

**In the High Court at Calcutta
Commercial Division
Original Side**

Judgment (2)

**PRESENT :
THE HON'BLE JUSTICE ANIRUDDHAROY**

**IA No. GA-COM/4/2026
In CS-COM/712/2024**

**SKIPPER LIMITED
VS
PRABHA INFRASTRUCTURE
PRIVATE LIMITED**

**For the plaintiffs : Mr. Sabyasachi Chaudhury, Sr. Adv.
Mr. Sayantan Bose, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Ms. Priyanka Gope, Adv.
Ms. Manisha Das, Adv.**

**For the defendants : Mr. Jayanta Sengupta, Adv.
Mr. Ritoban Sarkar, Adv.
Md. Dilwar Khan, Adv.
Ms. Apple Mughali Jimo, Adv.**

Heard on : February 11, 2026

**Judgment on : February 11, 2026
[In Court]**

ANIRUDDHA ROY, J :

Facts:

1. This is an application filed by the defendant praying for revocation of leave granted under **Clause 12 of the Letters Patent** by the Court, while admitting the plaint.

2. On instruction from his client, Mr. Sabyasachi Chowdhury, learned senior advocate for the plaintiff submits that his client shall not file any affidavit in opposition and shall proceed on the basis of the existing record.

3. This is a commercial suit. The defendant has not filed its written statement within the mandated 30 days or within the mandated 120 days, as mandated under the amended provisions of Order I Rule 8 of Code of Civil Procedure, 1908. Thus the defendant has forfeited its right to file written statement in the suit.

4. The principal plea taken by the defendant in support of its application are quoted below from the supporting affidavit, filed in support of the master summons:-

“5. On a meaningful reading of the Complaint along with the documents annexed thereto, it transpires that the transaction pertains to supply of goods and alleged failure to pay consideration against such supply. Admittedly, the entire transaction has taken place outside the jurisdiction of this Hon'ble Court which would be evident from the following:

a. The Defendant had invited an offer from the Plaintiff for supply of galvanized steel structure by way of an electronic mail dated 7th August, 2020, which had been issued on behalf of the Defendant from its registered office at 18, RajRajeshwari Nagar, Gilet Bazar, Varanasi- 221002, Uttar Pradesh, India.

b. Subsequently, the Plaintiff had made its offer for supply of such galvanized steel structures from its plant at Uluberia, Howrah, India, by way of an electronic mail dated 8th August, 2020.

C. The said offer made on behalf of the Plaintiff had been duly accepted by the Defendant by issuance of purchase orders, by way of an electronic mail dated 22nd August 2020, from its office at the aforesaid address of the Defendant at Varanasi, Uttar Pradesh, India.

d. The said purchase order contained an exclusive jurisdiction clause vesting the jurisdiction of the courts at Varanasi for adjudication of any dispute arising out of the said contract for supply of the aforesaid goods.

e. In fact, the Plaintiff had further offered modification to the terms of the said purchase orders, which had been duly accepted by the Defendant from its registered office at Varanasi by way of an amended purchase orders issued by way of an electronic mail dated 26th August, 2020.

f. Against the Purchase Orders, supplies were made by the Plaintiff to Rajasthan at Malakhera Railway Station, Alwar, Rajasthan 301406, as stated in the plaint ie., outside the jurisdiction of this Hon'ble Court. The invoices were also issued by the Plaintiff in favour of the Defendant at its Registered Office at Varanasi, outside the jurisdiction of this Hon'ble Court.

g. Payments were also made by the Defendant from its Bank at Varanasi, outside the jurisdiction of this Hon'ble Court.

6. The only basis for the Plaintiff instituting the suit in this court is the alleged receipt of the purchase orders at its registered office and the alleged issuance of invoices from its registered office within the jurisdiction of this Hon'ble Court.

7. However, from a true, correct and meaningful reading of the plaint, it transpires that the invitation to offer was made by the Defendant from its office at Varanasi, outside the jurisdiction of this Hon'ble Court. The offer had been made by the Plaintiff allegedly from its registered office, within the jurisdiction of this Hon'ble Court, which has subsequently been accepted by the Defendant at its office at Varanasi, outside the jurisdiction of this Hon'ble Court, by issuance of the Purchase Orders. Supplies were to be made from the plant of the Plaintiff at Uluberia, Howrah, outside the jurisdiction of this

Hon'ble Court, to the worksite of the Defendant at Alwar, Rajasthan, outside the jurisdiction of this Hon'ble Court.

