IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/5/2026
IA No. GA/1/2026, GA/2/2026

SURENDRA SINGH BENGANI
-VS-
ASHOK CHAUDHRY

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant	:	Mr. Rohit Banerjee, Adv. Mr. Virendra Singh Bengani, Adv.
For the Respondent	:	Mr. Jayanta Sengupta. Adv. Mr. Ayan Dutta, Adv. Ms. Shomrita Das, Adv. Ms. Shomrik Das, Adv.
HEARD ON	:	03.02.2026
DELIVERED ON	:	03.02.2026

DEBANGSU BASAK, J.:-

1. IA No. GA/1/2026 is an application for condonation of delay.

2. The delay is of 147 days in making and filing the appeal.

3. Delay is sought to be explained on the basis of the vacation of the Court intervening and the learned advocate being engaged in professional work, did not file the appeal within time.

4. Neither the act of the Court nor the act of the advocate, should be foisted upon the litigant.

5. Therefore, we accept the causes shown in the application for condonation of delay as sufficient. We allow IA No. GA/1/2026.

6. The appeal is taken up for hearing on merits.

7. Appeal is at the behest of the plaintiff and directed against order dated July 14, 2025.

8. By the impugned order, learned Single Judge disposed of an application for judgment on admission being IA GA/4/2023 by rejecting the same.

9. Learned advocate appearing for the appellant submits that, the appellant lent and advanced money to the defendant. The defendant acknowledged receipt of such money. Defendant also confirmed the accounts from time to time. He draws the attention of the Court to the confirmation of accounts for the period from April 1, 2015 to March 31, 2016 as well as for the period from April 1, 2017 till March 31, 2018. He submits that, the last confirmation of account was for a principal sum of Rs.7,82,00,000/-. He submits that such confirmation of account was made on April 1, 2018.

10. Learned advocate appearing for the appellant submits that, subsequent thereto, the defendant submitted tax deducted at source certificate with the income tax authorities. He refers to Form 26AS in this regard. He submits that, the rate and quantum of interest was also acknowledged in such Form 26AS which relates to the assessment year 2018-2019 financial year 2017-2018. He submits that the last date of booking of account in that Form 26AS in respect to the appellant is November 6, 2020.

11. Learned advocate appearing for the appellant refers to the impugned order. He submits that, the impugned order proceeds on the basis of an issue of limitation as also disputes raised by the defendant. He submits that, on both the scores, the defendant did not make out any case so far as limitation is concerned. He submits that suit was filed on March 18, 2021. The last acknowledgment of liability is of November 6, 2020. Consequently, by no stretch of imagination, the suit can be classified as barred by limitation.

12. So far as the disputes raised by the defendant are concerned, he submits that, the same are moonshine. According to him, the defence raised is that, the money stood repaid and that, the defendant allegedly paid another person in discharge of its liability. He submits that there is no evidence to suggest to the same, let alone establish it.

13. Learned advocate appearing for the respondent submits that, there is an issue of limitation involved. He submits that although the account from where the alleged disbursement took place is in the name of the plaintiff, nonetheless, the plaintiff is not in control of such bank account. It is the other person who is in control of such account and the defendant paid the other person.

14. Learned advocate appearing for the respondent relies upon **(2011) 15 SCC 273 (Himani Alloys Ltd. -Vs- Tata Steel Ltd.)** and submits that, since the acknowledgment cannot be said to be unconditional, decree should not be passed. In any event learned Single Judge exercised discretion in particular way with regard to the so called admission. Such discretion cannot be classified as perverse and, therefore, no interference is called for.

15. At our request, the appellant produced the original confirmation of accounts in Court today which are perused and returned.

16. Two confirmation of accounts for the period from April 1, 2015 to March 31, 2016 and April 1, 2017 to March 31, 2018, are relied upon by the appellant in its application for judgment upon admission. Since photocopies are relied, we called for the original to satisfy our conscience. As noted above, the originals were produced in Court and perused by us.

17. The last confirmation of account dated April 1, 2018 is for the period April 1, 2017 to March 31, 2018. Such confirmation of account bears the signature of both the parties before us. Such confirmation of account confirms that a sum of Rs.7,82,00,000/- is due and payable by the respondent to the appellant herein.

18. The confirmation of account is dated April 1, 2018. As noted above, suit was filed on March 18, 2021. However, there is a Form 26AS filed by the respondent with the income tax authorities. Such Form 26AS acknowledges that there was money transactions between the parties herein. Such form relates to the interest component payable by the respondent to the appellant. It acknowledges the quantum of interest that is to be paid, the quantum of taxes payable on such interest. Last transaction date in respect of such interest transaction and return filed with Income Tax authorities is November 6, 2020. Consequently, the plea on limitation does not possess any substance. A running current and continuous account existing between the parties right up to November 6, 2020, if not subsequent thereto, is established. Such a date is within the period of limitation of a suit for recovery of money lent and advanced.

19. So far as the defence on merit is concerned, we find that this stand of the respondent as the defendant is moonshine. The respondent acknowledged its liability in writing and acting on such liability, proceeded to file income tax returns with the income tax authority. The respondent cannot be allowed to take a stand contrary to one that it took voluntarily before the income tax authority, so far as the instant transactions are concerned. Before the income tax authority, it is not the case of the respondent that, the bank account although standing in the name of the appellant, nonetheless the same was operated by a different person and that, the liability of the respondent to the appellant stood discharged by way of payment to such other person. Quite to the contrary as late as on November 6, 2020, the liability was acknowledged to the income tax authority.

20. **Himani Alloys Ltd. (Supra)** was rendered in a suit where, an application for judgment on admission was filed. In the facts of that case, Supreme Court did not find unconditional acknowledgement of liability. Facts and circumstances of that case are different in the facts of the present case. There are unconditional acknowledgments of liability as noted above by us. Coupled with such acknowledgement of liability, there is voluntary stand taken by the respondent herein before the income tax authority where, the respondent acknowledged its liability, assessed and deducted tax at source from and on behalf of the appellant and filed corresponding return with the income tax authority.

21. Under such circumstances, we find that there is no defence to the prayer for decree as made by the appellant in its application for judgment on admission. There will be a decree for a principal sum of Rs.7,82,00,000/-

22. The rate of interest being acknowledged in the Form 26AS filed by the respondent before the income tax authority, therefore, there will be a decree for the period from December 1, 2017 to September 30, 2023 as claimed by the appellant, for the sum of Rs.7,51,63,128/-.

23. In the event of default of payment of the principal amount of Rs.7,82,00,000/- within a period of a fortnight from date, the appellant will be entitled to interest at agreed rate of 16.5% per annum on and from October 1, 2023 until realisation.

24. APOT/5/2026 along with all connected applications are disposed of.

25. Impugned order to the extent that it rejects the application for judgment on admission is set aside.

(DEBANGSU BASAK, J.)

26. I agree.

(MD. SHABBAR RASHIDI, J.)

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