

OCD-18, 19 & 20

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

**IA No.GA-COM/2/2024
[Old No. CS/238/2023]
In CS-COM/670/2024**

NEWEVER VINCOM PRIVATE LIMITED
-VS-
DEBABRATA GHOSH

&

**IA No.GA-COM/3/2024
[Old No. CS/238/2023]
In CS-COM/670/2024**

NEWEVER VINCOM PRIVATE LIMITED
-VS-
DEBABRATA GHOSH

&

EC-COM/277/2025

NEWEVER VINCOM PRIVATE LIMITED
VS
DEBABRATA GHOSH

**BEFORE:
The Hon'ble JUSTICE ANIRUDDHA ROY
Date : June 29, 2026.**

Appearance:
Mr. Ratanlal Joshi, Adv.
...for the plaintiff

Mr. Arnab Chakraborty, Adv.
Ms. Pragya Bhowmick, Adv.
Ms. Alisha Kar, Adv.
Ms. Rimi Mondal, Adv.
...for the defendant

The Court : This is an application filed by the defendant praying for condonation of delay for about **129 days** while applying for setting aside of an *ex parte* decree suffered by the defendant.

The *ex parte* decree was passed pursuant to the judgment delivered by a Coordinate Bench dated **August 27, 2024**, subsequently a correction to the decree had taken place by an order dated **December 6, 2024**. The decree was *ex parte* for a principal sum of **Rs.1,16,45,000/-** along with interest at the rate of **15% per annum**.

The said judgment dated **August 27, 2024** leading to the decree records that the defendant had issued post dated cheques for the said sum of **Rs.1,16,45,000/-**, which were dishonoured. Defendant was made aware of the same upon notice to which the defendant did not reply. After filing of the suit, writ of summons was sent through the bailiff as well as postal authorities but the same could not be served upon the defendant and accordingly, plaintiff had taken appropriate steps for publication of notice of the suit. The judgment records that despite publication of notice, defendant failed to appear in the suit.

For the purpose of considering this application for condonation of delay, this Court shall not lose sight of the fact that though the original judgment was delivered on **August 27, 2024** but the same was subsequently corrected on **December 6, 2024**. Whatever, minimal typographical correction is that, the same should be considered, as part of the drawn-up decree. The instant application had been filed on **December 18, 2024** and had been registered on **December 19, 2024**.

On the basis of the above, this Court is of the view that there might not have been any delay taken place, filing the application for setting aside

of the *ex parte* decree. Inasmuch as, substantial justice shall not suffer for procedural latches.

At the same time, equity has also to be balanced. The decree with the passage of time now is almost 1½ years old and the plaintiff has not received the benefit of it.

The order of Coordinate Bench dated **August 11, 2025** also shows that the Coordinate Bench had observed that the defendant has prayed for time to take instruction whether the judgment debtor was ready to deposit a sum of **Rs.70,00,000/-** with the Registrar, Original Side so that *ex parte* decree can be recalled. The said order still holds field. No appeal has been preferred.

This Court is of the view that in the conspectus of the above facts, the judgment debtor must also show its *bona fide* so that, the decree already on record can be protected to an extent.

In view of the above, the instant application **IA GA-COM/2/2024** being the application for condonation of delay stands **allowed**.

However, the equity demands that the defendant shall also have to deposit the said sum of **Rs.70,00,000/-** with the Registrar, Original Side, as **condition precedent** to have the application for setting aside of *ex parte* decree **IA GA-COM/3/2024** to be heard. The deposit shall be made positively within **six weeks** from the date.

In the event, the deposit is made, the Registrar, Original Side shall invest the same in an interest bearing fixed deposit account with any nationalized bank of his choice and shall prepare a report and keep it in the original file of the application for setting aside of the *ex parte* decree.

It is made clear that this Court has not expressed any opinion on the merits of the application for setting aside of *ex parte* decree and all points taken by the defendant shall be kept open, in the event the said application reaches at the stage of hearing.

If the amount is deposited, parties shall be at liberty to mention upon notice to each other for hearing of the application for setting aside of the *ex parte* decree.

It is also made clear that in the event, deposit is not made, the plaintiff shall be free to proceed with its pending execution proceeding.

(ANIRUDDHA ROY, J.)

Sbghosh