8. Accordingly, in response to the invitation to offer being made by the Defendant from Varanasi, outside the jurisdiction of this Hon'ble Court, the offer had been made by the Plaintiff allegedly from its registered office within the jurisdiction of this Hon'ble Court, whereby such offer of the Plaintiff stood accepted by the Defendant by issuance of the respective purchase orders from its registered office at Varanasi, outside the jurisdiction of this Hon'ble Court. Hence, the contract stood completed by acceptance of the offer of the Plaintiff by the Defendant upon issuance of the purchase orders issued from Varanasi, outside the jurisdiction of this Hon'ble Court.

9. The terms of the purchase orders were subsequently modified at the instance of the Plaintiff, which had been accepted by the Defendant upon issuance of amended purchase orders from its office at Varanasi, Uttar Pradesh, India, outside the jurisdiction of this Hon'ble Court. Hence, the modified/amended contract stood concluded and/or completed only upon acceptance of the offer of the Plaintiff by the Defendant from its office at Varanasi, outside the jurisdiction of this Hon'ble Court, upon issuance of the aforesaid amended purchase orders.

10. The Plaintiff and the Defendant are bound by the purchase orders containing a clause conferring exclusive jurisdiction in the Courts of Varanasi and subsequent to such selection, both the parties have acted in terms of the contract. The said jurisdiction clause was duly accepted by the Plaintiff without any demur and/or protest."

6. In the light of the above, the defendant prays for revocation of leave granted under Clause 12 of the Letters Patent.

Submissions:

7. Mr. Jayanta Sengupta, learned Advocate refers to the plaint along with the documents appended thereto, appearing for the defendant referring to page nos. 61 to 68 of the plaint submits that before issuing the purchase order by the defendant from Varanasi upon the plaintiff, there was a negotiation by and between the parties. The defendant submitted an invitation of offer upon the plaintiff at page

no.61 and 62 to the application, where the defendant made its offer to the plaintiff to supply the goods to the defendant and then further negotiations took place and the plaintiff submitted its detail offer for supply of material, at page nos. 64, 65 and 68 to the application, which was accepted by the defendant at Varanasi. Therefore, the contract, according to the defendant was concluded at Varanasi and then in pursuance thereof the purchase order was issued by the defendant from the Varanasi containing the forum selection clause at Varanasi, at page nos. 69 and 71.

8. The plaintiff accepted the said purchase order at its office at 3A, Loudon Street, Kolkata-700017 within the jurisdiction of this Court. The defendant then raised its tax invoice at page no. 176A (a specimen copy) from its office at Loudon Street which was received by the defendant at Varanasi. The said tax invoices also contains a forum selection clause at Kolkata.

9. Mr. Sengupta, learned Advocate then submits that since prior to issuance of the purchase order the contract was concluded between the parties at Varanasi, this Court has no jurisdiction in view of the purchase order issued by the defendant and also in view of the cause of action had arisen at Varanasi when the contract was concluded, according to the defendant. In support, he has relied upon a decision of the Hon'ble Supreme Court ***In the matter of: Bhagwandas***

Goverdhandas Kedia Vs. GirdharilalParshottamdas And Co. And Othersreported at AIR 1966 SC 543.

10. Mr. Sengupta, learned Advocate then submits that when purchase order is there in pursuance whereof goods were supplied, the forum selection clause even though mentioned in the tax invoices raised by the supplier of the goods, would not confer any jurisdiction. In support, he has relied upon a decision of the Hon'ble Delhi High Court ***In the matter of:Wollaque Ventilation & Conditioning Pvt. Ltd. Vs. Sterling Tools Ltd.reported at(2011) 177 DLT 731.***

11. Finally, Mr. Sengupta, learned Advocate has relied upon the celebrated decision of the Hon'ble Supreme Court in support of his contention ***In the matter of: A.B.C. Laminart Pvt. Ltd. and another Private Limited Vs. A. P. Agencies, Salemreported atAIR 1989 SC 1239,*** as the forum being selected by the parties at Varanasi.

12. Learned Advocate for the defendant submits that, when cause of action has arisen at Varanasi, as the contract was concluded there, the Varanasi Court having been agreed has the exclusive jurisdiction. In respect of the plea taken by the plaintiff that the tax invoices were issued by the plaintiff with the forum selection clause mentioned under the purchase order was novated, has been specifically denied and disputed by the defendant.

