

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

Judgment (2)

**PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY**

**IA NO. GA-COM/3/2025
In CS-COM/712/2024**

**SKIPPER LIMITED
Vs
PRABHA INFRASTRUCTURE
PRIVATE LIMITED**

For the petitioner:

**Mr. Sabyasachi Choudhury, Sr. Adv.
Mr. Sayantanu Bose, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Ms. Manisha Das, Adv.**

For the judgment debtor :

**Mr. Ritoban Sarkar, Adv.
Mr. Dilwar Khan, Adv.
Ms. Apple Mughali Jimo, Adv.**

Heard on : June 15, 2026

**Judgment on : June 15, 2026
[In Court]**

ANIRUDDHA ROY, J :

FACTS:

1. This is an interlocutory application filed by the plaintiff with the following prayers:

- “(a). Order(s) directing the Learned Registrar, Original Side, High Court at Calcutta to encash the fixed deposits created for the sums of **Rs. 15,00,000/-**, **Rs. 12,00,000/-** and **Rs. 13,00,000/-** respectively, created pursuant to the orders of this Hon'ble Court, and to remit the sums received upon such encashment to the plaintiff/petitioner herein;*
- (b). The Learned Registrar, Original Side, High Court at Calcutta be directed to accept counter security from the plaintiff/petitioner in the form of bank guarantee in a form approved by the Learned Registrar, Original Side for the sum of Rs. to be **25,00,000/-** sought to be withdrawn by the plaintiff/petitioner in terms of prayer above;*
- (c). Interim and Ad interim order(s) in terms of the prayers above;*
- (d). Any other order(s) and/or direction(s) as this Hon'ble Court may deem fit and proper.”*

2. The inescapable facts are only stated.
3. Plaintiff has filed the instant suit, *inter alia*, claiming price payable by the defendant to the plaintiff on account of goods sold and delivered. The principal claim in the plaint is for a sum of **Rs. 40,07,102.00/-** together with interest.
4. The plaintiff had filed an application praying for judgment upon admission for the entire claim in the plaint. The said application for judgment upon admission **IA GA-COM/1/2024** was allowed by this

Court **partially** by a judgment dated **March 12, 2026**, in which a decree was passed for a sum of **Rs. 12,00,000/-** on account of principal and the entire balance claim in the suit including interest was relegated for trial. Prior thereto, a Co-ordinate Bench by its order dated **August 30, 2024**, directed the defendant to secure the entire principal sum claimed in the plaint to the extent of **Rs. 40,07,102.00/-**. Accordingly, the defendant has secured the said amount with the Registrar, Original Side.

5. Subsequently, the instant application was moved. At the *ad-interim* stage, this Court by its order dated **March 30, 2026** allowed the plaintiff to withdraw the said sum of **Rs. 12,00,000/-** from the deposit lying with the Registrar, Original Side and the balance amount was further directed to be kept in deposit with the Registrar, Original Side.
6. Parties have filed and exchanged their affidavits in the instant application.

SUBMISSIONS:

7. Mr. Sabyasachi Choudhury, learned senior advocate appearing for the plaintiff at the threshold refers to the said judgment of this Court dated **March 12, 2026** under which a part decree was passed on the admission of the defendant. Referring to various portions from the said judgment, learned senior advocate submits that it is

the specific observation and finding of this Court in the said judgment that since beyond **Rs. 12,00,000/-**, no further quantum was admitted by the defendant though the defendant had accepted the transaction and its indebtedness to the plaintiff, the Court had passed a decree on admission only to the extent of **Rs. 12,00,000/-** and relegated the balance claim, including interest for trial.

8. Mr. Choudhury, learned senior advocate then submits that his client is ready and willing to furnish the equivalent amount of Bank Guarantee insofar as the deposit is still lying with the Registrar, Original Side and then be allowed to withdraw the said amount so that the amount can be best utilized by his client in further commercial transactions. He further submits that if the said amount is allowed to be withdrawn against the Bank Guarantee to be furnished by plaintiff, then the amount may be utilized by the plaintiff in a commercial manner and might earn a better return than what is being earned in the Fixed Deposit.
9. Mr. Choudhury, learned senior advocate further submits that this is a commercial suit and the commercial Court will have to deal with such commercial suit by keeping it in mind that in whatever possible manner the parties, within the permitted zone of law, can earn the highest monetary benefit in the commercial market, shall be permitted to do so. He further submits that the plaintiff may even undertake to deposit a higher sum with the Registrar, to the extent

this Court would think fit and proper, and then can be permitted to withdraw the amount from the security lying with the Registrar and utilize the same in its commercial activity.

10. Mr. Choudhury, learned senior advocate further submits that the judgment of this Court dated **March 12, 2026** has attained finality and, therefore, the finding therein has also attained its finality as parties have not challenged the said judgment. The finding in the said judgment shows that the transaction is clearly admitted by the defendant including its indebtedness towards plaintiff but to come to a conclusive finding with regard to the quantum of such indebtedness, the balance portion of the claim of the plaintiff including interest had been relegated for trial. Therefore, there shall be no impediment, if the instant application is allowed against adequate amount of Bank Guarantee being furnished by the plaintiff.
11. In support of his submissions, Mr. Choudhury relies on a decision of a Co-ordinate Bench ***In the matter of: Damodar Valley Corporation Vs. Reliance Infrastructure Ltd. reported at 2022 SCC OnLine Cal 553: (2022) 235 AIC (Sum 22) 12;***
12. However, Mr. Choudhury, learned senior advocate in his usual fairness submits that the said judgment was rendered in an arbitration proceeding and not in a civil suit.

