

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

Judgment (2)

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

**IA No. GA-COM/3/2024  
In CS-COM/728/2024**

**PULAK MODI AND ANR  
VS  
JITENDRA AGARWAL AND ORS**

**AND**

**IA No. GA-COM/7/2025  
In CS-COM/728/2024**

**PULAK MODI AND ANR  
VS  
JITENDRA AGARWAL AND ORS**

**For the plaintiffs** : **Mr. Suman Kumar Dutt, Sr. Adv.  
Mr. Shounak Mukhopadhyay, Adv.  
Ms. Shreyashee Das, Adv.  
Mr. Paritosh Sinha, Adv.  
Mr. Tridibesh Dasgupta, Adv.  
Ms. Anukriti Agarwal, Adv.**

**For the defendant Nos.1 to 4:** **Mr. Shuvashish Sengupta, Adv.  
Mr. Orijit Chatterjee, Adv.  
Ms. Swati Dalmia, Adv.  
Ms. Sabarni Mukherjee, Adv.  
Ms. Aishi Chatterjee, Adv.**

**Heard on** : **January 6, 2026**

**Judgment on** : **January 6, 2026**  
[In Court]

**ANIRUDDHA ROY, J.:****In Re: IA No. GA-COM/3/2024**

1. Original affidavit in reply is not found in record.
2. Mr. Suman Kumar Dutt, learned Senior Advocate appearing for the plaintiffs/applicants submits that it is a changed brief for the present Advocate on Record, so, if necessary, the plaintiffs shall reaffirm the affidavit in reply and file it in the department.
3. Mr. Shuvashish Sengupta, learned Counsel appearing for the defendant nos.1 to 4, in his usual fairness, submits that copy of the affidavit in reply has already been served upon them and they have no objection if the Court proceeds on the basis of a photocopy of the affidavit in reply and keeps it as part of the record for the time being.
4. On the basis of the said concession made on behalf of the parties, the instant application is being taken up for consideration.
5. By consent of the parties, both the applications being **IA No.GA-COM/3/2025** and **IA No.GA-COM/7/2025** filed by the plaintiffs and the defendant nos.1 to 4 respectively are taken up for analogous consideration.

**In Re: GA-COM/3/2024 and GA-COM/7/2025**

**FACTS :**

1. **IA No. GA-COM/3/2024** (for short “plaintiffs’ application”) is an interlocutory application filed by the plaintiffs with the following prayers:-

“a) *Leave be granted to the petitioners to serve a copy of the present application on The Federal Bank Ltd, through its Manager and Operations (Head) having his office at C.R. Avenue, 11, Prafulla Sarkar Street, Ground Floor, Kolkata 700072.*

b) *An order be passed directing the Manager and Operations (Head) of the Federal Bank Ltd. to disclose and/or furnish the following :*

(i) *Particulars regarding the balance amount lying in account No.11030100239718 standing in the name of the respondent No.1 with the Federal Bank Ltd., C.R. Avenue Branch.*

(ii) *A statement of account in respect of the account No.11030100239718 standing in the name of the respondent No.1 with the Federal Bank Ltd., C.R. Avenue Branch for the period April 2024 till 20 August 2024.*

(iii) *Particulars of any other account maintained by the respondent nos. 2 to 5 with The Federal Bank Ltd., C.R. Avenue Branch, if any.*

c) *An order be passed directing the respondent No.1 to disclose and/or furnish the details of the amount that was available as balance in bank account No.11030100239718 standing in the name of the*

*respondent No.1 with the Federal Bank Ltd., C.R. Avenue Branch, as of April 2024.*

