

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.46 of 2025

1. Aranyak Jewellers Private Limited, a company incorporated under the provisions of the Companies Act, 2013, having its registered office at Subhas Park, Khowai – 799201, Tripura
2. Manojit Chowdhury, son of Monoj Kanti Chowdhury, residing at Subhas Park, Khowai – 799201
3. Banasree Chowdhury, wife of Manojit Chowdhury, residing at Subhas Park, Khowai – 799201

.....Petitioner(s);

Versus

Shayam Sundar Co. Jewellers Private Limited, a company within the meaning of Companies Act, 2013 having its registered office at 131, Rash Behari Avenue, Suparno, Ground Floor, Kolkata – 700029 and also carrying on its business from 44, Central Road, Taman Choumuhani, Agartala – 799001 and 21/2, Hari Ganga Basak Road, Agartala, Tripura – 799001

.....Respondent(s).

For Petitioner(s) : Mr. Anuj Singh, Advocate,
Haradhan Sarkar, Advocate
Mr. Abhishek Das, Advocate.

For Respondent(s) : Ms. Sonal Shah, Advocate,
Ms. Jayita Paul, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

02/07/2025

The original certified copy of the order dated 25.03.2025 passed in C.M. (Inj.) 03 of 2024 arising out of Commercial Suit No.03 of 2024 which is impugned in the instant revision petition has been filed on 27.06.2025 to remove the defect. The other defects relating to the typed copies of certain pages are ignored.

2. I have heard learned counsel for the petitioners Mr. Anuj Singh assisted by learned counsel Mr. Abhishek Das and Ms. Sonal Shah, learned counsel assisted by Ms. Jayita Paul, learned counsel for the respondent.

3. The respondents in Commercial Suit No.03 of 2024 are the petitioners herein. Rejection of an application under Order XXXIX Rule 4 CPC by order dated 14.08.2024 was subject matter of challenge by the same respondents in Commercial Appeal No.02 of 2024. The commercial appeal was disposed of vide judgment and order dated 11.02.2025 which is extracted in extenso hereinafter:

“Heard Mr. A. Singh, learned counsel appearing for the appellants and Ms. S. Shah, learned counsel appearing for the respondent.

[2] On the last occasion, Mr. Singh, learned counsel came forward with a constructive proposal that the appellants were ready and willing to secure the amount of Rs.2,41,00,000/- [Rupees Two Crore Forty One lakh] which is the subject matter of the impugned order of injunction passed by the learned Commercial Court, by way of a bank guarantee and deposit of gold ornaments of equivalent value before the learned trial court without prejudice to their right of defence in the main proceeding.

[3] In view of above said submission made on the last occasion, today the authorised representative of the appellant No.1 has submitted one affidavit and in turn, from the side of the respondent also their authorised representative has submitted one affidavit whereby both the parties have come to an amiable settlement with the terms and conditions reflected in the later part of this order.

[4] The appeal has been filed under Section 13(1A) of the Commercial Courts Act, 2015 by challenging the order dated 14.08.2024 passed by the learned commercial Court, West Tripura, Agartala in CM(INJ)03 of 2024 arising out of Commercial Suit No.03 of 2024.

[5] The respondent-plaintiff filed the suit praying for a money decree of Rs.7,05,23,740/- as principal amount under different counts and further a decree of Rs.3,00,00,000/- as damages or for any other sum as on enquiry the court finds due and payable to the respondent by the appellants and also praying for perpetual injunction restraining the appellant-defendants, their men and agents from exploiting the name/trade names of the plaintiff for a business as similar to that of plaintiff and also for restraining them from offering for sale of gold jewellery bearing the hallmark of the plaintiff to the customers and from inducing any of the plaintiff's customer and posing before them with the trade name/jewellery of the plaintiff and representing them to be of the plaintiff and also from doing any other acts, deeds and things directly or indirectly which is in conflict with the interest of the plaintiff.

