

In the High Court at Calcutta
Commercial Division
Original Side

Judgment (2)

PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY

IA No. GA-COM/5/2025
In CS-COM/669/2024

M/S. S. G. KAREL AND SONS
JEWELLERS PRIVATE LIMITED
VS
M/S MADAN LAL AGARWALLA
JEWELLERS AND OTHERS

For the plaintiffs : **Mr. Indranil Nandi, Adv.**
Mr. Gunjan Shah, Adv.
Mr. Sayak Konar, Adv.
Ms. Shreya Agarwal, Adv.

For the defendants : **Mr. Chayan Gupta, Adv.**
Mr. Pranay Mukherjee, Adv.
Mr. Pourush Bandopadhyay, Adv.

Heard on : **April 1, 2026**

Judgment on : **April 1, 2026**
[In Court]

ANIRUDDHA ROY, J :

FACTS:

1. This is an application filed by the defendants claiming summary judgment under **Order XIII-A** of the amended **CPC**, in view of promulgation of the **Commercial Courts Act**,

2015. The ground for summary judgment is that the **plaintiff has no real prospect of succeeding on the claim.**

2. This is a commercial suit filed by the plaintiff on account of price of goods allegedly sold and delivered. Plaintiff is the seller of the goods. The defendant No. 1 being the partnership firm with its partners, namely, defendant Nos. 2 and 3 are the buyers of the goods, as pleaded in the plaint.
3. Pursuant to an order dated **February 18, 2025** passed by a Coordinate Bench, the defendant No. 4, originally impleaded in the plaint, has been deleted from the array of the defendants and the plaint has been amended consequently.
4. The relevant paragraphs from the plaint are quoted below:-

“6. The as per orders placed by the defendants, the plaintiff supplied the defendants different products of the agreed types and varieties from time to time under different invoices, which were duly accepted by the defendants without demur and/or objection whatsoever and the defendants have therefore, admitted and acknowledged their liability towards the plaintiff in respect thereof, which was discharged in part by payments made by the defendants from time to time to the plaintiff, thus gaining further trust of the plaintiff.

7. The plaintiff believing upon such representations and believing the same to be true and correct dealt with the defendant No.2 in the course of selling and delivering the said goods as stated hereinafter. It is important to note here that such

discussions took place in the registered office of the plaintiff.

8. *The offer made by the defendant No.2 to procure the said goods from the plaintiff was accepted by the plaintiff at its registered office within the jurisdiction of this learned Court. The plaintiff has its place of business at 12, Adi Banstolla Lane, 1st Floor, Police Station – Posta, Kolkata 700007. On the orders being placed by the defendants on the plaintiff from the defendants' office also outside the jurisdiction of this learned Court, the plaintiff accepted the offer made by the defendants for the business of causing the said goods at its registered office within the jurisdiction as aforementioned.*

9. *The said goods were received by the defendants from the plaintiff's place of business at 12, Adi Banstolla Lane, 1st Floor, Police Station – Posta, Kolkata 700007, within the jurisdiction as aforementioned.*

11. *That accordingly, the plaintiff with honest intention and clean frame of mind, supplied the defendants' goods on credit. The defendants promised the plaintiff that they would be making payment of the same shortly.*

12. *Thus, in the usual course of business on and from February-March, 2021, the defendants have offered to buy the said goods from the plaintiff and the plaintiff accepted such offer to sell the said goods lying at the plaintiff's place of business at 12, Adi Banstolla Lane, 1st Floor,*

Police Station – Posta, Kolkata 700007. The said offer was received by the plaintiff at its registered office within the jurisdiction as mentioned above.

- 13. Pursuant to and in terms of the representations, and assurances, made by the defendants, the plaintiff had duly supplied the said goods to the defendant from its office.*
- 14. After accepting the delivery of the said goods, the defendants jointly and severally, utilized the same for the purposes for which the said goods were procured from the plaintiff.*
- 15. The plaintiff duly in pursuance of the delivery of the said goods in favour of the defendants, raised Eleven (11 Nos.) Delivery Challans in favour of the defendants in lieu of the price of the said goods sold, delivered and appropriated by the defendants. The said Delivery Challans were all duly issued from the registered office of the plaintiff and thus the defendants are under a contractual obligation to make payment of the amounts as indicated in the Delivery Challans as per the agreed terms. Copy of the said Eleven (11 Nos.) Delivery Challans are annexed hereto and collectively marked with the Letter –“A”.*
- 16. That at present, a sum of Rs.6,51,28,139.99p (Rupees Six Crore Fifty one lacs Twenty Eight thousand one hundred thirty nine and paise ninety nine) only, is due and payable by the defendants, according to the usual books of account maintained by the plaintiff. Copies of the Ledger for the period April 01, 2020 to February 26, 2024 (3 Pages) are annexed hereto and collectively marked with the Letter-“B”.*

17. That even though the plaintiff had supplied the said goods to the defendants, the defendants have failed to make payments against the said Delivery Challans as raised by the plaintiff as was agreed for which the plaintiff continuously followed up with the defendants. Unfortunately, the defendants failed to make payments as per the commercial agreement entered into by and between the parties herein thereby causing breaches of the said agreement.

