

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

**CS (OS) no. 01/2025**

M/s Devyani International Limited

.... Plaintiff(s)

Through: Mr Anil Bhan, Sr. Advocate with  
Mr Danish Majid, Advocate

v.

Airport Authority of India and others

... Defendant(s)

Through: Mr Vikas Malik, Advocate

**CORAM:**

**HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE**

**ORDER**

18.03.2025

01. This Commercial Suit is preferred under Section 6 of the Commercial Courts Act 2015, hereinafter for short as Act of 2015, seeking declaration for cancellation of Tender No. 2023 AAI- 172342\_1 Dated 28.10.2023, Award letter dated 05.01.2024, issued by Defendant no. 3 and concession agreement dated 05.02.2024, on the ground of being vitiated by misrepresentation and fraud, with the further prayer to pass the decree of perpetual injunction, restraining defendant from taking any coercive action against the plaintiff and to direct defendant to forthwith return the Bank Guarantee Amount of ₹ 8, 94, 89, 000/-, deposited by the plaintiff. Plaintiff is also seeking damages to the tune of ₹ 10, 00, 00,000/- along with 15% interest per annum.

02. Along with the suit, plaintiff herein has filed an application under Section 12A of the Act of 2015, read with section 151 of the Code of Civil Procedure, 1908, seeking dispensation of Pre-Institution Mediation.

**Factual matrix**

03. The Defendant No. 1, issued Notice Inviting Tender (NIT) along with the request for proposal (REP) for concession to design, fit-out, finance, develop, market, operate, maintain and manage the food and beverage outlets at Srinagar

No.(Tender ID No.) AAI/2023\_172342\_1 dated 28.10.2023. Plaintiff qualified as a successful bidder and Defendant No. 4 Senior Manager, Commercial conveyed his approval for the Award of contract, accordingly LOIA dated 05.01.2024, was issued in favour of the plaintiff. The concession agreement was executed on 05.02.2024.

04. Subsequently, the plaintiff came to know that the defendant had fraudulently induced the plaintiff into executing the contract by concealing material facts that multiple litigations are pending in respect of the Srinagar Airport and status quo orders, protecting M/s Saptagiri Resturant Pvt. Limited (SRPL), the previous licensee of the airport premises, are in operation. Defendant had conveyed the plaintiff that the sites under the Concession Agreement would be handed over free of encumbrances, including any legal disputes, and that SRPL would vacate the existing premises by November 2023.

05. Relying upon these assurance, the plaintiff made substantial financial commitments, including furnishing, a bank guarantee of INR 8,94,89,000, assuming that business operations would commence in the month of March 2024, however, it was only in January 2025, upon engaging a legal counsel and conducting due diligence by the said legal counsel, the plaintiff discovered the extent of ongoing litigation, which effectively rendered a significant portion of concessionaire managed locations unavailable for handing it over to the plaintiff. This fact, as per the plaintiffs, was deliberately suppressed by the defendant, who kept on compelling the plaintiff to accept a partial handover and imposed additional financial liabilities through supplementary bills issued on 14.02.2025, for spaces which had not been occupied by the plaintiff.

06. It is stated that instead of providing 17 locations as promised under RFP, the defendant created 22 sites with at least five remaining with SRPL under litigation,

two overlapping with Space and separately stayed by judicial orders and the rest suffering from multiple encumbrances, thereby fraudulently inducing plaintiff into an unenforceable agreement that violates basic principles of transparency, fairness, and contractual sanctity.

07. It has been urged by the plaintiff that the present dispute is non-arbitrable, as the plaintiff challenges, the fundamental validity of the contract which an arbitral tribunal lacks jurisdiction to adjudicate. Arbitrator is further incompetent to pass orders affecting third-party rights, such as those of SRPL, which remains in position of the sites under judicial orders, protecting its occupancy. Additionally, the clause imposes a precondition requiring the plaintiff to deposit 50% of the disputed amount before invoking arbitration.

08. It is stated that the urgency of the suit renders pre-institution mediation inapplicable under section 12-A of the Act of 2015, as the plaintiff faces an eminent risk of irreparable financial loss, particularly the threat of Bank Guarantee encashment by the defendant. Moreover, the conduct, and financial pressures imposed by AAI clearly demonstrate that mediation would serve no useful purpose.

09. Heard learned counsel for the plaintiff and perused the material on record.

10. This Commercial Division having considered the submissions made by the learned counsel for the plaintiff has to consider the application under section 12-A of the Act of 2015, at the first instance.

