M/S. Trade Centre vs Magebe Bridge Products Private Limited on 18 March, 2025

Author: Sabyasachi Bhattacharyya

Bench: Sabyasachi Bhattacharyya

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

F.A. No.15 of 2023
With
CAN 1 of 2022

M/s. Trade Centre
Vs.
Magebe Bridge Products Private Limited

For the appellant : Mr. Kasinath De,
Mr. Kaushik Chatterjee,
Mr. Suparno Ghosh,
Mr. Prantik Sarkar

For the respondent : Mr. S.P. Mukherjee, Sr. Adv.,

Mr. Swarup Banerjee, Mr. Manoj Kumar Tewari, Ms. Arpita Dey, Mr. Arinjay Pal Heard on : 19.11.2024, 14.01.2025, 17.01.2025, 27.01.2025, 28.01.2025, 29.01.2025, 13.02.2025, 20.02.2025, 27.02.2025 Hearing concluded on : 06.03.2025 Judgment on : 18.03.2025 Sabyasachi Bhattacharyya, J.:-

1. The present first appeal has been preferred by the plaintiff in a money suit against a judgment whereby the said money claim on the basis of due payments for goods supplied by the plaintiff to the defendant was dismissed.

2. Learned senior counsel for the appellant contends that the Learned Trial Judge erred in law in dismissing the suit on the ground that the plaintiff/appellant/partnership firm was unregistered and the suit was hit by Section 69(2) of the Indian Partnership Act, 1932, by overlooking the legal effect of Exhibit-8, a memorandum of registration exhibited by the plaintiff, which conclusively proved

the registration of the firm prior to the filing of the suit.

3. It is next contended that in view of Exhibit 4-series, the relevant bills and challans, and Exhibit 7-series, being the purchase register of the defendant-Company having been marked as exhibits, the learned Trial judge erred in law and in fact in disbelieving the same.

4. It is contended that the defendant partially admitted the claim of the appellant in respect of some of the supplied goods but by its letter dated August 1, 2008 denied the claim of the plaintiff for the balance payments. The suit was filed on June 5, 2010, within the limitation period for filing a money suit and, as such, the argument of the respondent that the suit was barred by limitation is not tenable.

5. Insofar as the registration of the plaintiff-firm is concerned, it is argued that apart from Exhibit-8, an application under Order XLI Rule 27 of the Code of Civil Procedure has been filed in this Court to produce certified copies of documents issued by the Registrar of Firms, Government of West Bengal, which clearly corroborates Exhibit-8 and the registration number given to the plaintiff'/appellant-firm as mentioned therein.

6. It is argued that Exhibit-8 sufficiently proves the compliance of Section 58 of the Indian Partnership Act, which deals with registration of partnership firms,and, thus, ought to have been considered to be sufficient proof of registration of the firm.

7. The certified copies of public documents sought to be produced under Order XLI Rule 27 of the Code of Civil Procedure are admissible as secondary evidence under Section 65 of the Indian Evidence Act.

8. It is next contended that the written statement filed by the defendant/respondent was signed by Subrata Dutta, one of the Directors of the defendant, in his personal capacity, without any statement that he was filing the same on behalf of the defendant-

Company and without any seal of the company. Thus, it is to be construed that there are no valid pleadings of the defendant on record and, as such, the suit ought to have been decreed by application of the doctrineof non-traverse. The evidence led by the defendant/respondent could not be looked into, being beyond the pleadings, as there was no valid written statement on record.

9. Learned senior counsel for the appellant next contends that the evidence of D.W.1 Subrata Dutta amply proves that he had no personal knowledge regarding the purchase of materials and the transactions entered into by Tarak Nath Mitra, the other Director of the company. Hence, the said witness was incompetent to disprove the validity of such transactions with the plaintiff/appellant. He also admitted that he signed the purchase register and that when an account is signed by aDirector, it is presumed that the same is correct.

