

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
IN REVIEW FROM ITS COMMERCIAL DIVISION
ORIGINAL SIDE

RVWO/40/2025
IA NO: GA-COM/1/2025
CS (COM) No. 697 of 2024

M/S. SKIPPER FURNISHING PRIVATE LIMITED
VS
ANUBANDH FINANCIAL SERVICES PRIVATE
LIMITED AND ANOTHER

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO
Date : 2nd February, 2026.

Appearance:

Mr. Debdt Mukherjee, Adv.
Mr. Varun Kothari, Adv.
Mr. Nikunj Berlia, Adv.
Ms. Urvashi Jain, Adv.
...for the applicant.

Mr. Deepnath Roychowdhury, Adv.
Mr. Debraj Sahu, Adv.
Mr. Bhaskar Dwivedi, Adv.
Ms. Jyoti Rauth, Adv.
Mr. Tamaghana Saha, Adv.
...for the respondents.

1. The petitioner/defendant has filed the present application praying for review of the judgment passed by this Court dated 25th June, 2025 in GA-COM/2/2024 and CS-COM/697/2024.

2. The petitioner has also prayed for condonation of delay of 80 days in filing the present review application.

3. Counsel for the petitioner submits that after the delivery of judgment dated 25th June, 2025, the petitioner has held conference with the learned Advocate in the month of July, 2025 and after the conference was

held, the petitioner was advised to file the review application. Accordingly, the petitioner has instructed the learned Advocate to prepare the review application and as per the instruction, the learned Advocate has prepared the draft of the review application and was duly vetted by the senior Advocate.

4. In the meantime, the petitioner has also applied for certified copy of the judgment due to which there was a delay of 80 days in filing the present application.

5. Learned Counsel for the plaintiff raised objection and submits that the petitioner has not shown any cause as to why the petitioner has not filed the present application for review of the judgment dated 25th June, 2025 within prescribed time and prayed for rejection of the prayer for condoning the delay.

6. Heard the learned Counsel for the respective parties. Perused the material on records and the averments made in the application.

7. This Court finds that the petitioner has shown sufficient cause for non-filing of the present application within the statutory period.

8. Accordingly, the delay is condoned.

9. The petitioner has filed the review application for review of the judgment dated 25th June, 2025 on the ground that there are errors apparent on the face of the record since the judgment and decree has been passed in favour of the plaintiff without serving the writ of summons for judgment in Form No. 4A, Appendix B of the Code of Civil Procedure, 1908 or any affidavit-in-compliance of the Order XXXVII Rule 3 of the Code of Civil Procedure, 1908.

10. Learned Counsel appearing for the petitioner/defendant submits that the plaintiff has not served the writ of summons either in Form No. 4, Appendix B or under Form No. 4A, Appendix B compliance with Rule 2(2) and 3(4) of Order XXXVII of the Code of Civil Procedure, 1908.

11. Learned Counsel appearing for the petitioner submits that the plaintiff has not complied with the provisions of Order XXXVII Rule 3(4) of the Code of Civil Procedure, 1908 by taking appropriate steps for issuance of summons for judgment in Form No. 4A, Appendix B but this Court has taken up the application for hearing and passed the judgment, which is error apparent on the face of record and is liable to be reviewed and the plaintiff is directed to take appropriate steps for issuance of summons for judgment under Form No. 4A, Appendix B of Rule 3(4) of the Code of Civil Procedure, 1908.

12. Learned Counsel for the petitioner relied upon the judgment in the case of **Ramchandra Keshav Adke (Dead) by LRS & Ors. - Vs- Govind Joti Chavare and Ors.** reported in **(1975) 1 SCC 559** and submits that intention of the Legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it nonest for the purpose of section 5(3)(b).

13. He further submits that in the present case the plaintiff has not taken any steps for issuance of summons in terms of Order XXXVII Rule 3(4) of the Code of Civil Procedure, 1908 for issuance of summons for

judgment in Form No. 4A, in Appendix B but this Court has passed the judgment.

14. Learned Counsel for the petitioner submits that though the defendant after receipt of the writ of summons has appeared in the suit and filed an application being GA-COM/2/2024 praying for condoning the delay of one day as well as leave to defend the suit but the same will not curtail the right of the defendant to ask summons from the plaintiff as provided under Order XXXVII Rule 3(4) of the Code of Civil Procedure, 1908.

15. Per contra, learned Advocate appearing for the plaintiff/respondent submits that though the plaintiff has not taken any steps for issuance of summons in terms of Order XXXVII Rule 3(4) in Form No. 4A, Appendix B but the defendant on receipt of writ of summons has voluntarily appeared before this Court and filed an application being GA-COM/2/2024 praying for condoning the delay of one day in preparing an application for leave to defend the suit, which itself proves that the defendant had the knowledge that the plaintiff has filed the suit for summary judgment and as such the defendant has filed an application being GA-COM/2/2024 praying for leave to defend the suit.

16. He further submitted that during the hearing of the suit, the plaintiff has made necessary corrections in the plaint and the defendant has pointed out the same before this Court at the time of hearing of the suit and as per the direction passed by this Court, the plaintiff has served the corrected copy of plaint to the defendant and the defendant has received the corrected plaint and appeared in the suit and argued the matter on merit without raising any objection and thus after passing of the judgment the

defendant cannot come up with the review application taking the plea that the plaintiff has not taken any steps for issuance of summons under Order XXXVII Rule 3(4) in Form No. 4A, Appendix B of the Code of Civil Procedure, 1908.