- d) An order be passed directing the respondent No.1 to disclose and/or furnish a statement of account in respect of the account No.11030100239718 standing in the name of the respondent No.1 with the Federal Bank Ltd., C.R. Avenue Branch for the period April 2024 upto 20 August 2024.*
- e) An order be passed directing the respondent No. 1 to 5 to disclose and/or furnish details and/or particulars of all bank accounts maintained by each of them forthwith.*
- f) An order be passed to the following effect:*
  - (i) The respondent nos.1 to 3 be directed to furnish cash security for the sum of Rs.50 lakhs before the Registrar, Original Side of this Hon'ble Court.*
  - (ii) The respondent no.4 be directed to furnish cash security for the sum of Rs.6,43,70,000/- lakhs before the Registrar, Original Side of this Hon'ble Court.*
  - (iii) The respondent no. 5 be directed to furnish cash security for the sum of Rs.72,20,256/- lakhs before the Registrar, Original Side of this Hon'ble Court.*
- g) Order dated 13 August 2024 be modified by restraining the respondent No. 5 from operating any of its bank account without setting apart the sum of Rs.72,20,256/-.*
- h) Costs.*
  - i) Such further and/or other orders be passed and/or direction or directions be given as this Hon'ble Court may deem fit and proper."*

2. **IA No. GA-COM/7/2025** is an application (for short “defendants’ application”) has been filed by the defendant nos.1 to 4 with the following prayers:-

- “a) An order be passed directing the plaintiffs to furnish a security for a sum of Rs.12,54,25,000/- to the satisfaction of this Hon’ble Court;*
- b) In alternative, Show cause as to why the plaintiffs should not furnish security;*
- c) An order of injunction be passed restraining each of the plaintiffs and/or their men, agents, servants, assigns and/or representatives from transferring, alienating, encumbering, dealing with or disposing of or otherwise creating third party rights in respect of the steel plant at Georgia morefully described in Schedule “A” hereto;*
- d) An order of injunction be passed restraining the plaintiffs from withdrawing any money to the extent of Rs.12,54,25,000/- from the bank account, the details whereof are given in Schedule “B” hereto;*
- e) Ad interim orders in terms of prayers above;*
- f) Costs;*
- g) Such further and/or other orders can be passed and/or direction or directions be given as this Hon’ble Court may deem fit and proper.”*

3. The inescapable facts leading the plaintiffs to file the instant suit are only narrated. By virtue of a Share Sale Contract (for short

“the agreement”) dated **April 14, 2023, Annexure-A** at page **74** to the Affidavit in Opposition (for short “**the said A/O**”) filed in defendants’ application, the plaintiff nos.1 and 2 agreed to sell their shares of and in respondent no.5 in favour of the defendant nos. 1 to 4 against an agreed total consideration of **Rs.15,87,40,000/-**. The plaintiff no.1 being the 50% shareholder of and in respondent no.5 claims his part of consideration to the extent of **Rs.7,93,70,000/-**. Admittedly, a sum of **Rs.1 crore** has been paid to the plaintiff no. 1 and he has received the same. Therefore, the plaintiffs claim the balance consideration for a sum of **Rs.6,93,70,000/-** along with other consequential reliefs including liquidated damages. The prayers form the plaint are quoted below:-

*“The plaintiffs pray for leave under Clause 12 of the Letters Patent, 1865 and leave dispending with the requirement of compliance with pre-institution mediation and settlement as contemplated under Section 12A of the Commercial Courts Act, 2015 and claims:-*

- a) *Decree for a sum of Rs.50,00,000 as pleaded in paragraph 26 hereinabove against the defendant nos. 1 to 4 jointly and severally;*
- b) *Decree for a sum of Rs.6,43,70,000 as pleaded in paragraph 27 hereinabove against the defendant nos. 1 to 4 jointly and severally;*

- c) *Decree for a sum of Rs.30,04,054/- towards interest by way of liquidated damages as pleaded in paragraph 28 hereinabove;*
- d) *Decree for a sum of Rs.70,79,255/- together with interest of Rs.4,41,001/- by way of liquidated damages as pleaded in paragraph 29 hereinabove against the defendant nos. 1 to 5 jointly and severally;*
- e) *Interim interest and interest upon judgment @ 15% per annum;*
- f) *Receiver;*
- g) *Injunction;*
- h) *Attachment;*
- i) *Such further or other reliefs.”*