10. Learned senior counsel contends that in view of the admitted position that the benefits of VAT (Value Added Tax) adjustments were taken by the defendantwith regard to the disputed transactions, the transactions in respect of which the claims have been made by the plaintiff are proved.

11. It is argued that Exhibit-D, a purported certificate by the Excise Consultant of the defendant regarding the alleged return of the said VAT benefits, having not been proved by its author, is not admissible in evidence. The D.W.1, it is submitted, admitted that in case of refund of VAT, receipts are issued. Thus,his statement that the receipts could not be filed by the defendant/respondent clearly proves that there was no such refund by the defendant of the VAT adjustments. Hence, the transactions which form the foundation of the plaint claim were sufficiently proved.

12. The plinth of the allegations of the defendant/respondent centre around alleged collusion between the plaintiff and one Tarak Nath Mitra, one of the then Directors of the defendant-Company during the relevant period who was instrumental in the disputed transactions. It is argued that the D.W.1, in his cross-examination, admitted that no complaint or criminal case was filed against Tarak for the alleged forgery, nor was there any attempt to remove Tarak from directorship or any amount claimed from him regarding the siphoned off amounts.

13. Rather, D.W.1 admitted that Tarak left the defendant-Company by giving his share to the D.W.1 and his wife, and all accounts were updated and cleared when he left. Hence, the allegations of collusion with Tarak were disproved by the evidence of D.W.1 himself.

14. Tarak himself was examined as the defendant's witness. However, without compliance with and in contravention of Sections 138 and 154of the Indian Evidence Act (which was the governing statute at the relevant juncture, since the Bharatiya Sakshya Adhiniyam, 2003 had not yet come into force), the defendant/respondent directly cross- examined him without any leave of the trial court or declaring him hostile, instead of allowing him to adduce his evidence-in -chief first. Moreover, without any such leave under Section 138 of the Evidence Act, Tarak was further cross-examined on recall by the plaintiff.

15. In any event, Tarak's evidence corroborates the plaint case and not that of the defendant.

16. Learned Senior Counsel appearing for the defendant/respondent, on the other hand, contends that the suit was palpably barred by Section 69(2) of the Indian Partnership Act. It is submitted that the Exhibit-8 was not a certificate issued by the Registrar of Firms and, as such, the learned Trial Judge rightly disbelieved the registration of the plaintiff- firm.

17. The ingredients of Order XLI Rule 27 of the Code of Civil Procedure not being satisfied, the additional document now sought to be brought in by the plaintiff/appellant ought not to be permitted to be adduced, it is contended.

18. It is next argued that the plaintiff/appellant could produce trade license only from the year 2009 and not during the relevant period between 2005 to 2007, for which the claims had been made, thus

belying the plaint case that transactions took place between the parties during the relevant juncture.

19. Also, the suit is barred by limitation in view of the same being filed in the year 2011, whereas the transactions took place allegedly between 2005 and 2007.

20. It is argued that the plaintiff'/appellant failed to produce any partnership deed, without which no income tax assessment can be made in respect of the firm. Since the plaintiff claims on the basis of certain transactions, it was the incumbent duty of the plaintiff/appellant to produce the partnership deed, which would form the premise, under the Income Tax Act, for the assessment of the income of the partnership firm.

21. It is next submitted by the respondent that P.W.1 stated in his examination-in-chief and plaint that the purchase orders-in-question were both verbal and in writing, but in cross-examination, P.W.1 contradicted the same by stating that only oral purchase orders were placed by the defendant/respondent.

22. The purchase statements of the plaintiff itself, which would have reflected the source from where the materials were procured for alleged supply to the defendant, were never produced.

23. It is argued that the deposition in the other suits between the same parties, although in respect of different transactions, which were exhibited in the present case, would sufficiently prove the modus operandi of the appellant. Hence, it is contended that the plaintiff failed to prove its own case.

24. Learned senior counsel for both the parties cite judgments in support of their respective contentions, which will be dealt with in the following discussions.

