaintiff has no valid claim, in law or otherwise, against the carrier post 13th November 2022. That the carrier and the ship shall be discharged from all liability in respect of loss or damage unless the Suit is brought within one year after delivery of the goods or the date when goods should have been delivered and after the period of one year, the right to claim itself stands extinguished.

10. Mr. Venkiteswaran has submitted that admittedly, the present Suit has been filed by the Plaintiff against this Applicant beyond the one year period prescribed by the statute and as on the date of institution of the Suit, i.e., 23rd February 2023, not only the carrier's (this Applicant's) liability had been totally extinguished, but also the Plaintiff's remedy as regards the liability had also disappeared, and therefore, the Plaintiff had no valid legal claim against this Applicant. It has been further submitted that the Suit is not maintainable in law against the Applicant, nor does the Plaintiff have any valid and legal claim whatsoever against the Applicant. That the captioned Suit is, therefore, liable to be and ought to be dismissed, with costs as the Plaintiff has no valid claim in law even against the Defendant No. 1 who was at the relevant time acting in the capacity of agent only of this Applicant and as the present Suit is misplaced, without any merit, and

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barred by law, the Suit ought to be dismissed against the Defendants, with costs.

11. Mr. Venkiteswaran has submitted that without prejudice to all that has been submitted, even if for the sake of argument it is presumed that the Plaintiff's Suit claim was protected by the orders of the Hon'ble Supreme Court in the case of ***Cognizance For Extension of Limitation, In Re***[1], and the one year period as prescribed under the governing statute commenced only on 1st March 2022 and expired only on 28th February 2023, even then the Applicant's liability, if any, as the Carrier, stands fully extinguished and the Applicant is entirely discharged from any and all liability arising out of any alleged loss or damage to the cargo carried under the relevant governing Bill of Lading in view of the Plaintiff having filed the Suit without complying with the mandatory provision prescribed under Section 12A of the Act.

12. It has been submitted that the non-compliance of Section 12A of the Act results in the Suit being, as on the date of its filing, i.e., 23rd February 2023, bad in law, misconceived and barred by law and therefore, exposed to rejection of the Plaint under Order VII Rule 11 (d) of the CPC. That the Plaintiff had, after filing of the Plaint and institution of the Suit on 17th April 2023, filed a purported Mediation

1 2020 (19) SCC 10

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Application before the Main Mediation Centre, High Court, Bombay whereunder a Non-Starter Report came to be issued on 21st June 2023 however, the Non-Starter Report dated 21st June 2023 was not originally produced and annexed to the Plaint but was added to the Plaint only subsequently on 19th July, 2023, contrary to the procedure laid down in law, that too after making certain averments in the Plaint by hand. That the procedure adopted by the Plaintiff is not permitted in law, and the correct procedure, which ought to have been followed by the Plaintiff, was to withdraw the Suit and file a fresh Suit/Plaint after complying with the provisions of Section 12A of the Act or the Plaint ought to have been rejected and returned to the Plaintiff.

13. It has been submitted that even if the benefit of doubt is given to the Plaintiff and the Plaint is accepted, then the date of filing of the Suit would necessarily have to be equated to the date on which the Mediation Application was filed, i.e. on 17th April, 2023, in accordance with Section 12A of the Act and if so, this Applicant stands entirely and fully absolved and discharged from any and all liability in respect of any and all alleged losses/damages to cargo by reason of Article III (6) of the Indian Carriage of Goods by Sea Act, 1925 and further, in view of the one-year period having expired on 28th February, 2023, and Suit being filed on 17th April, 2023, the date on which the Mediation

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Application was filed, the Plaintiff's right to claim itself stands extinguished. It is submitted that, hence, the Suit is barred by and contrary to law, and is liable to be and ought to be visited with the consequences and be rejected.

14. Mr. Venkiteswaran has relied upon the following decisions in support of his contentions:

(i) ***Patil Automation Pvt. Ltd. Vs. Rakheja Engineers Pvt. Ltd.***[2]

(ii) ***Proactive Ship Management Private Limited Vs. The Owners and Parties Interested in the Vessel Green Ocean***[3]

(iii) ***Extreme Coating Private Ltd. Vs. Jotun India Private Ltd.***[4]

(iv) ***Red Bricks Pvt. Ltd. & Anr. in the matter of M/s. Green Square Vs. Red Bricks Pvt. Ltd. & Anr.***[5]

(v) ***The East and West Steamship Company, Georgetown, Madras Vs. S. K. Ramalingam Chettiar***[6]

(vi) ***Bhagwandas B. Ramchandani Vs. British Airways***[7]

(vii) ***Jeeves Impex Vs. Maersk Line India Pvt. Ltd. & Ors.***[8]

(viii) ***Midland Overseas Vs. M. V. "CMBT Tana" & Ors.***[9]

(ix) ***Marie Container Services South Pvt. Ltd. Vs. Go Go Garments***[10]

