

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No. 77 of 2025

M/s Yuksom Breweries Limited,
Through its authorised representative and PRO Mr.
Prem Shankar Gupta,
Malli, District Namchi, Sikkim.

..... Petitioner

Versus

1. M/s Thomas Enterprises.
Kalyani Apartments, Sevoke Road,
Siliguri-734401, West Bengal.
2. Mr. N. L. Thomas,
Proprietor M/s Thomas Enterprises,
Kalyani Apartments, Sevoke Road,
Siliguri-734401, West Bengal.

..... Respondents

Petition under Article 227 of the Constitution of India, 1950.

*{Against the impugned Order dated 08.07.2025 passed by the Learned Commercial Court at
Namchi in Commercial Suit Case No.01 of 2021 titled M/s Yuksom Breweries Ltd. vs. M/s
Thomas Enterprises & Anr.}*

Appearance:

Mr. Jorgay Namka, Senior Advocate (through V.C.). Mr. Sawal Rai,
Advocate for the Petitioner.

Mr. Anand Verma, Ms. Pabitra Pradhan and Ms. Pratima Subba
Limboo Advocates for the Respondents.

Date of Judgment reserved : 15.06.2026
Date of Judgment Pronounced: 26.06.2026
Date on which uploaded : 26.06.2026

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The present petition invoking Article 227 of the Constitution of India, 1950 challenges the impugned order dated 08.07.2025 passed by the learned Commercial Court at Namchi in Commercial Suit Case

No.01 of 2021 titled M/s Yuksom Breweries Limited vs. M/s Thomas Enterprises & Anr.

2. The learned Commercial Court on examination of section 12A of the Commercial Courts Act, 2015 came to the conclusion that pre-institution mediation is mandatory for commercial disputes before filing the suit, unless urgent interim relief is needed. The learned Commercial Court relied upon ***M/s Patil Automation Private Limited & Ors. vs. Rakheja Engineers Private Limited***¹ which held that section 12A was mandatory and that suits filed without complying with this mandate must be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 unless urgent interim relief is sought. The learned Commercial Court opined that the records reveal that the case was registered without complying with the mandate of section 12A of the Commercial Courts Act, 2015 (the Act, 2015). Accordingly, the learned Commercial Court disposed of the Commercial Suit Case No.01 of 2021.

3. The present petition under Article 227 of the Constitution of India thus challenges the reasoning and the rationale of the impugned order.

4. According to the petitioner the suit was in fact instituted as a Money Suit No. 03 of 2016 in the Court of the learned District Judge, Namchi on 18.08.2016. On 30.07.2018 the learned District Judge passed the final judgment. The said judgment was challenged before this Court by filing RFA No.04 of 2018. RFA No.04 of 2018 was disposed of by a Division Bench of this Court vide Order dated 01.11.2021. The Division Bench was of the view that the judgment and decree dated 30.07.2018 passed by the learned District Judge in

¹ 2022 SCC OnLine SC 1028

Money Suit No.03 of 2016 must be set aside and the money suit transferred to the files of Commercial Court to be tried by as per the provisions of the Act 2015. On 29.03.2022 the learned Commercial Court disposed of Commercial Case (Money Suit) No.02 of 2022 titled M/s Yuksom Breweries Limited vs. M/s Thomas Enterprises and Another by holding that the plaintiff ought to have exhausted the remedy of pre-institution mediation as there was no pleading that the plaintiff was facing serious economic crisis and had also not prayed for urgent interim relief.

5. Although the petitioner had preferred Writ Petition (C) No. 21 of 2022 before this Court the learned Senior Counsel representing the petitioner desired to withdraw it with liberty to approach the learned Commercial Appellate Court to exhaust the appeal remedy. Thereafter, Commercial Appeal No.01 of 2023 was disposed of by the learned Commercial Court vide order dated 31.07.2024 setting aside the order dated 29.03.2022 passed by the learned Commercial Court and restoring it back to be tried as per law. It transpires that due to the pecuniary jurisdiction issues the learned Commercial Court vide order dated 13.12.2024 registered Commercial Suit Case No.01 of 2021 and issued notice to the parties returnable by 05.02.2025. Thereafter, the learned Commercial Court passed the impugned order dated 08.07.2025 disposing of the Commercial Suit and directing the parties to take appropriate steps in terms of section 12A of the Commercial Courts Act, 2015.

