



ASSOCIATION OF
MEDIATION
PRACTITIONERS

EXPLORE MEDIATION

12th & 13th July, 2025 | BLVD, Nashik

Reciprocity Impasse Food
Compassion Empathy Cultural Neutrality
Communication
Patience Confidentiality
Ethics Mutuality Flexible
Reframing Rephrasing
Summarization
Efficacious
Hope Care
Rapport
Development
Resonate Together
Reality Testing
Cooperation
Communication
Importance
Genuine
Remarkable
Life Option
Harmony
Safe Space
Innovation
Creativity
Choice
Advantage
Vision
Able
Persistence
Rise
Confidence
Tact National
Share Objectivity
Society Care
Part Expression
Warmth
Apology Benefit Decision Society
Solidarity Interest Care Humility Expression
Improve Possession Dignified
Realization Colourful
Life Efficient
Acknowledgment Validation
Humanity Democratic
Actual Specific Sensitization
Impact
Livelihood Endeavour Responsible
Qualities Contribution Identity Efforts
Quantity Recognize Acceptance

Trust Faith
Self-Determination
Active Listening
Negotiation
Efficient
Challenge
Holistic
Aid
Ethics
Moral
Values
Culture
Prompt
Belief
Protect
Interest
Care

Life
Care
Patience

Generation
Protection
Identity
Successful
Possible

Law
Able
Option
Protect
Risk
Self Care me

Expression
Brainstorming Space
Vision Rise
Honesty Together

Confidence
Participation
Wisdom
Able
Rise Creativity
Birth
Power
Support
Nourish
Right Care
Performance
Prompt Interests
Society Vision
Tolerance
Eager Struggle
Careful
Acquired

From the President's Desk

Namaste!

Welcome, dear fellow-mediators to the 2nd Mediation Conference, organized by Association of Mediation Practitioners (AMP).

The first conference was held in Khandala in 2019, just before the onset of Covid. At the time, we were under the able stewardship of our dear Shri D S Parikh, an eminent Senior Counsel practicing mainly at the Bombay City Civil & Sessions Court and even at the Bombay High Court & Supreme Court of India. He was also my maternal uncle. Though he has moved on to his heavenly abode, he is missed very much by me and all the AMPsters, who also fondly addressed him as Mama. It was under him that AMP has blossomed to what it is today- a leading mediation service provider!

Though Covid took away much from all of us, it gave us the opportunity to re-think many aspects of our lives. Just as mediation is increasingly proving to be an empowering tool for parties caught up in disputes, thanks to Covid, Online Dispute Resolution (ODR) has established itself as one of the best tools-in-aid in strengthening our mediation practice. Those who attended the Khandala Conference will recall that we had a whole separate Session dedicated to the topics relating to ODR. Today, online platforms are widely used by mediators as well as judges.

Without further ado, I once again welcome you all, from the bottom of my heart, to this 2nd Mediation Conference.



Sheela Balsari

PRE INSTITUTION MEDIATION UNDER THE COMMERCIAL COURTS ACT, 2015

- Adv Dr. Santosh A Shah

BACKGROUND :

It is for the first time that the legislature in the year 2018 inserted Chapter III-A in the Commercial Courts Act, 2015 to provide for compulsory mediation before institution of a suit, where no urgent relief is contemplated. Accordingly section 12 A provides for mandatory pre institution mediation in all commercial suits which does not contemplate any urgent interim relief. Thereafter the central government by the Commercial Courts (Pre Institution Mediation and Settlement) Rules, 2018 prescribed the mediation process for the same. The central government notified Legal Services Authority in each District to carry out the said procedure of mediation.

The section 12 A provides for a period of 3 months for completion of the process of mediation extendable by a period of 2 months with the consent of the parties. The section further provides that the period spent in mediation shall not be computed for the period of limitation under the Limitation Act 1963.

The settlement arrived through mediation is given the status of an arbitral award under section 12 A of the Commercial Courts Act read with section 30(4) of the Arbitration and Conciliation Act 1996.

RESULT AND QUESTIONS :

Any such new provisions results in its interpretation by judicial authorities as applicability of such a provision in different facts and scenario is bound to give rise to litigation.

I am limiting this article to 2 aspects of interpretation of section 12 A which are as under:-

1. Whether section 12 A is a directory or mandatory provision ?
2. If it is mandatory does it become mandatory immediately on coming into force of 2018 amendment?
3. Which cases can be termed to be cases contemplating urgent interim relief?

