

In the High Court at Calcutta
Commercial Division
Original Side

Judgment (2)

PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY

IA No. GA-COM/1/2025
[Old No. CS/69/2023]
In CS-COM/491/2024

USHA MARTIN LIMITED
VS
BALURGHAT TECHNOLOGIES
LIMITED

For the plaintiff : **Mr. Rajarshi Dutta, Adv.**
 Ms. Labanyasree Sinha, Adv.
 Mr. Sarbesh Choudhury, Adv.
 Mr. Rohit Singh Parmar, Adv.

For the defendant : **Mr. Aruni Guha, Adv.**

Heard on : February 23, 2026

Judgment on : February 23, 2026
 [In Court]

ANIRUDDHA ROY, J :

FACTS :

1. This is a commercial suit. The defendant has not filed its written statement. The defendant has forfeited its right to file written

statement under the amended provisions of **Rule 1 to Order VIII of CPC, 1908.**

2. Examination-in-chief of the plaintiff's witness has been concluded. Though the suit has been marked as undefended but the defendant did not choose to cross-examine the witness of the plaintiff. In this regard, reliance has been placed on an order dated **February 25, 2025** passed by the Co-ordinate Bench.
3. Today, the plaintiff has come up with an application with the following prayers:

“(a) Leave be granted to the petitioner to disclose the documents annexed as "C-1" to "F" of the instant application;

(b) Leave be granted to the petitioner to prepare Additional Judges Brief of Documents containing the documents annexed as "C-1" to "F" of the instant application and file the same within four weeks from the date of the order to be made herein, or within such time as to this Hon'ble Court may seem fit and proper;

(c) Leave be granted to the petitioner to file Affidavit of Evidence of its second witness, Mr. Gautam Das, within six weeks from the date of the order to be made herein, or within such time as to this Hon'ble Court may seem fit and proper and leave be granted to the petitioner to adduce oral evidence through the said second witness Mr. Gautam Das;

(d) Costs of and incidental to this application be treated as costs in the cause;

(e) Such further or other order or orders be passed and/or direction or directions be given as to which this Hon'ble Court may deem fit and proper.”

4. Though the defendant is represented through Mr. Arani Guha, learned advocate but since the suit is marked as undefended, the defendant has no right of audience in this application.

SUBMISSIONS:

5. Mr. Rajarshi Dutta being ably assisted by Mr. Sarbesh Choudhury, learned Advocate appearing for the plaintiff submits that though the relevant documents at all material time was under the custody, power, possession and control of the plaintiff at the time of institution of the suit but the same were not disclosed by the plaintiff. However, during the examination of the witness and at the stage of argument of the suit, it was felt by the plaintiff that those documents are essentially to be disclosed to sustain the claim in the plaint and hence, this application has been filed.
6. Referring to **Sub-Rule 1 to Sub-Rule 3 to Rule 1 of Order XI of CPC**, Mr. Rajarshi Dutta, learned Advocate appearing for the plaintiff submits that, these provisions provide that the plaintiff is duty bound while instituting the suit to disclose documents in the manner and mode prescribed therein, which were in its power, possession, control and custody. It is a mandatory obligation on the part of the plaintiff. With reference to **Sub-Rule 4 to Rule 1 of Order XI of CPC**, it is submitted that in case of urgent filings, the

plaintiff may seek leave to rely on additional documents, as part of the declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within 30 days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody. Therefore, under **Sub-Rule 4**, an opportunity has been granted to the plaintiff to disclose additional documents in case of urgent filing of the suit.

7. Referring to the above provisions of CPC, Mr. Rajarshi Dutta, learned Advocate submits that up to **Sub-Rule 4 to Rule 1** an extension was permitted which can only be granted by the Court subject to its satisfaction and the period can be extended accordingly.
8. Learned Advocate then refers to **Sub-Rule 5 to Rule 1 of Order XI of CPC** and submits that the plaintiff shall not be allowed to rely on documents, which were in plaintiff's power, possession, control and custody and not disclosed with plaint or within the extended period set out in the Rules, save and except by leave of Court and such leave can be granted only upon the plaintiff establishing a reasonable cause for non-disclosure along with the plaint.