4. The particulars of the claim are set out in paragraph **30** of the plaint.

5. Since the balance consideration was not paid by the defendants, the plaintiff no.1 had issued a demand notice dated **March 14, 2024** at page **92** of the A/O to **GA-COM/7/2025**. The demand letter was replied on behalf of the defendants by a letter dated **April 12, 2024** at page **95** to the said A/O. The principal contention of the defendants are that despite a sum of Rs.1 crore having been paid, the defendants did not enjoy the fruit of the said agreement, as the **steel plant at Gerogia** (for short “**the**

**said steel plant”**) was not in an operational condition. A specific case of fraud has been pleaded by the defendants in their application that before executing the said agreement, the plaintiffs knew that they would not be able to hand over the said steel plant in a working condition and as a result, the defendants have suffered loss and damages. The defendants through the said reply dated **April 12, 2024 terminated** the agreement and claimed refund of the said sum of Rs.1,00,00,000/- (one crore) paid to the plaintiffs. The defendants had also reserved their right to claim on account of further loss and damages suffered by them.

6. Further two communications dated **April 16, 2024** at **page no. 104** to the said A/O and **June 10, 2024** at **page no. 110** to the said A/O were exchanged by and between the parties. The document showing acceptance of possession of the steel plant by the defendants signed by the defendant no.1 is also available at **page no. 106** to the A/O.
7. In the above facts situation, the plaintiffs have filed the first interlocutory application being **IA No. GA-COM/1/2025** when an ad-interim order was passed by the coordinate Bench on **August 13, 2024** and the following interim order was passed.

*“46. In view of the above, this Court finds that this is a fit case for invoking the provisions of Section 151 of the Code of Civil Procedure, 1908. The defendant Nos. 1 to 5 are restrained from operating the bank account of Federal Bank*

*Account No. 11030100239718, C.R. Avenue Branch, Kolkata by keeping aside an amount of **Rs.6,93,70,000/- till 17<sup>th</sup> September, 2024.***

8. Being aggrieved by the said order of the coordinate Bench the defendants preferred an appeal being **AO-COM/32/2024**. The Hon'ble Division Bench by its judgment and order dated **December 1, 2025**, the typographical error in the said order was corrected by another order dated **December 8, 2025**, had disposed of the appeal with the following observations:

*“41. As noted above, the petition in which, impugned order was passed, is yet to be finally decided. Therefore, we are minded to interfere at the ad-interim order stage. We are keeping all points open for the learned Single Judge to decide as to the nature and extent of the relief that the plaintiffs may be granted on final hearing of the application.*

*42. **AO-COM 32 of 2024** along with all connected applications are disposed of without any order as to costs.”*

9. On **August 20, 2024** Annexure 'G' at page no. 70 to plaintiffs' application the Federal Bank informed that in absence of appropriate direction upon the bank requisitioning necessary information issued by Court of competent jurisdiction or without mandate of account holder, the bank will not be able to divulge the information to any third party. At this juncture, the instant two applications are taken up for analogous consideration by this

Court. A letter of the bank dated **August 14, 2024** Annexure 'E' at **page no. 68**, plaintiff's application shows that only a sum of **Rs.72,822/-** was available in the bank account of the defendants.

**SUBMISSION:**

10. Mr. Suvasish Sengupta, learned Advocate appearing for defendant nos. 1 to 4 has first placed the defendant's application. He submits that as on the date of the direction made by the coordinate Bench, the necessary fund was not available at the relevant bank account of Federal Bank on which direction was issued by the coordinate Bench and as such the question of setting apart the sum of more than Rupees six crores, as directed by the coordinate Bench, did not and could not arise. He further submits that the plaintiffs have committed breach of the said agreement as the steel plant was not made operational for being operated by the defendants, though the defendants had already paid a sum of Rs.1,00,00,000/- (One crore) as part consideration under the said agreement to the plaintiff. As a result, the defendants has suffered loss and damages. The defendants has lodged its counter claim in the written statement. The defendants has claimed a total sum of **Rs.12,54,25,000/-** from the plaintiff on various counts including refund of the said sum of

Rs.1,00,00,000/- (One crore) and the particulars of the said claim is set out in **paragraph 54** of the defendants' application.