15. Mr. Kamat, learned Counsel appearing for the Applicant in Interim Application No. 1947 of 2024 has submitted that the Applicant

2 (2022) 10 SCC 1
3 Order dated 22nd February 2024 inInterim Application in GA COM 3 of 2023 in A.S. 6 of 2023.
4 2022 SCC OnLine 2341
5 Order dated 24th January 2024 in Interim Application (L) No. 36105 of 2023 in Commercial Summary Suit No. 19 of 2023.
6 (1960) 3 SCR 820
7 2022 SCC OnLine SC 939
8 2015 SCC OnLine Bom 890
9 1999 SCC OnLine Bom 460
10 (1998) 3 SCC 247

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is the original Defendant No. 3 in the captioned Commercial Admiralty Suit and was engaged as the freight forwarding agent by the Plaintiff. Mr. Kamat has submitted that although there are various grounds taken in said Interim Application including there being no cause of action as against the Applicant however, he is pressing the ground of non-compliance with the mandatory requirement under Section 12A of the Act despite the said ground not having been taken in the Interim Application as the said ground is a legal ground and as per the decision of the Hon'ble Supreme Court as held in the case of *Patil Automation Pvt. Ltd. (supra)*, the Court can *suo moto* take up the said ground even if it has not been pleaded.

16. Mr. Kamat has addressed this Court as to why the Plaint should be rejected under the said provision as the present Suit is a Suit filed under Section 6 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the "Admiralty Act") as a Suit in *personam* and not a Suit in *rem* under Section 5 as the Suit does not contemplate arrest. It has been submitted that as the Suit has been filed in *personam* and not in *rem* under Section 6 of the Admiralty Act and as the Suit does not contemplate any urgent relief viz. the arrest of the Vessel, the Plaintiff has not made out any case for the waiving the mandatory compliance to be made under Section 12A of the Act and as the

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Plaintiff could not have instituted the present Suit without the mandatory compliance with Section 12A of the Act and has only later annexed the Non-Starter Report dated 21st June 2023 issued by the Main Mediation Centre to the Plaint which was instituted on 23rd February, 2023, the Plaint deserved to be rejected.

17. Mr. Kamat has relied upon the following decisions in support of his contentions:

(i) ***Yamini Manohar Vs. T. K. D. Keerthi***[11]

(ii) ***Rushab Ship Internation LLC & Ors. Vs. Bunkers onboard the Ship M. V. African Eagle & the Freight due for transportation & Ors.***[12]

(iii) ***Shraddha Shelters Private Limited in the matter between Ekta Housing Private Limited Vs. Shraddha Shelters Private Limited***[13]

(iv) ***Novenco Building and Industry A/S Vs. Xero Energy Engineering Solutions Private Ltd. & Anr.***[14]

(v) ***Mary Pushpam Vs. Telvi Curusumary And Ors.***[15]

18. On the other hand, Mr. Khatri, learned, Counsel appearing for the Respondent-Plaintiff has submitted that the Plaint in the Suit was presented on 23rd February, 2023 and was given a lodging number as Commercial Admiralty Suit (L) No. 5342 of 2023. That since the Plaintiff was informed that the cargo was delivered without surrender

11 (2024) 5 SCC 815
12 2014 SCC OnLine Bom 620
13 2024 SCC OnLine Bom 3538
14 2025 SCC OnLine SC 2278
15 (2024) 3 SCC 224

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of original Bills of Lading as pleaded in paragraph 14 between 11th November, 2021 to 14th November, 2021, the said period falls within the period of 15th March, 2020 to 28th February, 2022 viz. the period excluded by the Hon'ble Supreme Court by virtue of the *suo-moto* order in *Cognizance For Extension of Limitation, In Re (supra)*, the period of limitation would end on 28th February, 2023, whereas the Plaint has been presented on 23rd February, 2023 and therefore, the same is within the period of limitation as envisaged by Article III of the Indian Carriage of Goods by Sea Act, 1925.

19. Mr. Khatri has further submitted that the Hon'ble Supreme Court in the case of *Patil Automation Pvt. Ltd. (supra)*, on a consideration of a scheme of Orders IV, V and VII of the CPC arrived at a conclusion in paragraph 94 that, the Suit is commenced by presentation of a Plaint, which is the date of presentation in terms of Section 3(2) of the Limitation Act, 1963. That by virtue of the Order IV Rule 1(3), the institution of the Plaint is however, complete only when the Plaint is in conformity with the requirement of Order VI and VII of the CPC. That the Court decides to issue summons under Order V Rule 1 of the CPC, after the Suit has been duly instituted. That since summons is to be issued in a duly instituted Suit, in a case where the Plaint is barred under Order VII Rule 11 (d) of the CPC, the stage begins at that time

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when the Court can reject the Plaint under Order VII Rule 11 of the CPC, where on allegations in the Suit, it is found that the Suit is barred by any law and the Plaintiff does not plead circumstances to take his case out of the requirement of Section 12A, the Plaint should be rejected without issuing summons. That the power under Order VII Rule 11 of the CPC is available to the Court to be exercised *suo-moto*.