- 13.** Mr. Ritoban Sarkar, learned advocate appearing for the defendant submits that when the balance claim in the plaint has been relegated for trial, in the said judgment dated **March 12, 2026**, it shows that unless the complete trial is conducted on the balance claim of the plaintiff, it cannot be said that the plaintiff is entitled to the said balance claim in the plaint. Therefore, it is not permitted in law to allow the plaintiff to withdraw the amount secured by the defendant with the Registrar under whatever mode and manner it seeks.
- 14.** Mr. Ritoban Sarkar, learned advocate appearing for the defendant further submits that in absence of crystallization of any decree at an interim stage, prayers of the plaintiff cannot be allowed. Unless a decree is pronounced and crystallized, rights of the parties are not decided. In support, he has relied upon a decision of a Co-ordinate Bench of Hon'ble Bombay High Court ***In the matter of : Techno Fire Protection Services Pvt. Ltd. Versus MTZ Polyesters Ltd. reported at 2002 SCC OnLine Bom 142: (2002) 3 Bom CR 533: 2002 CLC 841;***
- 15.** Mr. Sarkar, learned advocate further submits that when the application for judgment upon admission was heard and disposed of, no liberty was sought for by the plaintiff, as prayed for today, to have the deposit released lying with the Registrar, Original Side.

16. In the light of the above, learned advocate for the defendant prays for dismissal of this application.

DECISION:

17. After considering rival contentions of the parties and on perusal of the materials on record, it appears to this Court that, in the said judgment dated **March 12, 2026**, the plaintiff had already received a **part decree** to the extent of a sum of **Rs.12,00,000/-** and the balance claim in the plaint including interest had been relegated for trial. The said sum of the part decree had also been released subsequently in favour of the plaintiff and the plaintiff had received the payment towards *pro tanto* satisfaction of the claim in the plaint.
18. Considering the nature of the prayers in the instant application, this Court finds that there is no codified law in this regard. In absence of any codified law, to grant or not to grant relief, unless *ex facie* barred by law otherwise, depends entirely or largely on the discretion of the Court and under the equitable jurisdiction of the Court. The law is trite that, discretion and equity have to be exercised by the Court judiciously and within four corners of the established procedure of law. Discretion and equity can also be exercised by Court in exceptional circumstances also. Therefore, there is no straight jacket formula when the Court shall exercise its

discretion and equity and what should be considered by the Court to be an exceptional case. It depends on fact of each case.

19. Unless, decree is pronounced by the Court, rights of the parties are not conclusively decided. In the facts of the instant case, the trial of the suit is pending. Parties shall have to travel the stage of trial. The decree passed on admission by this Court under the said judgment dated **March 12, 2026**, to the extent of a part of the claim in the plaint, has achieved its finality and the same has decided the rights of the parties to that extent only and not beyond that. When rest of the claim including interest has been relegated for trial, there cannot be any final adjudication on the same, unless the trial completes and decree is pronounced.
20. It is true that the instant suit has been filed in the commercial division of this Court. A commercial Court while adjudicating such suit, must also bear in mind that if law permits, the interest of the parties to the suit shall be sub-served commercially to the best possible extent. Keeping this in mind, without availing of the execution proceeding, the decretal due for a sum of **Rs.12,00,000/-** had been allowed to be paid to the plaintiff and the plaintiff had received the amount.
21. ***In the matter of: Damodar Valley Corporaiton (Supra)***, there had been a final award in the arbitration between the parties. The award was passed under 1996 Arbitration Act, which had acquired the

character of decree. Thus, the right of the parties to the arbitration had been finally adjudicated upon and at that scenario, the judgment was delivered by the Coordinate Bench allowing the award holder to withdraw the amount during pendency of **Section 34** proceeding, by furnishing the equivalent or adequate security, as directed thereunder. Thus, the ratio of the said judgment would not apply in the facts and circumstances of this case, as the trial of the instant suit is awaited.

22. In the matter of: Techno Fire Protection Services Private Limited (Supra), the Coordinate Bench of the Bombay High Court had negated the prayer of the plaintiff in the similar circumstance, as in the instant case, where adjudication of the rights between the parties in the suit did not attain finality and accordingly, identical prayer was refused.

23. When the balance claim of the plaintiff had been relegated to trial under the said judgment dated **March 12, 2026**, unless, the trial concludes and the decree is pronounced, rights of the parties to the instant suit are not adjudicated upon and fate of the rights of the parties, till date, is unknown to this Court which shall depend upon the decree being pronounced after the trial. Hence, this Court is of the considered opinion not to exercise its discretion and equity, at this stage. Inasmuch as, no exceptional case has also been made

out by the plaintiff for which this Court can exercise its discretion or equitable jurisdiction.

24. In view of the above, the instant application **IA GA-COM/3/2025** partly **succeeds** and partly **dismissed**, as indicated above, without any order as to costs.

(ANIRUDDHA ROY, J.)

Arsad/Sbghosh