OD – 2

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

In CS/37/2019
IA NO. GA/3/2026

ABP PRIVATE LIMITED
Vs
A. H. WHEELER AND COMPANY PRIVATE LIMITED

BEFORE:
THE HON'BLE JUSTICE SUGATO MAJUMDAR
Date: 22nd September, 2026

Appearance:
Mr. Soumabho Ghose, Adv.
Mr. Soumitra Datta, Adv.
Ms. Tiana Bhattacharya, Adv.
..for the Plaintiff

Ms. Sonal Shah, Adv.
Mr. Kushagra Shah, Adv.
Mr. Sourish Roy, Adv.
. ....for the Defendant

The Court: The instant suit was filed praying for a decree of Rs.70,27,030.94/-, interim interest along other prayers.

Sum and substance of the suit was that Plaintiff is engaged in the business of printing and publishing newspapers and magazine. The Plaintiff and the Defendant entered into a contract for the purpose of supply and sale of newspapers and other publications published by the Plaintiff. Though there was an initial agreement in writing between the Plaintiff and the Defendant for sale and supply of these publications yet on last several years, in usual course of business, the Defendant used to place indents to the Plaintiff at their office within jurisdiction of this Court.

Since the month of May 2015, there was unreasonable delay in making payments in course of business. There was a huge outstanding amount Rs.56,54,051.86/-. The Plaintiff instituted the suit for recovery of the said principal amount along with interest at a rate of 18% per annum calculated from the due dates.

After service of summon, the Defendant entered into appearance on 31/07/2019 but did not file any written statement. Therefore, the suit was marked as undefended. The Plaintiff adduced documentary as well as oral evidence. Thereafter, the suit came for argument. This Court after hearing argument reserved the suit for judgment but subsequently thought some clarification was needed as to whether the suit is commercial or not.

In the meantime, the Defendant filed an application being GA 3 of 2026 praying for condonation of delay and recalling of the orders dated 24th February, 2026 and 21st April, 2026 and allowing Defendant to cross-examine the witness of the Plaintiff with other prayers.

The issue, whether the suit commercial in nature or not, was heard.

Since the suit is an undefended one, the Learned Counsel for the Defendant submitted that the application being GA 3 of 2026 kept in abeyance since the jurisdictional issue is to be addressed first.

Mr. Ghosh, the Learned Counsel for the Plaintiff vehemently argued that the suit is not of commercial nature. Firstly, dealing of newspaper is basically an act of dissemination of information. Secondly, newspaper does not come within ambit of goods as defined in Section 2(7) of the Sales of Goods Act, 1930. Mr. Ghosh vehemently argued that the suit is not a commercial one.

In the plaint, it was pleaded that the Plaintiff has been carrying on business of printing and publishing newspapers and magazine in para 1. In para 3, it was contended that the Plaintiff and the Defendant entered into contract for the purpose of supply and sale of newspapers and other publications published by the Plaintiff. In the same paragraph, it was also pleaded that an usual course of business the Defendant placed orders on the Plaintiff at its office for supply of require number of newspapers and magazine at various locations. The very pleading of the Plaintiff undermines the argument of Mr. Ghosh, the Learned Counsel for the Plaintiff.

The plaint itself clearly and unequivocally discloses that there was contract between the parties in the usual course of business on sale of goods. Clearly dispute between the parties is a commercial dispute within meaning of Section 2(1)(c) of the Commercial Courts Act, 2015.

The High Court at Calcutta Commercial Courts Practice Directions, 2021 and provisions contained therein may be considered. Rule 9(1) of the High Court at Calcutta Commercial Courts Practice Directions, 2021 may be quoted as follow:

> *"**9. Suits, applications and other proceedings, improperly filed***
>
> *1) The High Court or the District Court, as the case may be shall not, subsequent to the date of issuance of the appropriate Notification of the pecuniary value in terms of Section 3(1 A) of the Act, receive, try or determine any suit involving a commercial dispute of and above the specified value if the same is filed in its Ordinary Original Civil Jurisdiction."*

Specified value was notified under Section 3(1A) of the Act on 15th November, 2018 by the Joint Secretary of Government of West Bengal in terms of notification no.254 – OL. The suit was filed after publication of notification on 21/02/2019. At that time specified value was one crore. Subsequently, in terms of notification dated 20th March, 2020, the specified value was modified to Rs.10,00,000/-. By that

time, the instant suit had already been instituted. Therefore, the suit was filed after the notification under Section 3(1A) dated 15th November, 2018 which prescribed a specified value under which the suit was not commercial by that time. However, in the subsequent notification was published on 20th March, 2020. The suit became commercial by virtue of the value involved. Therefore, it is a fit case where the suit should be transferred to Commercial Division without returning the plaint.

Accordingly, the suit along with pending applications is transferred to the Commercial Division.

The Department is directed to do the needful.

(SUGATO MAJUMDAR, J.)

A.Das(P.A)