9. Relying upon these provisions, the plaintiff submits that due to reasons shown in application, though the plaintiff did not disclose these additional documents at the time of institution of the suit while filing the plaint, but the nature of the documents are such that they are extremely relevant to prove the case of the plaintiff in the plaint. These documents are required to meet the query raised by the Court.

10. In support of his contention, Mr. Rajarshi Dutta, learned Advocate has placed reliance upon the following decisions :-

(i) **A decision of this Court dated November 19, 2025 In the matter of : Mascot Petrochem Private Limited vs. SCIDPL and VE (JV) and Ors. rendered in IA No. GA-COM/4/2025 (Old No. CS/204/2019) in CS-COM/162/2024 and**

(ii) **Sudhir Kumar alias S. Baliyan vs. Vinay Kumar G.B. reported at (2021) 13 Supreme Court Cases 71.**

11. On the expression “**reasonable cause**” and to explain its meaning, Mr. Dutta, has placed reliance **In the matter of : Agva Healthcare Private Limited and Others vs. Agfa-Gevaert NV and Another reported at 2023 SCC OnLine Del 7914.**

12. In the light of the above, Mr. Rajarshi Dutta, learned Advocate appearing for the plaintiff submits that the instant application should be allowed and the additional documents should be taken on record.

DECISION:

13. After hearing the learned Advocate appearing for the plaintiff/petitioner and on perusal of the materials on record, it appears to this Court that, the suit is an undefended suit as the defendant has forfeited its right to file written statement. Further, the suit rests at its argument stage as the examination in chief of the plaintiff's witness has been concluded and the defendant chose not to cross-examine the witness of the plaintiff.

14. Sub-Rule 5 to Rule 1 of Order XI of CPC is quoted below :-

“(5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.”

15. On a meaningful reading of **Sub-Rule 1** to **Sub-Rule 3** to **Rule 1**, it appears to this Court that after the enactment of the **Commercial Courts Act, 2015** (for short “**CC Act**”), it is a mandatory obligation upon the plaintiff to disclose all documents at the time of filing of the suit with the plaint which are in power, possession, control and custody of the plaintiff pertaining to the suit in the manner and mode as stated in the Rules.

- 16. Sub-Rule 4** shows that in case of **urgent filing**, the plaintiff may seek leave to rely on additional documents, as part of the declaration on oath and subject to grant of leave by Court, the plaintiff shall file such additional documents in Court, within 30 days of filing of the suit along with a declaration, on oath that the plaintiff has produced all documents in its power, possession, control and custody pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents in its power, possession, control or custody.
- 17.** While reading the provisions under **Sub-Rule 5**, this Court finds that the plaintiff shall not be allowed to rely on documents which were in the plaintiff's power, possession, control and custody but not disclosed along with the plaintiff or within the extended period set out in the preceding Rules, save and except by leave of Court and as such, leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.
- 18.** On a meaningful and conjoint reading of the above Rules, this Court is of the considered view that even after **Sub-Rule 4** stage, legislature thought it fit to include **Sub-Rule 5** while amending CPC, where Court can exercise its discretion by granting leave to the plaintiff to disclose additional documents even after the extended period as provided under Sub-Rule 4. However, the discretion shall

be used upon being satisfied with the reasons shown by the plaintiff on oath.

19. This Court is therefore, of the view that there is no absolute bar imposed after **Sub-Rule 4** stage, as **Sub-Rule 5** has been engrafted in the Code.
20. The relevant grounds on which this application has been filed are quoted below:

“4. As will appear from the plaint filed in the instant suit, the claim of the petitioner is two-fold one, a claim for USD 24,000 towards payment of detention charges incurred in having to detain the vessel M.V. HAN ZHI till February 15 2021 when it was supposed to depart Kolkata Port on February 12, 2021; and second, a claim for the expenses incurred by the petitioner in loading goods a equivalent quantity and quality as that of the failed consignment, from its from its warehouse at Singapore Port, whereat the said vessel had berthed en route the port of discharge i.e. Hong Kong Port.

