

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**C.O. 1321 of 2025
Flowers Valley Floriculture Pvt. Ltd.
Vs.
Airplaza Retail Holdings Pvt. Ltd.**

For the Petitioner : Mr. Rajarshi Dutta
..... advocate

For the Opposite Party : Mr. Amit Kumar Nag
Mr. Subhajit Ghosh
...advocates

Reserved on : 12.03.2026

Judgment on : 20.05.2026

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order being no. 38 dated February 17, 2025 passed by the learned Judge, Commercial Court at Rajarhat in T.S. (Com) no. 27 of 2024.
2. By the order impugned, the application under Order XIII A of the Code of Civil Procedure filed by the petitioner herein stood rejected on contest.
3. The facts giving rise to this application under Article 227 of the Constitution of India, in a nut shell, are as follows-
4. By a registered deed of lease dated July 31, 2019, the petitioner as lessor had leased out an immovable property comprising of a commercial space together with covered car parking spaces in two contiguous buildings at Kazi

Nazrul Islam Avenue (for short “the suit property”) to the opposite party herein, for a period of 9 years commencing from July 1, 2019. The opposite party paid the monthly lease rent as per the agreed terms of the lease deed till March 2020. However, from April 2020 the opposite party did not make payment of the monthly lease rent as per the terms of the lease deed.

5. By a letter dated April 7, 2020, the opposite party expressed its willingness to pay rent at the rate of 2% of actual revenue from March 22, 2020 in view of the onset of Covid-19 Pandemic. Petitioner immediately replied to the letter dated April 7, 2020 by an e-mail dated April 9, 2020 stating that Covid-19 pandemic do not fall within the purview of Force Majeure Clause and, therefore, the Covid-19 Pandemic did not exonerate and/or prevent the opposite party in any manner whatsoever from discharging its obligations with regard to payment of lease rent in terms of the lease deed. Though there was exchange of correspondences between the parties, but the petitioner did not agree to accept the payment terms as proposed by the opposite party.
6. The opposite party, without consent of the petitioner, deposited certain amounts in the bank account of the petitioner but the petitioner returned such amounts to the opposite party and also raised objections against such deposits being made by the opposite party.
7. Petitioner through its learned advocate issued a notice dated September 16, 2020 informing the opposite party about the “material breach” of the terms and conditions of the lease deed and called upon the opposite party to rectify such default within one month from the date of receipt of the said notice and on failure to rectify the default within the time limit stipulated therein, the lease deed shall stand terminated on the expiry of two months thereafter. The opposite party replied to the notice dated September 16, 2020 by a letter dated September 29, 2020.

8. On the grounds as stated hereinbefore, the petitioner filed the instant suit for recovery of possession, decree for arrears of lease rent, mesne profits and for perpetual injunction.
9. In the said suit, the petitioner took out an application under Order XIII A of the Code of Civil Procedure for passing a summary judgment and decree for recovery of vacant and peaceful possession of the demised premises and for a decree for arrears of lease rent.
10. The opposite party contested the application for summary judgment by filing an affidavit-in-opposition thereto.
11. Petitioner also filed an affidavit-in-reply to the affidavit-in-opposition filed by the opposite party herein.
12. By the order impugned, the learned Judge of the Commercial Court rejected the application filed by the petitioner under order XIII A of the Code of Civil Procedure. Being aggrieved, the plaintiff has approached this Court.
13. Mr. Surajit Nath Mitra, learned Senior Counsel for the petitioner contended that the defendant/opposite party has no real prospect of successfully defending the claim and no reasons have been assigned by the learned Judge of the Commercial Court as to why the claim of the petitioner could not be disposed of before recording of oral evidence. He contended that the opposite party defaulted in payment of rent at the rate(s) specifically mentioned in the lease deed and such default amounts to “material breach” as defined in Clause 8(v) of the said lease deed. Mr. Mitra further contended that as per the terms of the lease deed, petitioner issued a notice providing a reasonable time to remedy the breach complained of. He further contended that the lease stood determined upon expiry of two months thereafter in view of the said notice. Mr. Mitra contended that the opposite party admitted the existence of jural relationship of lessor and lessee between the petitioner and the opposite party. The opposite party has also not disputed the service of notice terminating the lease. He contended that a combined notice calling upon the lessee/ opposite party to remedy the breach and determination of

the lease on failure to rectify the breach is permissible in law. In support of such contention he placed reliance upon a decision in the case of **Shaniwar Dhondu Dharnekar v. Prabhavati Chandrakant Patange**, reported at **AIR 1980 Bom 276**.