25. Upon hearing learned counsel for the parties, certain issues come up as germane for adjudication of the present lis, which are discussed hereinbelow:

Limitation

26. The first issue which arises is whether the suit was barred by limitation. Although not specifically dealt with in the impugned judgment, Section 3 of the Limitation Act,1963 mandates the court to decide such issue even without any objection being raised in that regard by the defendant.

27. From the materials on record, we find that the cause of action of the suit first arose on August 1, 2008, when the claim of the plaintiff was denied by the defendant. The suit was filed on June 5, 2010, well within the limitation period thereafter.

28. The above fact, coupled with the admission of the defendant that there were regular transactions between the parties and part payment of the claim of the plaintiff for supply of goods, in respect of other bills,was made by the defendant, clearly shows that there was a continuous flow of transactions between the parties and intermittent payments as and when bills were produced.

29. Thus, although the transactions-in-question were for the period 2005 to 2007, the cause of action for the instant suit arose on the refusal of the defendant to pay a part of the claims whereas, by partial payment regarding the other bills, the defendant/respondent admitted the premise of the ongoing transactions between the parties. Thus, the suit is not barred by limitation.

Bar under Section 69 of the Indian Partnership Act, 1932

30. Exhibit-8 is a memorandum issued by the Registrar of Firms, West Bengal, acknowledging the receipt of the documents (which should be deemed to be in compliance with Section 58 of the Indian Partnership Act by virtue of application of the presumption of correctness attached to official acts under Section 114 (e) of the Indian Evidence Act), and an intimation that the same has been filed/recorded/registered pursuant to the Indian Partnership Act, 1932. Thus, the said memorandum itself, in the absence of any rebuttal, indicates that the firm was registered pursuant to the Partnership Act. More importantly, the registration number (L73931) allotted to the plaintiff-firm is also depicted in the memorandum, thereby proving clearly that the plaintiff firm had been registered at least on May 14, 2010.

31. A question arises as to whether the additional documents sought to be produced by the appellantin the first appeal ought to be permitted to be brought on record at this stage. For deciding such issue, we have to look into the provisions of Clauses (aa) and (b) of Order XLI Rule 27(1) of the Code of Civil Procedure.

32. The first of the above clauses mandates the party seeking to produce additional evidence to establish that such evidence was not within its knowledge, or could not be produced even after the exercise of due diligence, at the time when the decree appealed against was passed.

33. Proceeding on the basis of the said clause, in the present case, as held above, Exhibit-8 was sufficient to prove the registration of the plaintiff- firm under the provisions of the Indian Partnership Act. The said document was issued by the Registrar of Firms, West Bengal and indicated the actual registration number of the plaintiff-firm. Hence, the need for producing further documents did not arise before the passing of the impugned judgment and decree, wherein such evidence was disbelieved for the first time, thereby giving rise to the cause of action for the appellant to produce further documents.

34. Also, the document sought to be produced now is not an entirely new document which would take the respondent by surprise but rather corroborative material to buttress Exhibit-8, which was already part of the evidence before the Trial Court. The said additional evidence is merely to corroborate the authenticity of Exhibit-8 and does not create any new right in favour of the appellant. Thus, the test laid down in Clause (aa) are met.

35. Again, Clause (b) of Rule 27(1) of Order XLI empowers the Appellate Court to permit production of additional evidence if the said court requires any document to be produced to enable it to pronounce judgment or for any other substantial cause. In view of a doubt having been raised by the learned Trial Judge in the impugned judgment regarding the registration of the deed upon

disbelieving the authenticity/sufficiency of Exhibit-8, it is required by the Appellate Court, to do substantial and complete justice between the parties, and to enable it to pronounce judgment, to permit the plaintiff/appellant production of corroborative material from the end of the Registrar of firms to verify the authenticity of Exhibit-8.

