

## **Commercial Courts Act | Pre-Institution Mediation Is A Pre-Suit Legal Drill, Cannot Be Post Suit Exercise: Madras High Court**

Madras High Court on 23.11.2022, While rejecting a plaint by Aachi Spices and Foods seeking an injunction restraining Karaikudi Achi Mess from using a trademark name or alike sounding expression in any media, websites and other platforms, has highlighted that "pre- institution mediation mandated U/S 12A of the Commercial Courts Act is a pre-suit legal drill and it cannot be ordered as a post suit exercise. This was seen in the matter of **Mr. AD Padmasingh Issac and others v. Karaikudi Achi Mess and another, Case No: C.S. (Comm.Div.) No. 192 of 2022 etc (batch)**, the matter was presided over by The Hon'ble Mr. Justice M. Sundar.

### **FACTS OF THE CASE**

Justice M Sundar stressed that Sec 12A is in the nature of a jurisdictional fact. This means that a party cannot plead that the pre- Institution mediation will be carried out after the institution of the suit. Therefore, any such attempt by the parties to dispense with pre-institution mediation is impermissible.

Sec 12A is in the nature of a jurisdictional fact. A jurisdictional fact has to precede the suit and it cannot be post suit. This Commercial Division has also held that Sec 12A having been held to be mandatory by Hon'ble SC, any such manoeuvre qua the rigour of Sec 12A of CCA either by way of dispensing with or post suit exercise when the law specifically talks about a pre-suit legal drill is impermissible.

The plaintiffs had asserted that the respondents were carrying on the business in the name of "Karaikudi Achi Mess" which was in infringement of the plaintiff's trademarks. On coming to know of the infringement, the plaintiffs oversee an investigation & found out that the defendants did not exist at the given address nor there were any restaurants being run in the address:

The plaintiffs had directly filed the plaints without issuing any pre-suit notice or a cease & desist notice U/S 12A of the CCA. They were granted an interim stay without reference to Sec 12A of the CCA

The plaintiff contended that there was a infusion of marks and that the defendant was selling low quality food which can cause injury to the health of incautious customers. Citing interim orders passed by the court in other cases, the plaintiff sought relief of injunction.

The court, though, rejected the suit as it observed that the plaintiff had failed to fulfil the obligatory criteria for urgent interim relief. The court added that even after coming to know of the infringement, the plaintiff had filed the suit only after a period of one and a half months and therefore could not urge urgency. The plaintiffs had also failed to show that there was an actual or comprehended wrong or legal injury which was so imminent that the plaintiff could not go ahead with a pre- institution mediation.

Farther, the plaintiffs had a prayer to direct post-filing of suit mediation U/S 12A of CCA.

## **JUDGEMENT**

The court noted that this would point towards a chances of mediation as an option. The court clenched the plaintiffs couldn't say that they will go for mediation pending the suit at one part & also contend that they did not resort to pre- Institution mediation on the another part.

Thus, the court rejected the plaint with liberty to the parties to take aside the court again if the exercise of pre-institution mediation does not bring in any results.

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**JUDGEMENT REVIEWED BY YAKSHU JINDAL.**