14. Mr. Mitra placed reliance upon a decision in the case of **Bright Enterprises Private Ltd. v. MJ Bizcraft LLP**, reported at **2017 SCC Online Del 6394** in support of his contention that an application for summary judgment can be filed after service of summons on the defendant and prior to framing of issues in the suit. He contended that the onset of Covid-19 pandemic cannot be a ground to suspend or keep the payment of rent in abeyance by the tenant/lessee to the landlord/lessor and in support of such contention he placed reliance upon the decision in the case of reported at **Siddhatha Singh v. Ajit Singh Bawa**, reported at **(2022) SCC Online Del 2007**. Mr. Mitra further contended that as per the terms of the lease deed only if the demised premises is wholly or substantially destroyed or damaged at any time by the occurrence of any Force Majeure events then in such event the lease shall stand revoked and determined. He submitted that the onset of Covid-19 pandemic did not result in the premises being wholly or substantially destroyed or damaged. He, thus, contended that onset of Covid-19 pandemic cannot exonerate the opposite party from discharging its obligations in respect of payment of lease rent as per the terms of the lease deed.
15. Mr. Mitra placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Rajendra Prasad Gupta v. Prakash Chandra Mishra**, reported at **(2011) 2 SCC 705** in support of his contention that a provision in the Code of Civil Procedure has to be interpreted to mean that every procedure is permitted for doing justice unless expressly prohibited. He placed reliance upon a decision of the Hon'ble Supreme Court in the case of **B. Premanand v. Mohan Koikal**, reported at **(2011) 4 SCC 266** in support of his contention that if a provision of a statute is unambiguous and the

legislative intent is clear from the said provision, the Court need not take the aid of other rules of construction.

16. Mr. Nag, the learned advocate appearing for the opposite party seriously disputed the contention of Mr. Mitra. He contended that in view of imposition of nationwide lockdown by the Government of India and the Government of West Bengal due to onset of Covid-19 pandemic, the opposite party faced severe restrictions to operate the retail store at the suit property and for which the opposite party was unable to pay the monthly lease rental to the petitioner as per the terms of the lease deed. He further contended that several correspondences were exchanged by and between the parties to sort out the problem and to arrive at an agreement for payment of reasonable lease rental. He submitted that the alleged non-payment of lease rent during the period when restrictions were imposed for carrying on business activities on account of onset of Covid-19 pandemic cannot be treated as a “material breach” of the terms and conditions of the lease deed. He further contended that the lease deed provides for one month notice period to rectify the default and in case the lessee/opposite party fails to rectify the default, a further notice is contemplated as per the lease deed. He, thus, contended that a combined notice calling upon the opposite party to rectify the alleged default within a period of one month with a further intimation that on failure to do so the lease shall stand terminated after two months cannot be said to be a valid notice of termination of lease as per the lease deed. He, thus contended that the suit could not have been instituted on the basis of such an invalid notice of termination of lease and, therefore, the suit is liable to be dismissed on that ground.
17. Mr. Nag further submitted that Covid-19 pandemic is a Force Majeure event and in support of such contention he placed reliance upon a decision of the Delhi High Court in the case of **Halliburton Offshore Services v. Vedanta Ltd.**, reported at **2020 SCC Online Del 2068**. He also placed reliance upon a decision of the Delhi High Court in the case of **Mehra Jewel Palace (P) Ltd. v. Miniso Life Style (P) Ltd.**, reported at **(2022) SCC Online Del 1557**

in support of his contention that if the lessee suffered a loss due to shut down of his shop on account of Covid-19 pandemic, any default on the part of the lessee in performing its obligation to pay lease rent is due to a force majeure condition and for such failure the lessee should not be penalized.

18. Heard the learned advocates for the parties and perused the materials placed.
19. Order XIII A of the Code of Civil Procedure was inserted by the Commercial Courts Act 2015. Rule 1 of Order XIII A states that the Courts may decide a claim or part of a claim as well as any particular question on which the claim (whether in whole or in part) depends or a counter claim, without recording oral evidence.
20. Sub-rule 3 of Rule 1 of Order XIII A starts with a non-obstante clause which implies that an application for summary judgment shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII of the Code of Civil Procedure.
21. Rule 2 of Order XIII A stipulates the time limit within which an application for summary judgment may be filed. An application for summary judgment may be filed at any time after the summons has been served upon the defendant but prior to framing of issues in respect of the suit.
22. The grounds on which the Court may give a summary judgment has been specifically stated in Rule 3 of Order XIII A which is extracted hereinafter.

“3. Grounds for summary judgment.—The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that—

(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.”