6. The learned Senior Counsel for the petitioner contends that the petitioner had instituted the money suit in 2016 when no Commercial Court was set up which was decreed vide judgment and decree dated 30.07.2018 and therefore, the Commercial Suit Case

No. 01 of 2021 was not a new case filed and was a suit pending adjudication after several rounds of meetings having taken place to resolve the issue amicably. It is therefore, contended that since section 12A was inserted into the Commercial Courts Act on 3rd May, 2018 only when the money suit no.03 of 2016 had already been instituted, the mandatory nature of section 12A could not have been imposed upon the plaintiff.

7. This Court is of the view that the issue sought to be raised by the learned Senior Counsel for the petitioner and vehemently opposed by the learned counsel for the respondent is squarely covered by the ratio of the judgment passed by the Supreme Court in **M/s Dhanbad Fuels Private Limited vs. Union of India and Anr**² in which it was held:

*“46. In **Patil Automation** (supra), this Court held that the language of Section 12-A is plainly imperative in nature, and any commercial suit instituted without adhering to this provision is liable to be rejected under Order 7 Rule 11CPC. However, recognising that the amending Act containing Section 12-A is a “toddler”, and that the “law necessarily would have teething problems at the nascent stage”, this Court declared the aforesaid declaration to operate prospectively, effective from 20-8-2022, so that the stakeholders may be sufficiently informed. In the instant case, as the money suit was filed by the respondents much prior to the decision in **Patil Automation** (supra), it is squarely protected by the prospective ruling of this Court.*

*47. This Court had further held that the protective umbrella of prospective overruling in **Patil Automation** (supra) would not apply to complaints which were rejected, and no steps had been taken within the period of limitation; or such rejection had been acted upon by filing a new suit; or if the complaint violating Section 12A had been filed after the jurisdictional High Court has declared the provision to be mandatory. Indisputably, the Union of India does not fall under any of the other aforementioned exceptions. Thus, we find it difficult to agree with the submission canvassed by the appellant that the bar of Section 12A of the 2015 Act would continue to apply to the*

² 2025 INSC 696

money suit filed by the respondents despite there being a prospective declaration in Patil Automation (supra).”

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“63(b). *If the suit was instituted prior to 20-08-2022 without complying with Section 12-A of the 2015 Act, and the same does not fall within one of the exceptional categories as explained in paragraph 47 of this judgment, then it would be open to the court to keep the suit in abeyance and direct the parties to explore the possibility of mediation in accordance with the 2015 Act, the PIMS Rules and the 2020 SOP.”*

8. Thus, keeping in mind that the mandatory provision of section 12A inserted on 3rd may 2018 in the Commercial Courts Act, 2015 was to operate prospectively effective from 20.08.2022, so that the stakeholders may be sufficiently informed. It is noticed that the money suit which was transferred to the Commercial Court was originally filed on 18.08.2016 much prior to 20.08.2022. It is also seen that the Division Bench of this Court had transferred the said money suit to the files of the Commercial Court vide order dated 01.11.2021 much prior to 20.08.2022. The Commercial Case Money Suit No.01 of 2021 was first disposed of after registration vide order dated 04.03.2022 much prior to 20.08.2022. The first effective order in the Commercial Case Money Suit No.02 of 2022 passed by the learned Commercial Court mandating compliance of pre-institution mediation is also dated 29.03.2022 much prior to 20.08.2022.

9. Therefore, this Court is of the view that although section 12A of the Commercial Courts Act, 2015 is mandatory in nature, in view of the judgment of the Supreme Court in **M/s Dhanbad Fuels** (supra) it would not apply to the present case.

10. In the circumstances the impugned order dated 08.07.2025 is set aside. The Commercial Suit Case No.01 of 2021 is restored to the files of the learned Commercial Court for its disposal as per law.

11. However, as noted by the learned Commercial Court that the suit filed did not contemplate any urgent interim relief as held in paragraph 63(b) of *M/s Dhanbad Fuels* (supra) it would be open to the learned Commercial Court to keep the suit in abeyance and direct the parties to explore the possibility of mediation in accordance with the Commercial Courts Act, 2015, the Post Institution Mediation Settlement Rules and Standard Operating Procedure, 2020.

12. The petition is disposed of with the above directions.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**
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