5. During the course of arguments being advanced on behalf of the petitioner on June 12, 2025, two queries fell from this Hon'ble Court - (a) on what basis the sum of USD 24,000 was shown to have been charged by the freight forwarder of the petitioner towards detention charges from February 13, 2021 to February 15 2021; and (b) what would have been the comparative cost of loading goods similar to the failed consignment from Kolkata Port to Hong Kong Port vis-a-vis the cost of loading such goods from Singapore Port to Hong Kong Port (as was done by the petitioner in the instant case).

6. *In order to answer the first of such queries, the following document require to be disclosed in the instant suit, and proved by way of oral evidence of further witness on behalf of the petitioner –*

a) Liner Booking Note dated January 21, 2021 issued by ISSGF private Limited, the freight forwarder of the petitioner;

(b) Email dated February 14, 2021 issued by Seahorse Ship Agencies Private Limited, the shipping agent of the petitioner, together with its attachment being Gate Notice issued by Kolkata Port showing that the berth gates would close on February 14, 2021 at 23:55 hours;

(c) Chain of 13 number of emails exchanged between ISSGF Private Limited and the petitioner from February 9, 2021 to February 13, 2021.

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14. *In order to avoid breach in performing its obligations under the Purchase Contracts, the Plaintiff arranged for 1 reel weighing 124 MT to be loaded onto the vessel M.V. HAN ZHI on or about February 22, 2021 for it to be delivered to COSL. This was done not only to avoid the risk and threat of LD being imposed on the Plaintiff, apart from the Purchase Contracts being terminated but also to ensure immediate payment of the balance 70% amount under the Purchase Contracts, which was payable under the LCs.*

15. *At about the time when the Plaintiff arranged for shipment of 1 reel to Singapore Port at Singapore for shipment to Hong Kong, China for the end buyer COSL,*

there was no fixed monthly calling vessel from Kolkata to Singapore with sufficient gear capacity to handle the loading of a single cargo unit weighing 124 MT. The vessels that do arrive at Kolkata Port from China and Singapore to discharge import cargo typically do not possess the heavy lifting capacity required to handle such a large reel. It is pertinent to mention that M.V. HAN ZHI was chartered by the Plaintiff in its entirety, solely to transport the cargo to Hong Kong Port. That is why the Plaintiff could delay the sailing of the vessel till February 15, 2021 because no other cargo except that of the Plaintiff's was on board.

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17. *The facts narrated in paragraph 15 and 16 hereinabove are necessary to be proved by way of oral evidence in order to satisfactorily answer to the second query from this Hon'ble Court. Apropos such query of the Hon'ble Court, it is respectfully submitted that Mr. Gautam Das, the Senior Deputy General Manager - Logistics of the petitioner, who had approved the loading of goods from the petitioner's warehouse in Singapore on board the vessel M.V. HAN ZHI en route to Hong Kong (as will appear from the emails dated February 17, 2021 marked as Exhibit "O" at page 15 of the Judges Brief of Documents) is competent to adduce oral evidence in such regard.*

18. *The instant suit is undefended by the respondent. Therefore, no prejudice will be caused to the respondent if the documents enumerated in paragraphs 6, 8, 12 and 13 hereinabove are disclosed and proved through a second witness. In any event, it will be open for the*

respondent to cross-examine such witness, if it so chooses.”

- 21.** The other relevant paragraphs in support of the application are also quoted from the supplementary affidavit filed by the plaintiff pursuant to the leave of this Court dated **November 25, 2025**, which are as follows :-

“5. Out of the aforesaid, the Liner Booking Note referred to in paragraph 4(a) hereinabove was not in the possession of the plaintiff/petitioner at its registered office. This document was at the Ranchi plant wherefrom the defendant was supposed to have lifted the goods. As such, the plaintiff/petitioner was not in a position to disclose the same at the time of filing of the plaint. Upon the query falling from the Hon'ble Court, the plaintiff/petitioner got in touch with its Ranchi office and asked its officials to conduct a thorough search of the papers, whereupon this document was located. It is only after conducting the search that the plaintiff could trace out such document and made the present application for leave to disclose the same.

