Form J(2)
Sl.No. 01

In The High Court at Calcutta
Ordinary Original Civil Jurisdiction
[Commercial Division]
Original Side

Present:
The Hon'ble Justice Aniruddha Roy

IA NO. GA-COM/3/2025

In CS-COM/834/2024

J K ENGINEERING PRIVATE LIMITED
Vs
ANE INDUSTRIES PRIVATE LIMITED

For plaintiff:	**Mr. Anirban Ray, Sr. Adv.** **Mr. Jayanta Sengupta, Adv.** **Mr. Sounak Banerjee, Adv.** **Mr. Sanjib Bandyopadhyay, Adv.** **Ms. Anamika Karmakar, Adv.** **Ms. Jiniya Deb, Adv.**
For defendant :	**Mr. Jayanta Kumar Mitra, Sr. Adv.** **Mr. Sarbajit Mukherjee, Adv.** **Mr. Asit Kumar De, Adv.** **Mr. Sourjya Roy, Adv.**

Reserved on : 08.05.2026

Judgment on : 28.07.2026

ANIRUDDHA ROY, J.:

Facts:

1. This is a commercial suit. The defendant has forfeited its right to file written statement by virtue of operation of law under **Rule 1 to Order VIII of Code of Civil Procedure, 1908** (hereinafter, **the Code**), as

amended in view of the promulgation of the **Commercial Courts Act, 2015** (hereinafter, **C.C. Act**).

2. The defendant has filed the instant application with the following prayers :-

> *(a) Leave granted under Clause 12 of the Letters Patent, 1865 by order dated 6th January 2025 be revoked;*
> *(b) Leave granted under Section 12A of the Commercial Act, 2015 by order dated 6th January 2025 be revoked;*
> *(c) The suit being barred by limitation be dismissed;*
> *(d) Pending disposal of this application the suit be stayed;*
> *(e) The plaintiff be directed to pay the cost of and incidental to this application to the defendant;*
> *(f) To pass such further and other order as this Hon'ble Court may be fit and proper.*

3. On **February 16, 2026**, Mr. Jayanta Kumar Mitra learned Senior Advocate appearing for the defendant/applicant on instruction submitted that the point on the ground of law of limitation shall not be pressed for, at this stage. The order also records the same. The order dated **February 25, 2026** shows that the defendant had concluded submissions in support of its application on the points of revocation of dispensation granted by the Court under Section 12A of C.C. Act and/or revocation of leave granted by the Court under Clause 12 of the Letters Patent, 1865 (hereinafter, **Letters Patent**). The plaintiff had previously filed a suit being CS No.163 of 2016 (hereinafter, the **First Suit**) before the non-commercial/regular division on August 18, 2016. The plaintiff on the same cause of action had filed the second suit being CS No.213 of 2016 (hereinafter, the **Second Suit**).

4. Immediately upon filing of the said Second Suit, the plaintiff withdrew the First Suit on August 19, 2016. The two suits were on the self-same cause of action between the self-same parties with self-same reliefs.

5. In the second suit, the defendant filed a demurrer application which travelled upto the stage of appeal. The Hon'ble Division Bench by its order dated **December 03, 2024, at page 38** to the instant application, disposed of the appeal and permitted the plaintiff to withdraw the suit and to institute a fresh suit within four weeks with a direction that in default, the plaintiff should not be entitled to the benefit of Section 14 of the Limitation Act, 1963.

6. Plaintiff then, pursuant to the direction of the Hon'ble Division Bench had filed the instant suit, inter alia, praying for leave under Order II Rule 2 of the Code, Clause 12 of the Letters Patent and leave for dispensation of requirement for pre-litigation mediation under Section 12A of the C.C. Act.

7. On January 06, 2025, a Coordinate Bench by its order, at **page 14** to the instant application, granted leave to institute the suit without compliance of the requirement for pre-litigation mediation. Leave was also granted under Clause 12 of the Letters Patent. The suit was filed on **December 24, 2024** and the instant application was filed on **August 11, 2025**.

Submissions :

Recalling of the order granting dispensation for pre-litigation mediation :-

8. Mr. Jayanta Kumar Mitra learned Senior Advocate appearing for the defendant/applicant refers to the provision laid down for pre-litigation

mediation under Section 12A of C.C. Act. He submits that it is a clear bar created by the Statute with regard to filing of a suit which does not contemplate any interim relief, the same shall not be instituted unless, the plaintiff exhaust the pre-institution mediation in accordance with and in such manner as prescribed under Section 12A of the C.C. Act.

9. Mr. Jayanta Kumar Mitra learned Senior Advocate appearing for the defendant further submits that there is a mechanism prescribed under the Mediation Rules 2018 framed under the said C.C. Act, which clearly lays down the process of initiating the mediation process. Proviso to Section 12A(3) states that the period during which the parties remain occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963. It further provides that the mediation be completed within three months of application.

10. Mr. Jayanta Kumar Mitra learned Senior Advocate further submits that the existence of the said proviso makes it clear that the legislative intent and mandate was only not to deprive an aggrieved party to force into this mandatory mediation process at the cost of expiry of any sort of limitation tenure.

11. Mr. Jayanta Kumar Mitra learned Senior Advocate then draws attention to the plaint and submits that the plaintiff had all instance was protected by the Division Bench's order dated December 03, 2024 and the plaintiff ought to have applied for the mandatory mediation process contemplated under Section 12A of C.C. Act which also mandatorily provided for exclusion of such mediation period. The plaintiff bypassing

such mandatory provision made an unfounded excuse. Such contention of the plaintiff was a camouflage and guise to bypass the statutory mandate. The falsities of the averments in the plaint are apparent.

12. Referring to the plaint learned Senior Advocate submits that the prayers in the suit are for money claim, declaration and injunction. The plaintiff had also prayed for and obtained leave under Order II Rule 2 of the Code.

13. Mr. Mitra further submits that on a meaningful reading of the plaint it appears that the alleged dispute between the parties had been existing since 2016, when the first suit was filed and no application for any urgent interim relief had been filed or even orally prayed for on behalf of the plaintiff before filing the instant application by the defendant. He further submits that unless the suit had been instituted, the defendant did not have right of audience and only upon institution of the suit, the defendant got chance to examine the contentions of the plaintiff with regard to its contemplation for urgent interim relief, as pleaded in paragraph 43 of the plaint.

14. Mr. Jayanta Kumar Mitra learned Senior Advocate appearing for the defendant submits that upon the plaint being served on the defendant, for the first time, it found that there was no contemplation of urgent relief actually pleaded with proper justification as required under Section 12A of C.C. Act. The attempt of the plaintiff was just to bypass the mandatory statutory bar under Section 12A of C.C. Act. Nothing has been pleaded in the plaint as to how the plaintiff would be prejudiced, if the mediation is not availed of.

15. Mr. Jayanta Kumar Mitra learned Senior Advocate appearing for the defendant then submits that in any case where no urgent interim relief is sought, the plaint must be rejected during the parties to avail of the mediation process as contemplated under Section 12A of the C.C. Act. Undisputedly, according to the defendant, no urgent relief was contemplated in the plaint inviting the Court to test the contemplation of the plaintiff. Thus, the plaint is liable to be rejected. In support, he has relied upon a decision of the Hon'ble Supreme Court ***In the matter of: Patil Automation Private Limited and Others vs. Rakheja Engineering Private Limited reported at (2022) 10 SCC 1***.