20. Drawing this Court's attention to paragraph 95 of the said decision in the case of *Patil Automation Pvt. Ltd. (supra)*, Mr. Khatri has submitted that there is a distinction between the presentation of the Plaint and institution of a Suit. That, Section 3(2) of the Limitation Act, 1963 provides that the Suit is instituted in a ordinary case, when the Plaint is presented to the proper officer. Mr. Khatri has submitted that every Plaint is required to comply with rules contained in Order VI and VII and the Plaint under Order IV Rule 1 of the CPC and cannot be deemed to be duly instituted unless it complies with the said rules. That the Plaint which does not comply with the rules contained in Orders VI and VII is not a valid Plaint.

21. Mr. Khatri has submitted that initially the Court gives a diary number indicating the presentation of Suit and it is only an act of numbering the Plaint and inclusion in the register of suits alone which

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would constitute the institution of Suit. That the stages prior to the registration of the Suit are all preliminary in nature and the return of Plaint before registration is for the purpose of complying with certain defects pointed out by the Court. Mr. Khatri has submitted that, therefore, until the Court admits the Plaint and registers it in the Suit register, the mandatory requirement of Section 12-A would not apply. That the presentation of the Plaint may not amount to institution of Suit for the purpose of Order IV Rule 1 of the CPC and Section 12A of the Act. Mr. Khatri has submitted that if this view is adopted, as also approved by the Hon'ble Supreme Court in paragraph 98 of the said decision in the case of *Patil Automation Pvt. Ltd. (supra)*, then before the Plaint is registered but after presentation if there is non-compliance of Section 12A of the Act, the Plaintiffs can then and there be told to comply with the mandate of Section 12A of the Act.

22. Mr. Khatri has submitted that in the facts of this case, the Plaint has been presented on 23rd February, 2023 and awarded lodging number Commercial Admiralty Suit (L) No. 5342 of 2023 after which, on 17th April, 2023 an application for pre-institution mediation was instituted by the Plaintiff, whereafter on 21st June, 2023 a Non-Starter Report was issued by the Main Mediation Centre after which on 11th

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October, 2023, the objections were complied with and the Suit was awarded registered number viz. Commercial Admiralty Suit No. 22 of 2023 on 16th October, 2023, which is the date of institution of the Suit.

23. Mr. Khatri submits that the written statement was filed by the Defendants No. 1 and 4 on 30th November, 2023, by the Defendant No. 2 on 5th December, 2023 and by the Defendant No. 3 on 22nd March, 2024. That the Defendant No. 2 has soon after filing the written statement on 5th December, 2023, filed Interim Application No. 808 of 2024 seeking rejection of the Plaint under Order VII Rule 11(d) of the CPC and that the Defendant No. 3 filed Interim Application No. 1947 of 2024 also seeking rejection of Plaint.

24. Mr. Khatri has submitted that in view of the clear legal position with respect to the institution of the Plaint and presentation of the Plaint, the grounds taken by the Applicants deserve to be dismissed and the Suit be proceeded with.

25. Mr. Khatri has also relied upon the decision of the Hon'ble Supreme Court in the case of *Novenco Building And Industry A/S (supra)*.

26. Mr. Venkiteswaran has in rejoinder relied upon paragraphs 48, 49, 62, 88 and 113 of the decision in the case of *Patil Automation Pvt.*

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Ltd. (supra) and submitted that Section 12A of the Act is mandatory and in a Suit instituted violating the mandate has to be visited with consequences under Order VII Rule 11 of the CPC and that the said power can be exercised *suo-moto* by the Court. That in the facts of this case, the mandatory requirements of Section 12A of the Act not having been met with at the time of presentation of the Plaint, which the learned Counsel submits is the date of institution of the Suit as also that the Suit is also barred by the Limitation Act, 1963. In support Mr. Venkiteswaran has also relied upon the decision of the Delhi High Court in the case of ***Dr. Reddys Laboratories Limited & Anr. Vs. Controller of Patents & Ors.***[16] and in particular refers to paragraphs 11, 15 and 16 thereof in support.

27. Mr. Kamat has in rejoinder relied upon the following decisions in support of his contention:

(i) *State Bank of India in the matter between Asean International Limited and Anr. Vs. State Bank of India and Ors.*[17]

(ii) *Y-Not Films LLP and Anr. in the matter between Ultra Media and Entertainment Pvt. Ltd. Vs. Y-Not Films LLP and Anr.*[18]

(iii) *IIFL Finance Ltd. & Ors. In the matter between Gundecha Estate Pvt. Ltd. Vs. IIFL Finance Ltd. & Ors. And connected matters*[19]

16 2023 SCC OnLine Del 4701.
17 2026 SCC OnLine Bom 20
18 2024 SCC OnLine Bom 3085
19 Order dated 17th July, 2025 in IAL/16800/25 in COMSL/8617/25 @ IAL/17138/25 in COMSL 8617/28.