36. The document sought to be produced as additional evidence is a certified copy of Form-VIII of the Register of Firms, duly certified by the Registrar of Firms,West Bengal, whereby it is reiterated that the registration number of the plaintiff firm is L73931, as it appears from Exhibit-8, and that the date of registration was May 14, 2010, also in consonance with Exhibit-8.

37. Section 65(e) of the Evidence Act, 1872, which statute is applicable in the present case since the suit was decided before the introduction of the Bharatiya Sakshya Adhiniyam, clearly provides that secondary evidence may be given of the existence, condition or contents of a document, when the original is a public document within the meaning of Section 74 of the Evidence Act. As per Section 65, a certified copy of such document, but no other kind of secondary evidence, is so admissible. Section 74 of the Evidence Act provides that documents forming the acts or records of the acts of official bodies and tribunals and of public officers of any part of India and public records kept in any state of private documents are included within the definition of "public document".

38. The said test is satisfied in the present case.

39. Hence, if Section 65 is read in conjunction with Section 74 of the Evidence Act, the document sought to be adduced as additional evidence,which is a certified copy of Form-VIII of the Register of Firms, duly certified by the Registrar of Firms,West Bengal, can be admitted and is hereby marked as an exhibit in the appeal.

40. Even without the additional evidence, Exihibit-8 would suffice to prove the registration of the plaintiff-firm. However, the additional evidence bolsters and strengthens the veracity of Exhibit-8, thus proving beyond doubt that the plaintiff-firm was registered on May 14, 2010, before the filing of the suit on June 5, 2010.

41. As per the language of Section 69(2) of the Indian Partnership Act, no suit to enforce a right arising from a contract shall be instituted by or on behalf of a firm against any third party unless the firm is registered and the person suing are or have been shown in the register of firms as partners in the firm.

42. Thus, the relevant date on which the partnership firm is required to be registered is not the date of the transactions which furnish the cause of action for the suit but the date of institution of the suit. Hence, even if the plaintiff-firm was not registered during the relevant period when the transactions-in-questions took place, that is, between the years 2005 and 2007, such non-registration does not vitiate the transactions themselves. The bar of Section 69(2) operates only in respect of institutions of suits by unregistered partnership firms and does not prevent such a firm from carrying on its business. Since the appellant- firm was registered before the filing of the suit, the bar under Section 69(2) does not apply. As such, the primary premise of the impugned judgment

and decree is denuded of legality. The suit was very well maintainable at the instance of the plaintiff-firm which was registered on the date of the filing of the suit.

Whether the plaint case was proved sufficiently

43. Exhibit-4-series are the bills and challans of the transactions-in- question which were duly proved by the plaintiff. We find from Exhibit- 2, the order passed in a company petition filed by the plaintiff against the defendant, whereby the parties were relegated to a civil suit, that the Company Court directed all relevant documents be produced, which were accordingly produced in original before the said court. As per the direction of the Company Court, the copies of the said documents were circulated among the parties. Having received the documents in such manner, those were exhibited in the present suit by the plaintiff.

44. Order XIII Rule 10 of the Code of Civil Procedure empowers the Civil Court even suo motu to direct the records of any other case to be called for to decide the suit at hand. Thus, nothing prevented the Trial Court to call for the records of the Company Court if there was any doubt regarding the authencity of the documents.

45. Two notices demanding production, respectively of the original challans and of the VAT returns for 2005 to 2008 of the defendants/respondents, both issued at the instance of the plaintiff/appellant, have been exhibited in the suit. Since the defendant/respondent neither produced such documents, which are supposed to be in its custody under the normal course of transactions, in response to the said notices, nor sought for production of the records of the Company Petition under Order XXXIX Rule 10 of the Code, adverse inference has to be drawn against the respondent on such count.

46. It is an admitted position that the respondent adjusted the VAT benefits in respect of the disputed transactions but even upon notice to produce the VAT returns for the period 2005-2008, the same were not produced by the defendant/respondent, which also shouldhave prompted the Trial Court to draw adverse inference against the defendant under Section 114, Illustration (g) of the Indian Evidence Act.