16. Learned Senior Advocate, Mr. Mitra then submits that under the provisions of Section 12A of C.C. Act, the suit must mandatorily met with rejection of the plaint either on the prayer of the defendant or even *suo motu* by the Court upon testing the contemplation pleaded in the plaint. In support, he has relied upon a decision of the Hon'ble Supreme Court ***In the matter of: Dhanbad Fuels Private Limited vs. Union of India and Another reported at (2025) 9 SCC 424***.

17. Mr. Jayanta Kumar Mitra learned Senior Advocate then submits that though under Section 12A of the C.C. Act no leave is required to be obtained for filing the suit without exhausting the remedy of pre-institution mediation but in terms of **Clause 8 of the High Court at Calcutta Commercial Court Practice Direction 2021** (hereinafter, **Practice Direction 2021**), which became effective from **October 13, 2023**, leave is required to be obtained.

18. Learned Senior Advocate further submits that the law is now well settled that the Court has to apply its mind whiling applying the legal test for not initiating pre-litigation mediation on contemplation of urgent interim relief by the plaintiff in the light of the provisions laid down under Section 12A of C.C. Act. Reference has been made to a decision of the Hon'ble Supreme Court ***In the matter of: Novenco Building and Industry A/S vs. Xero Energy Engineering Solutions Private Limited reported at 2025 SCC OnLine SC 2278***.

19. Mr. Mitra, learned Senior Advocate then submits that Rule 6 of the Practice Direction 2021 provides for forms of pleadings. Rule 6(1) (d) of the Practice Direction, 2021, inter alia, provides that in the case of a suit where the plaintiff has exhausted the remedy of pre-litigation mediation in accordance with Rules prescribed by the Central Government or that the suit contemplates any urgent interim relief by reasons whereof, the plaintiff could not exhaust the remedy of pre-litigation mediation with the brief statements of reasons to that effect. On a meaningful scrutiny of the averments made in the plaint, it would be evident that the plaintiff, save and except making a bald statement has not described any statements of reasons as to why the plaintiff contemplated an urgent interim relief for which there was no requirement of pre-litigation mediation as contemplated under Section 12A of C.C. Act.

20. Mr. Mitra learned Senior Advocate submits that contemplation to the test by a Court cannot be a mere formality, it has to justify the dispensation and the same has to be evident on the basis of the actions

and conduct of the plaintiff thereafter, otherwise, just becomes another creative way of bypassing the statutory mandate by misguiding the Court, which could not have been the intent of the law framers.

21. In the light of the above, learned Senior Advocate Mr. Mitra submits that the leave granted by the Coordinate Bench alleging dispensation of requirement of pre-litigation mediation under Section 12A of C.C. Act should be revoked and the plaint should be rejected.

Revocation of leave under Clause 12 of the Letters Patent :-

22. Mr. Jayanta Kumar Mitra learned Senior Advocate appearing for the defendant with reference to the averments made in the plaint and comparing the same with the documents appended to the plaint submits that it would be clear that the plaintiff in gross abuse of the powers of this Court under Letters Patent has elected to file the instant suit before this Court, with an oblique and *mala fide* motive to harass the defendant. A bare perusal of, inter alia, paragraphs 2, 3, 5 and 6 of the plaint would suggest that the parties allegedly had agreed to and entered into the terms of the agreement and entered the memorandum of understanding within the jurisdiction of this Court at 114/1A Utkalmoni Gopalbandhu Sarani, Kolkata 700 007.

23. Learned Senior Advocate Mr. Mitra submits that it is needless to mention that the instant suit being a commercial suit, the documents presented to the suit are required to be filed in terms of Order XI Rule 1 of the Code. A declaration or oath is also required to be filed with the plaint. As such, in commercial suit all the documents disclosed become part of the plaint. A prima facie perusal of the memorandum of

understanding, pleadings in the plaint **at page 33** thereof would suggest otherwise than the averments made in the plaint. He further submits that it would appear that the memorandum of understanding had been made and entered into at Chandigarh Road, Punjab on March 26, 2013. The registered office of the defendant had been recorded to be at Chandigarh Road, Punjab. Plaintiff is represented through its managing director. Registered office of the plaintiff is recorded to be at Gangtok, Sikkim, represented through its director, whose address had also been recorded to be at Gangtok, Sikkim. The memorandum of understanding was executed for the works to be carried out at Assam. From Clause (X) at page 37 of the plaint, the banker in-charge of the transfer for payment was also situated at Nawanshahr, Punjab. The terms of memorandum of understanding were duly executed by the representatives of both the parties. Thus, prima facie, the cause of arose either at Assam or at Punjab but outside the territorial jurisdiction of this Court.

24. Mr. Mitra, learned Senior Advocate then submits that the address of a witness in the memorandum of understanding being at Kolkata 700 007 cannot establish the averments alleged at paragraphs 2, 3, 5 and 6 of the plaint, when the actual memorandum of understanding records otherwise. He submits that furthermore, the alleged corporate office of the plaintiff would not appear from any of the documents filed with the plaint to establish the alleged averments made in paragraphs 10 and 25 of the plaint.

25. Mr. Jayanta Kumar Mitra learned Senior Advocate submits that it is an undisputed fact that the recorded office of the defendant is at Chandigarh Road, Punjab and the recorded office of the plaintiff is at Gangtok, Sikkim as per the agreement. The works were to be carried out at Assam. Payments were to be transferred from the bankers of the defendant at Nawanshahr, Punjab.

26. In view of the above case having been made out in the plaint, Mr. Jayanta Kumar Mitra learned Senior Advocate for the defendant invites this Court to examine and peruse the pleadings in the plaint with the documents produced with the plaint and to determine that granting of leave under Clause 12 of the Letters Patent by the Coordinate Bench, whether was justified or lawful.

27. Mr. Jayanta Kumar Mitra learned Senior Advocate for the defendant further submits that Letters Patent on the one hand empowers this Chartered High Court to allow the plaintiff to institute the suit before this Court if part of cause of action arises within the territorial limits of this Court, even though part arises outside, it also empowers this Chartered High Court not to grant such leave to the plaintiff and ought to revoke the leave if already granted in favour of the plaintiff under Clause 12 of the Letters Patent in an appropriate case where Court finds that balance of convenience warrants revocation as not to grant leave. In support, he has relied a series of decisions :-

(a) ***In the matter of: Madanlal Jalan vs. Madanlal & Ors. reported at AIR 1949 Cal 495***.

(b) ***In the matter of: Union of India vs. Kuppuswamy Naicker reported at AIR 1978 Cal 211***.

(c) ***In the matter of: Parasram Harnandrai vs. Chitandas and Ors. reported at AIR 1952 Cal 82***.

(d) ***In the matter of: Ultra Engineering vs. Spintex Industry reported at AIR 1980 Cal 159***.