21. That the plaintiff is, therefore, entitled to receive from the defendants and the defendants are bound, liable and obliged to remit/pay to the plaintiff, a sum of Rs.6,51,28,139.99p. (Rupees Six Crore Fifty one lacs Twenty Eight thousand one hundred thirty nine and paise ninety nine) only, together with all further interests that will accrue thereon. The defendants' negligence and failure to make such payment has inflicted severe financial losses upon the plaintiff.

27. The defendants despite duly and unequivocally acknowledging and admitting the claim of the plaintiff, has intentionally failed and/or neglected to make payment of the amount. Money is due and outstanding from the defendants to the plaintiff on account of goods sold and delivered by the plaintiff to the defendants.

28. After the aforesaid facts and circumstances, a sum of Rs.6,51,28,139.99p. (Rupees Six Crore Fifty one lacs Twenty Eight thousand one

hundred thirty nine and paise ninety nine) only is due and outstanding, from the defendants to the plaintiff on account of goods sold and delivered by the plaintiff to the defendants.”

5. The reliefs from the plaint are also quoted below:-

- “a) A decree for Rs.6,51,28,139.99p. (Rupees Six Crore Fifty one lacs Twenty Eight thousand one hundred thirty nine and paise ninety nine) only, as pleaded in paragraph 29 hereof against the defendants;*
- b) Interest, interest pendent lite and interest upon judgment at the rate of 24% per annum until realization;*
- c) Injunction;*
- d) Attachment/Attachment before judgment;*
- e) Judgment upon admission;*
- f) Costs;*
- g) Such further and/or other reliefs.”*

SUBMISSIONS:

6. Referring to the provisions laid down under **sub-Rule 3 to Order XIII-A of CPC** as amended, Mr. Pourush Bandopadhyay, learned Advocate appearing for the defendants submits that the **plaintiff has no real prospect of succeeding on the claim**, hence the application has been filed.
7. Learned Advocate for the defendants further submits that the goods were never supplied by the plaintiff to the defendants. Inasmuch as, eleven numbers of tax invoices raised by the

plaintiff, at **pages 23 to 33** of the plaint, would clearly show that the articles which were sought to be sold by the plaintiff are leviable with GST and allied taxes.

8. Referring to **Section 24** of the **Sale of Goods Act, 1930**, learned Advocate for the defendants submits that there has been no approval or acceptance given by the defendants/buyers to the plaintiff/seller neither the defendants/buyers have admitted the transaction towards the plaintiff/seller. Thus, goods alleged to have been sold by the plaintiff to the defendants have not taken place, *prima facie*, though alleged in the plaint otherwise.
9. Mr. Pourush Bandopadhyay, learned Advocate appearing for the defendants then refers to the provisions laid down under **Section 142 (12)** and the third proviso thereunder from the **Central Goods and Services Tax Act, 2017 (CGST Act)** and submits that several time-bound procedures were required to be carried out by the seller/plaintiff when the articles alleged to have been on transit to supply the same to the buyers/defendants. Neither the plaint discloses nor it is the case of the plaintiff that all such statutory requirements have been fulfilled and only thereupon the articles have been sold to the defendants. He submits that this gives presumption in law that the goods were never supplied by the seller/plaintiff to the buyers/defendants.

10. Mr. Bandopadhyay then refers to **Rule 120** of the relevant Rules under the **2017 Act** and submits had the seller/plaintiff sent articles on approval under the existing law within the meaning of Section **142(12) of 2017 Act** read with **Rule 117** which is time-bound compliance or even if it is extended, the necessary details should have been furnished by the plaintiff. The plaint does not disclose such details neither the plaintiff has made out any such case in the plaint. In absence of such statutory requirement being fulfilled, the presumption should be that the plaintiff has not sold the articles, as claimed in the plaint, to the defendants.
11. Mr. Bandopadhyay then refers to **page 118** from his application and submits that through an email dated **July 27, 2021**, the plaintiff has issued a balance confirmation of accounts for the period April 1, 2020 to March 31, 2021 for a sum of Rs.1,27,434/- and the last invoice was dated **March 20, 2021**. Therefore, this balance confirmation shows that there is nothing due and payable by the defendants to the plaintiff, even if the articles have been sold.
12. He further submits that none of these tax invoices at **pages 23 to 33** of the plaint have been countersigned by or on behalf of the defendants.
13. In addition to the above, referring to the affidavit in opposition filed by the plaintiff, Mr. Bandopadhyay submits that there is

no specific denial by the plaintiff to the case made out in this application.

