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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
INTERIM APPLICATION NO. 4596 OF 2025  
AND  
INTERIM APPLICATION (L) NO. 22220 OF 2025  
AND  
INTERIM APPLICATION NO. 7764 OF 2025  
IN  
COMMERCIAL SUIT NO. 126 OF 2025

IIFL Finance Ltd.

A Company incorporated under the  
provisions of the Companies Act,  
2013, (CIN No.) L67100MH199PLC0939797  
having its registered office of IIFL House,  
Sun Infotech Park, Road No. 16V, Plot No.  
B-223, Thane Industrial Area, Wagle Estate,  
Thane 400 604.

...Applicant/

(Org. defendant no.1)

IIFL Home Finance Ltd.

A Company incorporated under the  
provisions of the Companies Act,  
2013, (CIN NO.) L67100MH1995PLC093797  
having its registered office at IIFL House,  
Sun Infotech Park, Road No. 16V, Plot No.  
B-223, Thanu Industrial Area, Wagle  
Estate, Thane 400 604.

...Applicant/

(Org. Defendant No.2)

Vensco Developers LLP

A limited liability partnership

incorporated under the provisions of  
the Limited Liability Partnership Act,  
2008, having its registered office at 72,  
Tower A, Kalapataru Sunrise Kolshet  
Road, Chitalsar Manpada, Thane,  
Thane – 400 607.

...Applicant/

(Org. Defendant No. 3)

**IN THE MATTER BETWEEN**

1. Paramvir Developers Pvt. Ltd.  
A Company incorporated under the  
provisions of the Companies Act,  
2013, (CIN No. U70100MH2021PTC364702,  
Having registered address at 105, Balkrishna  
Nivas, 2<sup>nd</sup> and 4<sup>th</sup> Road, Ammore  
Comm Premises CHS, Khar West,  
Mumbai 400 052
2. Paramvir Real Estate Pvt. Ltd.  
A Company incorporated under the  
provisions of the Companies Act,  
2013, (CIN No. U45201MH202PTC364710,  
Having registered address at 105, Balkrishna  
Nivas, 2<sup>nd</sup> and 4<sup>th</sup> Road, Ammore  
Comm Premises CHS, Khar West,  
Mumbai 400 052
3. K Mordani Constructions Pvt. Ltd.  
A Company incorporated under the

provisions of the Companies Act, 2013, (CIN No. U70109MH2021PTC364239, Having registered address at 105, Balkrishna Nivas, 2<sup>nd</sup> and 4<sup>th</sup> Road, Ammore Comm Premises CHS, Khar West, Mumbai 400 052.

4. Koel Developers Pvt. Ltd.  
A Company incorporated under the provisions of the Companies Act, 2013, (CIN No. U74900MH2021PTC367663, Having registered address at 105, Balkrishna Nivas, 2<sup>nd</sup> and 4<sup>th</sup> Road, Ammore Comm Premises CHS, Khar West, Mumbai 400 052.
5. Kumar Mordani  
Adult, Indian inhabitant, Age :45  
Occupation : Business, having office address at 105, Balkrishna Nivas, 2<sup>nd</sup> and 4<sup>th</sup> Road, Ammore Comm Premises CHS, Khar West, Mumbai 400 052.
6. K Mordani Realty  
A proprietary concern of plaintiff No. 5, having its registered office at 105, Balkrishna Nivas, 2<sup>nd</sup> and 4<sup>th</sup> Road, Ammore Comm Premises CHS, Khar

West, Mumbai 400 052.

7. Paramvir Builders LLP  
A limited liability partnership  
incorporated under the Limited  
Liability Partnership Act, 2008,  
having registered office at 105,  
Balkrishna Nivas, 2<sup>nd</sup> and 4<sup>th</sup> road,  
Ammore Comm Premises CHS, Khar  
West, Mumbai 400 052.
8. Gayatri Mordani  
Adult, Indian inhabitant, Age:42,  
Occupation : Business, having office  
address at 105, Balkrishna Nivas, 2<sup>nd</sup> and  
4<sup>th</sup> Road, Ammore Comm Premises  
CHS, Khar West, Mumbai 400 052.
9. Mahek Mordani  
Adult, Indian inhabitant, Age : 43,  
Occupation : Business having office  
address at 105, Balkrishna Nivas, 2<sup>nd</sup> and  
4<sup>th</sup> Road, Ammore Comm Premises  
CHS, Khar West, Mumbai 400 052.
10. Kishore Mordani  
Adult, Indian inhabitant, Age : 46,  
Occupation : Business having office  
address at 105, Balkrishna Nivas, 2<sup>nd</sup> and

4<sup>th</sup> Road, Ammore Comm Premises  
CHS, Khar West, Mumbai 400 052.

11. Kanayalal Mordani  
Adult, Indian inhabitant, Age : 75,  
Occupation : Business having office  
address at 105, Balkrishna Nivas, 2<sup>nd</sup> and  
4<sup>th</sup> Road, Ammore Comm Premises  
CHS, Khar West, Mumbai 400 052.
12. K Mordani Real Estate Pvt. Ltd.  
A Company incorporated under the  
provisions of the Companies Act,  
2013, (CIN No. U70200MI-12019PTC321124,  
Having registered address at 105, Balkrishna  
Nivas, 2<sup>nd</sup> and 4<sup>th</sup> Road, Ammore  
Comm Premises CHS, Khar West,  
Mumbai 400 052.
13. MNK Builders LLP  
A limited liability partnership  
incorporated under the Limited  
Liability Partnership, Act, 2008 having  
its registered address at 105,  
balkrishna Nivas, 2<sup>nd</sup> and 4<sup>th</sup> Road,  
Ammore Comm Premises CHS, Khar  
West, Mumbai 400 052.
14. Reshma Mordani

