

**IN THE HIGH COURT FOR THE STATE OF TELANGANA,
AT HYDERABAD**

CIVIL REVISION PETITION No. 1511 OF 2026

04.06.2026

Between:

M/s Trident Chemphar Limited,
Rep. by its Authorized Signatory
Sunjay Dutta

..... Petitioner

And

Minas De Benga,
A company incorporated in Mozambique
& another

..... Respondents

Date of Order pronounced on : 04.06.2026

**HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA
AND
HON'BLE SRI JUSTICE VAKITI RAMAKRISHNA REDDY**

1. Whether Reporters of Local newspapers : No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked: Yes
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy : No
Of the Judgment?

NAGESH BHEEMAPAKA, J

VAKITI RAMAKRISHNA REDDY, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

**HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA
AND
HON'BLE SRI JUSTICE VAKITI RAMAKRISHNA REDDY**

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> HEAD NOTE:

! Counsel for the petitioner : Sri Vivek Reddy,
Learned Senior Counsel
Assisted by Sri Dheeraj Appasani

^ Counsel for the Respondents : ---

? (2024) 4 SCC 1

**IN THE HIGH COURT OF JUDICATURE FOR THE STATE OF
TELANGANA
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA
AND
HON'BLE SRI JUSTICE VAKITI RAMAKRISHNA REDDY
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ORDER: *(per Hon'ble Sri Justice Nagesh Bheemapaka)*

This Revision is directed against the order dated 21.05.2026 on the file of the Vacation Court i.e. Special Court for the Trial and Disposal of Commercial Disputes at Ranga Reddy District at L.B. Nagar in I.A. No. 291 of 2026 in C.O.S. SR No. 312 of 2026, whereby and whereunder, petitioner was declined exemption under Section 12A of the Commercial Courts Act, 2015; it was concluded that averments in the Petition did not disclose genuine urgency so as to grant

exemption under Section 12A, and consequently returned the
Plaint to Petitioner for compliance with the said provision.

2. The case of petitioner is that it is engaged in business operations in India and is, admittedly, an entity incorporated in India. It was not a party to and did not execute the Coal Mining Operation Services Contract dated 28.11.2017 entered into between Respondent No. 1, described as the Owner or Project Company, and Respondent No. 2, Black Gold Resources Private Limited, described as the Contractor, both being entities registered and operating in the jurisdiction of Mozambique. Petitioner did not subscribe to the arbitration clause contained in the said Contract and has no contractual nexus with either Respondent.

2.1. It is stated, the Vacation Court Judge erred in returning the Plaint on the ground of absence of territorial jurisdiction, inasmuch as the Plaint categorically and specifically avers that Petitioner's registered office is situated in Hyderabad; notices in respect of ICC International Court of Arbitration proceedings being ICC Case No. 29485/ICA8 were received by Petitioner at its said registered office in Hyderabad;

the Request for Joinder filed by Respondent No. 1 itself identifies Petitioner's registered office address at Sy. Nos. 66 & 67, Serilingampally (Mandal), Miyapur, Hyderabad, Telangana - 500050, India. It is the contention of Petitioner that the Vacation Court Judge, at the threshold, ought to have proceeded on the footing that the averments in the plaint are true and correct, and ought not to have pre-judged issues going to the root of jurisdiction. It is well-settled in law that a defendant is entitled to raise pleas of lack of jurisdiction or absence of cause of action only after entering an appearance, and it is not open to a court to return a plaint on such technical objections raised by its own registry at the stage prior to registration of the suit.

2.2. Petitioner contends that in considering a suit for an anti-arbitration injunction, a court having personal jurisdiction over the plaintiff is competent to entertain such a suit. Petitioner is a company having its registered office in Hyderabad, and accordingly, courts in Hyderabad possess personal jurisdiction over them. The impugned order, in returning the Plaint on the ground of territorial jurisdiction without taking into consideration this settled principle, is

unsustainable in law. The question of territorial jurisdiction must also be examined from the standpoint of where the eventual enforcement proceedings arising out of a potential adverse award would lie. Since Petitioner is registered in Hyderabad and has substantial assets within the jurisdiction of the Courts in Hyderabad, it necessarily follows that any enforcement proceedings arising from an adverse award passed against Petitioner would lie before the Courts at Hyderabad. This factor, viewed in conjunction with the personal jurisdiction of the Courts at Hyderabad over the Petitioner, firmly establishes the territorial competence of the Commercial Court at Ranga Reddy to entertain the suit.