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28. I have heard the learned Counsel in the matter.

29. Coming first to the contention of the Applicants with respect to Section 12A of the Act, in the case of *Patil Automation Pvt. Ltd. (supra),* the Hon'ble Supreme Court has held under:-

> *"48. In contrast, Section 12-A cannot be described as a mere procedural law. Exhausting pre-institution mediation by the plaintiff, with all the benefits that may accrue to the parties and, more importantly, the justice delivery system as a whole, would make Section 12-A not a mere procedural provision. The design and scope of the Act, as amended in 2018, by which Section 12-A was inserted, would make it clear that Parliament intended to give it a mandatory flavour. Any other interpretation would not only be in the teeth of the express language used but, more importantly, result in frustration of the object of the Act and the Rules.*
>
> *49. In this connection, in the Judgment reported in Sharif-ud-Din (supra), it has been held that, if the object of the law is defeated by non-compliance with the provision, then it would be regarded as mandatory. The right to institute the Suit in a Plaintiff who does not contemplate urgent interim relief in a commercial matter under the Act, is clearly conditioned by the fulfillment of certain conditions as provided in Section 12-A. This cannot be likened to allowing a party to file his written statement. Bearing in mind the object also, the conclusion is inevitable that the right of suit itself will fructify only when the conditions in Section 12-A are fulfilled. Treating the provision as procedural, also the result cannot be different. Any other view would remove the basis for treating Section 80(1) of the CPC as mandatory.*
>
> *62. Since, Section 12-A also contemplated the making of Rules to give effect to the scheme of pre-litigation mediation. The Rules were promptly made and published on 3-7-2018. Rule 3 elaborately provides for the manner in which the mediation process is initiated. It contemplates that a party, to a commercial dispute, may make an application to the Authority. This Rule speaks about a party. Section 12A*

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declares that the plaintiff must exhaust the remedy of pre-litigation mediation. What, apparently is required is that the Suit cannot be filed except after the remedy of pre-litigation mediation, contemplated under the Act and the Rules, is attempted and exhausted. What Rule 3(1) provides is the form in which the application is to be made, viz., Form-I, as specified in Schedule-I. The making of the Form can be by online transmission or by post or by hand.

88. We may immediately draw a parallel between Section 80(1) of the CPC and 12A of the Act. In Section 12A also, the bar of institution of the suit is applicable only in a case in which plaintiff does not contemplate urgent interim relief. The situation is akin to what is contemplated in Section 80(1) of the CPC. In other words, the suit under the Act which does not contemplate urgent interim relief is like a suit covered by Section 80(1) of the CPC which does not project the need for any urgent or interim relief. In regard to a suit covered under Section 12A of the Act, namely, in a suit where interim relief is not contemplated, there can be no substantial compliance by way of post institution reference to mediation. The argument of the plaintiff overlooks the object apart from the language used besides the design and scheme of the law. It will, if accepted, lead to courts also spending their invaluable time on such matters which follow from adjournments, objections and hearings. There is no need to adopt such a course.

94. On a consideration of the scheme of the Orders 4, 5 and 7 CPC, we arrive at the following conclusions:

94.1 A suit is commenced by presentation of a plaint. The date of the presentation in terms of Section 3(2)of the Limitation Act is the date of presentation for the purpose of the said Act. By virtue of Order 4 Rule 1 (3), institution of the plaint, however, is complete only when the plaint is in conformity with the requirement of Order 6 and Order 7.

94.2 When the court decides the question as to issue of summons under Order 5 Rule 1, what the court must consider is whether a suit has been duly instituted.

94.3 Order 7 Rule 11 does not provide that the court is to discharge its duty of rejecting the plaint only on an

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application. Order 7 Rule 11 is, in fact, silent about any such requirement. Since summon is to be issued in a duly instituted suit, in a case where the plaint is barred under Order 7 Rule 11(d), the stage begins at that time when the court can reject the plaint under Order 7 Rule 11. No doubt it would take a clear case where the court is satisfied. The Court has to hear the plaintiff before it invokes its power besides giving reasons under Order 7 Rule 12. In a clear case, where on allegations in the suit, it is found that the suit is barred by any law, as would be the case, where the plaintiff in a suit under the Act does not plead circumstances to take his case out of the requirement of Section 12A, the plaint should be rejected without issuing summons. Undoubtedly, on issuing summons it will be always open to the defendant to make an application as well under Order 7 Rule 11. In other words, the power under Order 7 Rule 11 is available to the court to be exercised suo motu.(See in this regard, the judgement of this Court in Madiraju Venkata Ramana Raju (supra).