13. Accordingly, the defendant prays for revocation of leave.

14. Mr. Sabyasachi Chaudhury, learned Senior Advocate appearing for the plaintiff refers to the relevant averments made in the plaint to show that specific case made out in the plaint is that the purchase order was issued by the defendant from Varanasi upon the plaintiff and the plaintiff has accepted the same at its Loudon Street office within the jurisdiction. The goods were supplied by the plaintiff to the defendant at Rajasthan, the agreed destination place for supply. The payments/part payments whenever made by the defendant it was received by crediting the bank account of the plaintiff at 24, Park Street, Kolkata- 700016, within jurisdiction of this Court. The amended purchase order was receivable by the plaintiff at its Loudon Street office within the jurisdiction of this Court. The contract was made at Loudon Street office of the plaintiff. Accordingly, part of cause of action arose within and part arose outside the jurisdiction of this Court and the leave was granted under Clause 12 of the Letters Patent, 1865 while admitting the plaint. The leave as prayed for was justified and accordingly the same was granted.

15. Mr. Chaudhury, learned Senior Advocate has further drawn attention of this Court to the pleading made in the plaint that no part of cause of action or any part thereof had arisen at Varanasi. He submits that the placing and submissions of purchase order by the purchaser upon the seller does not constitutes cause of action. In the facts of this case, admittedly the purchase order was placed by the defendant from Varanasi upon the plaintiff and the plaintiff has accepted the same at

its Loudon Street office where the cause of action has arisen immediately upon accepting the purchase order. In support, he has also relied upon the decision of the Hon'ble Supreme Court ***in the matter of: A. B. C. Laminart Pvt. Ltd. and another Vs. A. P. Agencies, Salem*** reported at ***AIR 1989 SC 1239***.

16. In the light of the above Mr. Chaudhury, learned Senior Advocate submits that this application is a ploy to stall the suit, if possible, since the defendant has not filed its written statement on merit of the claim and it has already forfeited its right to do so in law. The application is otherwise frivolous, harassive and misconceived and should be dismissed in limine.

Decision:

17. After considering the rival contentions of the parties and on perusal of the materials on record principally the plaint and the application filed by the defendant, this Court first thinks it fit to refer to the relevant paragraphs from the plaint where the plaintiff has pleaded the jurisdiction of the Court. Those are quoted below:

“60. Inasmuch as the Purchase Order and the Amended Purchase the Order issued by the defendant were received by the plaintiff at its registered office at 3A, Loudon Street, Kolkata-700017, within the jurisdiction aforesaid the contract between the plaintiff and the defendant was made at 3A, Loudon Street, Kolkata-700017. Inasmuch as the contract expressly specifies the place of performance of the contract to be the Malakhara Railway Station, Alwar, Rajasthan-301406, outside the jurisdiction aforesaid, and inasmuch as the goods were finally delivered at the request of the defendant at the Railway Station, Reengus Store Depot near Reengus, District-Sikar, Rajasthan-332404, outside jurisdiction

aforesaid, the performance of the contract was made at Sikar, Rajasthan, outside the jurisdiction aforesaid. For the purpose of effecting delivery under the Purchase Order and the Amended Purchase Order, the goods were made over to a common carrier Shrinivasa Roadways (P) Ltd., having its office at Akash Ganga Building, 36, MaharshiDevendra Road, 3rd floor, Room No.319, Kolkata-700006, within the jurisdiction aforesaid. Payment under the Purchase Order as amended by the Amended Purchase Order was receivable by the plaintiff at its registered office at 3A, Loudon Street, Kolkata-700017, within the jurisdiction aforesaid and at its bank account bearing no. 0000001094534662 maintained with State Bank of India, Commercial Branch Kolkata, having its office at 24, Park Street. Kolkata 700016 within the jurisdiction aforesaid.

61. Although the Purchase Order as amended by the Amended Purchase Order provides that the order was subject to Varanasi jurisdiction only, no part of the cause of action for the present suit has arisen within the territorial jurisdiction of the city of Varanasi and as such the said clause in the Purchase Order seeking to confer exclusive jurisdiction on the courts at Varanasi is of no effect.

62. In any event in view of the clear stipulation in the tax invoices raised by the plaintiff to the effect that "all disputes are subject to Kolkata jurisdiction only and exclusively", and in view of the said tax invoices having been accepted by the defendant and part payment having been made in respect thereof by the defendant in part performance of its obligation thereunder, the clause in the Purchase Order conferring exclusive jurisdiction on the Courts in Varanasi stood novated by the stipulation in the invoices raised by the plaintiff on the defendant which was accepted by the defendant by its conduct.

63. Inasmuch as the contract was made at 3A, Loudon Street, Kolkata-700017, within the jurisdiction aforesaid, as stated in paragraphs 5 and 6 hereof and inasmuch as payment was receivable at 3A, Loudon Street, Kolkata-700017, within the jurisdiction aforesaid and received by the plaintiff at its bank account bearing no. 0000001094534662 maintained with State Bank of India, Commercial Branch Kolkata, having its office at 24, Park Street, Kolkata 700016, within the jurisdiction aforesaid, as stated in paragraphs 9, 16, 18, 27, 28 and 30 hereof part of the cause of action for the present suit has arisen within the jurisdiction aforesaid, the plaintiff seeks leave under clause 12 of the Letters Patent, 1865."