Adult, Indian inhabitant, Age : 73,  
Occupation : Business having office  
address at 105, Balkrishna Nivas, 2<sup>nd</sup> and  
4<sup>th</sup> Road, Ammore Comm Premises  
CHS, Khar West, Mumbai 400 052. ...Plaintiffs

**VERSUS**

1. IIFL Finance Ltd.  
A company incorporated under the  
Provisions of the Companies Act,  
2013, (CIN No.) L67100MH1995PLC093797  
having its registered office at IIFL House,  
Sun Infotech Park, Road No. 16V, Plot No.  
B-223, Thane Industrial Area, Wagle  
Estate, Thane 400 064.
2. IIFL Home Finance Ltd.  
A company incorporated under the  
2013, (CIN No.) U65993MH2006PLC166475  
having its registered office at IIFL House,  
Sun Infotech Park, Road No. 16V, Plot No.  
B-223, Thane Industrial Area, Wagle  
Estate, Thane 400 064.
3. Vensco Developers LLP  
A Limited Liability partnership  
incorporated under the provisions of  
the Limited Liability Partnership Act,

2008, having its registered office at 72,  
Tower A, Kalapataru Sunrise Kolshet  
Road, Thane, Chitalsar Manpada,  
Thane 400 607.

.... Defendants

**CORAM : GAURI GODSE, J.**

**RESERVED ON: 23<sup>rd</sup> DECEMBER 2025**

**PRONOUNCED ON: 4<sup>th</sup> APRIL 2026**

**JUDGMENT:**

1. These applications are filed by the Defendants for rejection of the plaint under Order VII Rule 11 of the Civil Procedure Code, 1908 ("CPC"), on the grounds of non-compliance with Section 12-A of the Commercial Courts Act, 2015 ("said Act"), bar under Section 41 of the Specific Relief Act, 1963 and Section 34 of the The Securitisation And Reconstruction Of Financial Assets and Enforcement Of Security Interest Act, 2002 (SARFAESI Act).

2. The suit is filed for specific performance of the Framework Agreement dated 20<sup>th</sup> December 2024 by discharging the plaintiffs and the entire Mordani Group from all liabilities in relation to the loan facilities availed from defendant nos. 1 and 2, including all security interests created by them, by accepting the

premises in compliance with the Framework Agreement. The plaintiffs have also prayed for a declaration that, in view of the Framework Agreement, no amount is due and payable by the plaintiffs. The plaintiffs have therefore prayed for directions to release the securities on the ground of the execution of the Framework Agreement.

3. In view of the apprehension that defendant nos. 1 and 2 shall take steps in furtherance of the terms and conditions of the loan documents and take precipitative steps in respect of the secured assets, the plaintiffs filed the suit without complying with the mandatory requirement under Section 12-A of the said Act. Hence, by way of interim relief, the plaintiffs prayed for an injunction restraining defendant nos. 1 and 2 from dealing with, transferring, or creating third-party rights in respect of the plaintiffs' three projects referred to in the Framework Agreement, and from not enforcing the security under the loan agreements.

**SUBMISSIONS ON BEHALF OF DEFENDANT NO.1:**

4. The plaintiffs are all part of the Mordani Group and are engaged in developing real estate projects. Defendant nos.1 and 2 are non-banking financial companies engaged in the

business of providing loans/finance. Defendant no.3 is a real estate developer and was the nominee developer of defendant no.1 for the purpose of the transfer of projects under the Framework Agreement entered into by Mordani Group and defendant nos. 1 and 2. The agreements were executed by the Mordani Group to avail loan facilities from defendant nos. 1 and 2 for the development of their real estate projects, including the projects known as La Maison, Signature Suits, and Celyn Project.

5. The plaintiff alleges that defendant nos. 1 and 2 are signatories to a so-called "Framework Agreement" dated 20<sup>th</sup> December 2024, which purportedly recorded a composite resolution of all loan facilities. The Framework Agreement forms part of the plaintiff's records and records that the Mordani Group was required to perform its obligations by 31<sup>st</sup> December 2024, and if the Mordani Group failed to perform its obligations by the end of business hours on 31<sup>st</sup> December 2024, the composite settlement and the Framework Agreement will automatically and forthwith come to an end and stand revoked, cancelled and terminated without any act of the parties. In the event of failure,

the parties will be relegated to the same position they held prior to the Execution Date, as if the composite settlement had never been reached or agreed upon, and as if the agreement had never been executed. Admittedly, Mordani Group did not comply with its obligations under the Framework Agreement; hence, the Framework Agreement stood terminated.

6. The suit is allegedly moved with great urgency since defendant no.2 has allegedly begun taking precipitative steps and taken possession of the secured asset, and there is a purported failure on the part of the defendants in complying with the obligations under the Framework Agreement, and that the defendants will purportedly misuse the development rights assigned/transferred/novated in favour of defendant nos. 3 without complying with the terms of the Framework Agreement/MOU/Profit Sharing Agreement.

7. Admittedly, the plaintiffs have not complied with the procedure prescribed under Section 12-A of the said Act. It is well-settled that while examining an objection under Order VII Rule 11 of the CPC, a meaningful, not a formal, reading of the plaint must be done to determine whether it warrants the

exercise of powers of rejection. If the Court finds that the plaint does not disclose any cause of action or that the suit is barred by any law, the court has no option but to reject the plaint. To support his submissions, learned senior counsel for defendant no. 1 relied upon the Apex Court's decision in *Dahiben v. Arvinbhai Kalyanji Bhanusali*<sup>1</sup>.