PRESENTATION OF PLAINT AND INSTITUTION OF SUIT

95. Another area of debate has been about the distinction between the presentation of a plaint and institution of a suit. Section 3(2) of the Limitation Act, 1963, provides that for the purpose of the Limitation Act, a suit is instituted in the ordinary case, when the plaint is presented to the proper Officer. In the case of a pauper, the suit is instituted when his application to leave to sue as a pauper is made.

96. Order 4 Rule 1 CPC as follows:

> *"1. Suit to be commenced by plaint.-*
>
> *(1) Every suit shall be instituted by presenting a plaint in duplicate to the Court or such officer as it appoints in this behalf.*
>
> *(2) Every plaint shall comply with the rules contained in Orders 6 and 7, so far as they are applicable.*
>
> *(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2)."*

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97. Sub-Rule (3) of Order 4 Rule 1 was inserted by Act 46 of 1999 w.e.f. 01.07.2002. Shri Sharath Chandran has drawn our attention to the Judgment of the High Court of Madras reported in Olympic Cards Limited v. Standard Chartered Bank. In the said case, the question, which arose was, whether there was an abandonment or withdrawal of suit within the meaning of Order 23 Rule 1 of the CPC, which would operate as a bar to file a fresh suit. In this context, we notice the following discussion:

> *"16. Rule 1 of Order 4 of CPC provided for institution of Suits. Rules 3 & 4 of Order 4 contains the statutory prescription that the Plaint must comply with the essential requirements of a valid Plaint and then only the process of filing would culminate in the registration of a Suit. Rule 21 of Civil Rules of Practice contains the basic difference between presentation and institution. There is no dispute that the date of filing the Plaint would be counted for the purpose of limitation. However, that does not mean that the Suit was validly instituted by filing the Plaint. The Plaint, which does not comply with the Rules contained in Orders 4 & 7, is not a valid Plaint.*
>
> *The Court will initially give a Diary Number indicating the presentation of Suit. In case the Plaint is returned, it would remain as a "returned Plaint" and not a "returned Suit". The act of numbering the Plaint and inclusion in the Register of Suits alone would constitute the institution of Suit. The stages prior to the registration of Suit are all preliminary in nature. The return of Plaint before registration is for the purpose of complying with certain defects pointed out by the Court.*
>
> *The further procedure after admitting of the Plaint is indicated in Rule 9 of Order 7. This provision shows that the Court would issue summons to the parties after admitting the Plaint and registering the Suit. Thereafter only the Defendants are coming on record, exception being their appearance by lodging caveat. Even after admitting the Plaint, the Court can return the Plaint on the ground of jurisdiction under Rule 10 of Order 7 of C.P.C.*

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The fact that the Plaintiff/Petitioner served the Defendant/respondent the copies of Plaint/Petitions before filing the Suit/Petition would not amount to institution of Suit/filing Petition. It is only when the Court admits the Plaint, register it and enter it in the Suit register, it can be said that the Suit is validly instituted.

17. It is, therefore, clear that any abandonment before the registration of Suit would not constitute withdrawal or abandonment of Suit within the meaning of Order 23, Rule 1, C.P.C., so as to operate as a legal bar for a subsequent Suit of the very same nature. It is only the withdrawal or abandonment during the currency of a Legal proceedings would preclude the Plaintiff to file a fresh Suit at a later point of time on the basis of the very same cause of action."

98. The contention appears to be that it may be a fair view to take that there is no institution of the suit within the meaning of Section 12A, until the Court admits the plaint and registers it in the suit register. In other words, presentation of the plaint may not amount to institution of the suit for the purpose of Order 4 Rule 1 of the CPC and Section 12A of the Act. If this view is adopted, it is pointed out that before the plaint is registered after presentation and there is non-compliance with Section 12A, the plaintiffs can, then and there, be told off the gates to first comply with the mandate of Section 12A. This process would not involve the Courts actually spending time on such matters. In the facts, this question does not arise and, it may not be necessary to explore this matter further.

113. Having regard to all these circumstances, we would dispose of the matters in the following manner:

113.1. We declare that Section 12A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order 7 Rule 11. This power can be exercised even suo moto by the court as explained earlier in the judgment. We, however, make this declaration effective from 20-8-2022 so that concerned stakeholders become sufficiently informed.

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> *113.2 Still further, we however direct that in case plaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff.*
>
> *113.3 Finally, if the plaint is filed violating Section 12A after the jurisdictional High Court has declared Section 12A mandatory also, the plaintiff will not be entitled to the relief."*
>
> *(emphasis supplied)*

30. As can be seen, the Hon'ble Supreme Court in the case of *Patil Automation Pvt. Ltd. (supra)* has, on a consideration of the scheme of Orders IV, VI and VII of the CPC, held that the Suit is commenced by presentation of a Plaint, which is the date of presentation in terms of Section 3(2) of the Limitation Act, 1963 and further made a distinction between "presentation" and "institution" of a Suit and that by virtue of the Order IV Rule 1(3), the institution of the Plaint is however, complete only when the Plaint is in conformity with the requirement of Orders VI and VII of the CPC and the Court decides to issue summons under Order V Rule 1 of the CPC, only after the Suit has been duly instituted. The Hon'ble Supreme Court has also held that every Plaint is required to comply with rules contained in Orders VI and VII and the Plaint, under Order IV Rule 1 of the CPC, cannot be deemed to be duly instituted unless it complies with the said rules and that the Plaint