(e) ***In the matter of: Rooprekha Sales Pvt. Ltd. vs. Navkar Buildwell Pvt. Ltd. reported at 2015 SCC OnLine Cal 4436***.

(f) ***In the matter of: Mighty Metals Pvt. Ltd. and Anr. vs. Rajasthan Financial Corporation reported at 2011 SCC OnLine Cal 2113***.

28. Mr. Jayanta Kumar Mitra learned Senior Advocate for the defendant submits that the choice of forum by the plaintiff in the instant suit, is not a natural form and the same has put the defendant in difficulty to contest the instant suit. More so, the suit filed by the defendant arising out of the same transactions and/or same cause of action against the plaintiff is pending before the jurisdictional Court at Punjab, therefore, trial of the instant suit before this Court would not be in favour of the balance of convenience of either of the parties. Inasmuch as, the memorandum of understanding was executed by and between the parties at Punjab where the defendant has instituted its suit and the same is pending in Punjab.

29. In view of the above submissions, Mr. Mitra, learned Senior Advocate prays for revocation of leave granted by the Coordinate Bench under Clause 12 of the Letters Patent.

30. Mr. Anirban Ray, learned Senior Advocate appearing for the plaintiff opposing the instant application submits that, case of the plaintiff for dispensation of compliance of Section 12A of C.C. Act is based on the fact that the plaintiff had instituted the Second Suit before this Court, inter alia, praying for similar reliefs as had been sought for. In the first suit, plaintiff obtained a judgment upon admission under an order dated February 07, 2019 at page 12 to the affidavit-in-opposition filed by the plaintiff, the said judgment on admission was vacated due to the dismissal of the said second suit. Hence, the plaintiff apprehends that the defendant having suffered an earlier judgment may become wary and deal with their assets to defeat the claim of the plaintiff.

31. The said judgment upon admission was challenged and finally travelled upto to the Hon'ble Division Bench. The Hon'ble Division Bench disposed of the appeal on December 03, 2024 granting liberty to the plaintiff herein to institute the instant suit as a commercial suit within a period of four weeks from the date of the said order and if the suit is instituted within four weeks, the plaintiff would get the benefit of Section 14 of the Limitation Act. The order dated **December 03, 2024** is available **at page 44** to the affidavit-in-opposition.

32. Mr. Anirban Ray, learned Senior Advocate appearing for the plaintiff submits that the plaint contains averments that there was urgency involved in the instant suit, especially in view of the fact that the

plaintiff had already obtained a judgment upon admission against the defendant on the self-same cause of action in the second suit on February 07, 2019. The plaintiff had further averred in **paragraphs 21, 25, 33, 34, 35 and 42** on the urgency involved to institute this suit as the defendant was invading the rights of the plaintiff regarding the machineries and equipments forming subject-matter of the instant suit. He further submits that, moreover when the Hon'ble Division Bench granted liberty to the plaintiff to **institute** the present suit within a stipulated time, the leave was granted upon considering the contemplation of urgency to institute the instant suit for an interim relief. The plaintiff, therefore, had contemplated urgent interim relief which were required to be passed in the instant suit, especially, in view of the fact that the defendant had been aware of the claims of the plaintiff in the instant suit and having suffered a judgment upon admission, there was every chance that the defendant would dispose of its assets to frustrate the claims of the plaintiff. Therefore, the plaintiff had sought for leave for dispensation of the compliance of pre-litigation mediation under Section 12A of the C.C. Act.

33. The plaint also pleads that part of the cause of action arose outside the territorial limit of this Court. Hence, leave as prayed for in the plaint under Clause 12 of the Letters Patent had been granted by the Coordinate Bench and the plaint had been admitted.

34. Mr. Anirban Ray, learned Senior Advocate appearing for the plaintiff submits that apart from relying upon the averments made in the plaint, it was orally submitted on behalf of the plaintiff that for dispensation of

compliance of the requirement for pre-litigation mediation under Section 12A of C.C. Act, an urgent interim relief was also contemplated.

35. The plaintiff had already obtained judgment upon admission in the second suit on the self-same cause of action against the defendant on February 07, 2019. Ultimately, the said judgment was set aside holding that the suit should not have been filed and proceeded with in the regular division and the suit should be proceeded before the commercial division. On this ground, the said suit was dismissed. Since the defendant was aware of the decretal claim, the plaintiff at the time of institution of the instant suit contemplated an urgent interim relief with apprehension that the defendant might deal with its properties in the meantime. Furthermore, the Hon'ble Division Bench in its order dated December 03, 2024 granted liberty to the plaintiff to institute the suit. Once the Hon'ble Division Bench granted liberty to institute the suit, it is sufficient within the meaning of Section 12A of the C.C. Act that sufficient urgency was contemplated and as such on mere asking the requirement for pre-litigation mediation should be dispensed with as the suit was required to be filed within a specific time granted by the Hon'ble Division Bench on an urgent basis. Thus, liberty to institute the instant suit had already been granted by the Hon'ble Division Bench which not only construed urgency for the plaintiff to institute the suit but also it was based on the contemplation of the plaintiff for urgent relief.

36. Referring to the judgment of the Hon'ble Supreme Court ***In the matter of: Yamini Monohar vs. T.K.D. Keerthi reported at (2024) 5 SCC***

815, it was clarified that the urgent interim relief has to be considered holistically from the stand point of the plaintiff and its contemplation of such urgency. The contemplation used not as pre perception of the Court but that of the plaintiff. The said judgment has also clarified that refusal of interim relief at the interim stage, when the plaint is taken up for admission, would not justify dismissal of the commercial suit under Order VII Rule 11 of the Code. The same proposition of law had also been laid down by the Hon'ble Division Bench ***In the matter of: Patil Automation Private Limited and Others (supra).***

37. Mr. Anirban Ray, learned Senior Advocate appearing for the plaintiff submits that in the event, the plaint upon examination demonstrates an urgency from the stand point of the plaintiff, there is no fetter or justification in compliance of pre institution mediation process as contemplated under Section 12A of C.C. Act. The Court ought to infer the urgency on the basis of the averments made in the plaint, documents annexed thereto and the facts stated in the plaint.

38. Mr. Anirban Ray, learned Senior Advocate appearing for the plaintiff then refers to the judgment ***In the matter of: Dhanbad Fuels Private Limited (supra),*** with specific reference to paragraphs 44 and 50 of the report, it has been submitted that the law had proceeded one step further while clarifying the test under Section 12A is not whether the prayer for 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 pleaded in the plaint, the prayer for urgent

interim relief by the plaintiff should not said to be contemplable when the matter is seen from the stand point of the plaintiff.

39. ***In the matter of: Dhanbad Fuels Private Limited (supra),*** the Hon'ble Supreme Court had held that pleadings on record and also oral submissions would be sufficient in ordinary course to demonstrate the urgent interim relief from the stand point of the plaintiff since the act does not contemplate filing of any application for the prayer for dispensation of the pre-litigation mediation. In view of the observations made by the Hon'ble Supreme Court ***In the matter of: Dhanbad Fuels Private Limited (supra),*** according to Mr. Ray, the observations made ***In the matter of: Patil Automation Private Limited and Others (supra)*** which is a prior judgment had been diluted.

