

In the High Court at Calcutta
Commercial Division
Original Side

IA NO. GA-COM/3/2025
In CS-COM/82/2025

SKIPPER LIMITED
VS
KOUSHIK LAHA

BEFORE:
The Hon'ble JUSTICE ANIRUDDHA ROY
Date : December 22, 2025.

Appearance:

Mr. Sabyasachi Choudhury, Sr. Adv.
Mr. Sayantan Bose, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Ms. Manisha Das, Adv.
...for the plaintiff/petitioner

Mr. Rajarshi Dutta, Adv.
Mr. Kamalesh Bhattacharyya, Adv.
Mr. Arnab Neogi, Adv.
Mr. Anirban Saha, Adv.
Mr. Sarbesh Choudhury, Adv.
Mr. Sourav Samanta, Adv.
...for the defendant/respondent

The Court : Mr. Sabyasachi Choudhury, learned Senior Advocate appears for the plaintiff/petitioner with Mr. Sayantan Bose, learned Advocate and Mr. Shounak Mukhopadhyaya, learned Advocate.

Mr. Rajarshi Dutta, learned Advocate appears for the defendant/respondent with Mr. Sarbesh Choudhury, Advocate.

In substance, the plaint case is that the defendant has consumed certain goods supplied by the plaintiff. The plaintiff and the defendant agreed that the plaintiff shall supply and the defendant shall consume the goods at an agreed price. The involvement of a third party

stranger to the suit is also there, as the plaint case reveals, namely, one Hero Fincorp (for short "**Hero**") who alleged to have discounted the bills. The plaintiff has supplied the goods for a total amount of **Rs.15,54,30,916.49**. The plaintiff has received payment with debit notes for a total sum of **Rs.13,90,43,762.29**. For the balance unrealized amount, the plaintiff has filed the suit claiming a total sum of **Rs.7,26,26,893/-**. The said total claim includes both the price of goods supplied and delivered and the amount paid allegedly by the plaintiff to Hero for about above **Rs.2 crores** through whom the bill discounting was done.

Referring to a letter dated **February 3, 2025, Annexure K** at **page 1056** to the petition, Mr. Sabyasachi Choudhury, learned Senior Advocate submits that the plaintiff has specifically admitted a sum of **Rs.4,40,16,326.34** is due and payable to the plaintiff and a sum of **Rs.2,89,45,780/-** is due and payable to Hero. The said letter further discloses that the defendant allegedly has admitted that it would remit the amount within three months and further requested Hero not to deposit the five cheques mentioned therein which were deposited by the defendant to Hero.

In the above backdrop, the plaintiff has filed an application previously being **IA No. GA-COM/1/2025** where the prayer of the plaintiff was principally directing the defendant to furnish security for a total sum of **Rs.7,26,26,893/-** along with consequential reliefs.

On the said interlocutory application, a Co-ordinate Bench passed its order dated **June 24, 2025** when the defendant was restrained

by an order of injunction to deal with the immovable properties mentioned in the said application. The defendant was also directed to show cause as to why an order shall not be passed for furnishing a security of **Rs.7,26,26,893/-**.

This Court has been informed that till date the said cause has not been shown by the defendant as the defendant has failed and neglected to file any affidavit within the time directed by the Co-ordinate Bench. Though the extension of time was also granted by this Court on **November 27, 2025**.

Keeping the said first interlocutory application pending, the plaintiff has filed the instant second interlocutory application, *inter alia*, praying for an order of attachment of debt due and owing to the defendant from third party debtors mentioned in **Annexure D** to the instant application. Consequential prayer for serving of notice upon the third party debtors has also been prayed for.

Mr. Sabyasachi Choudhury, learned Senior Advocate referring to provisions laid down under **Rules 5 and 7** to **Order XXXVIII** read with **Rule 46** to **Order XXI of CPC** submits that it is a fit and proper case where the garnishees should be served with a notice at this stage and thereafter, upon considering the causes to be shown by those garnishees, this Court may proceed for attachment of those garnishees' alleged debts. In his support, Mr. Choudhury has relied upon two decisions:-

- i) ***In the matter of: Alwar Aiyangar Vs. Subramania Dikshathar and Others reported at AIR 1932 Madras 169 and***

ii) ***In the matter of: Surender Singh Bajaj Vs. M/s. Kitty Steels Ltd & Anr. reported at 2002(2) A.P.L.J. 226 (HC).***

Mr. Rajarshi Dutta, learned Advocate appearing for the defendant submits that the said letter of the defendant dated **February 3, 2025**, as referred to by the plaintiff, is not an unequivocal admission on the part of the defendant. The statement of the defendant appearing from the said letter would show that it was qualified by a further statement of the defendant that it shall take three months time to remit the amount to the extent of **Rs.4,40,16,326.34** for the plaintiff. The other quantum being **Rs.2,89,45,780/-** was mentioned for Hero who is not a party to the proceeding. The plaintiff states that the plaintiff has paid the said sum of **Rs.2,89,45,780/-** to Hero.