[6] The allegations of the respondent-plaintiff basically are that the plaintiff is a reputed firm doing jewellery business since from the time of their predecessor, late Gour Chandra Saha having their business points at various parts of the State of Tripura and also at Kolkata, West Bengal. In 2005, the appellant-defendants entered into an oral agreement to act as a franchisee of the plaintiff by setting up a shop at Khowai under certain terms and conditions including the conditions that the shop would bears the name of Shyam Sundar Company Jewellers at a conspicuous space along with any other name as the defendant-appellant No.2 chooses to use and the defendant-appellant No.2 would not sell with any other jewellery brand from said showroom and they would also contribute proportionately in the advertisement and publicity expenses of the brand of the respondent-plaintiff.

[7] Accordingly, the respondent-plaintiff made capital investment in the said business and gold ornaments would be supplied to the appellant-defendants by the respondent-plaintiff on approval basis but ultimately it was found that the defendants were deviating from such mutually agreed terms and conditions and

even started issuing invoices without mentioning the name of Shyam Sundar Company Jewellers Private Ltd. therein and also attempted to open another shop. It is also alleged that from 2019, the defendant No.1 started slowly disassociating themselves from the plaintiff by not contributing proportionately towards advertisement and promotion of the business and also by not actively participating in the schemes launched by the plaintiff and keeping a large amount of bills as dues. It is also alleged that from June, 2020 the tax invoices of the appellant-defendants are being issued in the name of Aranyak Jewellers Pvt. Ltd. Further it is the allegation of the plaintiff that the defendants were attempting to open a shop at Kaman Chowmuhanani near the shop of plaintiff with an intention to sell the jewellery of the plaintiff from that shop in breach of that oral agreement.

[8] Mainly with such allegations amongst other allegations, the plaintiff instituted the suit with above said reliefs and also prayed for temporary injunction before the learned Commercial Court, West Tripura, Agartala which was numbered as Civil Misc.(Injunction) 03 of 2024 arising out of Commercial Suit No.03 of 2024.

[9] Learned trial court on 29.06.2024 passed an ex-parte temporary injunction, *inter-alia*, with the following order:

“27. Considering the relief as prayed by the Plaintiff, and the undisputed claim to the tune of Rs.2,41,86,671/-

Hence

It is directed that the defendants CC Bank Account being No.38194756280 maintained with State Bank of India, Khowai Branch, & OD Account No.40476003353 maintained with State Bank of India, Dharmanagar Branch shall stand freezed to the extent of i) 1,21,00,000/- and ii) 1,20,86,671/- respectively if any or whatever amount is lying below the said amount till disposal of the instant application of temporary injunction or further order or orders and the defendant are prohibited from withdrawing the amount by any means and modes including electronic modes and the Branch Manager of the aforesaid Bank Account are directed to act according to aforesaid order. Defendants are directed to show cause within 10 days from the date of communication of this order as to why the application for temporary injunction filed by the plaintiff shall not be granted against them.

Plaintiff to comply the provision of order xxxix rule 3(a) and 3(b) of the code of civil procedure at once. Apart from above plaintiff is directed to serve copy of this order to Both the Bank Manager. Office is also directed to inform both Bank Manager by serving copy of this order.”

[10] Against the said order, the respondent filed one petition under Order XXXIX Rule 4 of the CPC for vacating the same and on hearing, the learned trial court rejected the same vide order dated 14.08.2024. Being aggrieved by the said order, the appellants preferred this appeal.

[11] Now, as indicated above, during the course of hearing, one affidavit is submitted by the appellants in this Court incorporating the following terms and conditions:

(i) The appellant-defendant No.1 shall secure the claimed amount of Rs.2,41,86,671/- [Rupees Two crores Forty One lakhs Eighty Six thousand Six hundred Seventy One only] without prejudice to their rights and contentions in the original suit and in the present appeal.

(ii) To secure such amount, the appellant No.1 will submit bank guarantee of Rs.50,00,000/- [Rupees Fifty lakhs only] which would remain deposited in the learned trial court and such bank guarantee shall be obtained by utilizing the sum lying in the aforesaid frozen bank accounts.