40. Mr. Anirban Ray, learned Senior Advocate appearing for the plaintiff in further support of his contention has placed reliance on a judgment of this Court dated November 07, 2025 ***In the matter of: Berger Paints India Limited vs. GPHP Holdings Pvt. Ltd. rendered in IA GA (COM)/3/2025 in CS(COM)/48/2025.*** He has further referred to a judgment of the Hon'ble Supreme Court ***In the matter of: Novenco Building and Industry A/S (supra),*** with a specific reference to paragraph 20 of the report.

41. Mr. Anirban Ray, learned Senior Advocate appearing for the plaintiff then submits that the plaintiff having contemplable urgency pleaded the same in the plaint supported by the documents appended thereto, the Coordinate Bench adjudicated the pleadings of the plaintiff and after being satisfied with the contemplation for urgency, the Coordinate

Bench allowed the dispensation for the pre-litigation mediation as provided under Section 12A of C.C. Act and the leave was granted on January 06, 2025.

42. Mr. Anirban Ray, learned Senior Advocate appearing for the plaintiff further submits that the defendant had accepted the direction of the Hon'ble Division Bench dated December 03, 2024 in pursuance whereof the instant suit had been filed. The direction of the Hon'ble Division Bench had attained finality to institute the present suit. The issue is, therefore, barred by the principle of *res judicata* and/or constructive *res judicata* in the instant application. In support, he has relied upon a decision of the Hon'ble Apex Court ***In the matter of: Puja Ferro Alloys P. Ltd. vs. State of Goa & Ors. reported at (2025) SCC OnLine SC 326.***

43. Mr. Ray further submits that the Coordinate Bench while granting the dispensation had exercised its discretion with application of mind and reasons. The reasons are supported from the case pleaded in the plaint. Hence, the leave granted to the plaintiff for dispensation of the requirement for pre-litigation mediation as provided under Section 12A of C.C. Act should not be recalled and/or revoked.

44. Mr. Ray learned Senior Advocate for the plaintiff then addressed the Court on the next issue raised by the defendant for revocation of leave under Clause 12 of the Letters Patent. Mr. Ray at the threshold submits that for the purpose of adjudication of an application for revocation of leave granted under Clause 12 of the Letters Patent, the averments made in the plaint are only to be looked into and the same should be

taken as true and correct. On a plain and meaningful reading of the plaint case, it appears that MoU dated March 26, 2013 was executed at the corporate office of the plaintiff at Gopalbandhu Sarani within the territorial limit of this Court. Plaintiff has also pleaded in the plaint in the respective paragraphs that part of cause of action had arisen outside the territorial limit of this Court. This is sufficient for granting leave under Clause 12 of the Letters Patent and to maintain the suit before this Court.

45. Mr. Anirban Ray, learned Senior Advocate appearing for the plaintiff further submits that an issue pertaining to the territorial jurisdiction should be taken in the written statement as part of substantive defense and cannot be summarily decided in an application for revocation of leave granted under Clause 12 of the Letters Patent except in clear cases wherefrom it can be inferred that the jurisdiction of this Court has been wrongfully invoked and in a mala fide manner under the Letters Patent. In support, he has relied upon a decision of the Hon'ble Supreme Court ***In the matter of: Isha Distribution House Pvt. Ltd. vs. Aditya Birla Nuvo Ltd. & Anr. reported at (2019) 12 SCC 205.***

46. Insofar as the submissions of the defendant on forum convenience is concerned, Mr. Ray, learned Senior Advocate submits that the application is bereft of any particulars. The submissions which have been made orally do not find place in the application. The defendant has not stated who are the witnesses and what should be the number of witnesses for the defendant to depose. It is also not the case of the defendant that the witnesses are all located at Punjab where the

defendant had instituted the suit or at Assam where the execution of works had been taken place. The civil court where the defendant had instituted the suit, according to the defendant is the competent forum but no supporting material has been produced by the defendant in this regard. Hence, the prayer for revocation of leave on the ground of forum convenience is baseless, devoid of any material and no cognizance shall be taken of the same. Inasmuch as, the contentions of the defendant for forum convenience is barred by law of res judicata as the issue to the lis had already been decided by another Coordinate Bench whiling hearing the second suit when the defendant had filed a demurrer application being GA 2998 of 2016, which was dismissed on contest and it was decided on merit by a judgment dated November 22, 2017. The said judgment had attained its finality.

47. Mr. Ray, learned Senior Advocate for the plaintiff then submits that the plaintiff was not required to take any leave under Clause 12 of the Letters Patent while instituting the instant suit in the commercial division of this Court under the said Practice Direction of 2021. The leave was prayed for and obtained for abundant caution. The Practice Direction of 2021 framed by this Court had duly notified in October 2023 which categorically indicates that in the event of there being a conflict in terms of Rules framed by this Court in comparison with the provisions of the Code, as amended with the promulgation of C.C. Act, the provisions of the Code as amended under the C.C. Act would prevail. In the light of the above submissions, learned Senior Advocate,

Mr. Ray has prayed for dismissal of the instant application as the same is devoid of any merit.

48. **In reply** to the submissions made on behalf of the plaintiff while distinguishing the judgment in the ***In the matter of: Rahul S. Shah vs. Jinendra Kumar Gandhi and Ors., reported at (2021) 6 SCC 418,*** Mr. Jayanta Kumar Mitra learned Senior Advocate appearing for the defendant submits that the ratio in the matter would not apply in the facts of the instant case. The judgment primarily deals with a scenario when the parties were at an execution stage. After the decree has been passed there was no scope for application of Section 12A of C.C. Act.

49. While distinguishing the judgement ***In the matter of: Berger Paints India Limited (supra)*** learned Senior Advocate, Mr. Mitra submits that the judgment did not consider the provision under Rule 6 (1) (d) and Rule 8 of the Practice Directions 2021 wherein, it has been specifically provided that in case of any leave under Section 12A of C.C. Act, a brief statement of the reasons to the effect why the plaintiff could not exhaust the remedy for pre-institution mediation has to be stated. Paragraph 43 of the plaint does not state such reason. Moreover, the said judgment had not considered the judgment of the Hon'ble Supreme Court ***In the matter of: Dhanbad Fuels Private Limited (supra)*** and ***In the matter of: Noven Building and Industry A/S (supra)***. Therefore, the ratio would not apply in the facts of the instant case.

50. The judgement in ***In the matter of: Srigopal Yarn Trading Pvt. Ltd. & Anr. Vs. Mahalaxmi Enterprise & Ors., reported at 2025 (9) SCC***

424 Would have no application in the facts of the instant case as the judgment has not considered two judgments of the Hon'ble Supreme Court ***In the matter of: Dhanbad Fuels Private Limited (supra)*** and ***In the matter of: Noven Building and Industry A/S (supra)***.