8. To support the objection on the ground of non-compliance with the mandatory provision under Section 12-A of the said Act, he relied upon the Apex Court's decisions in *Patil Automation Private Limited & Ors. v. Rakheja Engineers Private Limited*<sup>2</sup>, *Yamini Manohar v. T.K.D. Keerthi*<sup>3</sup> and *Dhanbad Fuels Private Limited v. Union of India*<sup>4</sup>. He submitted that it is observed by the Apex Court that the plaintiffs have no right to paralyse Section 12-A by making a camouflage prayer for urgent interim relief under the guise of bypassing the statutory mandate of pre-litigation mediation. When deception and falsity are apparent or established, the plaint deserves to be rejected.

9. Learned senior counsel for defendant no. 1, therefore,

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<sup>1</sup> (2020) 7 SCC 366

<sup>2</sup> (2022) 10 SCC 1

<sup>3</sup> (2024) 5 SCC 815.

<sup>4</sup> 2025 SCC Online SC 1129

submits that it is now well-settled how the expression "urgent interim relief" is to be construed in the context of Section 12-A of the said Act. The test under Section 12-A is not whether the prayer for the urgent interim relief actually comes to be allowed or not, but whether, on an examination of the nature and the subject-matter of the suit and the cause of action, the prayer for urgent interim relief by the plaintiff could be said to be contemplable when the matter is seen from the standpoint of the plaintiff. Therefore, urgent interim relief must not be merely an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12-A of the said Act. He submitted that the said test was adopted and affirmed by this Court in *Image Developer and Another v. Kamla Landmarc Real Estate Holding Private Limited*<sup>5</sup>. It is held that the conduct of the plaintiff subsequent to the filing of the suit, i.e. the alacrity or lack thereof with which interim reliefs were applied for, is also a material criterion when determining whether or not there was "urgency" justifying non-compliance with Section 12-A.

10. Learned senior counsel for defendant no. 1, therefore, submits that the court has to examine whether facts and

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<sup>5</sup> 2025 SCC OnLine Bom 3284

circumstances justify a genuine apprehension as opposed to a camouflage of an irreparable injury the plaintiffs are likely to suffer. He therefore submits that the test of urgent interim reliefs is not met in the facts and circumstances of the present case, and the plaint deserves to be rejected for non-compliance with the mandate under Section 12-A of the said Act.

**SUBMISSIONS OF DEFENDANT NO. 2:**

11. Learned counsel for defendant no. 2 supported the submissions made on behalf of defendant no. 1 for rejection of the plaint under Order VII Rule 11 of the CPC, for non-compliance with the mandatory requirement under Section 12-A of the said Act. Learned counsel for defendant no. 2 submitted that the plaint is liable to be rejected also on the ground of the bar under Section 41 of the Specific Relief Act, 1963 and Section 34 of the SARFAESI Act. He submitted that the plaintiffs defaulted in making payments towards the loans availed from defendant nos. 1 and 2.

12. Defendant no. 2 initiated SARFAESI proceedings against the plaintiffs, and thereafter, the Framework Agreement was executed, under which the loans were to be settled. The

plaintiffs did not comply with the mandatory provision under Section 12-A of the said Act, on the grounds of seeking interim relief, relying on the terms and conditions of the Framework Agreement. However, defendant no. 2 has not signed the agreement. Hence, in view of the SARFAESI proceedings initiated by defendant no. 2, relief in this suit against defendant no. 2 would be barred by the provision of Section 34 of the SARFAESI Act. To support his submissions, learned counsel for the plaintiffs relied upon the decision of the Apex Court in ***Punjab and Sind Bank vs. Frontline Corporation Limited***<sup>6</sup>.

13. In the present case, no grave urgency existed to file the suit without first initiating proceedings under Section 12-A of the said Act. The possession notice issued by defendant no. 2 under Section 13 of the SARFAESI Act is dated 18<sup>th</sup> February 2025 and was responded to by the plaintiffs on 27<sup>th</sup> February 2025. Thus, for two months after the notice was issued, the plaintiffs took no steps to initiate proceedings under Section 12-A or to file a suit seeking urgent relief. Hence, in the absence of an explanation for the delay of two months after receipt of the possession notice, the plaintiffs would not be entitled to seek

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<sup>6</sup> (2023) 16 SCC 331

any exemption for non-compliance under Section 12-A of the said Act.

14. The prayer in the suit is for specific performance of the Framework Agreement. Though the agreement is not signed by defendant no. 2, the plaint proceeds against defendant no. 2 based on the said agreement. Hence, there is no cause of action against defendant no. 2. The plaint is also therefore liable to be rejected for no cause of action against defendant no. 2. Learned counsel for defendant no. 2 referred to a recent judgment of the Apex Court in *Novenco Building and Industry A/S. vs. Xero Energy Engineering Solutions Pvt. Ltd. and Another*<sup>7</sup>. It is held that a plaintiff can be exempted from the requirement of Section 12-A only when the plaint and the documents attached to it clearly show a real need for urgent interim intervention.

**SUBMISSIONS ON BEHALF OF DEFENDANT NO. 3:**

15. Learned counsel for defendant no. 3 submitted that no urgent interim relief is contemplated for seeking exemption from compliance under Section 12-A of the said Act. He supports the

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<sup>7</sup> 2025 SCC Online SC 2278

submissions made on behalf of defendant nos. 1 and 2 for rejection of the plaint. He submits that there is no cause of action pleaded against defendant no. 3. Hence, the plaint is liable to be rejected qua defendant no. 3 for want of any cause of action. To support his submissions that the plaint can be rejected as a whole against defendant no. 3, he relied upon the decision of the division bench of this court in *Sheela Ram Vidhani and Another vs. S.K. Trading Company and Others*<sup>8</sup>.