2.3. It is stated, a cause of action is not a singular event but a bundle of facts, taken cumulatively, that gives a plaintiff the right to approach a Court for judicial relief. This bundle necessarily includes exchange of correspondence between the parties. In the present case, the request for Joinder filed by Respondent No. 1 in the ICC arbitration proceedings, together with all subsequent ICC correspondence, was received by Petitioner at its registered office in Hyderabad. A part of the cause of action has therefore, arisen within the territorial

jurisdiction of the Commercial Court at Ranga Reddy, Hyderabad. By virtue of Section 20(c) of the Code of Civil Procedure, 1908, the said Court is consequently vested with the requisite territorial jurisdiction to entertain the suit, and the order of the Vacation Court Judge returning the Plaint based on objections relating to territorial jurisdiction is accordingly, unsustainable in law.

2.4. The Arbitral Tribunal constituted in ICC Case No. 29485/ICA8 had passed a Majority Award on 12.05.2026 directing impleadment of Petitioner as an additional party to the said arbitral proceedings. The said Majority Award was delivered to Petitioner at its registered office in Hyderabad. Consequent upon the passing of the Majority Award, Petitioner was impleaded as a party to the ICC arbitration and the ICC Secretariat has demanded them payment of arbitration fees. These recent and concrete developments, which were delivered and communicated to Petitioner at Hyderabad constitute additional facets of the cause of action arising within the jurisdiction of the courts at Hyderabad.

2.5. It is the further case of Petitioner that it is neither a signatory nor a party to the arbitration clause forming part of

the Coal Mining Operation Services Contract dated 28.11.2017. The said arbitration clause is, on its face, a bilateral agreement executed exclusively between Respondent No.1 and Respondent No. 2. A plain and unambiguous reading of the dispute resolution clause containing the arbitration clause discloses no basis whatsoever for treating Petitioner as a party to the said clause, and any attempt to bind petitioner to the said arbitration clause would necessarily involve rewriting the terms of the agreement, which is impermissible in law.

2.6. The Majority Award dated 12.05.2026 itself records and acknowledges that there is insufficient evidence before the Arbitral Tribunal to conclude that Petitioner actually performed the subject Contract. In these circumstances, the Application of the Group of Companies doctrine to hold Petitioner to be a proper and necessary party to the arbitration agreement does not appear to be *prima facie* correct. The Group of Companies doctrine, as comprehensively expounded and circumscribed by the Hon'ble Supreme Court, proceeds on the foundation of an intention to bind a non-signatory and proof of active involvement in the performance of the contract; neither

condition is satisfied in the present case on the material available.

2.7. Furthermore, Petitioner was, at no stage, invited or required to participate in the various mandatory pre-arbitral steps contemplated under the dispute resolution mechanism of the subject Contract as between Respondents 1 and 2. The complete non-involvement of Petitioner in pre-arbitration process itself is a strong indicator that neither of the contracting parties ever intended or treated Petitioner as a party to the Contract or the arbitration agreement. A detailed and reasoned Dissenting Opinion has been rendered by one of the arbitrators in ICC Case No. 29485/ICA8. The Dissenting Opinion records, *inter alia*, that there is no evidence of Petitioner's performance of the subject Contract; termination notice was not addressed to Petitioner and Petitioner was not given notice to participate in the mandatory pre-arbitration stages. Existence of such a considered Dissent on the part of a member of the Arbitral Tribunal itself serves to fortify and reinforce the prima facie view that the impleadment of petitioner in the ICC arbitration is unsustainable.

2.8. It is further stated, petitioner did not submit to the jurisdiction of the ICC International Court of Arbitration and expressly contested the Request for Joinder filed by Respondent No. 1, while making it abundantly clear that such participation, if any, was without prejudice to its rights and contentions. Participation under protest cannot, in law, be treated as acquiescence in jurisdiction or as consent to arbitrate, and the Petitioner's right to challenge the jurisdiction of the ICC Tribunal before the civil court is entirely preserved. It is the specific case of petitioner that the suit filed by them contemplates urgent interim relief in the form of a restraint on the continuation of ICC proceedings against it, and is therefore, squarely exempted from the mandatory pre-institution mediation requirement under the proviso to Section 12A of the Act. Impleadment of Petitioner in the arbitral proceedings by the Majority Award dated 12.05.2026, notwithstanding that it is neither a signatory to the subject Contract nor to the arbitration agreement contained therein, coupled with the consequential demand of arbitration fees by the ICC Secretariat, taken together, constitute circumstances of genuine and pressing

urgency sufficient to satisfy the exemption criteria under the proviso to Section 12A.

