

In the High Court at Calcutta
Commercial Division
Original Side

Judgment (2)

PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY

IA NO. GA-COM/1/2025
In CS-COM/107/2025

HIMADRI SPECIALITY CHEMICAL LIMITED
VS
TARUN SHARMA

For the Plaintiff : **Mr. Satadeep Bhattacharyya. Adv.**
Mr. Subhajit Ghosh, Adv.
Ms. Sriparna Mitra, Adv.
Mr. Arjun Roy, Adv.

Heard on : **June 16, 2026**

Judgment on : **June 16, 2026**
[In Court]

ANIRUDDHA ROY, J :

FACTS:

1. This is an application filed by the plaintiff praying for a summary judgment under **Order XIII A** of the **Code of Civil Procedure, 1908**, as amended (hereinafter, "**the Code**").
2. Claiming the price of goods sold and delivered by the plaintiff to the defendant, the plaintiff has filed the instant suit, inter alia, claiming a principal sum of **Rs.15,00,000/-** along with the interest thereupon

aggregating to a total sum of **Rs.20,22,010/-**, as pleaded in **paragraph 22** of the plaint. The plaint is annexed as **Annexure-A** at **page 14** to the **application**.

3. **Annexure-B** at **page 33** to the **application** is the Service Report dated **November 14, 2025** issued by the office of the Deputy Sheriff showing that the writ of summons was served through speed post with Acknowledgement Due upon the defendant on **October 16, 2025**. The plaintiff informs that no written statement has been filed by the defendant. In view of the operation of the provisions laid down under **Rule 1** to **Order VIII** of the **Code**, as amended, it appears that since the mandatory period mentioned in the **Code** had expired but no written statement has been filed, the defendant has forfeited its right to file written statement. The instant application has been filed on **November 20, 2025**.
4. Pursuant to a verbal order placed by the defendant, the plaintiff had sold and delivered goods and raised its invoice dated **December 4, 2022** for a total sum of **Rs.22,30,200/-**, **Annexure-C** at **page 34** to the **application**.
5. The goods were duly sold and supplied by the plaintiff which was accepted by the defendant without any objection and the defendant in acknowledgment of receipt of the goods, sold and supplied by the plaintiff, had made a total part-payment for a sum of **Rs.7,30,200/-** during the period between **June 30, 2023** and **July 18, 2024** as would be evident from **pages 96, 115, 159, 191, 205, 220** and **227** of

the **application** respectively. The last of such part-payment was made on **July 18, 2024** for a sum of **Rs.1,00,000/-** as would be evident from **page 227** of the **application**.

6. From time to time the plaintiff raised series of demands, namely, dated **September 21, 2023, October 19, 2023, December 19, 2023** and **April 26, 2024** as would be evident from **pages 238, 239, 240, 241** and **243** of the **application** respectively. None of these demands were replied to.
7. The record shows that the defendant had failed to enter appearance in the suit. On **November 25, 2025** when the application appeared in the list and was moved, this Court directed the defendant to file its affidavit in opposition. No affidavit in opposition was filed neither the defendant was represented subsequently.
8. By an order dated **February 2, 2026**, this Court directed the plaintiff to publish a public notice, once in **Times of India**, having a wide circulation at New Delhi and once in a vernacular language mentioning the gist of the application. The order dated **April 8, 2026** records that necessary newspaper publications had already been made and the affidavit of service containing the original newspaper publications had been filed, which is on record.
9. The matter then appeared before this Court on **June 12, 2026** when the defendant was also not represented and the application is taken up for final consideration today when the defendant is also not represented.

