

OD-7

APOT/144/2025
WITH
CS/54/2023

IA NO: GA/1/2025

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

MAHAMANI PLAZA PRIVATE LIMITED
VS
JAI DURGA EXPRESS LOGISTICS LLP AND ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
And
The Hon'ble JUSTICE OM NARAYAN RAI
Date : September 10, 2025

Appearance:
Mr. Shailendra Jain, Adv.
Ms. Swati Agarwal, Adv.
..for the appellant/plaintiff

Mr. Moti Sagar Tiwari, Adv.
..for the respondents

Dictated by Arijit Banerjee, J.

The Court : By consent of the parties, the appeal and the connected application are taken up for hearing together.

This appeal is directed against an order dated April 21, 2025, passed by a Learned Judge of this Court in CS/54/2023, being a suit filed by the appellant herein against the respondents. The suit has been filed under the provisions of Order XXXVII of the Code of Civil Procedure, 1908 (in short, CPC).

It appears that the defendants in the suit did not enter appearance within the prescribed period of ten days after the service of the Summons. The defendants, however, filed an application for extension of time to enter appearance and also an application for rejection of the plaint under Order VII Rule 11, CPC. Both the applications were dismissed by a Learned Judge by an order dated September 11, 2024.

The order dated September 11, 2024 was carried in appeal by the defendants being APOT/364/2024. A Co-ordinate Bench, while disposing of the appeal, granted an opportunity to the defendants to defend the suit provided they deposit Rs.30 lakhs with the Registrar, Original Side, within a prescribed period of time. In default, the Division Bench directed that the suit may be heard as an *ex parte* suit. Admittedly, the defendants failed to deposit the amount of Rs.30 lakhs within the prescribed time period. The defendants made an application being GA/2/2025 for extension of time to deposit the said amount. The Division Bench, by an order dated March 5, 2025, extended the time by two weeks, clarifying that in default, the suit shall be heard *ex parte*.

When the matter appeared before the Learned Single Judge, it was submitted on behalf of the plaintiff that since the defendants have not deposited any money in terms of the Division Bench order dated March 5, 2025, the suit should be heard *ex parte*. The plaintiff prayed for a decree from the Learned Single Judge.

The Learned Single Judge passed the following direction:

“It is, therefore, necessary to ascertain whether the formalities under Order XXXVII Rule 2 Sub-Rule 2 read with

provisions of Order XXXVII Rule 3(2) have been complied with. The suit is directed to go out of the list for the present with liberty to mention.

The plaintiff shall apply before the department with the copy of the orders passed by the learned Single Judge as also by the Hon'ble Division Bench so that the necessary formalities are completed for the suit being heard as an *ex parte* suit as provided in the order dated 2nd January, 2025 of the Division Bench.”

Being aggrieved, the plaintiff is before us by way of this appeal.

We have great doubts as to whether this appeal is at all maintainable. By the order impugned, no right of the plaintiff has been finally decided. The Learned Judge has merely asked the plaintiff to make certain queries and place the result before the Learned Judge. We also do not see what prejudice the plaintiff has suffered.

Primarily, on the ground of maintainability, we are not inclined to entertain this appeal.

The appeal and the connected application stand dismissed.

The Learned Judge is requested to decide the suit in accordance with law as soon as the business of the Court may permit.

(ARIJIT BANERJEE, J.)

(OM NARAYAN RAI, J.)