

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Biswaroop Chowdhury

FMAT No. 144 of 2026

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CAN 1 of 2026

Shah Sponge & Power Limited
Vs.
Truvolt Engineering Co. Private
Limited and another

For the appellant : Ms. Urmila Chakraborty,
Mr. Orijit Chatterjee,
Ms. Swati Dalmia,
Ms. Sabarni Mukherjee,
Ms. Safura Ahmed, Advs.

For the
plaintiff/respondent no. 1 : Mr. Tapan Coomaar Dey,
Mr. V. N. Jana,
Ms. Shreya Chatterjee, Advs.

Heard on : May 21, 2026.

Judgment on : May 21, 2026.

Sabyasachi Bhattacharyya, J.:

1. The present appeal has been preferred against an order of ad interim injunction restraining the defendant no. 2/appellant

from invoking three performance bank guarantees furnished by the plaintiff/respondent no. 1.

2. Learned counsel for the appellant contends that the suit, as evident from the plaint, pertains to a commercial dispute and as such, the learned trial Judge, sitting in ordinary civil jurisdiction, could not have entertained the same, since the bar hits at the very root of the prima facie case for injunction.
3. Secondly, it is argued that it is a settled proposition of law that injunctions in respect of invocation of bank guarantees are not readily granted unless a case of fraud or apprehension of irretrievable injustice is made out in the context of the parent agreement between the parties.
4. It is contended that the present dispute pertains to the service to be provided by the plaintiff/respondent no. 1 in respect of transformers / sub-stations.
5. It is argued that, while obtaining the injunction, the plaintiff/respondent no. 1 suppressed several complaints registered by the appellant with the plaintiff/respondent no. 1 by way of several e-mails or other communications relating to delay in such performance as well as different deficiencies in respect thereof.

6. As such, it is argued that the learned trial Judge erred in law in granting injunction.
7. Learned counsel appearing for the plaintiff/respondent no. 1 submits that in the City Civil Court at Calcutta, both commercial and regular civil suits are filed. As such, it cannot be said beyond doubt that the impugned order was passed sitting in ordinary civil jurisdiction.
8. Secondly, it is argued that in the event the three performance bank guarantees are invoked, the plaintiff/respondent no. 1 will suffer irreparably.
9. Even otherwise, it is submitted that, as pleaded in the plaint, there is no dispute on the substance of the agreement of supply of such service.
10. Thus, it is argued that the invocation of bank guarantees, if permitted at this juncture, would not only be contrary to the contract between the parties but also create irreparable injury for the plaintiff/respondent no. 1.
11. Upon perusal of the plaint of the suit, from which the present appeal arises, we find that although the suit has been valued only at Rs.100/-, the same squarely pertains to claims of deficiencies in the services to be rendered by the plaintiff in

respect of transformers, sub-stations and other machineries supplied by the plaintiff/respondent no. 1.

12. It is quite obvious that the valuation of such transformers/services would much exceed the specified value as stipulated in the Commercial Courts Act, 2015.

13. In terms of Section 2(1)(c)(xviii) of the 2015 Act, disputes arising out of agreements for sale of goods or provision of services comes within the ambit of commercial disputes.

14. It is to be noted that the paradigm of a commercial suit is entirely different from any other ordinary civil suit, in view of the provisions of Section 12A of the said Act, which mandates pre-litigation mediation, and also the summary nature of a commercial suit as opposed to a regular civil suit.

15. It is the frame of the suit which is to be looked into in order to ascertain whether the dispute is commercial or not. From the plaint itself, it is clear that the suit has not been couched as a commercial suit.

16. Thus, the learned trial Judge did not have authority, sitting in ordinary civil jurisdiction, to entertain the suit or to pass the ad interim injunction order.

17. Secondly, from the four corners of the plaint, we do not find any specific allegation that the parent contract from which the performance bank guarantees emanate were vitiated by fraud or any irretrievable injustice with regard thereto.
18. Learned counsel for the plaintiff/respondent no. 1 cites a judgment in the case of *U.P. Cooperative Federation Ltd. Vs. Singh Consultants and Engineers (P) Ltd.*, reported at (1988) 1 Supreme Court Cases 174, where it was reiterated, in the context of Section 41 of the Arbitration Act, 1940 as well as Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, that the Court cannot issue injunction restraining the principal from invoking and encashing a guarantee except in cases of fraud or apprehension of irretrievable injustice to the contractor.
19. The said proposition is based on the premise of the very concept of bank guarantees, which are independent agreements between the concerned banks and the person in whose favour the bank guarantees are issued. There is no qualitative difference as such between a 'bank guarantee' and a 'performance bank guarantee', as sought to be made out by the plaintiff/respondent no.1.

20. Thus, the learned trial Judge, without referring to any such fraud or vitiation of the parent contract and/or in the absence of any such case even being made out in the plaint or injunction application, could not have mechanically granted injunction at the drop of a hat in respect of invocation of performance bank guarantees.
21. Hence, the impugned order is bad in law on such count as well.
22. In such view of the matter, the appeal is admitted and allowed on hearing the parties, thereby setting aside the impugned order dated March 23, 2026 passed by the learned Judge, Seventh Bench, City Civil Court at Calcutta, in Title Suit No. 624 of 2026.
23. Consequentially, CAN 1 of 2026 is disposed of as well.
24. There will be no order as to costs.
25. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties at an early date.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Biswaroop Chowdhury, J.)