

**In the High Court at Calcutta
Commercial Division
Original Side**

Judgment (2)

**PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY**

**IA NO. GA-COM/1/2025
In CS-COM/50/2025
DE CONVERTER INDIA PRIVATE
LIMITED
Vs
LA CHEMICO PVT LTD AND ORS.**

For the plaintiff :
**Mr. Shuvasish Sengupta, Adv.
Mr. Debraj Sahu, Adv.
Ms. Antara Biswas, Adv.
Ms. Tanushree Saha, Adv.**

For the respondent :
**Mr. Sorosij Dasgupta, Adv.
Mr. Sitikantha Mitra, Adv.
Mr. Keshav Kumar Daruka, Adv.
Mr. S. Chandrani Panigrahi, Adv.**

Heard on : April 16, 2026

**Judgment on : April 16, 2026
[In Court]**

ANIRUDDHA ROY, J :

FACTS :

1. This is a commercial suit where the defendants have forfeited their right to file written statement under the law. The present suit is

marked as **undefended**. The law is well-settled that in such scenario, the defendants would have a right of cross-examination, at the highest.

2. **IA No: GA-COM/1/2025** is an application filed by the plaintiff claiming summary judgment under **Order XIII-A of Code of Civil Procedure, 1908** (hereinafter, **CPC**), as amended. The parties have filed and exchanged their respective affidavits.
3. The plaintiff is the seller and defendants are the purchasers of goods. Plaintiff claims unpaid price of goods sold and delivered by it to the defendants. The money claim in the plaint shows that the plaintiff has claimed decree for a sum of **Rs.49,35,228.00/-** as pleaded in **paragraph 14** of the plaint and in addition of interest. **Paragraph 14** of the plaint shows that the claim of the plaintiff on account of principal is **Rs. 34,62,672.00/-**. The rest is the interest. The parties admit that there is no agreed rate of interest by and between the parties.
4. The plaint/application case is that goods were admittedly sold and supplied to the defendants by the plaintiff. The plaintiff has raised several invoices upon the defendant no. 1 at **pages 35 to 54** of the application covering a total price of goods for a sum of **Rs. 96,33,890/-**. The last of such invoices was dated **January 24, 2022** at **page 52** to the application. The specific case of the plaintiff is that the defendants have paid part payment for a total sum of **Rs. 61,71,218/-** as pleaded in **paragraph 8(ii)** of the application. Last part payment was made on **April 18,2023**. Further case in

the application and the plaint is that the parties have jointly signed and executed the ledger statement of accounts **Annexure-“D”** at **page 55** to the application showing a sum of **Rs. 35, 25, 981/-** was due and owing to the plaintiff by the defendants. A **confirmation of account** dated **September 3, 2022, Annexure-“E”** at **page 58** was duly signed by both the parties showing a sum of **Rs.35,22,672/-** being the closing balance was due and payable to the plaintiff by the defendant no. 1 as on September 3, 2022. The plaintiff thereafter served a legal notice dated **July 4, 2024**, at **page 59** to the application on the basis of the said existing facts and claimed a sum of **Rs. 34, 62, 672/-** from the defendants. The legal notice was replied by the defendant no. 1 by its reply dated **July 25, 2024** at **page 69** to the application where the defendants refuted the claims of the plaintiff and has specifically stated that no such sum was due and payable to the plaintiff.

5. In such facts and circumstances, the suit has been filed and the instant application has been taken out claiming summary judgment.

SUBMISSIONS:

6. Mr. Shuvasish Sengupta, learned advocate appearing for the plaintiff being ably assisted by Mr. Debraj Sahu, learned advocate submits that the ledger account statements and the balance confirmation dated **September 3, 2022** show an unequivocal acceptance of the transaction by the defendants as well as an

unequivocal admission of liability of the defendants towards the plaintiff for a sum of **Rs. 35, 22, 672/-** though the plaintiff has claimed a lesser sum, payable by the defendants. He submits that all along the goods were supplied by the plaintiff on the basis of an oral agreement by and between the parties. Mr. Sengupta then submits that there was no contemporaneous evidence to show that the defendants have raised any objection with regard to the supply of goods by the plaintiff, be it on quality or quantity. Mr. Sengupta further, referring to the demand notice and the reply, submits that there was no specific case made out by the defendants with supportive evidence with regard to the defective supply of any goods or that the goods were never received by the defendants. However, an evasive denial of the demand notice is there. The defendants only stated that some goods were allegedly defective and there was a delayed supply but no particulars were furnished.