51. Mr. Jayanta Kumar Mitra learned Senior Advocate appearing for the defendant further submits that in passing the said judgment ***In the matter of: Srigopal Yarn Trading Pvt. Ltd. & Anr., (supra),*** reliance has been placed on the judgment of the Hon'ble Division Bench ***reported at 2023 SCC OnLine Cal 2443***. The judgment of the Hon'ble Division Bench has no application in the facts of the instant case as the said judgment was delivered before the said Practice Directions of 2021 was enforced, which become effective on **November 20, 2023.**

52. Inasmuch as, the view taken in the said judgment by the Hon'ble Division Bench was contrary to the observations of the Hon'ble Supreme Court ***In the matter of: Dhanbad Fuels Private Limited (supra)*** and ***In the matter of Yamini Monohar (supra).*** Learned Senior Advocate Mr. Mitra then submits that contemplation for urgent relief would not depend on the history of a previous litigation between the same parties. He further submits that leave that was granted by the Hon'ble Division Bench to the plaintiff to file the suit and not for dispensation of requirement under Section 12A of C.C. Act. There cannot be any question of res judicata as the defendant was not heard while leave was granted under Section 12A of C.C. Act.

53. Mr. Jayanta Kumar Mitra learned Senior Advocate appearing for the defendant further submits that the recorded address of the plaintiff has

been mentioned in the agreement. A close perusal of the MoU, it appears that the recorded address of the defendant is at Nawanshahr, Punjab. The recorded address of the plaintiff at Sikkim and the MoU was executed at Nawanshahr at Punjab. Stamp paper of the MoU also suggests the same. Therefore, the forum at Punjab is not a convenient forum for the parties, where the suit filed by the defendant is pending is an absurd submission made on behalf of the plaintiff. The case made out in the plaint along with the documents appended to the plaint would show that admittedly the work was executed at Assam. The defendant is at Punjab and the suit filed by the defendant is also pending at Punjab, therefore, in all likelihood the balance of convenience for the parties cannot be considered to be at Kolkata and not Punjab.

54. The balance of convenience is clearly in favour of revocation of the leave granted under Clause 12 of the Letters Patent. The transfer of the instant suit to the convenient forum to be tried on merit is otherwise warranted if the transfer placed otherwise does not inherently lack jurisdiction.

55. To distinguish the judgment ***In the matter of: Isha Distribution House Pvt. Ltd. (supra),*** learned Senior Advocate Mr. Mitra submits that in the instant case petition for revocation of leave under Clause 12 of the Letters Patent was filed without filing the written statement by the defendant. Whereas in the judgment, the plea was taken in the written statement for revocation of leave, the defendant had not challenged the jurisdiction of this Court but the defendant contends that the balance of

convenience warrants the suit to be transferred before the Civil Court at Punjab where the same can be tried along with the suit filed by the defendant, since the Civil Court at Punjab is a competent court having jurisdiction.

56. ***In the matter of: Rikhab Chand Jain vs. Union of India reported at 2025 SCC OnLine SC 2510,*** Mr. Mitra submits that it was a judgment rendered in writ jurisdiction and not under Letters Patent. The question in the judgment whether the writ jurisdiction could be extended without exhausting alternative remedy and not the question of revocation of leave.

Decision :

57. After considering the rival submissions of the parties and on perusal of the materials on record, this Court proceed to deal with the instant application filed by the defendant.

Plea under Section 12A of C.C. Act :-

58. Section 12A of C.C. Act provides that a suit, which does not contemplate any urgent interim relief under the Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in the manner and mode prescribed under the procedure. The provision further makes it clear that the period during which the parties remain occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation to institute a suit. The provision imposses a clear bar, which is mandatory in nature, that the plaintiff must exhaust the remedy of pre-institution mediation but the exception is if the plaintiff contemplates an urgent interim relief.

However, the Section does not specify for dispensation of the requirement of pre-institution mediation in the event, the plaintiff contemplates an urgent relief. Rule 8 of the Practice Directions, 2021 provides for leave of Court for institution of suits without exhausting the remedy of pre-institution mediation. The Practice Directions of 2021 has been framed by this Court in due exercise of its power provided under the C.C. Act. Rule 8 states that in the case of a suit under the C.C. Act which contemplates any urgent relief by reasons of which the plaintiff seeks to institute such suit without exhausting the remedy of pre-institution mediation in terms of Section 12A of C.C. Act, the Court shall be empowered to receive, try and determine such suit only upon the leave of the Court having been first obtained. The Rule further provides in the event the Court not being satisfied that the suit contemplates any urgent relief which would justify the dispensation with the necessity of the plaintiff exhausting the remedy of pre-institution mediation, the Court shall be entitled to return the plaint and directed the plaintiff to comply with the requirement of pre-institution mediation within the meaning of C.C. Act.

59. On harmonious reading of Section 12A with Rule 8 of the Practice Directions, 2021, makes it clear that from the statements made in the plaint and on the basis of the submissions made on behalf of the plaintiff, if the Court is satisfied that the contemplation of the plaintiff is there for any urgent interim relief, the Court has ample authority and discretion to dispense with the formality required for pre-institution mediation and the Court is empowered to receive the plaint, try and

determine the suit. The Court must arrive at its satisfaction with the case made out in the plaint and then shall use its power and discretion judiciously.

60. It is the settled proposition now that the provision under Section 12A of C.C. Act is a mandatory provision and the provision under C.C Act should be read, construed and interpreted strictly. Liberal construction has no role to play. If a suit is instituted in violation of the mandate contained under Section 12A of C.C. Act must be visited with rejection of the plaint.

61. In the recent judgment of the Hon'ble Supreme Court ***In the matter of: Novenco Building and Industry A/S (supra)*** where the action concerned related to continuing infringement of intellectual property rights, the Hon'ble Supreme Court after considering all the previous judgments on the field, namely, ***In the matter of: Patil Automation Private Limited and Others (supra), In the matter of: Yamini Monohar (supra),*** and ***In the matter of: Dhanbad Fuels Private Limited (supra)*** had observed as under :-

> ***"17. The scope and ambit of Section 12A of the Act which makes pre-institution mediation mandatory for commercial disputes, except where the suit 'contemplates any urgent interim reliefs', has been considered in three recent decisions of this Court. In Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd. a two-Judge Bench of this Court dealt with a case where a suit for recovery of money was filed without adherence to Section 12A of the Act. It was held that Section 12A of the Act is mandatory and any suit instituted in violation of the mandate contained in Section 12A of the Act must be visited with rejection of the plaint.***
>
> ***18. In Yamini Manohar (supra), another two-Judge Bench of this Court laid down the criteria to judge***

whether the plaint contains a prayer for urgent interim relief, by taking into account the subject matter of the suit, the cause of action and the prayer for interim relief. It was further held that the facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff and the prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the Act. The scope and ambit of the words 'contemplate any urgent interim relief' in Section12A of the Act, with reference to the suit, were also considered and it was held that the plaint, documents, and facts should show and indicate the need for urgent interim relief. It was further held that this is the precise and limited exercise that the Commercial Courts will undertake.

19. In DHANBAD FUELS (P) LTD. v. UOI, another two-Judge Bench of this Court held that the test under Section 12A is not whether the prayer for urgent interim relief actually comes to be allowed or not, but whether on examination of the nature and the (2025) SCC Online SC 1129 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. It has been further held that the interim relief must not merely be an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12A of the Act.