11. A suit which does not contemplate any urgent interim relief under the Act of 2015 is it required to undergo pre-litigation mediation in accordance with such manner and procedure as may be prescribed by Rules made by the Central Government. The plaintiff herein has filed an application seeking dispensation of

Section 12 of the Act of 2015, thereby seeking urgent interim relief on the following grounds: -

*“I) Imminent risk of encashment of bank guarantee, deposited by the plaintiff amounting to INR8, 8,94,89,000/-, by the defendants*

*II) Fraud, misrepresentation, and concealment of material facts by the defendants.*

*III) Coercion by defendants to accept partial handover.*

*IV) Unjustified demand for supplementary payments for an unoccupied site.*

*V) Futility of Pre-Institution Mediation.*

*VI) Inapplicability of arbitration and lack of jurisdiction of arbitration.”*

12. Section 12-A of the Act of 2015, for facility of reference, is reproduced as under:

*“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....”*

13. The procedure provided in Section 12-A of the Act of 2015, is mandatory in nature. The intent of the legislature is to ensure that before a commercial dispute is filed before the court, the alternative means of resolution are adopted so that genuine cases come before the court and the courts are also decongested. It is not a penal enactment for punishment. The object of prescribing procedure is to advance the cause of justice. The design and scope of the Act of 2015, as amended in 2018, by which section 12-A was inserted, would make it clear that Parliament intended to make it a mandatory provision. A plaintiff has no right to institute a suit which does not contemplate urgent interim relief in commercial matter under Section 12-A of the Act of 2015.

14. It has already been settled by the Apex Court that whenever a plaint is filed

should examine the nature and the subject matter of the suit, the cause of action and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12 of the Commercial Court Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff.

15. This Commercial Division has now to examine the words “contemplate any urgent interim relief” appearing in Section 12-A (1) of the Act of 2015. The word “contemplate” as per Oxford dictionary means to think carefully about something or the possibility of doing something. The word “urgent” means needing immediate attention. The word “interim” means not final or lasting, temporary until somebody/ something more permanent is found. The word “relief” as per judicial dictionary means remedial action of the court in cases where a penalty or forfeiture has been incurred and which the court thinks it equitable that the complainant should not lie under or suffer.

16. Perusal of aforementioned descriptions clearly depict that plaintiff should think carefully about possibility of a thing happening which requires immediate attention and needs to be dealt with immediately so that he should not be made to suffer in exhausting the remedy of pre-institution mediation.

17. The learned Senior Counsel has vehemently argued that if his application for dispensation of pre-institution mediation under section 12-A of the Act of 2015 is not allowed, there is every possibility that the defendants would encash the Bank Guarantee duly deposited by the plaintiff on 24.01.2024, amounting to ₹ 8, 94, 89, 000/-. Plaintiff is seeking this urgent interim relief for restraining defendants from encashment of the Bank Guarantee primarily on the ground that though the Letter of Intent of Award (LOIA) was issued on 05.01.2024 and Concession Agreement was executed on 05.02.2024 but the defendants have fraudulently induced the

plaintiff into executing the contract by concealing the fact of multiple pending litigation and statusquo orders passed in favour of M/S Saptagiri restaurants, Private Limited. The locations have not been handed over to the plaintiff. Instead of providing 17 locations under RFP, the defendants had created 22 sites with at least five remaining with SRPL which are under litigation. In support of such submissions, the learned senior counsel has placed reliance on the judgment of the High Court of Delhi at New Delhi, passed in case titled *Dr Reddys Laboratories Limited v. Smart Laboratories Pvt. Ltd.* dated 16<sup>th</sup> November, 2023.

18. It is stated by the plaintiff that on 25.11.2024, plaintiff had sent an email asking the representative of the defendant No. 3 that defendants have not achieved the access date by miserably failing in handing over all concessionaire managed locations, as such, no concession fees is to be paid as per the RFP to the plaintiff. The plaintiff is further stated to have been requested that if the information is not provided within three working days, plaintiff will proceed with the legal action as per RFP terms. In response to the email, the representative of defendant no. 3 on 27.11.2024 requested plaintiff to takeover the available sites as the area offered is more than 97% ( i.e., 608 sqm area out of 626 sqm) of concessionary managed locations.

19. Learned counsel for the petitioner has produced copy of the communication dated 13.03.2025, issued by AGM commercial/civil Airport director AAI Srinagar, addressed to plaintiff, whereby show cause notice has been issued against the plaintiff on account of non-compliance of clause 10.4 of article 10 (concession fee) of concession agreement. The plaintiff has been called upon to explain within seven days from the date of receipt of notice dated 13.03.20 25, why appropriate action cannot be taken against plaintiff for non- compliance.