SUBMISSIONS:-

10. Mr. Satadeep Bhattacharyya, learned Advocate being ably assisted by Ms. Sriparna Mitra, learned Advocate and Mr. Arjun Roy, learned Advocate appearing for the plaintiff submits that the defendant has not filed its written statement within the mandated period under **Order VIII** of the **Code**. The defendant has forfeited its right to file written statement in the instant commercial suit. In absence of written statement, there is no scope for the defendant to set up any defence to the claim made in the plaint.
11. Mr. Bhattacharyya further submits that in any event, at no point of time the defendant has raised any objection with regard to the receipt of the goods in any manner whatsoever. The goods were duly received and consumed by the defendant. In acknowledgement of receipt of the goods and its consumption, the defendant has also made part-payments for a total sum of **Rs.7,30,200/-**, as already referred to above and last of such part-payments was made on **July 18, 2024**. The last part-payment was made post the demand notices.
12. Mr. Bhattacharyya submits that there is no defence on the part of the defendant to the claim of the plaintiff and on the contrary by making the part-payments from time to time, even after the demand notice having been received by the defendant, it has acknowledged and admitted the indebtedness towards the plaintiff. There is no *bona fide* defence on the part of the defendant. Hence, the plaintiff claims summary judgment.

13. Mr. Bhattacharyya also submits that there is no agreed rate of interest by and between the parties.

DECISION:

14. After considering the submissions made on behalf of the plaintiff and on perusal of the records, it appears to this Court that the suit in effect is an undefended one, as the defendant has forfeited its right to file written statement.
15. The law is trite that in absence of written statement, the defendant cannot set up any defence against the claim of the plaintiff and at the highest the defendant would have a right of cross-examination which shall also be restricted within the scope of the plaint case and not beyond that. **Order XIII A** of the **Code** provides for summary judgment, *inter alia*, in favour of the plaintiff, if the tests laid down under **Sub-rule 3** thereunder is satisfied.
16. On analysis of the facts on record, this Court finds that at no point of time, contemporaneously or otherwise, the defendant has raised any objection with regard to the supply of the goods delivered and supplied by the plaintiff. Upon receipt of the invoice raised by the plaintiff for a total sum of **Rs.22,30,200/-**, the defendant in acknowledgement of its liability has made part-payments from time to time for a total sum of **Rs.7,30,000/-** and last of such part-payments was made on **July 18, 2024**, even after service of the demand notice. The reply of the defendant dated **September 18, 2023, Annexure-E** at **page 236** to the **application** shows that the defendant requested the plaintiff to

update the payment for a sum of **Rs.1,00,000/-** which was made through NEFT on **August 31, 2023** through Bank of Baroda. The series of trail mails being part of the application and annexed thereto would clearly demonstrate that the defendant has acknowledged the acceptance of the goods and in acknowledgement of the price thereof made part-payment. There was no contemporaneous objection raised by the defendant.

17. In the light of the above, this Court finds that the defendant has no real prospect of successfully defending the claim of the plaintiff. There is no defence on the part of the defendant to the claim made by the plaintiff. Even if the defendant avails an opportunity of cross-examination, it cannot set up any defence to the claim of the plaintiff in the conspectus of the facts and circumstance stated herein.
18. In view of the foregoing reasons and discussions, this Court is of the firm and considered view that there is no other compelling reason why the claim of the plaintiff should not be disposed of, before recording of oral evidence, through a summary judgment.
19. There shall be a decree for a principal sum of **Rs.15,00,000/-** after adjustment and giving credit of the entire part-payment made by the defendant to the extent of **Rs.7,30,200/-**.
20. Since the interest has not been agreed upon by and between the parties and there is no statutory mandate in this regard and the transaction being commercial in nature, the discretion is left with this Court to award interest. Accordingly, the defendant shall pay interest

at the rate of **8%** per annum from the next date of the last part-payment made, i.e., **July 19, 2024** till the total payment is tendered to the plaintiff.

21. The decree shall be drawn up expeditiously.
22. Accordingly, the instant suit **CS-COM/107/2025** stands **decreed** and **disposed of**.
23. Resultantly, the instant application being **IA NO:GA/1/2025** stands **allowed**, without any order as to costs.

(ANIRUDDHA ROY, J.)

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