20. The legal test distilled from the aforesaid decisions for the purposes of rejection of the plaint and for adjudication of interim relief can be culled out as follows:

> ***(i) Section 12A mandatorily requires pre-institution mediation for commercial suits, non-compliance of which would ordinarily render the plaint institutionally defective.***
>
> ***(ii) A plaintiff can be exempted from the requirement of Section 12A only when the plaint and the documents attached with it clearly show a real need for urgent interim intervention. A wholesome reading of the plaint and the material annexed to the plaint ought to disclose the need for urgent relief.***
>
> ***(iii) The court must look at the plaint, pleadings and supporting documents to decide whether urgent interim relief is genuinely contemplated. 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.
(iv) A proforma or anticipatory prayer for urgent relief used as a device to skip mediation will be ignored and the court can require the parties to comply with Section 12A of the Act.
(v) The court is not concerned with the merits of the urgent relief, but if the relief sought seems to be plausibly urgent from the standpoint of the plaintiff the court can dispense with the requirement under Section 12A of the Act."

62. Hon'ble Supreme Court ***In the matter of: Dhanbad Fuels Private Limited (supra)*** specifically in its **paragraphs 49 and 50** had observed that the test under Section 12A of C.C. Act is not whether the prayers for urgent interim relief actually comes to be allowed or not but whether on an examination of the nature and subject-matter of the suit and cause of action, the prayer for urgent relief by the plaintiff could be said to be contemplable when the matter is seen from the **stand point of the plaintiff**. It has been further observed by the Hon'ble Supreme Court that the **pleadings** on record and also **oral submissions** would be sufficient in ordinary course to demonstrate the urgent interim relief from the **stand point** of the plaintiff since the provision does not contemplate filing of any application praying for dispensation. In the light of the said settled position of law if the provision under Section 12A of C.C. Act is read and examined, it also appears to this Court that the expression **"contemplate"** has not been clarified by any further expression or instance or situation or any state of affairs with regard to the subject matter of the plaint. Therefore, it is the perspective which has to be seen through the eyes of the plaintiff, as the case made out in

the plaint and then the discretion of the Court shall have to be exercised with application of mind.

63. On a mindful reading of the order dated January 06, 2025, **annexure-A at page 15** to the application, it appears that the Coordinate Bench had inter alia, observed as under :-

> ***"As regards Section 12A of the Commercial Courts Act, counsel for the plaintiff submits that initially the plaintiff has filed the suit in the non-commercial division, now, in terms of the order passed by the Hon'ble Division Bench, the plaintiff has filed the present suit before this Court and the claim of the plaintiff is aware by the defendant and there is every apprehension that the defendant will alienate the assets if the plaintiff will go for the mediation in the meantime."***

64. Since neither Section 12A of C.C. Act nor the Practice Procedure, 2021 specify or define what should be the grounds and/or causes to be stated in the plaint contemplating an urgent interim relief, in absence of such statutory prescription the perception for contemplating urgent interim relief praying for dispensation of pre-institution mediation would largely depend on the exercise of judicial discretion of the Court by reading the statements made in the plaint and by considering the submissions on behalf of the plaintiff from the stand point of the plaintiff for granting dispensation for pre-litigation mediation.

65. From the observations of the Coordinate Bench, quoted above, this Court finds that the Coordinate Bench had considered the pleading for contemplation of urgent relief pleaded by the plaintiff from the perspective how the plaintiff thought it and from the stand point of the plaintiff. The urgent relief ultimately may be granted or rejected that

would not have any relevance while considering the prayer for dispensation of requirement of pre-mediation litigation. In absence of any application on record, as the same is also not a requirement for praying for dispensation of the requirement for pre-institution mediation under Section 12A of C.C. Act, the oral submissions would also be of an important and relevant consideration for the Court. The Practice Procedure of 2021 under Rule 8 thereof speaks for leave of Court is required for institution of suits without exhausting the remedy of pre-institution mediation. The same also does not provide for filing of any application showing sufficient cause. On a meaningful reading of the averments made in the instant plaint, it can safely be held that sufficient and reasonable averments are there to contemplate an urgent interim relief. Therefore, consideration of the prayer for leave for dispensation of the requirement of pre-institution mediation by the Coordinate Bench was justified. On a close reading of the plaint, this Court also finds that it is not in derogation of the forms of pleadings prescribed under Rule 6 of the Practice Direction 2021. On a meaningful reading of the plaint, it shows that the relevant materials are present in the plaint in terms of Rule 6 of the Practice Direction, 2021. This Court also finds that on reading of the instant plaint a possible and plausible view can be taken by the Court for granting leave for dispensation of pre-institution mediation.

66. On reading of the said order of the Coordinate Bench dated January 06, 2025, it appears to this Court that from the stand point of the plaintiff, as the case is pleaded in the plaint, the Coordinate Bench has taken a

plausible and possible view by exercising its discretion and granted the dispensation for pre-institution mediation.

67. In view of the forgoing reasons and discussions, this Court is also of the considered opinion and view that there is no further scope to hold other than what has been held by the Coordinate Bench in its order dated January 06, 2025. Therefore, the **dispensation** granted to the plaintiff for pre-institution mediation **stands**.

Revocation of leave under Clause 12 of Letters Patent :-

68. Clause 12 of the Letters Patent, *inter alia*, provides that in all other cases except a suit for land, if the cause of action has arisen, either wholly or in case the leave of Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of this Court, a suit can be instituted with leave of Court before this Chartered High Court. The moment leave is granted after the Court is satisfied that part of cause of action in the suit has arisen within the local limits of this High Court and part outside, this Chartered High Court is vested with the jurisdiction to entertain, try and adjudicate such suit.

69. On a meaningful reading of the provisions under Clause 12 of the Letters Patent, this Court finds that in allowing or refusing leave or maintain or revoking leave, this Chartered High Court would have to consider the balance of convenience and inconvenience in connection with choosing of forum by the plaintiff. If the balance is definitely in favour of the defendant, the Court applying the doctrine of forum convenience.

70. ***In the matter of: Madanlal Jalan (supra)*** a Coordinate Bench of this Court had observed as under :-