47. That apart, the purchase statements of the defendant were marked as Exhibit-7-series.

48. D.W.1, the defendant's witness Subrata Dutta, who was one of the Directors of the defendant-Companyand also filed written statement on behalf of the defendant-company, denied in his cross-examination having any personal knowledge regarding the incoming and outgoing of materials or transactions by Tarak Nath Mitra, the Director sought to be tainted by the defendant, and/or regarding supply of goods or purchase of materials. Thus, the said witness was incompetent, in the absence of any direct knowledge, either to prove that the transactions entered into by Tarak on behalf of the defendant-Company with the plaintiff were collusive or invalid or to disprove the validity of such transactions.

49. D.W.1 further admitted in his cross-examination that he signed the purchase register of the defendant-Company. He also admitted in his evidence that he signed the accounts and further that when the accounts of the Company are signed by a Director, it is presumed that the account is correct. Thus, the purchase statements of the defendant-Company reflecting the disputed transactions was proved by D.W.1 himself.

50. Insofar as VAT benefits are concerned, D.W.1 admitted in his cross- examination that in case of refund of VAT, receipts are always available from the Sales Tax Authorities and that VAT is adjusted at the time of selling finished products. However, despite asserting that receipts are issued for return of the amount of VAT adjustments, D.W.1 admitted in his cross-examination that the defendant has not filed any such receipt to prove that any such refund was made by the defendant/respondent.

51. Moreover, no independent documents were filed to show such refund, nor is any provision for such refund relied on by the respondent.

52. The admission of D.W.1 that the VAT amounts for the disputed transactions were adjusted by the defendant/respondent, thereby the defendant having derived the statutory benefit for such transactions,coupled with the defendant'sfailure to prove refund of the same on the part of the defendant/respondent, are telltale indicators which go on to show the veracity of the plaint allegation regarding such transactions having actually taken place.

53. The plinth of the defence case is the alleged collusion of Tarak Nath Mitra, an ex-Director of the Company who was in charge of the purchase of materials at the relevant point of time, with the plaintiff. Despite having alleged that Tarak Nath Mitra had colluded with other suppliers as well, no such proof was ever brought on record in the suit.

54. D.W.1, in his cross-examination, categorically admitted that no complaint or criminal case was lodged by the defendant-company against Tarak till the date of adducing his evidence for such alleged acts of fraudulent collusion with the plaintiff and other suppliers,and also that no attempt was made to remove Tarak from Directorship on such ground andthat no amount was claimed by the defendant- company from Tarak regarding the money allegedly siphoned off by him.

55. Rather, D.W.1 admitted in his cross-examination that Tarak left the Company at the time of its partition by giving his share to D.W.1 and his wife; more importantly, when Tarak left, all accounts were updated and cleared. This itself shows that the defendant had no contemporaneous complaint of collusive and fraudulent transactions by its ex-Director Tarak with the plaintiff or other suppliers. It is only after the suit being filed that the defendant-company attempted to put up Tarak as a scape-goat to avoid the monetary claims against it.

56. Tarak himself was called to adduce evidence by the defendant and faced the witness-box as D.W.2. However, contrary to the provisions of Sections 154 and 138 of the Indian Evidence Act, Tarak was cross- examined first by the defendant, although Tarak was its own witness.

57. Be that as it may, the suggestions put to Tarak in his cross- examination by the defendant were entirely on irrelevant aspects and do not prove any material aspect regarding his collusion. Rather, such cross-examination elicits that materials were purchased by the plaintiff for supplying to the defendant and that verbal purchase orders were given to the plaintiff. Further, Tarak states in his cross-examination by the defendant that the plaintiff supplied goods which were tested by the defendant in its factory and that defective goodsused to be returned if those were not according to proper quality or were bad. In the present case, there is no case made out by the defendant that any of the goods supplied by virtue of the disputed challans were ever returned, although the challans go on to show that those were signed at the end of the defendant-Company, signifying acceptance of the goods supplied by the plaintiff by the defendant.