7. Mr. Suvasish Sengupta, learned advocate appearing for the plaintiff then submits that in the affidavit in opposition, the defendants have come out with a case that goods were defective and supply was made on the basis of signed agreement and not on oral agreement. He refers to the documents at **pages 29,31,39 and 40** from the affidavit in opposition and submits that all those documents were dated sometime in **2020** and **2021**, which were much prior to the balance confirmation dated **September 3, 2022** at **page 58** to the application. Accordingly, he submits, even if, though not admitted, any complaint was there, those were prior to

the said balance confirmation. The defendants even if have raised objection with regard to the supply of goods, though not admitted by the plaintiff, they were prior in point of time and the defendants ultimately have admitted and acknowledged the transaction and its indebtedness to the plaintiff to the extent of **Rs. 35,22,672/-** as would be evident from the said balance confirmation dated **September 3, 2022** and there is no defense to the contrary.

8. The plaintiff further submits that there is no defence or *bona fide* defence on the part of the defendants towards the claim raised by the plaintiff or against the said confirmation of account dated **September 3, 2022**. Hence, the summary judgment should be passed.
9. Mr. Suvasish Sengupta further submits that in absence of any written statement being there to the claim made in the plaint, the defendants cannot set up any defence at this stage. The defendants cannot have any further chance to prove its defence in absence of any defence having been taken in its written statement.
10. Mr. Sorosij Dasgupta, learned advocate appearing for the defendants at the threshold submits that the defendants have not only denied and disputed the claim in the application but have also denied and disputed the case made out by the plaintiff in its legal notice dated July 4, 2024 through its reply thereto dated July 25, 2022.
11. Referring to various paragraphs from the affidavit in opposition, Mr. Dasgupta, learned advocate appearing for the defendants submits

that there was a written contract by and between the parties and in support thereof he has referred to the documents being the sample purchase orders at **pages 27 and 28** to the affidavit in opposition. He submits that the plaintiff deliberately and willfully did not disclose those purchase orders in the plaint or any where on record and thereby suppressing this material fact, has filed the suit.

12. Mr. Dasgupta, learned advocate appearing for the defendants then refers to the balance confirmation at **page 58** of the application and compares it with the document at **page 37** of the application and submits that on a plain look, it would be evident that the seals used in both the documents were different from each other. The alleged document showing confirmation of account is a manufactured and fabricated document relied upon by the plaintiff, which is being totally denied by the defendants. In this regard, to show the discrepancy in the seal of the plaintiff, Mr. Dasgupta has relied upon **pages 37, 40, 43, 49 and 52** of the application. He then refers to the demand dated July 4, 2024 and submits that the plaintiff did not even refer to the said balance confirmation dated September 3, 2022 therein which clearly shows that the said balance confirmation was brought on record as an afterthought being a document manufactured by the plaintiff. The reply to legal notice would specifically show that the goods supplied by the plaintiff were defective and the same stand has also been taken in the affidavit in opposition.

13. Mr. Dasgupta then refers to the documents at **pages 29,31,39** and **40** from the affidavit in opposition and submits that these were the documents of 2024 showing defective supplies but the same have never been disclosed in the plaint nor in the application filed by the plaintiff.
14. Mr. Dasgupta, learned advocate then submits that by deliberate suppression of material documents, the plaintiff has practised fraud on Court. In support, he has relied upon a decision ***In the matter of: S.P. CHENGALVARAYA NAIDU (DEAD) BY LRS. Vs. JAGANNATH (DEAD) BY LRS. AND OTHERS reported at (1994) 1 Supreme Court Cases 1: 1993 SCC OnLine SC 318;***
15. Mr. Dasgupta further submits that the defendants have raised valid and *bonafide* disputes to defend the summary judgment with the supportive contemporaneous evidence and the issue being triable, no summary judgment can be passed. Inasmuch as, when the alleged balance confirmation dated September 3, 2022 is disputed by the defendants on the basis whereof summary judgment has been sought for, until the dispute is tried no summary judgment can be passed. In support, he has relied upon a decision of a Co-ordinate Bench of this Court ***In the matter of: MADHUSRI KONAR AND ANOTHER Vs. NEW CENTRAL BOOK AGENCY PVT. LTD. AND ANOTHER reported at AIR 2021 Cal 185: (2021) 2 ICC 845;***
16. In the light of the above, Mr. Dasgupta prays for dismissal of the application.

DECISION:

17. After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, this Court finds that **Order XIII-Aof CPC**, as amended, 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.
18. The said provision has been engrafted in the light of the promulgation of the **Commercial Courts Act, 2015** (hereafter, **CC Act**). This provision provides for a speedy judgment, inter alia, to the plaintiff if the tests are satisfied as mentioned under **Rule 3** of the Order.
19. The ledger statement at pages **55** to **57** of the application have been signed by both the parties. There is no contemporaneous objection with regard thereto raised on behalf of the defendants neither any contemporaneous proceeding was initiated by the defendants alleging coercion, undue influence or fraud against the plaintiff. Similarly, the document for balance confirmation dated September 3, 2022 is also placed on the same pedestal and remains uncontroverted. The said balance confirmation shows that a sum of **Rs.35,22,672/-** was due and payable by the defendants to the plaintiff on account of self-same transaction. In absence of any

counter case being pleaded against the case made out in the plaint, the defendants cannot set up any defense at present, in absence of its written statement.