> ***8. In our Court the practice is to present the plaint: before the Master with a note that the leave under cl. 12 is asked for. The plaint is scrutinised by the Master. Formerly the Master used to give the leave but eventually in 1907 it was held that the giving of leave was not a mere ministerial act but was a judicial act which must be done by the Judge and could not be delegated to the Master. Thenceforth the Master after scrutinising the plaint places it before the Judge. The Judge is supposed to consider the matter and use his discretion. In practice however, the Judge gives leave as a matter of course if the Master finds that a part of the cause of action arose in Calcutta. Although in practice it has become a mechanical process yet it cannot be denied that in law the Judge must be taken to have exercised his discretion. No serious harm, however, is done because the Defendant can always apply for revocation of the leave. Thus leave is granted by the Judge ex parte. At that stage the only material placed before the Court is the plaint. From the cause title the Court comes to know of the respective occupations and places of residence of the parties. From the body of the plaint the Court gathers the cause of action on which the suit is founded. The Court has to exercise its discretion in the matter of giving or refusing leave only on these materials. The question of bona fides or mala fides of the Plaintiff in seeking to file the suit in this Court will not usually be apparent from the plaint. Therefore the discretion of the Court at this stage cannot, of necessity, be based on a consideration of the motives of the Plaintiff. It must, at this initial stage at any rate, be exercised on a consideration of convenience having regard to the respective occupations and places of residence of the parties and the facts constituting the cause of action, and the extent of the part of the cause of action which is alleged to have arisen within jurisdiction. If it finds that the Defendant resides at a distance and the material facts mainly took place outside so that the***

bulk of the witnesses of the Defendant will be resident outside the jurisdiction and only an insignificant part of the cause of action arose within jurisdiction, the Court may in its discretion refuse the leave. This refusal must mainly, if not solely, be based on a consideration of convenience, for, as I have said, at this stage at any rate the Court will not usually have any material bearing on the motives of the Plaintiff, unless of course the degree of inconvenience itself or the insignificance of the part of the cause of action shown to have arisen within Jurisdiction by itself suggests bad motive. To hold otherwise will mean that the discretion undoubtedly given to the Court under cl. 12 is to be exercised only on a consideration of the extent of the part of the cause of action that arises within, irrespective of the inconvenience, however great, to which a Defendant may be put. I see no reason to so limit the discretion of this Court.

9. It is said that under the Code the Plaintiff has the unfettered choice of forum and mere inconvenience of the Defendant is not considered as a ground for restricting the Plaintiff's right to file his suit in any Court of his choice within whose jurisdiction a part of the cause of action arose. That is undoubtedly the position under the Code and the Court will not under the Code lightly interfere with the Plaintiff's choice. But there are safeguards provided in the Code by way of transfer or stay of the suit. Some of those safeguards may be available to this Court in exercise of its Ordinary Original Civil Jurisdiction [Mahindra Chandra v. Lal Mohon]. These safeguards however come into play after the suit has been filed in a particular Court. Because the Code has directly given an unfettered right to the Plaintiff to file his suit in any Court where a part of his cause of action arose the Court will not subsequently indirectly take it away by applying the safeguards except in the case of gross abuse. That is why balance of convenience which is short of abuse may not under, the Code be enough to induce the Court to stay the suit. That is also the principle underlying the cases relied on by Mr. Ghose which insists that some element of Injustice, bad faith

or ill will is necessary to induce the Court to stay a suit. In Snow White Food Products v. The Punjab Vanaspatila, I have applied these principles in an application for injunction restraining a Plaintiff from proceeding with a suit outside jurisdiction. In those cases where the Plaintiff is free to file his suit in a Court of his choice, stay or injunction or transfer will not be granted only on the ground of balance of convenience. The position is quite different, however, where leave of Court is necessary before a suit can be filed.

10. Cl. 12 interposes a safeguard in favour of the Defendant at an earlier stage by investing the Court with a discretion to grant or refuse leave to sue, in addition to the other safeguards which will be available at a later stage. That the safeguards provided by the Code which are to be operative after the institution of the suit are to be applied only in case of abuse does not appear to me to be any reason why the Court should ignore or limit the additional safeguard provided under cl. 12. If I am right in thinking as I do that the discretion given under cl. 12 is in the nature of an initial safeguard I must hold that this discretion must be based on circumstances then available. It is not limited to a mere consideration of the extent of the part of the cause of action that arose within jurisdiction and questions of convenience, so far as they are apparent from the plaint, the only material which is, at this stage, available to the Court, must be taken into consideration. If this is so when leave is granted ex parte, should the position be different when the Defendant, after service of the Writ of Summons, makes a substantive application complaining of inconvenience and hardship and prays for revocation of the leave? If our practice had been to give leave under cl. 12 on an application by the Plaintiff on notice to the Defendant, as it is or was in Madras, the Defendant would have had a chance, before the suit was received and admitted, to make out a case of inconvenience. Should a Defendant in our Court be deprived of that chance and be put in a worse position

because our practice is to give leave ex parte If questions of convenience are to be taken into consideration at the time leave is to be granted why should it not be considered when the Defendant applies for its revocation? I see no logic in differentiating between the two stages. The question, in my opinion, is the same at both stages, namely, should the Court allow the Plaintiff to proceed with his claim in this Court? The principles on which the answer to that question should be formulated must, therefore, be the same at both stages. I have endeavoured to show that according to our practice of giving leave ex parte, the main, if not the sole, consideration at that time can only be one of "convenience which may be apparent from the plaint. As an application for revocation of leave is in the nature of a review or reconsideration, logically the Court is called upon to decide the same question on the same considerations of convenience, although in the light of fuller materials. When I say that the question of convenience should be considered, I mean convenience of both parties. I agree with Mr. Khaitan that on an application for revocation a greater onus should not be put upon the Defendant by reason of an ex parte accomplished fact. In my opinion the Court should not on an application for revocation start with a presumption in favour of maintaining the leave but should apply an unfettered mind to all the facts and circumstances and submissions, presented before it as if it were considering the question for the first time. It remains to be seen whether the views I have just expressed find any support from judicial decisions or whether they militate against any of them.

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25. On a consideration of the legal principles established by the judicial decisions mentioned above it seems to me that balance of convenience is a material consideration in the exercise of discretion under cl. 12. From these judicial authorities the following propositions may, I think, be enunciated:

(a) that an application lies for revoking leave granted under cl. 12 of the Letters Patent;

(b) that such an application should be made at an early stage of the suit and delay and acquiescence may be a bar to such an application;

(c) that if the application depends on difficult questions of law or fact the Court should not revoke leave on a summary application but should decide the question at the trial;

(d) that if the Defendant shows clearly that no part of the cause of action arose within jurisdiction, the leave should be revoked as a matter of course;

(e) that if only a part of the cause of action arose within jurisdiction, then it is a question of discretion for the Court to give or refuse leave or where leave has already been granted to revoke or maintain the leave;

(f) that assignment is a very important part of the cause of action in a suit by the assignee;

(g) that in giving or refusing leave or maintaining or revoking leave the Court will ordinarily take into consideration the balance of convenience and may, if the balance is definitely in favour of the Defendant, apply the doctrine of forum conveniens;

(h) that the Court may refuse leave or revoke leave on the ground of balance of convenience although there be no evidence of bad faith or abuse of process on the part of the Plaintiff;

(i) that if the cause of action is founded on an assignment within jurisdiction of a negotiable instrument, the Court will, in recognition of the principle of negotiability, insist on a far greater degree of balance of convenience in favour of the Defendant and will more readily give or maintain leave than in other cases of assignment;

> ***(j) that if the Court is satisfied that the suit has been filed mala fide for the purpose of harassing or oppressing the Defendant or might result in injustice the Court should in all cases readily refuse leave or if leave has already been granted revoke the leave as a matter of course."***

71. The law is also well settled as to the tests applicable for revocation of leave under Clause 12 of the Letters Patent and one such test is that where only a part of cause of action has arisen within the territorial limits of this High Court and part outside then it is a question of discretion for the Court to grant or to refuse or to revoke or maintain the leave, if already granted. Taking into consideration the balance of convenience and the balance if is definitely in favour of defendant, the Court should apply the doctrine of forum convenience.