58. In the cross-examination of Tarak by the plaintiff, Tarak categorically denied any collusion with the plaintiff and stated that CENVAT, if withdrawn and deposited, will be shown in the account-book and documents relating to income tax. Conspicuously, such documents were never produced by the defendant.

59. Tarak, being D.W.2, was never sought to be declared hostile by the plaintiff, although the plaintiff cross-examined the witness on recall without leave of the trial court, without adhering to the provisions of Section 138 of the Evidence Act.

60. Hence, the foundational facts for the plaint claim, being the transactions-in-question, were fully established from the evidence of both parties.

Whether the written statement of Subrata Dutta was valid in law

61. Subrata Dutta, as D.W.1, admitted in his cross-examination that there was no mention of his credentials under any of his signatures on the written statement. We find from the written statement that there was no stamp or seal of the defendant-Company. Subrata verified the written statement in his personal capacity, merely mentioning that he is a Director of the defendant-Company but not verifying/affirming the written statement as a Director of the Company or in the capacity of a Director.

62. Exhibit-B, an authorisation letter by the defendant-Company in favour of the Subrata,was on the face of it the product of a resolution taken by the defendant-Company on November 26, 2015, much after the filing of the written statement. Such authorisation pertained to future action and representation of the defendant-Company by Subrata in the suit but did not ratify the prior filing of written statement by him on behalf of the defendant-company.

63. Under Order XXIX Rule 1 of the Code of Civil Procedure, the pleading of a corporation has to be signed and verified on its behalf inter alia by any of its Directors. In the present case, there was no such averment in the verificationto the defendant's written statement that Subrata was verifying the plaint on behalf of the defendant-company as its Director and, as such, the pleading of the defendant ought to be discarded as not tenable in the eye of law.

64. Also, as discussed above, the letter of authority produced by the defendant cited a resolution of the defendant-company subsequent to the defendant having entered appearance and filed its written statement in the suit through Subrata, without even any ratification of such past action. Also, since the written statement was defective as unlawful at the outset, being in contravention of Order XXIX Rule 1 of the Code, there is considerable doubt as to whether such defect could be cured at a later stage of the suit.

65. As held in State Bank of Travancore v. Kingston Computers India Private Limited, reported at (2011) 11 SCC 524, if there is no valid resolution to authorise the filing of a suit, the pleading of a corporation/company cannot be looked into. As held in Shivshankara and another v. H.P. Vedavyasa Char, reported at (2023) 13 SCC 1, there cannot be any proof beyond the pleading. Hence, in the absence of a valid pleading, the trial court also could not place much reliance on the defendant's evidence.

Whether additional evidence can be permitted to be produced

66. As discussed above, invoking the provisions of Order XLI Rule 27(1)(b), since the Appellate Court requires the document-in-question for doing substantial justice and since the same is not a new document but is merely required to corroborate the authenticity of Exhibit-8, the same can be adduced in additional evidence.

67. Also, there was no lack of due diligence on the part of the plaintiff, since it produced the memorandum of registration issued by the Registrar of Firms as Exhibit-8. That the said document would not suffice in the perception of the Trial Judge became evident only upon passing of the impugned judgment and decree. Hence, there was no cause of action for filing of such additional document prior to the passing of the impugned decree. Thus, even under Clause (aa) of Order XLI Rule 27(1), the document is admissible in evidence.

68. The judgments cited by the respondenton such count are distinguishable for the following reasons:

69. In Principal Secretary, Revenue Department, State of Telangana and another v. B. Rangaswamy (Dead) by legal representatives and Others, reported at (2022) 16 SCC 264, in the facts of the case it was held that sufficient opportunity had been given to the party concerned to adduce the evidence-in-question. The matter had been remanded and there was ample opportunity to produce the evidence. In the present case, however, there was no such opportunity as discussed above.