14. In the light of the above submissions, Mr. Bandopadhyay submits that cumulative assessment of all these facts would clearly establish, without any dispute or defence on the part of the plaintiff, that the plaintiff has no real prospect of succeeding on the claim in the plaint.
15. Mr. Indranil Nandi, learned Advocate appears for the plaintiff. He has denied and disputed the submissions made on behalf of the defendants. He submits that there is evidence galore to show that the articles, as mentioned in the plaint, have been sold and supplied by the plaintiff to the defendants and the defendants have consumed the same without paying the price of it. Hence, this suit.
16. Inasmuch as, Mr. Indranil Nandi, learned Advocate further submits that all the facts stated by the defendants, which according to the defendants, would give rise to statutory presumption for not supplying of articles by the plaintiff are required to be specifically proved at the end of the defendants and they are all triable in nature. Therefore, this application for summary judgment is not maintainable.
17. He has referred to the written statement filed by the defendants and submitted that the defendants have disclosed documents galore which would show that none of these documents would bear any signature on behalf of the

defendants showing receiving the articles supplied by the plaintiff. However, on an overall assessment of the case and counter case made out by the plaintiff and defendants in their respective pleadings filed, in course of the trial, would show that the plaintiff has supplied the articles to the defendants and the defendants have consumed it. Some time the defendants have accepted the articles on credit and credit was granted by the plaintiff. These are all questions to be gone into during the trial.

DECISION:

18. After considering rival contentions of the parties and on perusal of the materials on record, it appears that the defendants have already filed their written statement. However, under **Order XIII-A of CPC**, as amended, it is not a bar to pray for a summary judgment, even if the defendant has filed its written statement.
19. To adjudicate upon the instant application filed under **Order XIII-A of CPC**, as amended, on the ground that **the plaintiff has no real prospect of succeeding on the claim**, primarily, the plaint filed by the plaintiff has to be read, taking the statements made therein to be true, correct and sacrosanct. What can be the defence or probable defence of the defendants cannot and should not be of relevant consideration. The statements made in the plaint, as quoted above, would show that plaintiff has sold and

supplied articles to the defendants mentioned in the plaint and the defendants have received and accepted the materials, without any contemporaneous complaint or demur but failed and neglected to pay the price of it.

20. The defendants, since have also filed written statement, the general rule of law is that, at this stage, if the defendants are sent for trial, the trial will depend upon the witness action of the respective parties on the triable issues.
21. In the event, Court finds that there is no triable issue, there will be no impediment on the Court to pass a summary judgment.
22. The submissions made on behalf of the defendants that the statutory time-bound compliance has not been made by the plaintiff or that the plaintiff has failed to comply with the provisions under the GST Act or the relevant Rules framed thereunder, are required to be examined on the basis of the existing facts in the light of the statements made in the plaint. Once factual enquiry is required to be made on the basis of the case and counter case made by the parties to a suit, it inevitably gives rise to triable issues for which a properly constituted trial is required.
23. The statements made in the instant application filed by the defendants have to be examined in the light of the statements made in the plaint primarily. On such examination of the averments made in the instant application and the plaint filed

by the plaintiff, this Court is of the firm and considered view that without causing an effective fact finding enquiry through a trial, the suit filed in its present form cannot be adjudicated, even to ascertain whether the plaintiff has no real prospect of succeeding on the claim made in the plaint.

24. The procedure for summary judgment has been introduced for a speedy trial so that if the grounds for summary judgment mentioned under **Rule 3 to Order XIII-A** are satisfied, the defendants shall not wait for the trial which is otherwise may be a time consuming process.
25. When a plaint is instituted, the plaintiff has a vested right to have his claim adjudicated in the established procedure of law by granting the plaintiff fullest opportunity, in accordance with law. Once the plaint case, as pleaded in the plaint, is found to be triable, the trial is inevitable, unless the Court is satisfied that the plaint case is such which is otherwise barred by law. Therefore, right to go for trial in an appropriate case is a vested right of the plaintiff which cannot be taken away under the procedure of summary judgment without holding the trial of the suit. If the grounds taken by the defendant, as in the instant case, claiming a summary judgment against the plaintiff does not satisfy the tests laid down under **Rule 3 to Order XIII-A of CPC**, as amended, it shall not be a fit case for summary judgment and the application for summary judgment should be dismissed.

26. In the light of the above finding, this Court is of the considered view that the tests laid down under **Rule 3 to Order XIII-A** have not been satisfied and therefore, there shall not be any summary judgment.
27. In view of the foregoing reasons and discussions, the instant application **fails**.
28. Accordingly, **IA No. GA-COM/5/2025** stands **dismissed**, without any order as to costs.

(ANIRUDDHA ROY, J.)

Sbghosh