**SUBMISSIONS ON BEHALF OF THE PLAINTIFFS:**

16. Learned senior counsel appearing for the plaintiffs submitted that the suit was lodged for institution on 7<sup>th</sup> May 2025, which is before the courts closed for summer vacation on 9<sup>th</sup> May 2025. An application for leave under Clause 12 of the Letters Patent was moved. The leave application was heard and allowed on 13<sup>th</sup> June 2025. Thereafter, the interim application for urgent interim relief was listed before the court on 23<sup>rd</sup> June 2025 and it was adjourned to 3<sup>rd</sup> July 2025. When the application was moved for urgent interim relief on 30<sup>th</sup> June 2025, the defendants had requested time. Accordingly, time was

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<sup>8</sup> 2021SC Online Bom 864

granted to file reply and rejoinder. He therefore submits that all possible steps were taken by the plaintiffs to seek urgent interim relief.

17. Learned senior counsel submits that even otherwise, the post-filing conduct cannot be considered while deciding the objections under Order VII Rule 11 of the CPC. In view of Orders IV and V of the CPC, the suit once filed is listed before the court for the issuance of summons. At the stage of issuing summons, the court can examine the plaint for compliance and issue summons or consider rejecting the plaint at the threshold for any non-compliance or any bar as contemplated under Order VII Rule 11 of the CPC. As per Rule 122 IX-A of Chapter IX-A of the Bombay High Court (Original Side) Rules, 1980 ("OS Rules") applicable to the suits filed in this Court, all interim applications must be listed on the date assigned by the Registry, provided that the Court has ordered to list the application on an earlier date. He pointed out that, as per Rules 7, 8 and 9 of Chapter II of the Civil Manual, applicable to all the Civil Courts in Maharashtra, suits and interim applications are listed before the Courts after they are filed.

18. Learned counsel for the plaintiffs submits that a plaint can be rejected at the threshold under Order VII Rule 11(d) of the CPC, when the suit appears from the statement in the plaint to be barred by any law. Therefore, the post-filing stages are irrelevant for deciding the rejection of the plaint on the ground of non-compliance with the mandatory pre-litigation mediation and settlement provision under Section 12-A of the said Act. Even otherwise, in the present case, the mandatory provision is not complied with on the ground that urgent interim relief is contemplated in the suit from the plaintiff's standpoint.

19. Learned senior counsel for the plaintiffs submits that the legal principles regarding non-applicability of bar under Section 12-A of the said Act, when urgent interim relief is contemplated from the plaintiffs' standpoint, are well-settled in various decisions of the Apex court. Hence, in the present case, since urgent interim relief is prayed by the plaintiffs and the urgency is pleaded, the plaint cannot be rejected at the threshold by applying the bar under Section 12-A of the said Act.

20. The learned senior counsel for the plaintiffs submits that if the post-filing stage of hearing the application for urgent relief is

delayed, it cannot be a ground for rejection of the plaint for non-compliance with Section 12-A of the said Act. He submits that no remedial measures are provided for the injury that is likely to be caused to the plaintiffs if not permitted to file suit and seek urgent interim relief on the ground of pre-litigation mediation and settlement process. When a suit is not permitted to be filed on the ground of compliance under Section 12-A of the said Act, the protection of the lis pendens principle would also not apply. Hence, in a case where urgent interim relief is contemplated, and the plaintiffs are precluded from filing a suit, the same would defeat the very object of Section 12-A of the said Act, which permits the filing of the suit without compliance under Section 12-A of the said Act when urgent interim relief is contemplated.

21. In response to the objections raised on no cause of action against defendant nos. 2 and 3 on the ground that the Framework Agreement is not signed by them, learned senior counsel for the plaintiffs submitted that all the parties have acted upon the Framework Agreement. Defendant no. 2 is a group company of defendant no. 1. One project is transferred to defendant no. 3, after the Framework Agreement is signed, as

security for the loan availed from defendant nos. 1 and 2. The settlement amount was agreed upon for three projects. Accordingly, the steps taken pursuant to the settlement agreement have been pleaded substantially in paragraphs 30 to 39 of the plaint. The averment in paragraph 40 of the plaint shows the conduct of the parties that the agreement was to be kept alive. The issuance of the possession notice under the SARFAESI Act by defendant no. 2, despite the terms and conditions of the Framework Agreement executed for settlement with regard to the three projects, compelled the plaintiffs to file the suit. Considering the threat of dispossession, the urgency clause has been pleaded in paragraph 66 of the plaint, supported by the relevant averments in paragraphs 55 to 58 of the plaint. Hence, if viewed from the plaintiff's standpoint, urgent interim relief is contemplated for not complying with the mandatory requirement under Section 12-A of the said Act.

22. Learned senior counsel for the plaintiffs relied upon the decision of this court in *Dipti Co-operative Housing Society Ltd vs. Buildcon Sethia Construction*<sup>9</sup>. He submits that this court, after referring to the legal principles settled by the Apex Court on

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<sup>9</sup> IAL No. 28008 OF 2025 in COMSL No. 22835 of 2025

bar under Section 12-A of the said Act, held that if the averment in the plaint and supporting documents reveal that urgent interim relief is contemplated from the standpoint of the plaintiffs, the plaint cannot be rejected at the threshold. A similar view was taken by this court in the decision of *Shaikh Mohammed Rafique and Lakhani Realty LLP vs. Kalina Vihar Darshan Co-operative Housing Society and Others*<sup>10</sup>, and *Westin Infra World Private Ltd and Others, and Vistra ITCL India Limited vs. Darvesh Properties Private Ltd. and Others*<sup>11</sup>.

23. With reference to the arguments raised on behalf of defendant no. 2 on the bar under Section 34 of the SARFAESI Act, learned senior counsel for the plaintiffs referred to prayer clause (c) of the plaint, which may affect the DRT proceedings. He, however, submits that in view of the substantive prayers in the present suit seeking relief of specific performance, the bar under Section 34 of the SARFAESI Act would not apply in the present case, as the said prayer clause (c) is a general consequential prayer. He thus submits that prayer clause (c) is only a consequential relief. Hence, considering the main reliefs

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<sup>10</sup> 2025 : BHC- OS : 19816

<sup>11</sup> Interim Application (L) No. 22747 of 2025 in Commercial Suit (L) No. 13824 of 2025

in the plaint, it cannot be rejected at the threshold on the ground of bar under Section 34 of the SARFAESI Act.