6. Insofar as the emails enumerated in paragraph 4(b) and (c) are concerned, the same all pertain to the year 2021. As such, the emails were saved onto the archival database of the plaintiff/petitioner and not readily available on the computer system of the plaintiff/petitioner. Furthermore, the plaintiff/petitioner was under the bona fide belief and understanding that from the invoice raised by ISSGF India Private Limited, the freight forwarder of the petitioner and payment advice evidencing remittance by the petitioner (which

were disclosed along with the plaint) it was evident that a sum of USD 24,000 was paid by it on account of detention charges for detaining the vessel M.V. HAN ZHI from February 13, 2021 to February 15, 2021. Therefore, the plaintiff/petitioner did not cause a deeper search into its archived email databases to locate further documents in support thereof. Such search into the archived databases was only caused by the plaintiff/petitioner apropos the query of this Hon'ble Court as to how the said sum of USD 24,000 was arrived at and/or what was the basis for the same.

7. Insofar as the second query of the Hon'ble Court is concerned *Le*, what would have been the comparative cost of loading goods similar to the failed consignment from Kolkata Port to Hong Kong Port vis-a-vis the cost of loading such goods from Singapore Port to Hong Kong Port (as was done by the petitioner in the instant case), the same necessitated a query by the plaintiff/petitioner to its sister concern Usha Martin Singapore Pte Limited, which had entered into the contract with the end customer. The documents sought to be disclosed in answer to the second query being Purchase Contracts entered into by and between COSL and the Plaintiff and Letters of Credit both dated April 8, 2021 caused to be issued by the end buyer COSL in favour of the Plaintiff were forwarded to the plaintiff/petitioner by its sister concern Usha Martin Singapore Pte Limited vide email dated September 5, 2025, which has also been disclosed in the instant application as Annexure "F" thereto. The documents disclosed as Annexures "D-1" "D-2" "E-1" and "E-2" to the instant application were not in the possession of the plaintiff/petitioner but in the

possession of its sister concern Usha Martin Singapore Pte Limited and thus could not have been produced with the plaint. These documents were also sought by the petitioner from its sister concern after the queries of this Hon'ble Court and to establish the claim of the petitioner in the suit.

8. *There is no intentional or deliberate delay or laches on the part of the petitioner to disclose the documents in support of its cause. It is only after certain queries of this Hon'ble Court that the petitioner was advised to locate and trace further documents. These documents are absolutely necessary to establish the claim of the petitioner. The respondent did not file written statement in the suit and the suit is being tried as 'undefended suit'. In any event, respondent shall suffer no prejudice if the documents are allowed to be disclosed and relied upon by the petitioner."*

22. In the matter of: Mascot Petrochem Private Limited (Supra) this Court had dealt with a situation when the defendant came with the plea for disclosure of additional documents which were not disclosed along with the written statement. On reading the relevant provisions from CPC, this Court had opined as follows :-

“20. *The test is, as there is no absolute bar in law for disclosing documents at a subsequent stage, the Court is to examine and scrutinize the reasons shown by the applicants and if the reasons are found to be just and cogent, the Court in exercise of its discretion can grant leave for subsequent disclosure instead of depriving*

the defendants from an opportunity to defend its case to the fullest extent.”

23. Hon’ble Supreme Court ***In the matter of : Sudhir Kumar alias S. Baliyan (Supra)*** had observed as under :-

“9.5. Order 11 Rule 1(5) further provides that the plaintiff shall not be allowed to rely on documents, which were in the plaintiff’s power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint. Therefore on combined reading of Order 11 Rule 1(4) read with Order 11 Rule 1(5), it emerges that (i) in case of urgent filings the plaintiff may seek leave to rely on additional documents; (ii) within thirty days of filing of the suit; (iii) making out a reasonable cause for non-disclosure along with plaint.

