OD-7 ORDER SHEET

IA No.GA/1/2025
IN
CS/7/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

VEDIC TRACOM PRIVATE LIMITED
VERSUS
JYOTE PROPERTIES & ORS.

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 24th August, 2026.

Mr. Sujit Banerjee, Adv.
Mr. Nilay Sengupta, Adv.
Ms. Sunanda Samanta, Adv.
. . . .for the plaintiff.

Mr. Shuvanil Chakraborty, Adv.
. . . . . for defendants.

The Court : In a suit for money lent and advanced the plaintiff has filed this application for a summary judgment *inter alia* under the provisions of Chapter XIIIA of the Original Side Rules of this Court.

It is the case of the plaintiff that on being approached by the defendant no.1, a partnership firm through defendant no.2, its partner, the plaintiff at its place of business within the jurisdiction as aforesaid agreed to lend and advance Rs.3,24,50,000/- to the defendant no.1. Pursuant to such agreement, the plaintiff from its bank within the Ordinary Original Civil Jurisdiction of this Court had sent to the account of the defendant no.1 by way of Real Time Gross Settlement (in short RTGS) an aggregate sum of Rs. 3,24,50,000/-. The defendant no.1 duly received the said money and appropriated the same. The defendants in terms of an oral agreement as pleaded in paragraph 5 of the plaint which is also paragraph 5 of this application were to refund the said money within six months without any interest. The defendants failed and neglected to pay such amount which resulted in issuance of a demand notice followed by institution of the present suit and the present application.

The defendants, on the other hand, have come up with a defence that there was an arrangement between the plaintiff and the defendants by which the plaintiff in order to enroute money to another company wherein one of the directors of the plaintiff company was common, paid money to the defendants which was immediately thereafter paid to that entity wherein one of the directors of the plaintiff company was common. The defendants, therefore, owe no money to the plaintiff. The defendants also raise the issue of commercial loan though not specifically pleaded.

After hearing the parties and considering the materials on record, I find that money from the plaintiff's bank account was transferred to the bank account of the defendant no.1 and there is no dispute to that. Unless there is some arrangement between the parties, the question of money, that too a huge quantum of Rs.3,24,50,000/- would not have been transferred from the plaintiff's account to the defendant no.1's account. On a query from Court it is submitted that the defendants are into the business of repairing motor cars for which they have several outlets connoted as workshop/garages. The plaintiff, on the other hand, has submitted to be in the business of trading with textile.

The money given to the defendants by the plaintiff, therefore, has no nexus with the business, the plaintiff and the defendants carry on. In order to qualify the loan to be one under the provisions of Section 2(1)(c)(i) of the Commercial Courts Act, 2015. In absence of any further pleading this issue cannot be further considered since it is a ground under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 (in short, CPC) and no separate application in this ground with specific details have also not been filed. It may so happen that the plaintiff company or the principal officers of the plaintiff company were getting their cars/vehicles repaired at the workshop of the defendants but there is no such pleading from the side of the defendants. The defendants to operate its workshop may require waste cloth which could have been procured from the plaintiff for which transaction took place but that is also not the case of the defendants. These possibilities cannot be advanced further in absence of specific pleading to that effect.

This fact situation coupled with interest free loan as pleaded by the defendants conclusively demonstrates that the transaction does not fall in any of the categories which can give rise to a commercial dispute for making the suit liable to be framed and instituted as a commercial suit. The defendants also have not alleged that the money was refundable with interest.

The money which has gone from the plaintiff's account to the defendants' account, therefore, is to be held to be loan given by the plaintiff to the defendants not as a commercial loan in the facts of the instant case. The defendants have also not come up with a story of gratuitous payment. Once the receipt of money as a loan is conclusive, the next question therefore arises is whether the same has been refunded. Repaying to another entity and not the plaintiff, without any corroborating document does not demonstrate even prima facie repayment to the plaintiff through its alter ego. Assuming without admitting that the plaintiff had orally requested the defendants to pay to another entity where one of the directors of the plaintiff company is also the directors in the plaintiff company. In such a situation in ordinary course after the repayment was made there ought to have been a document within a reasonable period of time from the side of the defendant intimating the plaintiff or having it recorded that the loan amount has been repaid. Even the defendants did not reply to the legal notice issued by the plaintiff making out the case which the defendants are now trying to run. The defendant has also not disclosed its books of account to show the transaction as alleged by the defendant.

The plaintiff has also relied upon a Memorandum of Understanding subsequent to filing of this application which is annexed to the affidavit-in-reply wherefrom it appears that pursuant to a settlement, the defendants made over a cheque for Rs.3,24,50,000/- for paying off the loan. The cheque, however, on being presented has been dishonored which resulted in the plaintiff filing proceedings under Section 138 of the Negotiable Instrument Act, 1881 after issuing a notice. The defendants have also not replied to such notice. No settlement was necessary, if the defendants had reopened the loan as contended by the defendants.

The defence put forth by the defendants that there is no written agreement between the parties as pleaded by the plaintiff also does not assist the defendants as an application under provisions of Chapter XIIIA of the Original Side Rules of this Court does not require only a written agreement or document.

The defence put forth by the defendants in the light of the discussions made hereinabove is ex facie sham and does not inspire the confidence of the Court to send the matter for trial holding that there are triable issues.

The plaintiff is, therefore, entitled to a summary judgment of Rs.3,24,50,000/-. The plaintiff is not entitled to any interest as it is the own case of the plaintiff that the loan was given without any interest. The subsequent terms of the agreement pleaded by the plaintiff in paragraph 5(d) of the application as also 5(d) of the plaint are also not acceptable in the facts of the case as under the golden rule of interpretation of an agreement except a testamentary document. The first clause will prevail if there is any dispute or discrepancy between two clauses of the same agreement.

Let there be a decree for the said sum of Rs.3,24,50,000/-.

The defendants shall pay the said sum within a period of two months from date failing which the defendants shall be liable to pay interest at the rate of 8% per annum from this date (24-08-2026) till actual payment of the money.

Let the decree be drawn up expeditiously.

The application being GA/1/2025 is accordingly disposed of.

(ARINDAM MUKHERJEE, J.)

pa/sb