**ANALYSIS AND CONCLUSIONS :**

24. I have carefully perused the pleadings in the plaint. The plaintiffs have availed various loans from defendant nos. 1 and 2 for the purpose of development of slum rehabilitation schemes and projects known as La Maison, Signature Suites, and the Celyn project. The plaintiffs have pleaded the particulars of various documents executed for availing loans and the deposit of title documents in respect of a few flats as secured assets for Loan No. 4. In view of the default of repayment, the loan account for Loan No. 4 was declared as a non-performing asset on 3<sup>rd</sup> November 2024 and defendant no. 2 issued notice dated 13<sup>th</sup> November 2024 demanding payment, failing, which different number two would initiate insolvency proceedings. On 14<sup>th</sup> November 2024, defendant no. 2 issued notice under Section 13(2) of the SARFAESI Act to plaintiff nos. 3, 5, 11 and 14. On 30<sup>th</sup> November 2024, defendant no. 2 issued a legal notice, under Section 138 of the Negotiable Instruments Act, to plaintiff no. 14 in respect of the cheque pertaining to loan agreement no.

4. Defendant no. 2 had also proceeded for invoking arbitration under the loan agreement no. 4. On 9<sup>th</sup> November 2024, defendant no. 1 invoked the personal guarantees, executed by plaintiff no. 5 and on 12<sup>th</sup> December 2024, defendant no. 1 through its Resolution Professional, initiated proceedings under Section 95 of Insolvency and Bankruptcy Code against plaintiff nos. 5 and 11.

25. Thereafter, the plaintiffs availed of the Amnesty scheme floated by the government to revive the slum rehabilitation projects. As per the scheme, a new developer would be appointed in respect of the project of La Maison, and defendant no. 1 would be notified as co-developer for the project. Simultaneously, along with availing the scheme, the plaintiffs and defendant no. 1 and 2 decided to amicably resolve the dispute for all the loan facilities, and accordingly, the Framework Agreement dated 20<sup>th</sup> December 2024, was executed between the plaintiffs and defendant nos. 1 and 2. Certain obligations were to be met under the Framework Agreement.

26. The plaintiffs have further pleaded that defendant no. 3 is the new developer who has been appointed/nominated by

defendant no. 1 in respect of the La Maison and Signature Suites projects, which were previously developed by the plaintiffs. Therefore, defendant no. 3 also entered into a Memorandum of Understanding/Profit Sharing Agreement with plaintiff no. 5 for profit and loss sharing from the said two projects contingent upon the settlement contemplated under the Framework Agreement.

27. It is further pleaded that in view of the Framework Agreement, two projects are assigned and transferred to defendant no. 3, who is the assignee of defendant nos. 1 and 2. According to the plaintiffs, the parties acted on the Framework Agreement, and the defendants availed themselves of its benefits. Hence, the Framework Agreement has been acted upon and is subsisting according to the plaintiffs. All these pleadings on availing the benefit by the defendants pursuant to the Framework Agreement are specifically pleaded in the plaint. Various registered agreements are executed between the plaintiffs and defendant no. 3 for transferring various flats for compliance with the Framework Agreement and the Profit Sharing Agreement. The plaintiffs have pleaded willingness to

transfer the Celyn premises, defendant no. 2, in compliance with the terms of the agreements.

28. Hence, the substantial prayers in the suit pertain to the implementation of the Framework Agreement, which, according to the plaintiffs, is executed by defendant nos. 1 and 2 towards the settlement of all the loan agreements availed by the plaintiffs. The plaintiffs have also claimed enforcement / specific performance of the memorandum of understanding/profit-sharing agreement with defendant no. 3 in respect of the two projects mentioned in the Framework Agreement.

29. The plaintiffs have pleaded that the Framework Agreement was signed by the plaintiffs and defendant nos. 1 and 2, whereby the parties agreed to a composite amicable settlement with respect to all the loan facilities availed by the plaintiffs. According to the plaintiffs, despite availing the benefit under the Framework Agreement, defendant no. 2 continued the proceedings under the SARFAESI Act and secured a notice of possession. The plaintiffs have therefore expressed apprehension that, despite the terms and conditions of the Framework Agreement and the security provided with reference

to the two projects transferred to defendant no. 3, action has been initiated and precipitated by defendant no. 2.

30. Since all the defendants are affected under the Framework Agreement, for which specific performance and enforcement are prayed in the suit, the cause of action is pleaded against all the defendants. The prayers for enforcement of the terms and conditions of the Framework Agreement are against defendant nos. 1 and 2 by directing them to accept the premises as security in compliance with the Framework Agreement. The prayers regarding release and discharge of the plaintiffs on liability and security interest against defendant nos. 1 and 2 pertain to the enforcement and implementation of the terms and conditions of the Framework Agreement.

31. So far as defendant no. 3 is concerned, specific performance is prayed against defendant no. 3 for directing defendant no. 3 to perform its obligations under the profit-sharing agreement dated 20<sup>th</sup> December 2024 by directing defendant no. 3 to take all the requisite steps to complete the effect of the terms and conditions of the profit-sharing agreement. Based on the allegations of non-performance of the

terms and conditions of the Framework Agreement dated 20<sup>th</sup> December 2025, executed by defendant nos. 1 and 2, and the profit-sharing agreement dated 20<sup>th</sup> December 2024, by defendant no. 3, the plaintiffs have pleaded the cause of action against all three defendants. Hence, in the alternative, a prayer for damages is claimed against defendant no. 3 on the ground of non-performance of the profit-sharing agreement of 2024.