18. Before proceeding any further this Court at the threshold reiterates the settled law on the issue, while adjudicating an application filed by the defendant praying for revocation of leave granted under **Clause 12 of the Letters Patent**, the Court should only read the averments from the plaint taking them as true and correct. The averments in the plaint are to be taken as sacrosanct and in the light of that averments the Court has to investigate whether any part of cause of action had arisen within the jurisdiction of this Court so that leave under Clause 12 of the Letters Patent can be granted.

19. From the averments made in the instant plaint, it appears to this Court that, the clear case pleaded in the plaint is that purchase order was issued by the defendant from Varanasi and it was accepted by the plaintiff at its Loudon Street office and the payment/part payment made by the defendant to the plaintiff was received by the plaintiff at its bank account at 24, Park Street within the jurisdiction of this Court. In a suit for unrealized price for goods sold and delivered, according to this Court, these factors are sufficient to attract the jurisdiction of the Court. The defendants have admitted the transaction to the extent that the plaintiff has supplied the goods and the defendant has accepted the goods.

20. The purchaser of the goods being the defendant herein might have raised its purchase order from Varanasi but unless that

purchase order is accepted by the plaintiff, the question of proceeding any further under the contract would not have arisen and therefore when the purchase order is accepted by the plaintiff at its Loudon Street office and thereafter any breach is alleged by either of the parties, definitely the jurisdiction would be there at the place of office of the plaintiff at Loudon Street for either of the parties to sue each other. Inasmuch as, in acknowledgment of supply of material by the plaintiff, the defendant has also made payment/part payment by crediting the bank account of the plaintiff at 24, Park Street within the jurisdiction of this Court.

21. ***In the matter of: A.B.C. Laminart Pvt. Ltd. (Supra)***, the Hon'ble Supreme Court had observed as under:

“15. In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have (been) performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where

actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors.”

22. Insofar as the contention of the plaintiff that with the issuance of the tax invoices by the plaintiff, the forum selection clause mentioned in the purchase order issued by the defendant has been novated, is a mixed question of law and fact and should be the subject matter of trial, the same cannot be taken into consideration in a summary manner at this stage.

23. ***In the matter of: Bhagwandas Goverdhandas Kedia (Supra)*** there was a trial Court decree and then the matter finally went up before the Hon’ble Supreme Court. On interpretation and constriction of Section 4 of the Contract Act the judgment was delivered by the Hon’ble Supreme Court. In the facts of this case, as pleaded in the plaint, the plaintiff had proceeded on the basis of the purchase order having been issued by the defendant from Varanasi and accepted by the plaintiff at its Loudon Street office. The pre-purchase order negotiations are not spelt out in the plaint as contended by the defendant. However, the defendant has relied upon some documents to show that there was a discussion and negotiation between the parties. The averments made in the plaint since has to be taken sacrosanct, this Court has to proceed on the basis that the purchase order

having been received by the plaintiff at its Loudon Street office, this Court has jurisdiction to entertain the cause of action on the basis of the averments made in the plaint. It is the acceptance of the purchase order which gives the jurisdiction, as held by the Hon'ble Supreme Court ***In the matter of: A.B.C. Laminart Pvt. Ltd. (Supra)***. The ratio ***In the matter of: Bhagwandas Goverdhandas Kedia (Supra)*** would not apply in the facts of this case.

24. As this Court has already discussed whether the issuance of tax invoices has novated the purchase order insofar as forum selection clause is concerned is a mixed question of law and facts, the decision of the Hon'ble Delhi High Court ***In the matter of: Wollaque Ventilation & Conditioning Pvt. Ltd. Vs. Sterling Tools Ltd.*** reported at ***(2011)177 DLT 731*** is not required to be discussed at this stage.

25. In view of the forgoing reasons and discussions, this Court is of the firm and considered view that the leave granted by the Court under Clause 12 of the Letters Patent, 1865 in the light of the averments made in the plaint in the instant suit, cannot and should not be revoked.

26. The defendant has not filed its written statement and has already forfeited its right to do so. However, the right of cross-examination of the defendant is protected. In such circumstances, the defendant shall be free to cross-examine the

witness of the plaintiff in accordance with law, if the suit travels up to the stage of trial.

27. With the above observations and direction this application **IA No. GA-COM/4/2026** stands **dismissed**, without any order as to costs.

(ANIRUDDHA ROY, J.)

mg