20. The plaintiff herein has filed this suit on 11.03.2025, i.e. prior to the issuance of show cause notice to him. The defendants have not raised any issue or have made any demand for encashment of Bank Guarantee, till date. This show cause notice also needs to be replied by the plaintiff before 20.03.2025. The plaintiff by filing instant suit wants to stall the process of any mediation. The plaintiff does not have any absolute choice and right to bypass mandatory provision under Section 12-A of the Act of 2015, by making a prayer for urgent interim relief without justifying any reasonable ground.

21. The Apex Court in case titled Patil Automation Private Limited v Rakheja Engineers Pvt. Ltd. 2022 Vol. 10 SCC 1, has held that section 12-A of the CC Act is mandatory. Pre litigation mediation is necessary, unless the suit contemplates an urgent interim relief. At the same time, the judgment observed in para 100 of the judgment as under:

*“100. In the cases before us, the suits do not contemplate urgent interim relief. As to what should happen in suits which do contemplate urgent interim relief or rather the meaning of the word “contemplate” or urgent interim relief, we need not dwell upon it. The other aspect raised about the word “contemplate” is that there can be attempts to bypass the statutory mediation under Section 12-A by contending that the plaintiff is contemplating urgent interim relief, which is reality, it is found to be without any basis. Section 80 (2) CPC permits the suit to be filed where urgent interim relief is sought by seeking the leave of the court. The proviso to Section 80 (2) CPC contemplates that the court shall, if, after hearing the parties, is satisfied that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to the court after compliance. Our attention is drawn to the fact that Section 12-A does not contemplate such a procedure. This is a matter which may engage attention of the lawmaker. Again, we reiterate that these are not issues which arise for our consideration. In the fact of the cases admittedly there is no urgent interim relief contemplated in the plaints in question.”*

22. The Apex Court in case titled Yamini Manohar v. T.K.D. Keerthi has laid down the following principle:

*“12. The words “contemplate any urgent interim relief” in Section 12-A (1) of the CC Act, with reference to the suit, should be read as conferring power on the court to be satisfied. They suggest that the suit must “contemplate”, which means that the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and ensure that the legislative object/intent behind the enactment of Section 12-A of the CC Act is not defeated.”*

23. It has been held by the Apex Court that the plaintiff does not have any absolute choice and unfettered right to paralyse Section 12-A of the Act of 2015, by making a prayer for urgent interim relief without any emergent cause of action and imminent danger. Section 12-A is mandatory as held in judgment supra. The plaintiff herein has failed to convince this Commercial Division that his prayer for urgent interim relief is genuine.

24. The commercial suit in view of the ratio laid down by the Apex Court in case titled Patil Automation (*supra*) is barred by law under and in terms of the provisions of Order VII Rule 11 of the Code. It would be relevant to take note of Order 7 Rule 11 of the Code herein, thus:

*“Order VII....*

*Rule-11. Rejection of plaint.\_The plaint shall be rejected in the following cases:-*

- (a) Where it does not disclose a cause of action;*
- (b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) Where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*

- (d) Where the suit appears from the statement in the plaint to be barred by any law;  
(e) Where is not filed in duplicate;  
(f) Where the plaintiff fails to comply with the provisions of Rule 9.”

25. It does come to the fore that the plaintiff was offered most of the locations for takeover which he chose to refuse reflecting his deliberate intention to get the agreement cancelled without getting the dispute, if any, being resolved.

26. The plaintiff *prima facie* appears to have rushed to this Commercial Division in anticipation of the show cause notice dated 13.03.2025. The intention of the defendants clearly reflects that they want the dispute raised by the plaintiff through emails to be settled. While as the plaintiff has chosen not to pay the concession fees which makes the Bank Guarantee vulnerable for encashment.

27. In view of above discussion and reasoning in the plaint, suit stands rejected, and application is closed. There shall be no order as to costs. It is made clear that this judgment will have no impact on other proceedings being initiated against the plaintiff, if any.

28. Before concluding, this Commercial Division thinks it appropriate to preserve the rights of the plaintiff to come before this Commercial Division with the similar or same suit, if the need arises after exhausting, pre-institution mediation as per the Act of 2015.

**(MOKSHA KHAJURIA KAZMI)**  
**JUDGE**

Srinagar  
18.03.2025  
Mohammad Yaseen Dar, PS

Whether the order is speaking: Yes.  
Whether the order is reportable: Yes/No.