70. In Basayya I. Mathad v. Rudrayya S. Mathad and others, reported at (2008) 3 SCC 120, it was generally held that if additional evidence is permitted, Order XLI Rule 27 has to adhered to. Unlike the said case, in the present lis, a specific application under Order XLI Rule 27 has been filed and allowed by this Court.

71. In Karnataka Board of Wakf v. Govt. of India and others, reported at (2004) 10 SCC 779, the provisions of Order XLI Rule 27 were not satisfied as opposed the present case.

72. In Satish Kumar Gupta and others v. State of Haryana and others, reported at (2017) 4 SCC 760, it was held that Order XLI Rule 27 could not be resorted to for the purpose of filling in lacunae or patching up weak points of the case of a party. Here, as opposed thereto, Exhibit-8 was already on record and the additional evidence was required merely to buttress and elucidate the same.

73. Since the additional evidence is a certified copy of a public document, Sections 65 and 74 of the Evidence Act, read conjointly, render the same admissible in evidence.

74. Thus the plaintiff/respondent is definitely entitled to produce such additional document at the first appellate stage. Whether the depositions in the other suits were relevant

75. The depositions of other money suits, regarding distinct and separate transactions, challans and bills, cannot be relevant for the purpose of present suit and thus, cannot/could not be looked into by this Court or by the Trial Court.

76. In view of the above, the learned Trial Judge palpably erred in law and on facts, in dismissing the suit on the ground of bar under Section 69(2) of the Indian Partnership Act.

77. Since issues were framed on the other components of the pleadings and the parties addressed the same in arguments as well as adduced evidence and there was a full-fledged trial on all issues, instead of relegating the matter on remand, in view of the above observations, we decide to invoke the provisions of Order XLI Rule 24 of the Code of Civil Procedure and decree the suit on the basis of the observations made above, premised on the evidence which is already on record.

78. However, the rate at which interest has been sought in the plaint is, in the opinion of this Court, exorbitant and, in our estimate, interest at the rate of 6% per annum till date of realization would suffice.

79. Thus, F.A. No.15 of 2023 is allowed on contest, thereby setting aside the impugned judgment and decree dated May 18, 2022 passed by the learned Civil Judge (Senior Division), Ninth Court at Alipore, District:

> South 24 Parganas in Money Suit No.43 of 2011 and partially decreeing the said suit on contest without any order as to costs.

80. Accordingly, the defendant/respondent shall pay to the plaintiff/appellant a sum of Rs.24,36,105/- (Rupees Twenty Four Lakh Thirty Six Thousand One Hundred and Five Only), along with interest thereon at the rate of six per cent per annum from June 5, 2010 (the date of filing of the suit) till the date of realization of the amount, within ninety days from date.

81. In default of such payment, the plaintiff/appellant will be at liberty to have the decree executed in accordance with law.

82. A formal decree be drawn up accordingly.

83. CAN 1 of 2022 also stands disposed of in view of the above.

(Sabyasachi Bhattacharyya, J.) I agree.

(Uday Kumar, J.) Later After passing of the above judgment, it is pointed out by learned counsel for the parties that the decretal amount has been secured by the appellant by depositing the same with the learned Registrar, Original Side.

The plaintiff/appellant shall accordingly be entitled to withdraw the said amount with interest, if accrued thereon, after deducting the statutory dues, if any.

It is made clear that such withdrawal shall be construed to be sufficient satisfaction of the decree and no further amount need be paid by the respondent on such count.

At this juncture, learned counsel for the respondent seeks limited stay of operation of the above judgment and decree in order to prefer a challenge against the same.

Since questions of law are involved in the matter, the operation of the above judgment and decree is stayed for a period of four weeks from date.

(Uday Kumar, J.) (Sabyasachi Bhattacharyya, J.)