

OCD-5

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE**

**AO-COM/19/2025
APOT/161/2025
With CS/105/2018
IA No. GA-COM/3/2025**

**ISLAMI BANK BANGLADESH LIMITED
-Vs-
SUSHIL KUMAR MORE AND ORS**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Arijit Bardhan, Adv.
Mr. Sarosij Dasgupta, Adv.
Ms. Saheli Bose, Adv.

For the Respondent : Mr. Sounak Banerjee, Adv.
Mr. Shubasish Pyne, Adv.
Mr. R. N. Pyne, Adv.

HEARD ON : 03.12.2025

DELIVERED ON : 03.12.2025

DEBANGSU BASAK, J.:-

1. The appeal is directed against judgment and order dated March 21, 2025 passed in GA-COM/3/2024 with GA-COM/4/2024 in CS/105/2018.
2. By the impugned judgment and order, learned Single Judge was pleased to dismiss both the applications.

- 3.** Learned advocate appearing for the appellant submits that, the appellant suffered a decree which was passed ex parte. He draws the attention of the Court to the cause title of the plaint and the description of the appellant in the cause title of the plaint, as a defendant. He submits that, the appellant never carried on business from the place where, the appellant is described in the plaint. In particular, he refers to the pin code number given in the cause title of the plaint as against the appellant.
- 4.** Learned advocate appearing for the appellant draws the attention of the Court to the various documents in the appeal which, according to him, establishes that the appellant never carried on business from the place where the appellant is described in the cause title of the plaint.
- 5.** Learned advocate appearing for the appellant submits that, the appellant assailed the decree initially by way of an appeal. The Appeal Court by an order dated July 3, 2024 passed in APDT/1/2024 permitted the appellant to apply under Order IX Rule 13 of the Code of Civil Procedure, 1908. Appellant did so.
- 6.** Application under Order IX Rule 13 of the Code of Civil Procedure, 1908 was accompanied by an application under Section 5 of the Limitation Act, 1963.
- 7.** Learned advocate appearing for the appellant submits that, the appellant was able to explain the delay in making and filing the application for setting aside of the ex parte decree. He refers to the pleadings made in the application for setting aside of the ex parte

decree and for the condonation of delay. He submits that, there are adequate explanations with regard to the delay being caused.

8. Learned advocate appearing for the appellant refers to the impugned judgment and order. He submits that, learned Single Judge proceeded on the basis of a statement made in the body of the application for setting aside of the ex parte decree that, the appellant became aware of the ex parte decree on June 20, 2023 although the appellant was aware of the ex parte decree at least on June 19, 2023. He submits that, the date knowledge of June 20, 2023 stated in the application is incorrect.
9. Relying upon **(1991) 1 CHN 356 (Harendra Nath Ghosal –Vs- Superfoam Pvt. Ltd.)**, learned advocate appearing for the appellant submits that, service of summons is required to be effected at the registered office of the corporation. In this regard, he draws the attention of the Court to Order XXIX Rule 2 of the Code of Civil Procedure, 1908. He points out that, the appellant is not described in the cause title of the plaint at its registered office.
10. Learned advocate appearing for the appellant relies upon **(1980) 3 Supreme Court Cases 595 (M/s. Shalimar Rope Works Ltd. –Vs- M/s. Abdul Hussain H. M. Hasanbhai Rassiwalla and Others)** for the proposition as to what would constitute adequate service of summons on a corporation governed by Order XXIX Rule 2 of the Code of Civil Procedure, 1908.
11. The respondents are represented.

- 12.** In the suit, plaintiff claimed that, the plaintiff sold goods to the defendant no.1 on the strength of irrevocable Letter of Credit issued by the defendant no.2. Goods involved was Indian origin non Basmati Rice.
- 13.** Defendant no.2 established an irrevocable Letter of Credit in favour of the plaintiff on July 2, 2015. The suit was decreed on November 22, 2022.
- 14.** The buyer of the goods did not assail the decree. The buyer of the goods also did not contest the execution proceeding in which order dated August 31, 2023 was passed.
- 15.** Appellant suffered decree, albeit ex parte, on November 22, 2022. Respondent no.1 herein put the decree in execution by way of execution petition being Execution Case No.217 of 2023. In such execution petition, notices were issued to the judgment debtors including the appellant herein. None appeared for the appellant in the execution proceeding.
- 16.** Executing Court disposed of the execution petition by an order dated August 31, 2023. By such order, the directions for payments were made to some of the banks.
- 17.** So far as the decree dated November 22, 2022 is concerned, appellant claims that it derived knowledge of the same on June 20, 2023. Learned Judge considered such claim and in paragraph 18 of the impugned judgment and order, learned Judge found that, such statement was incorrect. The reason that such statement was incorrect, was stated to be, the e-mail dated June 20, 2023 which,

the appellant claimed to be the source of knowledge of the ex parte decree dated November 22, 2022 itself stated that, the copy of the judgment and order was received on June 19, 2023.

18. The finding of the learned Judge as written in paragraph 18 of the impugned judgment and order cannot be said to be perverse. No materials placed before us to establish a contrary view.

19. Learned Judge thereafter proceeded to dismiss the application for condonation of delay since, such the application contained a statement which was wrong to the knowledge of the appellant. Again, there is no material on record to suggest that, such finding is perverse or that we can substitute such finding on the basis of the materials made available to us.

20. *M/s. Shalimar Rope Works (Supra)* considers Order XXIX Rule 2(b) of the Code of Civil Procedure, 1908 and issue of service of summons on a company. It is of the view that, a company can be served through its managing agent also.

21. *Harendra Nath Ghosal (Supra)* is by a Co-ordinate Bench which considered the provisions of Order XXIX Rule 2 of the Code of Civil Procedure and services of summons on a company incorporated under the provisions of the Companies Act, 1956. In the present case, appellant before us is not a company incorporated under the provisions of the Companies Act, 1956.

22. There are correspondences placed on record establish that, the appellant issued letters from the address where the appellant is described as defendant no.2 in the plaint. Therefore, it cannot be

said that, the appellant was described in the cause title of the plaint as defendant no.2 to be carrying on business from a place from which it never carried on such business. The letter of the appellant, dated January 2, 2018 and January 12, 2018 will belie such claim.

23. In such circumstances, we find no merit in the present appeal.

24. AO-COM/19/2025 with APOT/161/2025 along with all connected applications are dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

25. I agree.

[MD. SHABBAR RASHIDI, J.]