17. Learned Counsel for the plaintiff has also drawn the attention of this Court to paragraphs 20 and 21 of the judgment and submits that this Court has also recorded that on receipt of the summons, the defendant has filed an application for leave to defend with the prayer for condoning the delay of one day in filing the present application.

18. In the said application also the defendant has not raised any objection that the plaintiff has not served with the writ of summons in terms of Order XXXVII Rule 3(4) of the Code of Civil Procedure, 1908. This Court has categorically held that the plaintiff has taken appropriate steps for issuance of writ of summons and the defendant on receipt of the writ of summons has appeared before the Court and filed an application for condoning the delay of one day and has also prayed for leave to defend the suit and the application filed by the defendant was taken up for hearing along with suit and after hearing the parties this Court has passed the judgment on 25th June, 2025 directing the defendant no. 1 to pay Rs.30,00,000/- being the principal amount along with interest @ Rs.10% per annum, till realisation of the decretal amount. He further submits that the defendant has taken the plea with regard to the issuance of summons of summary suit under Order XXXVII Rule 2(2) of the CPC in Form No. 4 in Appendix B. In paragraphs 20 and 21 of the judgment it is categorically held that the defendant has appeared and filed an application. Thus, the

defendant by way of review application cannot raise the issues at the later stage. He further submits that if the defendant was aggrieved with the judgment passed by this Court he should have filed an appeal but instead of filing an appeal, has filed the present application.

19. He further submitted that the plaintiff has also initiated the execution proceeding and in the execution proceeding also the defendant has appeared and has deposited the part decretal amount and there is a further direction to deposit the further decretal amount by 2nd March, 2026. He submits that the review application filed by the defendant is not maintainable.

20. Heard the learned Counsel for the respective parties. Perused the materials on record.

21. Order XXXVII Rule 2(2) and Rule 3(4) of the Code of Civil Procedure, 1908 read as follows:-

“2(2). The summons of the suit shall be in Form No. 4 in Appendix B or in such other Form as may, from time to time, be prescribed.”

3(4). if the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.”

22. This Court finds that the plaintiff has filed the summary suit under Order XXXVII and the plaintiff has taken appropriate steps for issuance of writ of summons. On receipt of the writ of summons, the defendant has entered appearance. After appearance, the defendant has filed

an application being GA-COM/2/2024 praying for leave to defend the suit and also prayed for condoning the delay.

23. The plaintiff has not raised any objection at the initial stage that the plaintiff has not taken any steps for issuance of summons for judgment in Form No. 4A, Appendix B in terms of Order XXXVII Rule 3(4) of the Code of Civil Procedure, 1908.

24. The defendant has participated in the said proceedings. During the pendency of the proceedings, the plaintiff has made correction in the plaint and the defendant has pointed out the correction made by the plaintiff and as per the direction passed by this Court the corrected plaint was served upon the defendant. The defendant has not raised any objection at that point of time also that the plaintiff has not taken any steps.

25. This Court in Paragraphs 20 and 21 of the judgment held as follows:-

“(20) The defendants have not denied with respect to receipt of writ of summons. On receipt of writ of summons, the defendants have filed the present application with the prayer for condoning delay of 1(one) day in filing of the present application. In the application also the defendants have not raised any objection that the plaintiff has not served writ of summons in terms of Order XXXVII, Rule 2(2) of the CPC. At the time of hearing of the suit, the defendants informed this Court that the plaintiff has made some corrections in the plaint but corrected plaint has not served upon the defendants. When the defendants have pointed out the same, this Court directed the plaintiff to serve corrected copy of the plaint and on the same day i.e. 28th April, 2025, the plaintiff has served the corrected copy of the plaint to the defendants and the defendants have received the same without any objection.

(21) This Court finds that the plaintiff has taken appropriate steps for issuance of writ of summons upon the defendants and the defendants have received writ of summons and has filed the present application. The corrected plaint is served upon the defendants by the plaintiff as per order of this Court and the defendants have accepted the same without any objection. It is not the case that the plaintiff has not lodged the writ of summons. The only question raised that the said summons not in accordance with Form No. 4 but this Court finds that the defendants have received the writ of summons and have entered appearance without any objection and filed the present application and in the present application also the defendants have not raised any objection with regard to issuance of writ of summons not in accordance with Form 4, thus this Court did not find any merit on the objection raised by the defendants.”

26. This Court finds that once the defendant has appeared in the suit on receipt of the writ of summons and had filed an application for leave to defend the suit and accordingly this Court has taken up the said application for hearing and after hearing both the parties, this Court was of the view that there is no ground to grant leave to the defendant to defend the suit and accordingly summary judgment was passed directing the defendant to pay a sum of Rs.30,00,000/- being the principal amount along with interest.

27. In the judgment in paragraphs 20 and 21 the issues raised by the defendant has been categorically decided. The judgment was passed on 25th June, 2025. The defendant has not chosen to prepare any appeal. The plaintiff has also initiated an execution proceeding. In the execution proceeding also the defendant has entered appearance and has complied with

the judgment by paying the 50 per cent of the decretal amount and the remaining 50 per cent amount is required to be paid on 2nd March, 2026.

28. This Court finds that the issue raised by the defendant in the present application is already decided by this Court in the judgment dated 25.06.2025. The defendant has filed this application afterthought even after entering in the execution proceeding. There is no error apparent on the face of record.

29. Considering the above RVWO No. 40 of 2025 is dismissed.

30. GA-COM/1/2025 is disposed of.

(KRISHNA RAO, J.)

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