(iii) The balance sum of Rs.1,91,86,671/- [Rupees One crore Ninety One lakhs Eighty Six thousand Six hundred Seventy One only] will be secured by deposit of gold ornaments which were purchased by the appellant No.1 from the respondent and the same shall be kept in a locker maintained in any nationalized bank.

[12] The authorized representative of the respondent, namely Sri Sourajit Roy by submitting his affidavit stated that the impugned order may be varied or modified to incorporate that the defendant-appellants through the defendant No.1 would secure the said sum of Rs.2,41,86,671/- [Rupees Two crores Forty One

lakhs Eighty Six thousands Six hundred Seventy One only] by agreeing with the aforesaid terms and conditions. It is further stated in the affidavit that the gold ornaments may be accepted as a security only after identification by the personnel of the respondent as the same has been lying in the custody of the appellant No.1 for almost a year and to ascertain the purity of such gold ornaments by appointing one expert Valuer on the basis of the price of the gold ornaments prevailing. It is further urged in the affidavit that the lockers where the ornaments are to be kept may be maintained with any nationalized bank in the name of the advocate on record appearing for the parties who would only be allowed to operate the same and the bank guarantee may be placed before the Registrar of the learned Commercial Court with a Xerox copy of the same furnished to the advocate of the respondent.

[13] We have considered the submissions of the learned counsel of the parties with reference to the above said terms and conditions but we are of the view that the gold ornaments shall be kept by opening a locker in any nationalized bank at the instance of the learned District & Sessions Judge, West Tripura, Agartala and such gold ornaments shall be kept in safe custody of the learned trial court. In view of the above and also in view of the aforesaid mutually agreed terms and conditions and also considering the facts and circumstances involved in the suit as well as in the appeal, the impugned order dated 14.08.2024 passed by the learned Commercial Court, West Tripura, Agartala is hereby set aside with a further directions that:

(i) The appellant No.1 shall deposit bank guarantee of Rs.50,00,000/- [Rupees Fifty lakhs only] before the learned trial court within 2[two] weeks from the date of receipt of copy of this order and such document(s) of bank guarantee shall also be kept in a proper and safe custody of the learned trial court to be renewed from time to time during pendency of the suit. The appellants are given liberty to obtain such bank guarantee utilising the sum lying in the frozen accounts of the respondent.

(ii) The appellant No.1 shall also ensure deposit of gold ornaments worth of Rs.1,91,86,671/- [Rupees One crore Ninety One lakhs Eighty Six thousand Six hundred Seventy One only] from the ornaments which were purchased/taken by the appellant No.1 from the respondent within 2[two] weeks from the date of receipt of copy of this order and such gold ornaments will be kept in the safe custody of the learned trial court in a bank locker as indicated above.

(iii) After such gold ornaments are deposited, the learned trial court will appoint one suitable Valuer experienced in this matter for ascertaining both the purity and value of such ornaments and the learned trial court shall take an endeavour to complete the said process not later than 6[six] weeks from the date of receipt of copy of this order. While appointing such Valuer, learned trial court may take into consideration the names of such dependable valuer(s), if any, as proposed by the parties.

(iv) After the aforesaid directions are complied with, the learned trial court will modify the order dated 29.06.2014 accordingly resorting to the relevant provisions of law and will also take endeavour to dispose of the main suit expeditiously.

[14] With such observations and directions, this appeal is disposed of accordingly.

Copy of this order be communicated to the learned Trial Court by the Registry immediately.

No order as to costs.

Pending application(s), if any, also stands disposed of.”