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which does not comply with the rules contained in Orders VI and VII is not a valid Plaint. Presentation of a Suit is indicated when a diary number is given i.e. the lodging number in the present case which was given on the 23rd February 2023, and the act of numbering the Plaint and inclusion in the Register of Suits alone would constitute institution of the Suit i.e. the registered number in the present case which was given on the 16th October 2023 and the stages prior to the registration of the Suit are all preliminary in nature. That it is only when the Court admits the Plaint, registers it and enters it in the Suit Register, it can be said that the Suit is validly instituted. That the presentation of the Plaint does not amount to institution of Suit for the purpose of Order IV Rule 1 of the CPC and Section 12A of the Act. This view has also been approved by the Hon'ble Supreme Court in paragraph 98 of the said decision in the case of *Patil Automation Pvt. Ltd. (supra)*, as before the Plaint is registered but after presentation if there is non-compliance of Section 12A of the Act, the Plaintiffs can then and there be told to comply with the mandate of Section 12A of the Act.

31. In the facts of this case, the Plaint has been presented on 23rd February, 2023 and awarded lodging number Commercial Admiralty Suit (L) No. 5342 of 2023 after which, on 17th April, 2023 an

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application for pre-institution mediation was instituted by the Plaintiff, whereafter on 21st June, 2023 a Non-Starter Report was issued by the Main Mediation Centre prior to the institution of the Suit, after which on 11th October, 2023, the objections were complied with and the Suit was awarded registered number viz. Commercial Admiralty Suit No. 22 of 2023 on 16th October, 2023, which is the date of institution of the Suit. This clearly indicates that mandate under Section 12A of the Act was complied with after the presentation stage whereafter the Suit was validly instituted and subsequently, the Defendants entered appearance and the Defendants No. 1 and 4 filed their Written Statements on 30th November 2023, Defendant No. 2 on 5th December 2023 and Defendant No. 3 on 22nd March 2024.

32. In view of the same, I am afraid that I am unable to agree with the contention of the Applicants that the Plaint is not in accordance with law and is contrary to the provisions of the Act, and is liable to be rejected for non-compliance with the mandate under Section 12A of the Act as the Non-Starter Report dated 21st June 2023 as annexed at Page 118 to the Suit is before the registration number has been assigned to the Suit on 16th October 2023 i.e. the date of institution. Therefore, in the facts of the present case, the Plaintiff has complied with the

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mandate as under Section 12A of the Act before the registration of the Suit, and therefore, it cannot be said that the Suit is liable to be rejected under Order VII Rule 11 of the CPC.

33. In light of what has been held above, it would not be necessary to deal with the decisions in the case of *Proactive Ship Management Private Limited (supra)*, *Extreme Coating Private Ltd. (supra), Red Bricks Pvt. Ltd. & Anr. (supra), Yamini Manohar (supra), Rushab Ship International LLC & Ors. (supra), Shraddha Shelters Private Limited (supra)* relied upon by the Applicants as also which are in any event distinguishable on facts and would not aid the case of the Applicants.

34. The decision of the Single Judge of the Delhi High Court in the case of *Dr. Reddys Laboratories Limited & Anr. (supra),* in my view, would not be applicable in the facts of this case as firstly it is distinguishable on facts as the issue of Section 12A of the Act, relating to pre-institution mediation was not under consideration and secondly the said decision does not refer to the paragraphs 94 to 98 of the decision in the case of *Patil Automation Pvt. Ltd. (supra)*, where it has been observed that there is a distinction between presentation of the Plaint and institution of Suit and prior to the institution of the Suit, the Plaintiff can be sent for complying with the Section 12A of the Act, which has been done in this case, as presentation of the Plaint was on

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23rd February, 2023, whereas the Suit has been instituted on 11th October, 2023.

35. The decision in the case of *State Bank of India (supra)* relied upon by Mr. Kamat is clearly distinguishable with the facts before this Court, as in that case the Plaintiffs had asserted that they attempted pre-litigation mediation through a private Mediator, however, the attempt was unsuccessful and the Suit was filed. In the facts of this case as noted above, the Plaint in the Suit was only presented but not instituted and this Court has observed relying upon *Patil Automation Pvt. Ltd. (supra)* that until and unless the registered number is obtained, the Suit cannot be said to be instituted. With respect, it is to be held that the distinction endeavoured to be brought out in the case of *State Bank of India (supra)* between institution and registration was in a completely different context as can be seen from paragraph 21 of the said decision viz. it was in the context of computing a limitation period and therefore, the findings in the said decision would to my mind, not apply to the case at hand.