72. ***In the matter of: Mighty Metals Pvt. Ltd. and Anr. (supra)*** a Coordinate Bench had observed as under :

> ***"The defendant has also relied on a judgment reported at AIR 1999 Cal 179 (Hindusthan Zinc Ltd v. Gujarat NRE Coke Ltd) where a Division Bench held that since a global tender had been issued which envisaged the performance of the work in Rajasthan and the tenders were scrutinised in Rajasthan, the petitioner in that case could not have challenged the decision to reject the petitioner's offer in the writ jurisdiction of this court since the rejection took place in Rajasthan. The defendant has next referred to a judgment reported at (2010) 3 CHN 26 (Assam Company Ltd v. The State of Andhra Pradesh) where the leave granted under Clause 12 of the Letters Patent was revoked on the grounds that the plaintiff's cause of action had no nexus with this court and it would have been overwhelmingly inconvenient for the defendants in that action to contest at the trial. Paragraph 33 of the report has been relied on:***

"33. In any event, it is obvious that this Court has no nexus with the subject matter of the suit. Since the averments in a plaint have to be taken to be true and correct for the purpose of assessing a point of demurer as the present one, the incredible case run in the plaint of the first plaintiff's association with the transactions, improbable as it is, has to be accepted at this stage. But to accept that the situs of the first plaintiff (even that is unclear; since the plaint does not aver that the First plaintiff has its registered office within jurisdiction) and it having allegedly made funds available to the other plaintiffs to enable the then plaintiffs to discharge their obligations under the memorandum of understanding as the basis for instituting the suit in this Court, would amount to doing violence with the accepted principles for founding a suit in a particular forum, Further, the facts here are such that the usual principle that the defendant has to show overwhelming inconvenience to dislodge a plaintiff from his chosen forum, would not apply. The facts here are such that the inconvenience is obvious and the onus would be on the plaintiff to demonstrate otherwise. The memorandum of understanding was executed in Hyderabad, the projects were to be implemented in the State of Andhra Pradesh and the memorandum of settlement was entered into in Hyderabad. The plaintiffs' reliance on the judgment reported at AIR 1978 Cal 397 (Sanjay Trading Company v. Dal Chemical N.V.) that the plaintiff as dominus litus must enjoy the choice of forum is inappropriate on the facts obtaining in the present case."

The judgment was affirmed in appeal by an order dated July 23, 2010 in APOT No. 117 of 2010, APO No. 69 of 2010 (Assam Company Ltd v. The State of Andhra Pradesh). Only the costs awarded were reduced in appeal.

In support of the argument that it would be inconvenient for it to contest the trial in this court, the defendant has referred to a judgment reported at AIR 1980 Cal 159 (Ultra Engineering Industries P. Ltd v. Spintex Industries Pvt. Ltd) where the leave under Clause 12 of the Letters Patent was revoked on the

consideration that it would cause genuine hardship to the defendant to defend the suit in this court."

73. In the light of the settled position of law, as discussed above, the duty of this Court is also to consider whether the defendant in the instant suit will suffer any inconvenience if the instant suit is proceeded before this Court.

74. Admittedly, the work was executed at Assam. The defendant has already filed a suit before the Civil Court at Punjab where the defendant carries on business. The plaintiff admittedly carries on its business at Sikkim. Only a part of cause of action pleaded in the plaint with regard to the negotiation and the execution of MoU, according to the plaint case, arose within the territorial jurisdiction of this Court. The registered office of the plaintiff is at Sikkim and the plaintiff carries on its business from its alleged corporate office within the territorial limit of this Court, whereas admittedly, the defendant does not have any place of business in West Bengal and carries on its business at Punjab. The law under the Companies Act, is also statutorily mandates that all the records of the company shall be kept at its registered office, which is Sikkim for the plaintiff, in the instant case. Therefore, from the point of convenience and/or inconvenience to proceed with the instant suit or to defend the suit filed by the defendant at Punjab, the plaintiff in any event has to produce its records from its registered office at Sikkim, be it before this Court or the Civil Court at Punjab, where the suit filed by the defendant is pending. However, since the defendant has no place of business admittedly, as pleaded in the plaint in West Bengal, the

defendant has to produce all its records and its witnesses from its registered office at Punjab before this Court. Weighing the situation, this Court finds that it would definitely be inconvenient for the defendant to defend the instant suit before this Court and in that case the defendant may be handicapped in contesting the instant suit and shall suffer immense hardship.

75. On the contrary, the Civil Court at the district of Punjab where the suit filed by the defendant is pending, if that Court has commercial division and/or the jurisdictional commercial division in that district of Punjab, would be a convenient forum for trying the instant suit. The plaintiff in any event has to produce the records either before this Court or before the jurisdictional Court at Punjab from its registered office at Sikkim. If the instant suit is tried before the same court and/or the court of competent jurisdiction at a nearer place at Punjab which is nearer to the Court where the suit filed by the defendant is pending, then it would be convenient for parties to produce their respective records and witnesses there, undoubtedly.

76. In the instant case, the defendant has forfeited its right to file written statement by operation of law. In absence of written statement since the plea of territorial jurisdiction has been taken by the defendant through the instant application for revocation of leave granted under Clause 12 of the Letters Patent on the ground of forum convenience, such a substantive plea can be accepted for adjudication. This Court is vested with the authority and jurisdiction under Clause 12 of the Letters Patent to revoke the leave on the ground of forum convenience.

Therefore, the ratio decided ***In the matter of: Isha Distribution House Pvt. Ltd. (supra),*** would not apply in the facts and circumstances of the instant case.

77. It is needless to mention that since the instant suit is a commercial suit, the same shall have to be tried by strictly following the provisions laid down under the C.C. Act and following the relevant amended provisions of the Code, as amended in light of the promulgation of the C.C. Act. The instant suit shall have to be tried, wherever it is, as an **undefended suit**, as the defendant has forfeited **its right to file written statement** under the law.

78. In view of the foregoing reasons and discussions, leave granted by the Coordinate Bench under **Clause 12 of the Letters Patent** in its **order dated January 06, 2024** stands **revoked**.

79. The plaint filed in the instant suit shall be returned to the plaintiff along with the court fees upon leaving a photostat copy of the plaint duly certified by the learned Advocate on record for the plaintiff, which shall be kept in the records of this Court. If the requirements of law demands the plaintiff to pay necessary court fees and/or further court fees for filing the plaint before **the jurisdictional commercial court** at Punjab where the suit filed by the defendant is pending, the plaintiff shall pay such *ad valorem* court fees and the **suit shall proceed from its present stage and status** as it stands today but as undefended suit.

80. With the above observations and directions, the instant application being ***IA No.GA-COM/3/2025*** stands **disposed of**.

81. Consequently, the connected applications ***IA No.GA-COM/4/2025*** and ***IA No.GA-COM/5/2026*** also stand **disposed of** and interim order if any, passed stands **vacated**. However, the plaintiff shall be at liberty to file identical applications with the self-same relief before the jurisdictional commercial court where the plaint shall be presented at Punjab.

(Aniruddha Roy, J.)