OD-1 ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE

APDT/24/2026
IA NO: GA-COM/1/2026
+
IA NO: GA-COM/2/2026

ITC LIMITED
VS.
SMM TOBACCO PRIVATE LIMITED AND ORS.

BEFORE:
The Hon'ble JUSTICE TAPABRATA CHAKRABORTY
AND
The Hon'ble JUSTICE PARTHA PRATIM ROY
Date : 12th October, 2026.

Appearance:
Mr. Joydeep Gupta, Sr. Adv. (VC)
Mr. Ranjan Bachawat, Sr. Adv.
Mr. Rudraman Bhattacharyya, Sr. Adv.
Mr. Paritosh Sinha, Adv.
Mr. K. K. Pandey, Adv.
Mr. Kunal Chatterji, Adv.
Ms. Surita Majumdar, Adv.
Mr. Sarathi Dasgupta, Adv.
Mr. Naman Chowdhury, Adv.
Mr. Manosij Mukherjee, Adv.
Mr. Aayush Sinha, Adv.
Mr. Teesham Das, Adv.
Mr. Bhavesh Garodia, Adv.
Ms. Mallika Bothra, Adv.
…for the Appellant

The Court:- The present appeal has been preferred challenging the impugned judgment and decree dated 8th September 2026 passed by the learned Single Judge in IP (COM) No.10 of 2026. In the said judgment, the learned Single Judge held *inter alia* that the plaint does not contemplate any urgent interim relief within the meaning of Section 12A of the Commercial Courts Act, 2015 (in short, the 2015 Act) and declined exemption from pre-litigation mediation and directed return of the plaint.

The appellant herein is one of the country's foremost private sector companies with a diversified portfolio including a renowned business of cigarettes. The respondent no.1 is an entity incorporated under the Companies Act, 2013 engaged in the business of manufacturing, processing and trading in cigarettes and tobacco products from the State of Bihar. The respondent nos. 2 to 4 were engaged in such activities from the registered office of the respondent no.1 and the respondent no.5 is an unknown individual and is suspected of acting in collusion and collaboration with the other respondents.

Records reveal that the suit was filed on 27th August 2026 along with an application for interim relief alleging infringement of trade mark, copyright and passing off in relation to its cigarettes and tobacco products by the respondents and praying for a relief of perpetual injunction and dispensation with the requirement of pre-litigation

mediation as provided under Section 12A of the 2015 Act. Subsequently, another application was filed *inter alia* praying for appointment of a Receiver.

Mr. Gupta learned senior advocate, assisted by Mr. Bachawat, learned senior advocate, appears on behalf of the appellant and submits that credible intelligence was received by the appellant in and around the month of July 2026 revealing unauthorized and illicit counterfeiting, manufacturing and distribution operations being carried out by the respondents. The appellant, accordingly, filed an FIR and pursuant thereto search and seizure operations were conducted on 22nd July 2026 and illicit goods and articles were recovered from various locations. It cannot be urged that the appellant having approached the police authorities first, is disentitled from instituting the suit without exhausting mediation. The steps taken by the police authorities do not in any manner impinge upon the requirement of interim relief from this Court on an urgent basis.

He argues that the observations made by the learned Single Judge in the impugned judgment are contradictory in nature. On one hand, it has been observed that the right to approach the police authorities was available to the appellant in addition to the right to bring a civil action for infringement and passing off but on the other hand as the appellant filed

FIR, the Court observed that it was unable to grant dispensation of the mandatory provisions of Section 12A of the 2015 Act. The learned Single Judge also held that delay in approaching the Court was not fatal but refused to dispense with the formalities of the Section 12A of the 2015 Act.

Drawing our attention to the judgment delivered in the case of *Novenco Building and Industry A/S v. Xero Engergy Engineering Solutions Private Limited and Another*, reported in *(2026) 4 SCC 815*, Mr. Gupta argues that mere delay in dealing with an action does not legalise an infringement, more so when the urgency lies not in the age of the cause but in the persistence of the peril. The suit contemplates an urgent interim relief from the standpoint of the appellant. In cases of infringement either of trademark or of copyright, normally an injunction must follow and mere delay in bringing action is not sufficient to defeat grant of injunction. Such arguments, as advanced, were glossed over by the learned Single Judge. In support of the arguments advanced, reliance has also been placed upon the judgments delivered in the cases of *Bengal Waterproof Limited vs. Bombay Waterproof Manufacturing Company and Another*, reported in *(1997) 1 SCC 99* and *Midas Hygiene Industries (P) Ltd. and Anr. Vs. Sudhir Bhatia & Ors.,* reported in *(2004) 3 SCC 90*.

We have extensively heard Mr. Gupta and considered the materials on record.

The primary issue which arises for consideration is whether the appellant's suit truly insists upon an urgent interim relief to justify the dispensation of Section 12A of the 2015 Act. The words *'contemplate any urgent interim relief'* in Section 12A of the 2015 Act, with reference to the suit, mean the plaint, documents and facts should show and indicate the need to justify the dispensation of Section 12A of the 2015 Act. This is the precise and limited exercise that Commercial Courts would have to undertake. However, it is to be noted that not merely interim relief but only an *'urgent interim relief'* qualifies a suit to wriggle out of the rigours of Section 12A of the 2015 Act. It needs to be ascertained as to whether the matter is of such nature that the apprehended wrong or injury is imminent and that exhausting the remedy of pre litigation mediation without any intervention in the meantime can lead to an irreversible situation.

The learned Single Judge was of the view that even if the delay in approaching the Court is not fatal, it cannot be urged that the Court has to dispense with the formalities of Section 12A of the 2015 Act whenever the plaintiff approaches the Court. The delay in filing the present suit has not been explained by the appellant. In paragraphs 78, 79 and 85 of

the plaint, it has been urged that the appellant had suffered a continuing wrong and that as such it is entitled to dispensation with the formalities of Section 12A. Seeking leave under Section 12A and establishing a *'continuing cause of action'* stand on different footings and serve distinct purposes and carry distinct legal consequences. No explanation is also forthcoming as to why the suit was not preferred when the right to sue first accrued. Immediately upon coming to know about the illicit manufacturing and distribution activities of the respondent no.1, the appellant approached the police authorities but chose not to bring a civil action for infringement and passing off though criminal and civil action are maintainable at the same time. In the said conspectus, the learned Single Judge held that the judgment delivered in the case of *Novenco (supra)* is not applicable to the facts of the present case.

The Appellate Courts in IPR matters are prohibited from substituting its own discretion for that of the trial Court, provided the trial Court exercised its authority reasonably. Such interference is called for only in cases where the trial Court had exercised its discretion arbitrarily or perversely or had omitted relevant facts committing a clear failure of justice. An appeal against an order of discretion (like granting or denying leave under Section 12A is an appeal on principle and not a re-trial of the merits. The Appellate Court must not re-weigh or re-assess

the materials on record merely because it might arrive at a different conclusion. If the view taken by the trial Court was plausible and reasonable, it must stand even if a better or alternative view exists.

For the reasons discussed above, we do not find any infirmity in the order impugned. The learned single Judge upon dealing with the factual issues arrived at a specific findings and we do not find any error in the same, warranting interference in appeal.

The appeal and the connected applications are, accordingly, dismissed.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(PARTHA PRATIM ROY, J.) (TAPABRATA CHAKRABORTY, J)

Sm