4. A perusal of the judgment passed in Commercial Appeal No.02 of 2024 as quoted above would show that the appellants/petitioners herein were allowed to operate their bank accounts on fulfillment of certain terms and conditions enumerated under paragraph 13 on the basis of the affidavit given by the defendants/appellants/petitioners herein. The order of the learned Appellate Court also shows that once the conditions were satisfied, the learned Trial Court would modify the order of injunction dated 29.06.2024. Learned counsel for the parties have brought to the notice of this Court that the petitioners herein are in the process of complying with the conditions enumerated under paragraph 13. The Bank Guarantee and the gold ornaments have been submitted by the petitioners. They have been valued and are to be kept in a bank locker to be opened at the instance of the learned Trial Court. The present petitioners have approached the Appellate Court in the disposed of commercial appeal for certain clarifications which have been duly considered vide orders dated 18.03.2025 and 09.04.2025. In effect, if those conditions are going to be satisfied, the original order of injunction dated 29.06.2024, whereby the two bank accounts of the defendants/petitioners herein were frozen, have to be modified by allowing their operation. The whole object and purport of the judgment and order passed in commercial appeal was to ensure that the defendants may be allowed to operate their bank accounts on fulfillment of the enumerated conditions by furnishing sureties in the nature of Bank Guarantee and gold ornaments thereby enabling the main suit to proceed for trial. The intent of the judgment was to ensure that the parties are not embroiled on the injunction issue and thereby cause delay in the trial of the commercial suit itself

which would be contrary to the object and the scheme of the Commercial Courts Act, 2015.

5. By the impugned order dated 25.03.2025, the application of the defendants/petitioners herein to hear the petition under Order XXXIX Rule 4 CPC analogous with the petition under Order VII Rule 11 CPC has been rejected. The defendants, being aggrieved have preferred the instant revision petition under Article 227 of the Constitution of India. Let it be indicated that the order dated 14.08.2024 by which the petition under Order XXXIX Rule 4 CPC was rejected was set aside vide judgment and order dated 11.02.2025 passed in Commercial Appeal No.02 of 2024 on the basis of the terms and conditions mutually agreed between the appellants and respondents herein and as enumerated in the concluding part of the judgment at paragraph 13. Since the petition under Order XXXIX Rule 4 CPC stood revived the same has to be disposed of in accordance with law keeping into mind that the original injunction order dated 29.06.2024 has to be modified to allow the defendants to operate the frozen bank accounts upon fulfillment of the conditions enumerated under para 13 of the judgment dated 11.02.2025 in Commercial Appeal No. 02/2024.

6. Learned counsel for the petitioners Mr. Anuj Singh has vehemently argued that the grounds raised in the petition under Order XXXIX Rule 4 CPC have to be dealt with on merits again.

7. Learned counsel for the respondent Ms. Sonal Shah has equally vehemently opposed such submissions on the ground that once the order of injunction dated 29.06.2024 is modified upon fulfillment of the conditions by

the defendants/petitioners herein, nothing would remain to be decided in the petition under Order XXXIX Rule 4 CPC.

8. This Court is of the view that the petition under Order XXXIX Rule 4 CPC, now pending before the learned Commercial Court, is required to be dealt with in accordance with law keeping into mind the directions contained in the judgment and order dated 11.02.2025 passed in Commercial Appeal No.02 of 2024. If those conditions are fulfilled by the defendants/petitioners herein, the order of injunction has to be modified to allow the defendants to operate the two frozen bank accounts. Meanwhile the other petition under Order VII Rule 11 CPC filed by the defendants/petitioners herein is also pending in the docket of the learned Trial Court.

9. The defendants/petitioners have their own reasoning to get the petitions heard together. However, it is left to the judicial discretion of the learned Trial Court to deal with both the applications, either analogously or separately in accordance with law. As such, taking into account the background referred above, this Court is of the view that it would be open for the learned Commercial Court to either hear the two applications analogously on the same dates or separately as the Court may deem fit and proper. The learned Commercial Court while doing so would not be precluded by rejection of the application of the defendants by the impugned order dated 25.03.2025.

10. With these observations, the instant revision petition is disposed of. In line with the directions passed by this Court in the judgment and order dated 11.02.2025 in Commercial Appeal No.02 of 2024, the learned

Commercial Court would endeavour to dispose of these interlocutory applications expeditiously so that the trial of the main suit commences without further delay. Parties are expected to cooperate in the proceedings.

(APARESH KUMAR SINGH), CJ

Pijush/
MUNNA SAHA

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