11. Mr. Shuvashish Sengupta, learned Advocate appearing for the defendants submits that the plaintiffs' claim is principally on account of alleged liquidated damages as mentioned in the plaint, which has not yet been quantified. Only after trial of the suit if the plaintiffs succeed to their claim then only the claim of the plaintiff will be quantified and at the stage in execution of decree the question may arise whether the defendant would require to secure the decretal claim or not. He submits that at this interlocutory stage the defendants cannot be directed either to disclose the bank accounts with the particulars of amount lying there or to secure the alleged claim of the plaintiff in any manner. In support, he has relied upon a decision ***In the matter of: VK Bajaj and Co. Vs. Nayati Healthcare and Research NCR Pvt. Ltd. And Anr, reported at 2021 SCC Online Del 5637.***
12. Mr. Sengupta, learned Advocate then submits that since the defendants have already terminated the contract and the termination is not under challenge in the plaint, the only remedy lies with the plaintiffs in damages and is required to be quantified only after trial of the suit and not at this interim stage. He further submits that the plaintiffs have neither asked for specific performance of the contract nor has asked for

cancellation of termination of the contract terminated by the defendants, therefore the present suit in its present form is not maintainable. If the suit is *prima facie* not maintainable, the Court cannot take a *prima facie* view or finding for any direction upon the defendant in aid of the reliefs claimed in the suit. In support, he has relied upon a decision ***In the matter of: I. S. Sikandar Vs. K. Subramani And Ors. reported at (2013) 15 SCC 27.***

13. Mr. Sengupta, learned Advocate further submits that if on the basis of the alleged claim of the plaintiff, on account of damages, defendant is directed to disclose its bank account or to secure the alleged claim of the plaintiff then on the same breath on the basis of the counter claim of the defendant, on account of damages against the plaintiffs, the plaintiff would have to secure the claim of the defendant.
14. Mr. Suman Kumar Dutt, learned senior Advocate appearing for the plaintiffs has referred to the various clauses from the said agreement. He submits that on a plain reading of the said agreement it is evident that the agreement was only for transfer of shares by the plaintiffs in favour of the defendants against the agreed sale consideration. He submits that the plaintiff has never indemnified the defendant on account of the said steel plant in any manner whatsoever. The four essential documents which are on record, namely, the said agreement,

the certificate/undertaking of taking possession of the steel plant by the defendants, the demand notice dated **March 14, 2024**, the reply thereto dated **April 12, 2024** along with the subsequent two communications dated **April 16, 2024** and **June 10, 2024** would clearly demonstrate that the execution of the agreement with all its terms and conditions have been admitted by the parties. The subject shares under the said agreement have duly been transferred in favour of the defendants by the plaintiffs. The defendants have taken possession of the steel plant. In part performance, the defendants have paid a sum of Rs. 1,00,00,000/- (one crore) being the part consideration under the said agreement. the defendants have never raised any objection whatsoever either with regard to the execution or existence of the agreement or with regard to the status and situation of the steel plant contemporaneously. Only after receiving the said demand notice dated March 14, 2024 the defendants purported to have raised objections through its reply dated April 12, 2024 and sought to terminate the contract.

15. Learned senior Advocate Mr. Dutt further submits, from the prayers in the plaint it would be evident that the plaintiffs have claimed the balance sale consideration price from the defendants and the consequential liquidated damages suffered by them. Referring to the provisions laid down under Section 3

of the Specific Relief Act, 1963 he submits that except as otherwise provided under the Act, nothing in the Act shall be deemed to deprive any person or any right to relief, other than specific performance, which he may have under any contract. He submits that under the said agreement the plaintiffs have performed its entire obligation but the defendants have caused breach by not paying the entire sale consideration payable to the plaintiffs under the agreement. Thus, the plaintiffs have filed the instant suit claiming the balance consideration payable to the plaintiff along with other consequential reliefs including the liquidated damages. It is not at all obligatory on the part of the plaintiff to seek cancellation of the said alleged termination of contract allegedly terminated by the defendants or to claim specific performance of the contract.

