

Supreme Court Clarifies “Urgent Interim Relief” under Section 12A of the Commercial Courts Act

In *Novenco Building and Industry A/S v. Xero Energy Engineering Solutions Pvt. Ltd. & Anr.* (2025 INSC 1256), the Supreme Court examined whether a commercial suit seeking an interim injunction against continued intellectual property infringement could be instituted without initiating pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.

Novenco, a Danish manufacturer of industrial ventilation systems, alleged that its former Indian distributor had begun manufacturing and selling identical and deceptively similar fans under a confusingly similar name and appearance. The plaintiff filed a suit seeking injunction and damages, claiming urgent interim relief due to the ongoing infringement. The High Court, however, dismissed the suit as non-maintainable, holding that no urgency existed since Novenco had waited several months after discovering the infringement before filing the case, had issued a cease-and-desist notice, and therefore had adequate time to initiate mediation.

Reversing this view, the Supreme Court held that in cases of continuing infringement, urgency must be assessed from the perspective of the plaintiff and the nature of the alleged wrong, not



merely by the time elapsed before filing. The Court emphasized that every instance of unauthorised manufacture or sale constitutes a fresh cause of action, and the harm resulting from such ongoing acts can justify exemption from pre-institution mediation.

The Court clarified that while pre-institution mediation under Section 12A is mandatory, the exception for urgent interim relief must be interpreted pragmatically and based on the specific facts of each case. A plaintiff who faces ongoing infringement and apprehends irreparable loss should not be denied immediate judicial recourse merely because of some delay in approaching the court.

This judgment reaffirms that the right to seek urgent protection in IP disputes of a commercial nature depends on the continuing nature of the injury and the public interest in preventing deception. Mere delay in filing a suit, by itself, does not negate urgency.