32. Hence, there is also no substance in the arguments made on behalf of defendant no. 3 that the plaint is liable to be rejected qua defendant no. 3 for want of any cause of action. Hence, the decision of this court in *Sheela Ram Vadhani* would not be of any assistance to the arguments raised on behalf of defendant no. 3.

33. A prayer is made against defendant no. 2 to hand over and return the secured assets on the ground that illegal possession of the same is taken by defendant no. 2. In view of all these substantive prayers against all three defendants, the plaintiffs have prayed for interim relief directing defendant nos. 1 and 2 to complete the compliance of their obligations under the Framework Agreement and defendant no. 3 under the profit

sharing agreement and thus restraining them from taking any benefit of assignment in the two projects, which are subject matter of the Framework Agreement. Apart from the interim reliefs for compliance with the terms and conditions of the two agreements, a restraining order is prayed against defendant nos. 1 and 2 from enforcing any security interest or personal guarantee or taking any precipitative steps in relation to secured assets.

34. It is alleged that, despite availing of the benefit under the agreements, defendant no. 2 proceeded with the SARFAESI action. Hence, the plaintiffs have sought relief against defendant nos. 1 and 2 from taking any precipitative action to enforce the security under the loan agreements, in view of the settlement arrived at under the Framework Agreement. In view of the averments regarding the notice of possession issued under the SARFAESI Act, it is sought to be argued on behalf of the defendants that there is a bar under Section 34 of the SARFAESI Act. However, the substantive prayers in the suit are regarding the performance of the profit-sharing agreement with defendant no. 3 and the Framework Agreement with defendant

nos. 1 and 2, the reliefs of which cannot be dealt with and decided under the SARFAESI Act.

35. The interim relief is prayed for, with reference to restraining the defendants from enforcing the security, on the ground that the plaintiffs' rights are protected under the profit-sharing agreement and the Framework Agreement. Hence, at this preliminary stage, the interim reliefs cannot be related to the action under the SARFAESI Act for applying the bar under Section 34 to the present suit, which claims substantive relief of specific performance. Hence, the plaint cannot be rejected at the threshold on the ground that the suit would be barred under Section 34. In *Punjab & Sind Bank*, the Apex Court held that the jurisdiction of the civil court is barred in respect of matters which a DRT or an Appellate Tribunal is empowered to determine in respect of any action taken or to be taken in pursuance of any power conferred under the SARFAESI Act.

36. It is argued on behalf of defendant no. 2 that there is no privity of contract as defendant no. 2 is not a signatory to the framework agreement. Hence, there is no cause of action qua defendant no. 2. Therefore, the plaint as a whole must be

rejected against defendant no. 2. I have already discussed in the above paragraphs the plaintiffs' pleadings that the Framework Agreement was executed by defendant nos. 1 and 2. All the pleadings in the plaint, as discussed above, also pertain to the cause of action against defendant no. 2 on the ground that, despite acting upon the Framework Agreement, defendant no. 2 has initiated and continued the precipitative actions against the plaintiffs to enforce the security under the loan agreements. There is sufficient cause of action pleaded against defendant no. 2 based on the various terms and conditions of the Framework Agreement, and the parties have acted upon it. The relief of injunction is not restricted or specific qua defendant no. 2, only pertaining to the SARFAESI Act proceedings. The reliefs of injunction are in the nature of protecting the secured assets in view of the Framework Agreement entered into and acted upon to bring about an overall settlement of all the loan agreements availed from defendant nos. 1 and 2. Hence, there is no substance in the arguments that the plaint must be rejected at the threshold on the ground of a complete bar in view of Section 41(b) of the Specific Relief Act. The pleadings warrant a trial, and the merits of the cause of action and the reliefs claimed

cannot be dealt with at this preliminary stage under Order VII Rule 11 of CPC.

37. So far as the prayer for rejection of the plaint on the ground of the bar under Section 12-A of the said Act is concerned, the legal principles regarding the application of the bar under Section 12-A are no longer res integra.

**LEGAL POSITION:**

38. The Apex Court in *Dhanbad Fuels Pvt. Ltd.* referred to the legal principles settled in *Patil Automation* and also discussed the power of the Court to reject the plaint, which is held to be a drastic measure, as it terminates a civil action at the threshold, and therefore must be exercised strictly in accordance with the conditions enumerated under Order VII Rule 11 of the CPC. The Apex Court held that the use of the word “shall” in Order VII Rule 11 of the CPC denotes that the courts are under an obligation to reject the plaint if the conditions specified therein are satisfied. It is observed that the word “contemplate” connotes to deliberate and consider. It is also held that the legal position that the plaint can be rejected and not entertained reflects the application of mind by the court as regards the

requirement of “urgent interim relief”.

39. The Apex Court in *Dhanbad Fuels Pvt. Ltd.* further observed that the prayer of urgent interim relief should not act as a disguise to get over the bar contemplated under Section 12-A. However, at the same time, the mere non-grant of the interim relief, when the plaint is taken up for admission and examination, would not justify the rejection of the plaint under Order VII Rule 11 of CPC. Further, even if after the conclusion of arguments on the aspect of interim relief, the same is denied on merits, that would not by itself justify the rejection of the plaint under Order VII Rule 11.

40. So far as the decision in *Kamla Landmarc Real Estate* relied upon by the learned counsel for defendant no.1 is concerned, the view taken by this court in the said decision regarding rejection of the plaint is on the facts of that case, and the test applied is for considering whether the urgent interim relief is contemplated from the standpoint of the plaintiff in the said case. It is held that the pleading for claiming exemption from compliance under Section 12-A should be based on a strong foundation that has to be tested by the Court by

considering various factors, including the conduct of the plaintiffs prior to and post-filing the suit. It is further held that the plaint should contain details indicating that the plaintiffs could not have waited for the period specified for the completion of the mediation process.