16. Referring to the claims made by the defendants in its counter claim and referring to the particulars of claim of the defendants stated in paragraph 54 of the defendants' application, learned senior Counsel submits that except the said refund of Rs.1,00,00,000/- (one crore) which is quantified, though not admitted by the plaintiffs, all the other quantum of claims are in the nature of alleged damages, which unless proved cannot be directed to be secured by the plaintiffs. The amount has not been segregated by the defendants pursuant to the previous direction of the Co-ordinate Bench being upheld by the Hon'ble

Division Bench and the admitted position is that save and except a sum of Rs. 1 crore no further amount has been paid to the plaintiffs by the defendants under the said agreement.

**DECISION:**

17. After considering the rival contentions of the parties and on perusal of the materials on record this Court finds that few facts are admitted, which are inescapable. The execution and existence of the agreement, the transfer of entire share holding by the plaintiffs in favour of the defendants, the existence and execution of the said possession document by which defendants accepted possession of the steel plant and the part consideration paid by the defendants to the plaintiff for a sum of Rs.1,00,00,000/- (one crore) under the said agreement are admitted. The two relevant clauses from the said agreement are quoted below:

*“1. The sellers on the date of this contract have respectively sold and transferred the Equity Sale shares and the Preference Sale Sharers to the Purchasers and the Purchasers on the date hereof have purchased and received the Equity Sale Sharers from the individual Sellers and the Preference Sale Sharers from the Corporate Sellers, who have also agreed to cause the Equity Sale Sharers and the Preference Sale Sharers to be duly transferred and registered in favour and in the name of the*

*Purchasers, as set out morefully in the First Schedule hereto, separately in Part A for the Equity Sale Sharers and in Part B for the Preference Sale Sharers.*

2. *The Equity Sale Sharers and the Preference Sale Sharers sold and transferred by the individual Sellers and Corporate Sellers respectively to the Purchasers are free from all encumbrances and confer on the Purchasers full right, title and interest attached thereto. The Sellers however make no covenant, representation or warranty in relation to the Steel Plant and the physical possession thereof upon purchase of the Sale Sharers by the Purchasers has been received and accepted by the Purchasers on as-is-where-is and as-is-what-it-is basis and the Purchasers will not be entitled to raise any claims, issues or concerns in respect thereof whether on account of the past or in future.”*
  
18. The above provisions under the said agreement clearly show that the plaintiffs have not indemnified or executed any warranty in favour of the defendants in relation to the steel plant and the physical possession thereof upon purchase of the shares by the purchasers/defendants. The defendants accepted the steel plant as is where is basis and the defendants would not be entitled to raise any claims, issuance or concerns in respect thereof on account of the past or in future. Being agreed to the said terms, the defendants executed the agreement and received possession of the steel plant by

executing the said possession certificate at page no. 106 to the said A/O dated April 14, 2023. The document itself, prima facie, shows a clear undertaking executed by the defendant no.1 with regard to the acceptance of possession of the steel plant.

19. In as much as, the direction of the coordinate Bench dated **August 13, 2024** with regard to the restricted operation of the Federal Bank account has not been interfered by the Hon'ble Division Bench in appeal. The record further reveals from the communication made by the Federal Bank that for about a sum of Rs.72,822/- is only lying with the bank account, as already narrated above. Therefore, the defendants are not in a position to set apart the claim of the plaintiff, as directed by the coordinate Bench subsequently being upheld by the Hon'ble Division Bench.
20. In course of hearing the defendants have not been able to establish that it has otherwise sufficient means through which it can set apart the claim of the plaintiff pursuant to and in terms of the direction of the said coordinate Bench. Through affidavits filed by the defendants in both these applications, the defendants have not been able to establish before this Court that any subsequent development has taken place for which any further order can be passed other than the direction already made by the coordinate Bench.

