In the High Court at Calcutta
Commercial Division
Original Side

Judgment (2)

PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY

IA No.GA-COM/4/2025
[Old No.CS/67/2019]
In CS-COM/147/2024

DINESH KUMAR GOYAL
VS
NITIN KUMAR YADAV AND ANOTHER

For the plaintiff : Mr. Pratyush Patwari, Adv.

For the defendant no.2 : Mr. Bratin Kumar Dey, Adv.
Ms. Anjana Banerjee, Adv.
Mr. Subhankar Banerjee, Adv.

Heard on : June 10, 2026

Judgment on : June 10, 2026

[In Court]

ANIRUDDHA ROY, J :

1. On the prayer of the learned Advocate appearing for the defendant no.2, time to file affidavit in opposition stands extended till today.

Affidavit in opposition filed in Court today is taken on record. Copy has been served upon the plaintiff.

2. Learned Advocate appearing for the plaintiff has informed this Court that affidavit in reply has already been filed and is on record. Copy has been served.

FACTS:

3. This is an application filed by the plaintiff claiming a summary judgment against the defendant no.1, as would be evident from **prayer (a)** to the application under **Order XIIIA of the Code of Civil Procedure, 1908** (hereinafter, "**the Code**"), as amended.

4. The plaint case is that the plaintiff has sold and supplied goods to defendant no.1 for which it had raised seven numbers of invoices at **pages 49 to 55** of the application. Two such invoices were dated **July 2, 2018** and the rest five were dated **July 3, 2018**. The total amount covered under the said invoices was **Rs.7,85,65,690/-**. The plaintiff contends that nothing has been paid by the defendant no.1 under the said seven invoices. Thus, the principal claim of the plaintiff is **Rs.7,85,65,690/-** and then the plaintiff has claimed interest.

5. Referring to the said invoices along with e-Way bills at **pages 56 to 62** of the application, the plaintiff submits that admittedly, the goods were delivered to the defendant no.1 by the plaintiff.

Defendant no.2 had acted as a mediator between the plaintiff and the defendant no.1. The plaintiff then refers to the debit notes raised by the defendant no.1 at **pages 63 to 76** of the application, all dated **November 17, 2018** and submits that under the garb of the said purported debit notes, the defendant no.1 had contended that the goods were returned. The plaintiff then refers to the document being **Annexure 'E'** at **page 93** to the application showing that GST registration of the defendant no.1 stood cancelled on **October 26, 2023**. The debit notes were dated **November 17, 2018**, much after the GST registration was cancelled.

6. By an order dated **January 10, 2023** passed by a Co-ordinate Bench, the instant suit was directed to be marked as "**undefended**" as against the **defendant no.1**, since the defendant no.1 did not file its written statement within the time stipulated under **Order VIII of CPC** for a commercial suit. The defendant no.1 has forfeited its right to file written statement. The defendant no.1 has not filed any affidavit to the instant application neither the defendant no.1 replied to the demand notice served by the plaintiff dated **January 25, 2019** at **page 103** of the application.

7. In this circumstance, the instant suit has been filed and subsequently, the instant application has been filed claiming a summary judgment.

SUBMISSIONS:

8. Mr. Pratyush Patwari, learned Advocate appearing for the plaintiff submits that once the invoices had been raised by the plaintiff and the e-way bills are there on record, it shows admittedly, the defendant no.1 has received the goods sold and delivered by the plaintiff. No portion of the price of the goods has been paid by the defendant no.1.

9. Referring to the averment made in **paragraph 4** of the instant application, learned Advocate Mr. Pratyush Patwari submits that the defendant no.2 who acted as a negotiator between the plaintiff and the defendant no.1 had filed its written statement and the specific stand taken by the defendant no.2 that the goods were delivered by the plaintiff to the defendant no.1 and the defendant no.2 is not under any obligation to pay a sum of **Rs.7,85,65,690/-** being the price of goods allegedly sold and delivered by the plaintiff to the defendant no.1.

10. With reference to the said stand taken by the defendant no.2, learned Advocate for the plaintiff submits that this stand of the defendant no.2 further shows that goods were admittedly, received and accepted by the defendant no.1 which were sold by the plaintiff and the defendant no.1 failed and neglected to pay the price thereof to the plaintiff.

11. Mr. Pratyush Patwari, learned Advocate for the plaintiff further submits that once the GST registration of the defendant no.1 was cancelled on **October 26, 2018**, the defendant no.1 was not even permitted in law to raise the debit notes on **November 17, 2018**. This, according to Mr. Patwari, clearly shows that the debit notes were raised by the defendant no.1 in a fabricated manner. The debit notes were fabricated and manufactured by the defendant no.1 and were raised only to avoid the payments of the goods sold and delivered by the plaintiff.

