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ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE

IA No. GA-COM/1/2026
In APOT/196/2026

ABP PRIVATE LIMITED
-VS-
A. H. WHEELER AND COMPANY PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
-AND-
The Hon'ble JUSTICE ARYAK DUTT

Date: November 23, 2026.

Appearance:
Mr. Soumabho Ghose, Adv.
Ms. Tiana Bhattacharya, Adv.
Mr. S. Datta, Adv.
...for the appellant

Ms. Sonal Shah, Adv.
Mr. Kushagra Shah, Adv.
Ms. Rittwika Banerjee, Adv.
...for the respondent

The Court: Appeal is directed against the judgment and order dated September 22, 2026 passed in CS/37/2019.

Learned advocate appearing for the appellant submits that, the suit was placed in the undefended list with the defendant not filing written statement. He submits that, evidence in the undefended suit was led on behalf of the plaintiff. Witness of the plaintiff was not cross-examined by the defendant as the defendant was not appearing.

Learned advocate appearing for the appellant submits that, the appellant will be prejudiced by the impugned order in the sense that, the learned Judge might proceed with the suit afresh.

Learned advocate appearing for the defendant submits that, the defendant applied for recalling of two orders by way of an application being IA No. GA/3/2026 which is pending. She submits that, she is not objecting to the order of transfer from the Non-Commercial Division to the Commercial Division as done by the impugned order.

Subject matter of the suit involves recovery of price of goods sold and delivered. Newspapers were made over by the plaintiff to the defendant for distribution not intending to do so gratuitously. Plaintiff by the suit seeks to recover the price of such newspapers from the defendant. In such context, the learned Trial Judge held that the subject matter of the suit would fall within the definition of Section 2(i)(c) of the Commercial Courts Act, 2015.

The view taken by the learned Trial Judge is not being disputed by the defendant in the appeal. The apprehension of the appellant as the plaintiff before us that the learned Trial Judge might hear the suit afresh is misplaced. The suit was placed in the undefended suit with the defendant not filing written statement though the defendant entered appearance. Evidence in the suit was led by the plaintiff.

However, there is an application pending in the suit filed at the behest of the defendant. It would, therefore, in the facts and circumstances of the present case, be appropriate that, the proceedings in the suit up to the stage of the order impugned be treated as *de bene esse* by the transferee

Court. The transferee Court that is the Commercial Division will proceed with the suit from the stage it attained before the impugned order of transfer. Needless to say, Commercial Division is at liberty to dispose of IA GA/3/2026 in accordance with law without being influenced by any of the observations made by us herein.

APOT/196/2026 along with the connected application is thus disposed of, without any order as to costs.

(DEBANGSU BASAK, J.)

(ARYAK DUTT, J.)

sp3