23. Rule 3 thus empowers the Court to give a summary judgment against the defendant if the Court considers that the defendant has no real prospect of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.
24. Rule 4 of Order XIII A lays down the procedure that is to be complied with in case an applicant seeks a summary judgment.
25. Rule 4 of Order XIII A is extracted hereinafter for better appreciation.

“4. Procedure.—(1) *An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-clauses (a) to (f) mentioned hereunder:—*

(a) the application must contain a statement that it is an application for summary judgment made under this Order;

(b) the application must precisely disclose all material facts and identify the point of law, if any;

(c) in the event the applicant seeks to rely upon any documentary evidence, the applicant must,—

(i) include such documentary evidence in its application, and

(ii) identify the relevant content of such documentary evidence on which the applicant relies;

(d) the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be;

(e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.

(2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days’ notice of:—

(a) the date fixed for the hearing; and

(b) the claim that is proposed to be decided by the Court at such hearing.

(3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (f) mentioned hereunder in addition to any other matters that the respondent may deem relevant:—

(a) the reply must precisely—

(i) disclose all material facts;

(ii) identify the point of law, if any; and

(iii) state the reasons why the relief sought by the applicant should not be granted;

(b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must—

(i) include such documentary evidence in its reply; and

(ii) identify the relevant content of such documentary evidence on which the respondent relies;

(c) the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be;

(d) the reply must concisely state the issues that should be framed for trial;

(e) the reply must identify what further evidence shall be brought on record at trial that could not be brought on record at the stage of summary judgment; and

(f) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.”

26. Rule 5 of Order XIII A enables the parties to rely upon additional documentary evidence during hearing.

“5. Evidence for hearing of summary judgment.—(1) *Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must:—*

(a) file such documentary evidence; and

(b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing.

(2) *Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant’s documentary evidence, the applicant must:—*

(a) file such documentary evidence in reply; and

(b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing.

(3) Notwithstanding anything to the contrary, sub-rules (1) and (2) shall not require documentary evidence to be:—

(a) filed if such documentary evidence has already been filed; or

(b) served on a party on whom it has already been served.”

27. Rule 6 of Order XIII A enumerates the class of orders that the Court can pass in exercise of its discretion on an application for summary judgment. The said list is, however, not exhaustive but inclusive. Rule 6 is extracted hereinafter.

“6. Orders that may be made by Court.—*(1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:—*

(a) judgment on the claim;

(b) conditional order in accordance with Rule 7 mentioned hereunder;

(c) dismissing the application;

(d) dismissing part of the claim and a judgment on part of the claim that is not dismissed;

(e) striking out the pleadings (whether in whole or in part); or

(f) further directions to proceed for case management under Order XV-A.

(2) Where the Court makes any of the orders as set forth in sub-rule (1) (a) to (f), the Court shall record its reasons for making such order.”

28. Apart from other orders that may be passed on an application for summary judgment, Order XIII A Rule 6(b) of the Code of Civil Procedure empowers the Court to pass conditional orders in accordance with Rule 7. Rule 7 speaks of the nature of conditional orders that may be passed by the Court. Rule 7 is extracted hereinafter.

“7. Conditional order.—*(1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it*

shall do so, the Court may make a conditional order as set forth in Rule 6 (1) (b).

(2) Where the Court makes a conditional order, it may:—

(a) make it subject to all or any of the following conditions:—

(i) require a party to deposit a sum of money in the Court;

(ii) require a party to take a specified step in relation to the claim or defence, as the case may be;

(iii) require a party, as the case may be, to give such security or provide such surety for restitution of costs as the Court deems fit and proper;

(iv) impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion; and

(b) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.”

29. Order XIII A has been inserted with an object of speedy disposal of a claim pertaining to any Commercial Dispute by dispensing with the recording of oral evidence.
30. Upon reading Order XIII A as a whole, this Court is of the considered view that the applicant apart from stating other facts has to precisely disclose all material facts and identify the points of law, if any and in the event the applicant seeks to rely upon any documentary evidence has to include such documentary evidence in the application for summary judgment and identify the relevant content of such documentary evidence on which the applicant relies. The applicant must also state the reason why, according to the applicant, there are no real prospects of defending the claim.
31. On the other hand, the party defending such application in its reply has to precisely disclose all material facts, identify the points of law, if any and state the reasons why the reliefs sought by the applicant should not be granted. Such reply must also identify what further evidence will be brought on record at the trial. The reply must also state why, in the light of the

evidence or material on record, if any, the Court should not proceed to summary judgment.