20. Inasmuch as, the contemporaneous protests as alleged by the defendants at pages **29, 31, 39** and **40** to the **affidavit in opposition**, were all during **2020** and **2021**, which were much prior to the said balance confirmation dated **September 3, 2022**. This gives rise to a reasonable presumption that even if, though not admitted by the plaintiff, these contemporaneous protests are taken into account then also the confirmation of accounts being a subsequent event shall prevail over those which unequivocally shows that a sum of Rs.**35,22,672/-** was admitted to be due and payable by the defendants towards the plaintiff in the self-same transaction and there has been no credible defense thereto. The plea taken by the defendants as alleged defense have also not been corroborated by any contemporaneous evidence.
21. The sample purchase orders at pages **27** and **28** of the affidavit in opposition *ex facie* do not show these were raised by the defendants upon the plaintiff and the plaintiff had accepted the same. In absence of written statement the defendants cannot contend at this stage that these documents were exchanged by and between the parties and the plaintiff had received those. The documents at pages **29, 31, 39** and **40** relied upon by the defendants from its affidavit in opposition also stand on the same pedestal, as discussed above, in absence of written statement.

22. With regard to the denial and dispute of the seal of the plaintiff company or the existence and correctness of the said balance confirmation document dated **September 3, 2022**, the defendants in absence of written statement cannot set up any defense. A defense unless proved in the trial cannot sustain in law. Therefore, in absence of any defense being taken there is no question of proving any defense.
23. The most significant factor in the facts of the instant case is that the defendants have forfeited its right to file written statement in this commercial suit by operation of law. Therefore, there cannot be any further opportunity to the defendants to come up with any defense to defend the claim in the plaint, save and except, the right of cross-examination of the witness of the plaintiff. By way of cross-examination the defendants cannot set up its defense. It can only test the testimony of the plaintiff at the highest within the four corners of the plaint case only and not beyond that. At this stage, the defendants cannot set up any defense or to prove its defense in any manner.
24. The cardinal principle is that parties cannot travel beyond its pleadings and evidence cannot be led beyond the pleadings on record. Since the defendants have no further opportunity to file written statement and the suit is marked as undefended, there is no scope for the defendants to file any pleading against the claim made in the plant and therefore, there is no scope for the defendants to adduce any further evidence in absence of its written

statement in the instant case. The defendants cannot run a counter case/ claim against the case/ claim made in the plaint.

25. **Order XIII A** has been incorporated in the legislation by the framers of law with the objective of the **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 a longer period for trial. The provision presumes that the party seeking a summary judgment has established a crystal clear case to which the other party would have no defense or credible and *bona fide* defense. The defense of the other party resisting summary judgment, if is exhibited as moonshine or a 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. A credible defense has to be demonstrated by the defending party. The provision is very much akin to the provision laid down under Order XXXVII of CPC.
26. ***In the matter of: MADHUSRI KONAR AND ANOTHER (supra)***, the law is well-settled. However, the law settled therein would have to be applied in the given set of facts and circumstances. In the facts of the instant case, the defendants do not have any bona fide or credible defence which can weigh the Court to refuse summary judgment, as already discussed above. Therefore, the ratio laid down in the said judgment would not apply in the facts and circumstances of this case.

27. ***In the matter of: S.P. CHENGALVARAYA NAIDU (DEAD) (supra)***, the family settlement which was not on record was an undisputed evidence and was suppressed and the partition suit was filed. In the instant case, the alleged documents spoken of by the defendants allegedly suppressed by the plaintiff are not at all admitted documents. In absence of written statement, the defendants have to proceed only on the basis of the plaintiff case. The defendants would have no scope to set up its defense. Therefore, the ratio decided in the said judgment would not apply in the facts and circumstances of this case.
28. After careful consideration of the rival contentions of the parties and in the light of the existing materials before this Court, this Court is of the firm view that the defendants have failed to establish any credible defense and/or substantial defense and/or *bona fide* defense to resist the claim made in this application for summary judgment. The defence allegedly taken by the defendants is without any basis in absence of written statement and also moonshine and illusory.
29. In view of the foregoing discussions and reasons, there will be a **summary judgment/decreed** in favour of the plaintiff and against the defendant no. 1/defendants for a principal sum of Rs.**34,62,672/-**. Since interest has not been agreed upon, it is left to the discretion of the Court. The defendants shall pay interest @ **6% per annum** on the aforesaid principal sum from **April 19, 2023**

until the amount is tendered to the plaintiff, as the last part payment was made on **April 18, 2023**.

30. There shall be a decree for the aforesaid amount, both principal and interest.
31. The decree shall be drawn up and completed expeditiously.
32. Accordingly, this application **IA NO.GA-COM/1/2025** stands **allowed** without any order as to costs.
33. Consequently, the instant civil suit **CS-COM/50/2025** stands **decreed** and **disposed of**.

(ANIRUDDHA ROY, J.)

Arsad/SM