36. Mr. Kamat has also relied upon the decision of the Hon'ble Supreme Court in the case of *Mary Pushpam (supra)*. I am afraid that the said decision would also not apply to the facts of this case. No doubt, judicial discipline and propriety and the doctrine of precedents has merit in promoting certainty and consistency in judicial decisions,

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providing assurance to individuals as to the consequences of their actions, however, the said principle was reiterated in the context, where aggrieved by the dismissal of the Suit, the Appellant preferred an appeal and the Sub-Judge vide judgment modified the judgment and decree of the Trial Court and declared that the Appellants were entitled to the entire suit property for relief of declaration of title, permanent injunction and for setting up their boundary for securing the said property and the Sub-Judge had relied upon the High Court decision in the earlier round of litigation. Aggrieved by the decision of the Sub-Judge, the Respondents preferred second appeal before the High Court and the High Court allowed the Appeal and set aside the judgment of the Sub-Judge and restored the decree of the Trial Court, against which, the matter came to the Supreme Court.

37. Highlighting the doctrine of merger for the maintenance of the decorum of hierarchy of Courts and Tribunals, the Hon'ble Supreme Court held that the High Court's judgment for the initial round dated 30th March, 1990, noting that the disputed property included 8 cents of land, not just the building structure on it, the decision of the Trial Court and the first Appellate Court from the first round of litigation were absorbed into High Court's judgment dated 30th March, 1990 and that 1990 judgment should be regarded as the conclusive and binding order from the initial litigation. The Hon'ble Supreme Court observed that

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following the principles of judicial discipline, lower or subordinate courts do not have the authority to contradict the decisions of higher courts and the Trial Court and the High Court in the second round of litigation violated this judicial discipline by adopting the position contrary to the High Court's final judgment dated 30th March, 1990, from the first round of litigation. It was observed that the High Court committed a *bonafide* error in recording that the suit property was 8 cents along with constructions standing over it and the Trial Court and the High Court in the present round were correct in limiting the decree only to the construction and not the entire area of 8 cents. The Hon'ble Supreme Court thereby allowed the Appeal and set aside the judgment and order of the High Court and restored and maintained the order of the Sub-Judge. As can be seen, the said decision was in the context of appeal proceedings in the very same fact situation, whereas the decision in the case of *State Bank of India and Ors.(supra)* is in a completely different fact situation as noted above.

38. Principles of law settled by the Hon'ble Supreme Court are time tested and undoubtedly have to be applied, however, the application of such principles would always vary from case to case depending upon facts. If a Single Judge of this Court has made an observation on the basis of application of settled principles of law to a fact situation, the said decision cannot be a binding precedent in the name of judicial

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discipline to a different fact situation. That was not what was contemplated under the principle of discipline and propriety as contemplated by the Hon'ble Supreme Court in the case of *Mary Pushpam (supra)*.

39. Again the decision of this Court in the case of *Y-Not Films LLP and Anr. (supra)* is also distinguishable on facts. In the facts of the said case, there was an ad-interim relief sought and therefore, pre-institution mediation was given a go by in view of the urgency. Such are not facts of this case, therefore, the said decision is distinguishable.

40. In the case of *IIFL Finance Ltd. & Ors. (supra)* relied upon by Mr. Kamat, firstly the said matter pertains to intellectual property rights, where again there was a case for urgency to by-pass the pre-institution mediation. Moreover, in the said case there was a complete non-compliance of Section 12A, but that is not so in the facts of this case as it has been clearly observed that the pre-institution mediation herein has been conducted before the Suit was registered and in view of *Patil Automation Pvt. Ltd. (supra)*, until and unless the Suit is registered, mediation in terms of Section 12A of the Commercial Courts Act is valid.

41. As regards the contention of the Applicant in Interim Application No. 808 of 2024 that the Suit is barred by limitation as provided under

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Article III(6) of the Indian Carriage of Goods by Sea Act, 1925, Article III(6) of the Indian Carriage of Goods by Sea Act, 1925 is usefully reproduced:

> "*6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or if, the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.*
> *The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.*
> *In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.*
> *This period may, however, be extended if the parties so agree after the cause of action has arisen;*
> *Provided that a suit may be brought after the expiry of the period of one year referred to in this sub-paragraph within a further period of not more than three months as allowed by the court.*
> *In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods."*
>
> *(emphasis supplied)*

42. It is clear from the above that the limitation period to present the Suit is one year. Mr. Khatri has submitted that since the Plaintiff was informed that the cargo was delivered without surrender of original Bill of Lading between 11th November 2021 to 14th November 2021 and I

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agree with Mr. Khatri that as the said period falls within the period excluded by the decision of the Hon'ble Supreme Court in the case of *Cognizance For Extension of Limitation, In Re (supra)*, the period of limitation would be counted one year from 28th February, 2022 viz. the end-date of the exclusion period, which would be 28th February 2023 and as the Plaint has been presented on 23rd February 2023, the same is within the period of limitation.