2.9. Given the fact that petitioner is not a party to the subject Contract, it cannot be compelled to engage in mediation with the Respondents under Section 12A; there is no contractual relationship between Petitioner and Respondents that could form the basis of any mediation. Moreover, the number of submissions already made by all the parties before the ICC Tribunal, as referred to in the Majority Award itself, renders any pre-suit mediation a wholly futile exercise that would serve no practical purpose. Petitioner also seeks urgent ad interim protection in I.A. No. 3 of 2026, seeking a restraint on the continuation of ICC Case No. 29485/ICA8 insofar as it pertains to Petitioner. Pending disposal of the present Revision, Petitioner urges that Respondents 1 and 2 be restrained from taking any further steps in prosecuting or continuing any proceedings against the Petitioner in ICC Case No. 29485/ICA8.

3. Petitioner placed reliance upon the order dated 21.02.2019 in C.R.P.No. 3690 of 2018 of the Division Bench of this Court.

4. Heard Sri Vivek Reddy, learned Senior Counsel assisted by Sri Dheeraj Appasani, learned counsel for petitioner.

5. At the outset, it is necessary to set out with precision the nature and scope of the challenge before this Court. The Civil Revision Petition is directed against the order of the Vacation Court Judge dismissing I.A. No. 291 of 2026 and consequently returning the Plaint filed by Petitioner and refusing to grant exemption, on the principal ground that the mandatory pre-institution mediation requirement under Section 12A of the Commercial Courts Act, 2015 had not been complied with and the facts of the case did not disclose genuine urgency so as to attract the exemption under the proviso to that provision.

6. The two principal issues therefore fall for consideration are: i), whether the Vacation Court Judge was correct in finding the absence of genuine urgency and in dismissing I.A. No. 291 of 2026 in COS. SR. No. 312 of 2026 for non-compliance with Section 12A; and ii) whether the Vacation Court Judge erred in returning the Plaint on the ground of territorial jurisdiction.

7. Before proceeding to examine these issues on their merits, it is necessary to briefly advert to the factual canvas against which the present Revision arises. The Coal Mining Operation Services Contract dated 28.11.2017 was executed between Respondent No. 1 and Respondent No. 2, both being entities registered and operating in Mozambique. The said Contract contains a dispute resolution clause providing for international arbitration under the ICC Rules with the seat at Maputo, Mozambique. It is common ground that Petitioner is not a signatory to the said Contract and is not named as a party to the arbitration agreement contained therein. Disputes having arisen between the contracting parties, ICC arbitration proceedings being ICC Case No. 29485/ICA8 were commenced. Respondent No. 1 filed a Request for Joinder before the ICC Tribunal seeking to implead Petitioner as an additional party. Petitioner contested the Request for Joinder expressly and without prejudice to its rights and contentions. By a Majority Award dated 12.05.2026, the Arbitral Tribunal directed impleadment of Petitioner as an additional party. A Dissenting Opinion was also rendered, recording that there is no evidence of Petitioner's performance of the Contract; termination notice

was not addressed to Petitioner and that Petitioner was not given notice to participate in the mandatory pre-arbitration stages. The Majority Award and subsequent ICC correspondence, including the demand of arbitration fees by the ICC Secretariat, were delivered to Petitioner at its registered office in Hyderabad. It was in these circumstances, petitioner filed C.O.S. SR No. 312 of 2026 before the Commercial Court at Ranga Reddy along with I.A. No. 291 of 2026 seeking, *inter alia*, a declaration that no arbitration agreement exists between it and Respondents, a declaration that it cannot be compelled to participate in ICC Case No. 29485/ICA8, an injunction restraining the continuation of the arbitral proceedings against it, and urgent interim protection.

8. Coming to the first and pivotal issue, whether the Vacation Court Judge was correct in finding that the suit was not exempted from the pre-institution mediation requirement under Section 12A, it is necessary to examine the scope and purpose of the said provision. Section 12A imposes a mandatory condition precedent upon every party to a commercial dispute, requiring that party to exhaust the remedy of pre-institution mediation before the authorities constituted

under the Legal Services Authorities Act, 1987 before instituting a suit. The Legislature, in its wisdom, incorporated this provision with the express and salutary object of relieving the dockets of commercial courts from disputes that are capable of resolution through the facilitative process of mediation at the pre-litigation stage. The provision represents a conscious policy choice by the legislature that parties to a commercial dispute must first make a genuine attempt to resolve their differences through mediation before resorting to litigation. Courts have consistently and emphatically held that requirement under Section 12A is mandatory in character and is not a mere formality that may be dispensed with at the convenience of a party.