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10.3. Even the reason given by the learned Commercial Court that the invoices being suspicious and therefore not granting leave to produce the said invoices cannot be accepted. At the stage of granting leave to place on record additional documents the Court is not required to consider the

genuineness of the documents/additional documents, the stage at which genuineness of the documents to be considered during the trial and/or even at the stage of deciding the application under Order 39 Rule 1 that too while considering prima facie case. Therefore, the learned Commercial Court ought to have granted leave to the plaintiff to rely on/produce the invoices as mentioned in the application as additional documents.”

- 24.** While considering and interpreting the expression **“reasonable cause”**, the Hon’ble Division Bench of the Hon’ble Delhi High Court ***In the matter of: Agva Healthcare Private Limited and Others vs. Agfa-Gevaert NV and Another (Supra)*** had observed as under:-

“14. The word used in Order XIII Rule 2 CPC (since repealed) were “unless good cause is shown” and the Supreme Court in the decision reported in Madanlal V. Shyamlal [(2002) 1 SCC 535], noted the distinction between “good cause” and “sufficient cause” and held that “good cause” requires a lower degree of proof as compared to “sufficient cause” and thus the power under Order XIII Rule 2 CPC should be exercised liberally. Order XI Rule 1(5) of Commercial Courts Act, 2015 uses the word “reasonable cause”, which would require even a lower degree of proof as compared to “good cause”. 13. Thus it is to be seen in the present case whether the respondent had “reasonable cause” for non-disclosure of documents (Annexure A to Annexure H) along with the plaint. While dealing

with the same, learned District Judge observed as under:-

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“16. At the stage of granting leave to place on record additional documents, the Court is not required to consider the genuineness of the documents/additional documents, the stage at which the genuineness of the documents is to be considered is during the trial.”

- 25.** In an adversarial litigation, right to present its case by the plaintiff is a vested right. On a meaningful reading of the relevant provisions laid down under **Rule 1 to Order XI of CPC**, this Court is further of the view that on a proper construction and interpretation of **Sub-Rule 5** thereto, since there is no outer limit fixed by the legislature and also there being no absolute bar even after **Sub-Rule 4** stage, subject to reasonable cause being shown in the application, the plaintiff can be permitted to disclose additional documents even at the argument stage.
- 26.** The causes shown in the application are found to be just, cogent and reasonable. The plaintiff has specifically pleaded a case that it requires these additional documents to be brought on suit record to meet the queries raised by the Court at the argument stage. The

worthiness and veracity of these additional documents cannot be assessed or adjudicated upon at this stage and the same can only be adjudicated upon at the time of final trial of the suit. At this **Order XI Rule 1** stage of **CPC** as amended, the jurisdiction of this Court is limited to the extent whether to allow or not to allow these additional documents to be brought on record.

27. In view of the foregoing reasons and discussions, this Court is of the firm and considered view that a case has been made out and the causes are explained to be sufficient and cogent in the application filed by the plaintiff, allowing the plaintiff to disclose these additional documents.

28. Accordingly, this application **IA No. GA-COM/1/2025** stands **allowed** with the following findings and directions :

- (a)** There shall be an order in terms of **prayer (a)** to the Notice of Motion;
- (b)** There shall be an order in terms of **prayer (b)** to the Notice of Motion;
- (c)** Leave is granted to the plaintiff to file evidence on affidavit of its second witness within **six weeks** from date but the said evidence on affidavit shall be **restricted** only with regard to the documents mentioned in **prayer (a)** to the Notice of Motion.

29. It is needless to mention that the defendant shall be entitled to cross-examine the second witness of the plaintiff, which shall also

be **restricted** only to these additional documents and not beyond that.

- 30.** The disclosure shall be permitted subject to payment of costs of **Rs.50,000/-** to be paid by the plaintiff in favour of **Calcutta High Court Legal Services Committee** within **two weeks** from date.
- 31.** Upon costs being paid, the plaintiff shall furnish a copy of the money receipt before the department at the time of filing of the additional documents in accordance with law.

(ANIRUDDHA ROY, J.)

Arsad/RS