41. In view of sub-rule (1) of Rule 1 of Order IV of the CPC, a suit is instituted by presenting a plaint before the court or the registering officer, as the case may be. As per sub-rule (2) of the said Rule 1, every plaint must comply with the rules in Orders VI and VII as may apply. In a duly instituted suit, a summons may be issued as per Order V of the CPC. The particulars to be pleaded in a plaint are provided in Rules 1 to 8 of Order VII, which specify what has to be stated in a plaint. Rule 9 of Order VII provides for the procedure to be followed on admitting the plaint for service of the summons issued by the court. Rule 10 provides for the return of the plaint to the proper court, and Rule 11 of Order VII provides for the rejection of the plaint on the grounds provided therein. Under Order VII Rule 11(d), where the suit appears from the statement in the plaint to be barred by any law, the plaint can be rejected.

42. Thus, once the suit is filed, it must be listed before the Court for the issuance of a summons. At the stage of issuing summons, the Court examines the plaint to verify whether all compliances have been met and, if so, orders the issue of summons; otherwise, it may consider rejecting the plaint at the threshold for any non-compliance or any bar as contemplated under Order VII Rule 11 of the CPC.

43. As per Rule 122 IX-A of Chapter IX-A of the OS Rules applicable to the suits filed in this Court, all interim applications must be listed on the date assigned by the Registry, provided that the Court has ordered to list the application on an earlier date. As per Rules 7 to 12 of Chapter II of the Civil Manual, applicable to all the Civil Courts in Maharashtra, suits and interim applications are listed before the Courts after their filing. Thus, the normal rule is to list the suits and interim applications before the court after filing; however, the Court can always direct the listing of the suit or an interim application for urgent relief on any date prior to the routine date assigned by the court's registry. It is only due to the huge pendency before the courts that the immediate listing of the matters in the routine course

takes time. Hence, the procedural rules and practices followed in the Courts provide for listing matters out of turn, as directed by the concerned court, depending on the urgency of the matters.

44. In *Dhanbad Fuels (P) Ltd.*, the Apex Court has explained in paragraphs 49 to 52 how the expression “urgent interim relief” is to be construed, which reads as under:

“49. Further, it is also pertinent to note that Section 12-A of the 2015 Act does not contemplate leave of the court for filing a suit which contemplates an urgent interim relief, as is clear from the language and words used in the provision. The provision also does not necessarily require an application seeking exemption if a suit is being filed without pre-institution mediation. An application seeking waiver on account of urgent interim relief setting out grounds and reasons may allay a challenge and assist the court, but in the absence of any statutory mandate or rules made by the Central Government, an application per se is not a condition under Section 12-A of the 2015 Act. Pleadings on record and oral submissions would be sufficient in ordinary course.

*50. This Court in Yamini Manohar v. T.K.D. Keerthi [Yamini Manohar v. T.K.D. Keerthi, (2024) 5 SCC 815 : (2024) 3 SCC (Civ) 436] while interpreting the import of the expression “a suit which does not contemplate any urgent interim relief” used in*

*Section 12-A of the 2015 Act observed that the word “contemplate” connotes to deliberate and consider. Further, the legal position that the plaint can be rejected and not entertained reflects application of mind by the court as regards the requirement of “urgent interim relief”. The Court further observed that the prayer of urgent interim relief should not act as a disguise to get over the bar contemplated under Section 12-A. However, at the same time, the Court observed that the mere non-grant of the interim relief at the ad interim stage, when the plaint is taken up for admission and examination would not justify the rejection of the plaint under Order 7 Rule 11 CPC, as interim relief is at times also granted after issuance of notice. Further, even if after the conclusion of arguments on the aspect of interim relief, the same is denied on merits, that would not by itself justify the rejection of the plaint under Order 7 Rule 11.*

51. The relevant observations from the said decision in *Yamini Manohar* [*Yamini Manohar v. T.K.D. Keerthi*, (2024) 5 SCC 815 : (2024) 3 SCC (Civ) 436] are reproduced hereinbelow: (*Yamini Manohar case* [*Yamini Manohar v. T.K.D. Keerthi*, (2024) 5 SCC 815 : (2024) 3 SCC (Civ) 436] , SCC p. 820, paras 10-12)

*“ 10. We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the Commercial Court 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-A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order 7 Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order 7 Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely: (i) prima facie case, (ii) irreparable harm and injury, and (iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.*

*11. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyse Section 12-A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The proposition that the Commercial Courts do have a role, albeit a limited one, should be accepted, otherwise it would be up to the plaintiff alone to decide whether to resort to the procedure under Section 12-A of the CC Act. An “absolute and unfettered right” approach is not justified if the pre-institution mediation under Section 12-A of*

the CC Act is mandatory, as held by this Court in *Patil Automation* [*Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*, (2022) 10 SCC 1 : (2023) 1 SCC (Civ) 545] .

**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 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.”**

(emphasis supplied)

**52.** Thus, it becomes clear from a perusal of the aforesaid decision in *Yamini Manohar* [*Yamini Manohar v. T.K.D. Keerthi*, (2024) 5 SCC 815 : (2024) 3 SCC (Civ) 436] that the test under Section 12-A is not whether the prayer for the urgent interim relief actually comes to be allowed or not, but whether on an examination of the nature and the subject-matter of the suit and the cause of action, the prayer of urgent interim relief by the plaintiff could be said to be **contemplable when the matter is seen from the standpoint of the plaintiff.** Further, what is also to be kept in mind by the courts is that the urgent interim relief must not be merely an

unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12-A of the 2015 Act.”