43. This Court in the case of ***Arch Construction Co. Vs. Union of India***[20], while relying upon the decision of the Hon'ble Supreme Court in the case of *Cognizance For Extension of Limitation, In Re (supra)* observed as under:

> *"8. This being so as the order of the Hon'ble Supreme Court although entitled cognizance for extension of limitation in Cognizance For Extension of Limitation, In Re (supra), in fact in paragraph 5.1 clearly directs that the period from 15th March, 2020 till 28th February, 2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings which reiterated in paragraph 5.4.*
>
> *9. Under the Section 3 of the Limitation Act, 1963 entitled bar of limitation, it is provided that subject to the provisions contained in Sections 4 to 24 (both inclusive), every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. This means that by virtue of Section 3 of the Limitation Act, it is obligatory on the part of the Court to dismiss a proceeding if made after the*

20 Order dated 17th June 2026 in Execution Application (L) No. 39969 of 2025.

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prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation, even at appellate stage as limitation may go to the root of the matter. What is pertinent to observe is that under the Limitation Act, particularly Sections 12 to 15, which are under part III of the said Act entitled "Computation of period of Limitation", are in respect of exclusion of time in contradistinction to extension of time. The said provisions clearly require the dates or periods mentioned therein to be excluded in computing the period of limitation. These provisions, in my view, are distinct and distinguishable from the provisions under the Limitation Act, which permit computation of a fresh period of limitation in cases of acknowledgment of liability or payment of a date as in those cases the essential pre-condition is that the acknowledgment in writing or payment of a debt should be before the expiry of the prescribed period of limitation, whereas in the case of exclusion, the period excluded completely stands excluded for the purposes of computation of limitation. The Hon'ble Supreme Court in the case of Cognizance For Extension of Limitation, In Re (supra) has clearly excluded the period from 15th March, 2020 till 28th February, 2022 for the purposes of limitation prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. And further as noted above, the Hon'ble Supreme Court in the case of IL & FS Financial Services Limited Vs. Adhunik Meghalaya Steels Pvt. Ltd. (supra) has also clearly observed that paragraph 5.1 of the order entitled Cognizance For Extension of Limitation, In Re (supra) would apply and the entire period from 15th March, 2020 to 28th February, 2022 would stand excluded and the limitation would commence on 1st March, 2022 and continue till 28th February, 2025, further holding that paragraph 5.3 of the cognizance order of the Hon'ble Supreme Court which provides for cases where limitation would have expired during the period between 15thMarch, 2020 till 28th February, 2022, would have no application as the limitation did not expire during that period.

10. Accordingly, under the Scheme of the Limitation Act for a period to be excluded for computation of limitation, it is not necessary that the period of limitation should have

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> *commenced or expired during the said period. The period excluded has to be simply excluded. It is only when fresh limitation has to commence for extending the limitation in situation such as acknowledgment of liability or payment of debt, that the said acts should have occurred before the expiry of the prescribed period of limitation and that there is no such requirement for excluding the period of limitation."*
>
> *(emphasis supplied)*

44. In the facts of this case as well, the Plaintiff gained knowledge about the cargo being delivered between 11th November 2021 to 14th November 2021, which period is covered by the COVID-exclusion period of 15th March 2020 to 28th February, 2022 i.e. the period excluded by the Hon'ble Supreme Court by virtue of the suo moto order in *Cognizance For Extension of Limitation, In Re (supra)*, and hence, the period of limitation would end on 28th February, 2023, whereas the Plaint has been presented on 23rd February, 2023 and therefore, the same is within the period of limitation as envisaged by Article III of the Indian Carriage of Goods by Sea Act, 1925. Therefore, Mr. Venkiteswaran's contention that the one year period would expire on 13th November 2022 and from then on, the Applicant would be discharged and released from any and all liability is misplaced. Ergo, I am of the *prima facie* view that the Suit has been filed within limitation. In any event, the issue of limitation being a mixed question

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of fact and law can always be framed as an issue to be considered at the trial.

45. In light of what has been held above, it would not be necessary to deal with the decisions in the case of *The East and West Steamship Company, Georgetown, Madras (supra), Bhagwandas B. Ramchandani (supra)* and *Jeeves Impex (supra)* as also which are in any event distinguishable on facts and do not aid the case of the Applicant.

46. Ergo, from the above discussion it does not appear to me that the Suit is barred by any law and therefore, I am unable to accept the contentions made on behalf of the Applicants.

47. Consequently, even though the other decisions cited by the Applicants, no doubt enunciate and elucidate the principles of law, I am afraid that in the facts of this case, the said decisions do not aid the case of the Applicants as also are distinguishable on facts and therefore, it would not be necessary to deal with the same.

48. In view of the above, the Interim Applications deserve to be rejected and are hereby rejected. Let the Suit now proceed for framing of issues.

(ABHAY AHUJA, J.)

NIKITA YOGESH GADGIL
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