9. The proviso to Section 12A carves out a limited and carefully circumscribed exception, permitting a party to institute a suit without prior recourse to mediation where the suit contemplates urgent interim relief. This exception must, of necessity, be construed narrowly and strictly, for a broad construction of the exception would swallow the rule and render the mandate of Section 12A nugatory. The word "urgent" in the context of the proviso to Section 12A does not mean merely that

the plaintiff subjectively believes that speedy relief is required, or that the situation has become urgent because plaintiff has delayed taking action. The urgency contemplated by the proviso must be of an objective character, it must be urgency arising from circumstances that are sudden, unpredictable, and such that the time required for pre-institution mediation would itself result in irreversible prejudice to the plaintiff. It is well-settled that self-created urgency, or urgency arising from inaction on the part of plaintiff despite having knowledge of an impending threat, does not qualify as urgency within the meaning of the proviso. To hold otherwise would be to permit every plaintiff to circumvent Section 12A by the simple device of allowing a situation to develop to a point of urgency and then claiming exemption on that basis.

10. Examined against this settled position of law, the claim of urgency advanced by Petitioner in the present case calls for careful scrutiny. Petitioner had, admittedly, received notices in respect of the ICC arbitration proceedings and the Request for Joinder at its registered office in Hyderabad well before the Majority Award was passed on 12.05.2026. Indeed, Petitioner's own pleadings disclose that it had contested the Request for

Joinder before the ICC Tribunal. This means, Petitioner was fully and consciously aware of the proceedings being conducted against it, of the risk of being impleaded as an additional party to the ICC arbitration, and of the consequent threat to its interests, for a considerable period of time prior to passing of the Majority Award. Petitioner thus had ample time and opportunity to take stock of the situation, to seek legal advice, and to approach the mediation authority under the Legal Services Authorities Act, 1987 for pre-institution mediation before filing the suit. It chose not to do so. Having kept quiet while the proceedings progressed and the Majority Award was passed, petitioner cannot now be heard to say that the situation is one of urgency that makes compliance with Section 12A impossible or impractical.

11. The Majority Award dated 12.05.2026 and the consequential demand of arbitration fees by the ICC Secretariat, while, no doubt, inconvenient and even potentially-prejudicial to Petitioner, were not sudden, unforeseen, or unpredictable events. They were, on the contrary, culmination of a process that had been unfolding over a period of time and in which Petitioner was actively participating, *albeit* under protest.

Petitioner could have anticipated this outcome and taken preventive legal action well in advance of passing of the Award. The urgency, if any, is thus of Petitioner's own making, arising from its decision to wait until the Majority Award was passed before approaching the civil court. Self-created urgency, as already noticed, does not satisfy the requirement of the proviso to Section 12A. To permit Petitioner to bypass the salutary mandate of Section 12A on the basis of such urgency would set a dangerous precedent and effectively, permit any party to an arbitration to avoid the requirement of pre-institution mediation by the simple expedient of waiting until an adverse procedural order is passed before rushing to court.

12. This Court is therefore, unable to receive Petitioner's challenge to the conclusion of the Vacation Court Judge on the question of urgency. The Vacation Court Judge, having examined the facts and circumstances disclosed in the plaint, correctly concluded that no genuine urgency of the kind contemplated by the proviso to Section 12A was established. The impugned order, on this aspect, is in conformity with the law and does not suffer from any legal infirmity that would

warrant interference by this Court in exercise of its revisional jurisdiction. The requirement of pre-institution mediation under Section 12A is a substantive statutory obligation and not a mere technicality, and this Court would not be justified in setting aside a correct order returning a plaint for non-compliance with this obligation on the basis of a claim of urgency that does not withstand scrutiny. The order dated 21.02.2019 in C.R.P.No. 3690 of 2018 relied on by petitioner is not of help in the facts and circumstances of the case.

13. Dealing with the question of territorial jurisdiction, this Court notes that there is force in Petitioner's contention that the Vacation Court Judge ought not to have, at the threshold stage of consideration of the plaint, pre-judged the issue of territorial jurisdiction. It is settled law, as has been consistently held by the Hon'ble Supreme Court and various High Courts, that a court at the stage of considering whether to register or return a plaint must proceed on the basis that the averments in the plaint are true and correct. The objections of the registry going to jurisdiction ought not to have been treated as conclusive at that stage, without affording Petitioner opportunity to establish jurisdiction upon the pleadings. A

defendant is entitled to raise a plea of lack of territorial jurisdiction after entering an appearance, and the court is entitled to decide that question on the merits at the appropriate stage. It was not open to the Vacation Court Judge to return the plaint on this ground at the threshold.