**emphasis applied by me**

45. Therefore, the observations in the judgment in *Kamla Landmarc Real Estate* that the foundation in the plaint for non-compliance with Section 12-A must be tested by the Court by considering various factors including the prior and post-filing conduct of a plaintiff must be read in the context of the well-established legal principles by the Apex Court that the test under Section 12-A is whether on an examination of the nature and the subject-matter of the suit and the cause of action, the prayer of urgent interim relief by the plaintiff could be said to be contemplable when the matter is seen from the standpoint of the plaintiff. In *Kamla Landmarc Real Estate*, it is held that the foundation in the plaint for non-compliance with Section 12-A has to be tested by the Court by considering various factors, including the conduct of the plaintiffs prior to and post-filing the suit for applying the bar under Section 12-A. Thus, the reference to the post-filing conduct of the plaintiff is a passing observation. In view of the legal principles settled by the Apex Court, on the

test to be undertaken for the applicability of the bar under Section 12-A, the said observation on post-filing conduct of the plaintiff cannot be considered as a binding precedent.

46. Therefore, the post-filing stages of the suit would not be relevant for considering whether the plaint can be rejected under Order VII Rule 11(d) of the CPC on the ground of non-compliance with the mandatory provision under section 12-A of the said Act.

47. The Hon'ble Apex Court, in *Yamini Manohar and Dhanbad Fuels Private Limited*, held that the facts and circumstances should be considered holistically from the standpoint of the plaintiff. This court, in *Westin Infra World, Lakhani Realty LLP* and *Dipti Co-operative Housing Society Ltd*, following the well-settled legal principles of the Apex Court, has taken the view that there cannot be a straitjacket formula when examining the justification for non-compliance with Section 12-A. After reading the plaint as a whole, each suit has to be examined in the facts and circumstances of that case for ascertaining whether non-compliance with Section 12-A is justified on the ground that urgent interim relief is contemplated from the plaintiff's point of

view. It is held that considering the well-settled legal principles by the Hon'ble Apex Court in the case of **Dahiben**, the power conferred on the court to terminate a civil action is a drastic one and thus conditions enumerated under Order VII Rule 11 of the CPC are required to be strictly adhered to.

48. In a recent judgment of the Apex Court in ***Novenco Building and Industry***, it is held that a plaintiff can be exempted from the requirement of Section 12-A only when the plaint and the documents attached to it clearly show a real need for urgent interim intervention and on a wholesome reading of the plaint and the material annexed to the plaint ought to disclose the need for urgent relief. It is held that the court must look at the plaint, pleadings and supporting documents to decide whether urgent interim relief is genuinely contemplated, and the court may also look for immediacy of the peril, irreparable harm, risk of losing rights/assets, statutory timelines, perishable subject-matter, or where delay would render eventual relief ineffective.

49. In ***Novenco Building and Industry***, the prayer for injunction was made in a suit alleging continuing infringement of patent and design rights. The Apex Court held that a prayer for an

injunction cannot be characterised as mere camouflage to evade mediation when it was a real grievance founded on the continuing nature of infringement and irreparable prejudice likely to be caused. It was held that the court must look beyond the time lag and evaluate the substance of the plea for interim protection. The Apex Court held in paragraph 24 that “.....*The insistence of pre-institution mediation in a situation of ongoing infringement, in effect, would render the plaintiff remediless allowing the infringer to continue to profit under the protection of procedural formality. Section 12A of the Act was not intended to achieve such kind of anomalous result.*”

**CONCLUSIONS:**

50. It is therefore a well-settled legal principle that the test for “urgent interim relief” is whether, on the examination of the nature of and the subject matter of the suit and the cause of action, the plaintiff’s prayer for urgent interim relief could be said to be contemplable, when the matter is seen from the standpoint of the plaintiff. Thus, if the test for urgent interim relief is satisfied notwithstanding the actual outcome on merits, the suit can be proceeded with without compliance with Section 12-A.

51. In the present case, the pleadings in the plaint for seeking urgent interim relief are based on the precipitative action taken by the defendants, which, according to the plaintiffs, is in breach of the profit-sharing agreement executed by defendant no. 3 and breach of the terms and conditions of the Framework Agreement executed by defendant nos. 1 and 2. Hence, it is alleged in the plaint that, despite availing the benefit under the said agreements, defendant nos. 1 and 2 have sought to enforce the security and take possession of the secured assets. Hence, according to the plaintiffs, the possession notice initiated is illegal, premature and unwarranted in view of the lump-sum payments of the loans pursuant to the terms and conditions of the Framework Agreement.

52. According to the plaintiffs, although they agreed and were willing to allot the Celyn Premises to defendant no. 2, no response has been received to accept the allotment. Hence, the plaintiffs issued a legal notice to defendant nos. 1 and 2, intimating them that their actions constituted derivations from the terms and conditions of the Framework Agreement on their part, although the plaintiffs had taken all the necessary steps to

comply with the terms and conditions and shown readiness and willingness to transfer the Celyn Premises to defendant nos. 1 and 2. Thus, the plaintiffs have expressed apprehension that, despite the defendants availing the benefit under the two agreements, actions are being initiated to realise the secured assets. Hence, to protect the plaintiffs' interest in view of the profit-sharing agreements with defendant no. 3 and the Framework Agreement with defendant nos. 1 and 2, the suit is filed for seeking urgent interim relief without complying with the mandatory requirement under Section 12-A of the said Act.

53. Thus, if seen from the standpoint of the plaintiffs, urgent interim relief is contemplated in the suit. Hence, by applying the well-settled legal principles as discussed in the above paragraphs, when a suit contemplates urgent interim relief, it cannot be rejected at the threshold by applying the bar under Section 12-A of the said Act. I have recorded reasons in the above paragraphs that the bar under Section 34 of the SARFAESI Act and Section 41 of the Specific Relief Act cannot be applied for rejection of the plaint at the threshold. Hence, no ground contemplated under Order VII Rule 11 of the CPC is

made out for rejection of the plaint at the threshold.

54. For the reasons recorded above, interim applications for rejection of the plaint under Order VII Rule 11 of the CPC are dismissed.

**[GAURI GODSE, J.]**