21. On perusal of the claim made by the defendants, as fully stated in paragraph 54 of the defendants' application, save and except the refund of Rs. 1 crore all other claims are on account of alleged damages or compensation and none such claims has been crystallized nor proved, as yet. These claims can sustain only upon being proved at the trial of the suit, if the defendants can prove it. Whereas it is an admitted position that out of the total sale consideration of Rs.7,93,70,000/- only a sum of Rs.1 crore has been paid by the defendants, though the entire share holdings has been transferred by the plaintiffs in favour of the defendants. The defendants may succeed to its counter claim at the time of trial of the suit. Similarly, the plaintiff may fail to prove its claim at the final trial of the suit but at the present, it *prima facie* appears to this Court that, the defendants have not paid the balance consideration to the extent of **Rs.6,93,70,000/-** under the said agreement. Moreover, despite the direction of the coordinate Bench having attained finality before the Hon'ble Division Bench, the defendants do not have the requisite amount in its bank account with Federal Bank, so that it can set apart the claim of the plaintiff as directed by the Co-ordinate Bench.

22. ***In the matter of : V. K. Bajaj and Co.*** (supra), the law laid down is that unsecured debt cannot be converted into a secured debt. In the instant case, the defendants, *prima facie*,

has not paid the plaintiffs the entire consideration under the said agreement despite the shares being transferred by the plaintiffs in favour of the defendants. A part consideration has been paid to the extent of Rs. 1 crore. So the Co-ordinate Bench directed to segregate the unpaid consideration which has not been done by the defendants. Therefore, the ratio laid down in the said judgment would not apply in the facts of the instant case.

23. ***In the matter of: I.S. Sikandar*** (supra) the law laid down is that in the facts of that case money suit is not permitted simplicitor unless specific performance of the contract is sought for. The judgment was delivered after the suit was decreed in connection with appeal from decree. In the instant case, it is an interim stage which would not have any bearing when the suit would be finally heard for passing a decree. Therefore, the ratio in the said judgment would not apply in the facts of this case.
24. Since the defendants have already paid a sum of Rs. 1 crore under the said agreement, they can be granted a benefit of the said sum at this interim stage in exercise of the equitable jurisdiction of this Court.
25. In view of the foregoing discussions and reasons, this Court is *prima facie* satisfied on the case made out by the plaintiffs and the balance of convenience and inconvenience also warrant

necessary directions to be passed on the defendants, which are as follows:

- (a) The plaintiffs shall serve a copy of this order upon the concerned branch of the Federal Bank.
- (b) The appropriate authority of the concerned branch of the Federal Bank by way of an affidavit shall disclose the current status with reference to the amount lying at the relevant bank account of the defendants mentioned in **prayer (b)** to the plaintiff's application with the supportive account statement positively within **three weeks** from the date of communication of this order.
- (c) The concerned authority of the branch of Federal Bank shall also state in the said affidavit if any other Bank account is there in the name of the defendant Nos. 1 to 4 with the said Bank.
- (d) The defendant nos. 1 to 4 by way of an affidavit shall disclose all the bank accounts held by them and in their name in whatever Banks they are with the supporting Bank statement as on the current date. Such affidavit shall be filed within **four weeks** from date.
- (e) The defendant nos. 1 to 4 shall furnish a security for a sum of **Rs.5,43,70,000/-** after giving an adjustment of Rs.1 crore for the time being, without prejudice to the rights and contentions of the plaintiffs, as an interim

arrangement with the learned Registrar, Original Side positively within **six weeks** from date.

26. In the event, such deposit is made, Registrar, Original Side shall invest the same in an interest bearing Fixed Deposit Account with any Nationalized Bank of his/her choice and shall prepare a report and keep the same in the original suit file. It is needless to mention that the Fixed Deposit shall be kept in an auto-renewal mode. The fate of the deposit shall abide by the final result in the suit.
27. With the above observations and directions, **IA GA-COM/3/2024** stands **allowed** and **IA GA-COM/7/2025** stands **dismissed**, without any order as to costs.

**(ANIRUDDHA ROY, J.)**

RS/mg/dg