Mr. Rajrashi Dutta, learned Advocate appearing for the defendant then refers to letter dated **February 24, 2025** and places the same for the consideration of this Court today. The same is taken on record. He submits that this letter has been suppressed by the plaintiff which would clearly show that the defendant has also raised a claim against the plaintiff for about a sum of **Rs.90 lakhs** on the plea allegedly mentioned in the said letter dated **February 24, 2025**. Therefore, the claim of the plaintiff is not an unimpeachable one and to prove its claim, the plaintiff has to travel the trial of the suit.

Mr. Dutta, learned Advocate for the defendant further submits that at this stage, the garnishees cannot be directed to deposit the alleged

amounts mentioned by the plaintiff in any manner, as the claim of the plaintiff is awaited for adjudication.

The further submissions of the defendant is that contemporaneously it was informed by way of an e-mail dated **February 11, 2025** to the plaintiff that the security cheques deposited by the defendant were filled up by the plaintiff and then those were deposited with the bank. Copy of the said e-mail is handed over to this Court and the same is taken on record. The bank statement is also referred to. The cheques issued by the defendant having been dishonoured, the plaintiff has already initiated a proceeding under the Negotiable Instrument Act against the issuing authority of the cheques before the jurisdictional Criminal Court. The proceeding is pending.

In the light of the above submissions, Mr. Dutta submits that at this stage, no order can be passed, as prayed for, in the petition.

After considering the rival submissions of the parties and upon perusal of the materials on record, there is no doubt in the mind of this Court that the commercial transaction by and between the parties stands admitted to the effect that the plaintiff was supplier of some goods and the defendant was purchaser/consumer of those goods. On a plain reading of the letter dated **February 3, 2025** at page **1056** to the petition, it shows an alleged admission on the part of the defendant to the extent of **Rs.4,40,16,326.34** towards the plaintiff and to the extent of **Rs.2,89,45,780/-** towards Hero. The fact pleaded in the plaint and the interlocutory application by the plaintiff that Hero has acted as bill discounting agent has not been denied by the defendant. Plaintiff has also

made out a case and made necessary averments in the pleading that the plaintiff has paid a sum of **Rs.2,89,45,780/-** to Hero and in turn has raised this claim against the defendant, as the amount, according to the plaintiff, is payable by the defendant to Hero.

Insofar as the first interlocutory application is concerned and the prayers made therein, as would be evident from **paragraph 10** of this petition, the plaintiff had already asked for furnishing security by the defendant to the extent of the entire principal claim made in the plaint. The order of the Co-ordinate Bench dated **June 24, 2025** directed the defendant to show cause as to why an order shall not be passed for furnishing security of **Rs.7,26,26,893/-**. The defendant has not preferred any appeal from the said order. By accepting the said order, the defendant has prayed for an extension to file affidavit and the extension has been granted by this Court on **November 27, 2025** but till date the causes have not been shown by way of affidavit by the defendant.

In the conspectus of the above facts and situation, this Court finds that any interim order to be passed or to be refused by this Court, at this stage, is a discretionary relief. This Court also exercises its equitable jurisdiction either to pass order or not to pass any interim order, as prayed for herein.

Considering the conduct of the defendant and considering the content of the said letter dated **February 3, 2025** and the previous order passed by the Co-ordinate Bench, this Court, *prima facie*, thinks it fit that the defendant should be put on terms to secure the plaintiff's claim. Securing the claim of the plaintiff by furnishing security with the Registrar

of this Court, does not amount to make payment to the plaintiff but to demonstrate the bona fide and financial worthiness of the defendant, more so, when despite opportunity being granted to the defendant, the defendant has failed to show cause as to why the security shall not be furnished. Also taking into consideration the said letter of the defendant dated **February 24, 2025**, *prima facie*, this Court is of the view that for the time being, the defendant may be exempted from securing the said sum of **Rs.90 lakhs**.

Accordingly, the defendant is directed to secure the claim of the plaintiff to the tune of **Rs.7,26,26,893/-** after deducting the said sum of **Rs.90 lakhs** and the balance shall be secured by the defendant with the learned Registrar, Original Side, positively within **four weeks** from date.

In the event, the security is furnished, the Registrar, Original Side shall invest the same in an interest bearing fixed deposit account with any nationalized Bank of his choice and shall file his report before this Court on the next day.

The plaintiff shall be at liberty to issue notices upon the garnishees, the particulars whereof is mentioned in **Annexure D** at **pages 1167 to 1170** to the petition, disclosing pendency of this proceeding along with the copies of the orders passed in this proceeding. The garnishees shall be at liberty to be represented before this Court to represent their case on the next day. The plaintiff shall file an affidavit of service on the next day.

The judgments cited on behalf of the plaintiff, shall be considered afterwards when the application shall be considered on merit finally.

The defendant/respondent shall file affidavit in opposition on or before **January 22, 2026**.

Affidavit in reply, if any, thereto shall be filed by **February 20, 2026**.

The matter shall appear under the heading **“Adjourned Motion”** in the **monthly list** of **March, 2026**.

(ANIRUDDHA ROY, J.)

RS