In the High Court at Calcutta
Commercial Division
Original Side

Judgment (2)

PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY

IA NO. GA-COM/7/2026
[OLD NO. CS/80/2023
In CS-COM/497/2024

GLEN INDUSTRIES LIMITED
VS
UNITED INDIA INSURANCE COMPANY LIMITED

For the plaintiff/petitioner : **Mr. Mr. Shuvasish Sengupta, Adv.**
Mr. Biswajib Ghosh, Adv.
Mr. Avirup Chatterjee, Adv.
Mr. Sourojit Dasgupta, Adv.
Mr. Rishov Das, Adv.

For the defendant/respondent : **Mr. Soumendranath Ganguly, Adv.**
Mr. Jit Ray, Adv.
Ms. Suparna Das, Adv.
Mr. Souvik Ghosh, Adv.

Heard on : **September 23, 2026**

Judgment on : **September 23, 2026**
[In Court]

ANIRUDDHA ROY, J :

1. This is an application filed by the plaintiff, *inter alia*, praying for a direction to file an affidavit by the plaintiff under **Section 65B of**

the Evidence Act, corresponding to **Section 63 of the Bharatiya Sakshya Adhiniyam, 2023** (for short "**BSA**").

2. Mr. Shuvasish Sengupta, Learned Advocate with Mr. Sourojit Dasgupta, Learned Advocate appearing for the plaintiff has referred to a previous order of this Court dated **December 1, 2025** when in a similar circumstance, this Court has allowed the plaintiff to file such an affidavit which was restricted to two documents only, as mentioned in the said order appearing at **page 17** to the application. The said affidavit filed in terms of the direction of this Court dated **December 1, 2025** is on record as also admitted in evidence during the examination in chief of the witness of the plaintiff.

3. Mr. Jit Ray, Learned Advocate led by Mr. Soumendranath Ganguly, Learned Advocate appearing for the defendant submits that this application cannot be allowed, as it is barred by the principle of *res judicata* and/or constructive *res judicata* since the issue has already been decided by this Court in its order dated **December 1, 2025**.

4. It is further submitted that if the instant application is allowed, then there might be a complication with regard to the conflict of evidence already on record and in that case recalling of witness may be required.

5. Defendant further submits that when the plaintiff had come up with the previous application on which the order dated **December 1, 2025** was passed, they could have come up with the plea taken in the instant application, as the plea are identical but the plaintiff did not choose to do so. This shows a gross negligence on the part of the plaintiff.

6. The defendant in support of its contention has relied upon the following two judgments:

   (i) In the matter of: Satyadhyan Ghosal and Others vs. Deorajin Debi (Smt.) and Another, reported at AIR 1960 SC 941 and

   (ii) In the matter of: Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Others, reported at (2020) 7 Supreme Court Cases 1.

7. After considering the rival submissions of the parties and on perusal of the materials on record, it appears to this Court that the order dated **December 1, 2025** was passed in the previous application being **IA No. GA-COM/5/2025**, where the affidavit filed under **Section 65B of the Evidence Act** was restricted to two documents mentioned in the said order. The instant application is a subsequent one relating to various other documents except those two. These are directions to conduct the

procedure within the framework of law. These directions neither decide the rights of the parties as the suit is awaiting its final trial, nor decide any *res* between the parties. Thus, the question of application of doctrine of *res judicata* or constructive *res judicata* does not arise in the facts of this case.

8. In the event, at the time of final trial and at the time of argument of the suit, any of the parties find any irregularity or illegality with regard to the recording of evidence or even procedural irregularities, objector parties can take those points at the time of final hearing of the suit.

9. If there is any conflict of evidence in law, during the examination of the witness of the parties, the objecting party may raise objections during the final trial of the suit.

10. Upon considering the application, it appears to this Court that filing of an affidavit under **Section 65B of the Evidence Act**, is a procedural act which cannot be denied in the facts of this case. In the event, the defendant has any objection with regard to recording of evidence, such objections can be recorded and can be decided at the time of final hearing of the suit.

11. The ratio of the judgments relied upon by the defendant would not apply in the facts and circumstances of this case.

12. In view of the foregoing reasons and discussions, the plaintiff shall be allowed to file necessary affidavit under **Section 65B of**

the Evidence Act, corresponding to **Section 63 of BSA** only in respect of the documents mentioned in **paragraph 5** of the application being **Annexure "E"** at **page 20** to the instant application and not beyond that, **within two weeks** from date.

13. It is made clear that in the event, the defendant would have any objection in this regard, it may be at liberty to take that objection at the time of final hearing of the suit.

14. With the above observation and directions, this application **IA No. GA-COM 7 of 2026** stands **disposed of**, without any order as to costs.

(ANIRUDDHA ROY, J.)

RS