12. Mr. Pratyush Patwari further submits that contemporaneously immediately after receiving the goods or at any time the defendant no.1 never raised any objection with regard to the goods and accepted the same, without any protest and demur. The defendant no.1 has consumed the goods and utilized the same but failed to pay the price thereof.

13. Mr. Bratin Kumar Dey, learned Advocate appearing for the defendant no.2 submits that the defendant no.2 has no nexus or connection in respect of the alleged transaction between the plaintiff and the defendant no.1. The defendant no.1 was merely a tenant of the defendant no.2 and carried on business from the said tenanted premises. The defendant no.2 has got no privity either with the plaintiff or with the defendant no.1 with regard to the goods allegedly sold and delivered by the plaintiff to the defendant no.1.

14. The defendant no.2 has already filed its written statement and shall place its defence at the time of trial of the suit.

DECISION:

15. After considering the rival contentions of the parties and on perusal of the materials on record, it appears to this Court that the plaintiff has claimed to have sold and supplied goods to the defendant no.1. The plaintiff claimed to have raised seven numbers of invoices, as referred to above. The plaintiff has relied upon some e-Way bills to show that the goods were allegedly despatched to the defendant no.1. The plaintiff claims the entire price of goods sold and delivered by the plaintiff to the defendant no.1.

16. On reading the provisions laid down under **Order XIIIA of the Code,** as amended, it appears to this Court that the said provision provides for summary judgment if the grounds are satisfied, as mentioned in **Rule 3** of the Order. The Court may give summary judgment, *inter alia*, against the defendant, if it considers that the defendant has no real prospect of successfully defending the claim and if there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

17. The said provision has been engrafted in the light of the promulgation of the **Commercial Courts Act, 2015** (hereinafter, "**CC Act**"). The provision provides for a speedy judgment, *inter alia*, to the plaintiff, if the tests are satisfied, as mentioned under **Rule 3** of the Order.

18. In the facts of the instant case, in absence of filing of written statement by the defendant no.1, the defendant no.1 would have a right to cross-examine the witness of the plaintiff but of course such cross-examination would have to be restricted and limited within the plaint case and not beyond that. Defendant no.1 cannot set up any defence in absence of written statement.

19. On perusal of the materials on record, it appears to this Court that there is a document showing cancellation of GST registration of the defendant no.1 dated **October 26, 2018** at **page 93** to the application and the debit notes were all dated **November 17, 2018**, subsequent to such cancellation. The specific stand of the plaintiff, in this regard, is that debit notes are manufactured and fabricated on the face of it, as the defendant no.1 was not permitted in law to raise such debit notes after its GST registration was cancelled.

20. The provisions under the **Sale of Goods Act**, *inter alia*, provides that if after acceptance of the goods, the buyer does not raise any objection or does not take step to return the goods to the seller, it will be a deemed acceptance of goods by the buyer.

21. In the facts of this case, even if the submissions of the plaintiff is to be taken as correct that the debit notes are manufactured or fabricated or that the defendant no.1 was not permitted in law to issue the said debit notes after its GST registration was cancelled, though these pleas of the plaintiff are triable in nature, then also, the said documents allegedly to be the debit notes whether were actually raised or not or if raised whether it would amount to an intention of the defendant no.1 who is the buyer to return the goods within the provisions of **Sale of Goods Act**, are required to be adjudicated upon. Such adjudication is not permitted to be done in a summary manner, without going into the trial on the issues.

22. **Order XIIIA** has been incorporated in the legislature by the framers of law with objective of **CC Act** for speedy disposal of commercial disputes with an independent summary mechanism, so that if the party can satisfy the tests, laid down therein, would not have to wait for a longer period for trial. The provision presumes the party seeking a summary judgment, has established a crystal clear case to which the other party would have no defence or credible or *bona fide* defence. The defence of the other party resisting summary judgment, if is exhibited as moonshine or result of an afterthought and if the party seeking summary judgment can establish a clear case, there will be no impediment to pass a summary judgment, without travelling through the process of trial of a suit.

23. In the facts of the instant case, the very existence of the debit notes and its validity with its significance, is required to be adjudicated upon after holding a properly constituted trial in the suit.

24. The plaintiff has not demonstrated any unimpeachable evidence to controvert the said debit notes, at this summary stage.

25. The issues are **triable**, of course subject to the restriction in law that the defendant no.1 would have a limited right and scope of cross-examination, as already discussed above. However, this order shall not expand the scope of cross-examination by the defendant no.1, in absence of its written statement.

26. In view of the foregoing reasons and discussions, this Court finds that the application for summary judgment is **not tenable** in law and should be **dismissed**.

27. Accordingly, this application **IA No.GA-COM/4/2025** stands **dismissed**, without any order as to costs and the suit stands for **trial**.

(ANIRUDDHA ROY, J.)

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