14. However, and this is the critical point, even if this Court were to hold, as it is inclined to, the Vacation Court Judge erred in returning the plaint on the ground of territorial jurisdiction, such a finding would not, by itself, entitle Petitioner to any relief in the present Revision. The reason is straightforward. Non-compliance with Section 12A of the Commercial Courts Act, 2015 is an independent and self-sufficient ground for returning the plaint, and this Court has already held that the Vacation Court Judge was correct on this aspect. Territorial jurisdiction and compliance with Section 12A are two distinct and separate prerequisites for institution of a suit before a Commercial Court. Satisfaction of one does not excuse non-satisfaction of the other. The plaint is liable to be returned for non-compliance with Section 12A regardless of whether territorial jurisdiction exists, and the error committed by the Vacation Court Judge in also returning the plaint on the

ground of territorial jurisdiction does not come to petitioner's aid when the plaint must in any event be returned for non-compliance with the mandatory statutory pre-condition under Section 12A.

15. On the substantive question, whether Petitioner, as a non-signatory to the Contract dated 28.11.2017, can be impleaded in ICC Case No. 29485/ICA8, and whether the application of the Group of Companies doctrine in the circumstances of this case is justifiable, this Court notes that the said question is of considerable legal intricacy and importance. The decision of the Hon'ble Supreme Court in **Cox & Kings Ltd. v. SAP India Pvt. Ltd.**¹ has comprehensively mapped the boundaries of the Group of Companies doctrine in Indian arbitration law. The Majority Award dated 12.05.2026 itself records that there is insufficient evidence before the Tribunal to conclude that Petitioner actually performed the subject Contract. The Dissenting Opinion further records the absence of any evidence of performance, non-service of termination notice on Petitioner, and the absence of any notice to Petitioner to participate in the mandatory pre-arbitration

¹ (2024) 4 SCC 1

stages. These are weighty considerations that deserve full and careful examination by the competent Commercial Court upon proper institution of the suit in accordance with law, after compliance with the prerequisite of pre-institution mediation. This Court, at the revisional stage, refrains from expressing any final opinion on the merits of these questions, so that the adjudication of these important issues is not pre-empted or prejudiced.

16. This Court also takes note of Petitioner's contention regarding the conduct of the ICC Secretariat in making the Petitioner an additional party without reference to the ICC Court, and the various correspondences issued in this regard. These are matters that Petitioner is at liberty to raise and agitate before the Commercial Court at such time as the suit is properly instituted after due compliance with the provisions of Section 12A. This Court does not deem it necessary or appropriate to express any view on these aspects at the present stage.

17. It requires to be clarified that dismissal of the present Revision is not a pronouncement on the merits of the Petitioner's substantive case. The question whether Petitioner

can be compelled to participate in ICC Case No. 29485/ICA8 as a non-signatory to the arbitration agreement, whether the Group of Companies doctrine is correctly applied in the present case, and all other questions of law and fact arising in the suit, remain entirely open and unaffected by the present order. Petitioner is not foreclosed from seeking appropriate relief before the Commercial Court after duly complying with the mandate of Section 12A of the Commercial Courts Act, 2015.

18. Insofar as the *ad interim* protection sought by Petitioner in I.A. No. 3 of 2026 is concerned, since the Plaint itself is liable to be returned for non-compliance with Section 12A and since this Court has found no merit in the challenge to the impugned order, the prayer for grant of the said relief does not survive for consideration and is accordingly, rejected. It is, however, clarified that arbitral proceedings in ICC Case No. 29485/ICA8, between Respondent No. 1 and Respondent No. 2, may continue unhindered as between themselves, with the participation of Petitioner, until such time as the matter is properly adjudicated upon by a competent court in accordance with law.

19. For the foregoing reasons, this Court finds no merit in this Revision and the same is accordingly, dismissed. It is clarified that Petitioner shall be at liberty to approach the appropriate authority for pre-institution mediation in accordance with Section 12A of the Commercial Courts Act, 2015, and upon exhaustion of that remedy or upon obtaining an exemption therefrom in accordance with law, shall be entitled to institute appropriate proceedings before the competent Commercial Court, agitating therein all contentions that are available to it in law, including all contentions touching upon its impleadment in ICC Case No. 29485/ICA8 and the applicability of the Group of Companies doctrine.

19.1. All questions of law and fact arising in the suit, including the question of territorial jurisdiction, the question of maintainability of the anti-arbitration injunction suit, the question of Petitioner's status as a non-signatory, and all other questions, are left entirely open and uninfluenced by any observation or finding in the present order, except the finding on the non-fulfilment of pre-condition under Section 12A. No costs.

20. Consequently, the miscellaneous Applications, if any shall stand closed.

NAGESH BHEEMAPAKA, J

VAKITI RAMAKRISHNA REDDY, J

04th June 2026

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