ANALYSIS OF QUESTION 1 AND 2 :

1. Whether section 12 A is a directory or mandatory provision ?

2. If it is mandatory does it become mandatory immediately on coming into force of 2018 amendment?

Different courts gave divergent views on the directory or mandatory nature of the provision. In a judgement rendered by single judge of Bombay High Court in *Ganga Taro Vazirani vs Deepak Raheja* (2021 SCC Online Bom 195) a view was taken that section 12 A is not mandatory. The said judgment came to be reversed by the division Bench of the Bombay High Court reported in 2021 SCC Online Bom 3124 holding that section 12 A being rooted in public interest there is no question of it being waived.

Ultimately, the matter reached the Apex court and the Supreme Court of India has put to rest the said controversy in judgement of *Patil Automation Private Limited and others vs Rakheja Engineers Private Limited* 2022 (10) SCC 1.

In the said judgement the apex court analyzed the provision and the spirit behind the same and held that the section 12 A of Commercial Court Act is a mandatory provision.

However in view of the lack of clarity about the same and different interpretations by High Courts held that the provision be construed to be mandatory from 20/08/2022. Interestingly the Court further held that in cases the jurisdictional high courts held that the provision is mandatory from a particular date the said date shall apply instead of the aforesaid 20/08/2022.

Accordingly, as far as Maharashtra is concerned in view the judgement of the Bombay High Division in *Deepak Raheja* (Supra) the said date is 1/10/2021 and not 20/08/2022. This date has been upheld by Bombay High Court in *Forbes Technosys Limited vs Vinod Devilal Panchal* Writ Petition No. 949/2024 decided on 31/04/2024.

Recently the Supreme Court in *Dhanbad Fuels Pvt Ltd vs Union of India* (2025 SCC Online SC 1129) has added one more aspect to the matter. The Supreme Court has held that in cases instituted prior to 20/08/2022 the matter should be kept in abeyance and the parties be referred to mediation.

ANALYSIS OF QUESTION 3:-

3. Which cases can be termed to be cases contemplating urgent interim relief?

Even in this respect divergent views are taken by high courts. Some High Court have held that the court must examine not only the form of the suit but the substance thereof and be satisfied about the genuineness of the urgent interim relief sought therein. The said cases are,

1. *T.V. Krishna Moorthy and Ors. Vs. Kanakadhara Finance, rep. By its Joint Managing Partner N. Prabakaran*, in C.R.P.No.4244 of 2023 and C.M.P. No.25820 of 2023,

decided on 15.03.2024

2. Ekta Housing Private Limited Vs. Shraddha Shelters Pvt.Ltd. and Others, Interim Application No.920 of 2024 in Commercial Summary Suit No.47 of 2023, decided on 11-11-2024
3. Novenco Building & Industry A/S Vs. Xero Energy Engineering Solutions Private Limited & Anr., reported in 2024 Legal Eagle 501, Commercial Appeal No. 1 of 2024, decided on 13-11-2024.
4. Pranoy Kumar Saha Vs. Rabindra Narayan Das, APD/15/2023 with CS/197/2022 decided on 3rd March, 2025.

However, some High Courts have held that in view of the words “contemplate urgent interim relief” the Commercial Courts at the pre institution stage need not go into the genuineness or otherwise of the prayer for interim relief. The moment the court finds that urgent interim relief is sought, the court is bound to exempt the party from pre institution mediation. This view is taken in the judgement reported in Chandra Kishore Chaurasia Vs R A Perfumery Works Pvt Ltd 2022 SCC Online Del 3529

In this respect the Supreme Court of India in Yamini Manohar Vs T K D Keerthi 2024 (5) SCC 815 has held that it is difficult to agree with the proposition that the plaintiff has the absolute choice and has a right to paralyze section 12 A by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate should be checked when deception and falsity is apparent and established. The court thus held that the commercial courts do have a role albeit a limited one in this behalf. The word “contemplate any urgent interim relief” in section 12 A should be read as conforming power on the court to be satisfied that the suit must contemplate, which means the plaint documents and facts should show and indicate the need for urgent interim relief. The commercial courts should examine the nature and subject matter of the suit, the cause of action and prayer for interim relief. The facts and circumstances have to be considered holistically from the standpoint of the plaintiff. This will be sufficient to keep a check and ensure that the legislative intent behind the enactment section 12 A is not defeated.

Subsequently the said judgment of the Supreme Court is also followed in the latest case of Dhanbad Fuels Pvt Ltd vs Union of India (2025 SCC Online SC 1129)



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