32. Thus, Order XIII A allows the parties to put forward their respective cases as well as the documentary evidence in support thereof.
33. If the Court after going through the application for summary judgment and the reply thereto along with the documentary evidences produced by the respective parties finds that the claim either in whole or a part thereof or any particular question on which the claim depends can be decided on a point of law and upon interpretation and construction of the documents which forms the foundation of the claim and the Court is satisfied that all the documentary evidences necessary for the purpose of adjudication of the claim or any particular question on which the claim depends have been produced to enable the Court to dispose of the claim wholly or in part before recording of oral evidence and the defendant has no real prospect of successfully defending the claim, the Court may give summary judgment against the defendant.
34. The defendant cannot object to the passing of a summary judgment only on the plea that further evidence will be brought on record at the time of trial but in order to successfully resist the passing of a summary judgment, the defendant must identify what further evidence will be brought on record at the trial that could not be brought on record at the stage of summary judgment and also state why, in the light of the evidence or materials on record, the Court should not proceed to summary judgment.
35. Order XIII A Rule 6(b) enables the Court to make a conditional order in exercise of its discretion whether it appears to the Court that it is possible that a claim may succeed.
36. The Court shall exercise its power under Order XIII A of the Code of Civil Procedure to decide a claim pertaining to a Commercial Dispute in exceptional circumstances, only if the Court arrives at a conclusion that recording of oral evidence is not necessary to decide the claim wholly or in

part and the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be.

37. Turning back to the facts of the case on hand, admittedly a lease deed was executed by and between the petitioner and the opposite party.
38. It is not in dispute that the opposite party did not pay lease rent at the rate(s) mentioned in the lease deed on and from April 2020.
39. Onset of Covid-19 pandemic and imposition of nationwide lockdown has been set up as a ground for not making payment of lease rent at the rate(s) specified in the lease deed. Such default, according to the petitioner, amounted to “material breach” of the terms of the lease deed for which a notice calling upon the opposite party to remedy the default was issued clearly indicating therein that in case of failure to remedy such default the lease shall stand terminated after the expiry of the further period as indicated in the said notice.
40. The legality of a combined notice has been questioned by the opposite party on the ground that the same is not in accordance with the terms of the lease deed.
41. The reasons for the default in payment of lease rent at the rate mentioned in the lease deed, according to the opposite party, falls within the Force Majeure Clause which is disputed by the petitioner by contending that the Force Majeure Clause shall be applicable only in case the demised premises is wholly destroyed or damaged and not otherwise.
42. The jural relationship of lessor and lessee between the petitioner and opposite party prior to the alleged determination of lease as well as the service of notice dated 16.09.2020 are not in dispute.
43. This Court finds that the petitioner in the application for summary judgment has disclosed all material facts and identified the point of law and also produced documentary evidence in support of the claim made in such

application. The opposite party in its reply has also disclosed the material facts and identified the points of law. The opposite party has also placed reliance upon some documentary evidences and sought for leave to produce the bank statements and other documents at the time of hearing.

44. The learned Judge recorded that rent issues are to be decided on the basis of documents at the stage of trial and for that purpose the defendant should be permitted to rely on its bank documents during the hearing.
45. When the learned Judge of the Commercial Court was of the view that the rent issues can be decided on the basis of documentary evidence and the opposite party also in its affidavit-in-opposition sought for leave to produce the bank accounts at the time of hearing, the learned Judge of the Commercial Court ought to have returned a finding whether the opposite party should be allowed to rely upon additional documentary evidences at the time of hearing of the application for summary judgment instead of dismissing the application and consequently relegating the matter to a full-fledged trial even after formulating the points which are required to be decided.
46. Petitioner has terminated the lease deed on the ground of alleged failure on the part of the opposite party to rectify the default in payment of rent. Whether the alleged default in payment of rent amounts to “material breach” as defined in the lease deed requires an interpretation of the clauses of the lease deed which was available in the records.
47. Whether a combined notice calling upon the opposite party to remedy the “material breach” within a certain time with a further stipulation that the lease shall stand terminated on failure to remedy the breach within a further time limit is valid or not is a question of law which can be decided upon construction of the relevant clauses of the lease deed, which is an admitted document.
48. Whether imposition of lockdown due to onset of Covid 19 pandemic can be said to be a Force Majeure event would also involve construction of the

terms of the lease deed and the circulars that may have been issued by the Government from time to time on such issue. Decision on such issue may not also require recording of oral evidence.

49. As observed hereinbefore, Order XIII A enables the parties to include documentary evidence along with the application for summary judgment and the reply filed thereto. It also enables the parties to produce additional documentary evidences at the time of hearing. Order XIII A only dispenses with the recording of oral evidence in order to save time as well as to ensure speedy disposal of commercial disputes.
50. The learned Judge while rejecting the application for summary judgment has not recorded any finding as to why recording of oral evidence is necessary for deciding the points formulated by the learned Judge. Order XIII A enables the Commercial Court to decide a claim or a part of the claim on the basis of documentary evidence.
51. That apart the learned Judge of the Commercial Court even after observing that the defendant cannot lounge and sit idle on the suit property without payment of rent did not also consider whether a conditional order as provided under Order XIII A Rule 6(b) read with Rule 7 could not have been passed.
52. Rule 6 of the Order XIII A of the Code vests the Commercial Court with a discretion to pass conditional orders. Such discretion has to be exercised in a proper manner.
53. When a person in possession of an immovable property takes the shelter under the lease deed to protect its possession, the Commercial Court, on an application for summary judgment has to assign reasons as to why conditional order as contemplated in Rule 6(b) read with Rule 7 of Order XIII A should not be passed in a given case.
54. This Court accordingly holds that the Commercial Court has a duty to assign reasons even in cases where the Court is not inclined to pass any

conditional order in view of the expression “makes any of the orders” used in Order XIII A Rule 6(2). Any contrary interpretation would frustrate the object of Order XIII A of the Code.

55. To the mind of this Court, the learned Judge of the Commercial Court, failed to exercise its jurisdiction in a proper manner.
56. From the materials disclosed, it appears to this Court that the petitioner determined the lease by forfeiture for alleged non-payment of rent.
57. At this stage, it would not be out of place to take note of the provisions of the Transfer of Property Act, 1882 more particularly Section 114 thereof.
58. Mr. Mitra, learned Senior Counsel would contend that it was open to the opposite party to take such recourse at the time of hearing of the application for summary judgment. He submitted that since the opposite party chose not to pay the arrear amount even in course of hearing of this civil revision application, they are disentitled to such relief.
59. Per contra, the learned Advocate for the opposite party contended that it is open to the opposite party to pray for such relief at the final stage of hearing of the suit.
60. From the aforesaid submission of the learned advocates, a legal issue arises whether in a claim pertaining to a Commercial Dispute, the expression “at the hearing” appearing in Section 114 of the Transfer of Property Act would imply “at the hearing of the application for summary judgment” also.
61. In view of the fact that the aforesaid legal issue was not raised before the Commercial Court at the time of hearing of the application for summary judgment this Court is not inclined to accept the submission of Mr. Mitra, that the opposite party became disentitled to the aforesaid relief which they may be entitled to as per law.
62. Though Mr. Mitra relied upon certain decisions in support of his aforesaid contention, this Court refrains from making any comment at this stage on

such legal issue as the opposite party has not yet claimed any relief under Section 114 of the Transfer of Property Act. Such issue is left open to be considered and decided at the appropriate stage.

63. As pointed out earlier that the opposite party sought to rely upon additional documentary evidence at the time of hearing of the application for summary judgment but such prayer was neither allowed nor rejected by the learned Judge of the Commercial Court.
64. For all the reasons as aforesaid, this Court is of the considered view that the impugned order is liable to be set aside and the learned Judge of the Commercial Court should be directed to decide the application under Order XIII A of the Code afresh.
65. There is no quarrel to the proposition of law laid down in **B. Premanand (supra)** that the first and foremost principle of interpretation of a statute is the literal rule of interpretation and the other rules of interpretation namely mischief rule, purposive interpretation etc. can be resorted to only when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute.
66. There is also no quarrel to the proposition of law laid down in **Rajendra Prasad Gupta (supra)** that every procedure is to be understood as permissible till it is shown to be prohibited by the law. In other words, as a general principle, prohibition cannot be presumed.
67. This Court refrains from making any comment as to the applicability or otherwise of the other decisions cited at the Bar, as this Court is inclined to pass a direction upon the learned Judge, Commercial Court to decide the application for summary judgment afresh.
68. The order impugned accordingly stands set aside. The application for summary judgment stands restored to the file of the learned Judge, Commercial Court. The learned Judge, Commercial Court is directed to consider the application for summary judgment afresh and to dispose of the

same by passing a reasoned order in the light of the observations made hereinbefore after affording an opportunity to the parties to rely upon additional documentary evidences, if any, during the hearing subject to compliance of the requirements under Rule 5 of Order XIII A of the Code of Civil Procedure and an opportunity of hearing should also be given to the respective parties. The entire exercise shall be completed as expeditiously as possible but positively within a period of twelve working weeks from the receipt of a server copy of this Order.

69. C.O. no. 1321 of 2025 stands allowed with the aforesaid directions. There shall be, however, no order as to costs.
70. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)