



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7<sup>TH</sup> DAY OF NOVEMBER, 2025

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 593 OF 2025



**BETWEEN:**

1. M/S SUGAM PACKING INDUSTRIES  
PROPRIETOR SMT.SUMA  
NO 05, SRI.MANJUNATHA INDUSTRIES ESTATE  
MAGADI MAIN ROAD, HEROHALLI CROSS B,  
BENGALURU-560091.

...APPELLANT

(BY SRI SAGAR B B,ADVOCATE)

**AND:**

1. M/S TIWNKLE IMPEX  
REPRESENTED BY ITS PROPRIETOR  
MR.RAJENDRA KUMAR JAIN  
NO 272, NANJUNDESHWARA NILAYA  
AKKIPET MAIN ROAD, BENGALURU-560053.

...RESPONDENT

(BY SRI ANISH P BHOJANI,ADVOCATE FOR C/RESPONDENT)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13 (1-A) OF COMMERCIAL COURT ACT, 2015 READ WITH UNDER SECTION 37 (1) (C) OF THE ARBITRATION AND CONCILATION ACT, 1996 PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT DATED 27.10.2025 PASSED IN COMMERCIAL MISCELLANEOUS NO.66/2024 ON THE FILE OF HONBLE LXXXII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT, BENGALURU (CCH-83), IN THE INTEREST OF JUSTICE AND EQUITY & ETC.





THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE  
and  
HON'BLE MR. JUSTICE C.M. POONACHA

**ORAL JUDGMENT**

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant has filed the present appeal impugning an order dated 27.10.2025 passed by the learned Commercial Court in Com.Misc.No.66/2024.
2. The appellant-arrayed as defendant in the suit being Com.O.S.No.15/2024-had filed the said application (Com.Misc.No.66/2024), *inter alia*, praying that *ex parte* judgment and decree dated 29.06.2024 passed by the learned Commercial Court in Com.O.S.No.15/2024 be set aside and the appellant be permitted to contest the case on merits.
3. It is material to note that the aforementioned suit being Com.O.S.No.15/2024, was instituted by the respondent [**plaintiff**], *inter alia*, seeking a decree for a sum of Rs.22,24,624/- (Rs.Twenty Two Lakhs Twenty Four Thousand Six Hundred and



Twenty Four only) including interest at the rate of 24% p.a. from the date of the invoices. The plaintiff also claimed future interest at the rate of 1% per day from the date of legal notice till realization costs of the suit.

4. It is the plaintiff's case that it had, in usual course of business supplied materials on credit basis to the defendant and had maintained a running account. The plaintiff claimed that an amount of Rs.11,52,299/- remained outstanding in respect of the goods supplied against four invoices dated 03.07.2019, 10.08.2019, 14.09.2019 and 30.10.2019. The plaintiff also claimed that the defendant had also provided an account confirmation dated 10.09.2019 acknowledging an amount of Rs.15,23,160/- as due and payable to the plaintiff as against the aforesaid amount. The defendant had subsequently made a payment of Rs.3,70,861/-. Thus, the plaintiff sought recovery of the balance amount along with interest quantified to Rs.10,72,325/-.

5. It is material to note that the said suit was filed as a summary suit under Order XXXVII of the Code of Civil Procedure,1908 [CPC]. The order sheets, which have been placed on record



indicate that the suit was registered on 03.01.2024 and summons were issued to the appellant [**defendant**] in Form No.4 on 04.01.2024. The suit was thereafter listed on 12.02.2024. However, none appeared for the defendant on 12.02.2024 and the defendant was proceeded *ex parte*.

6. The suit was thereafter listed on 21.02.2024. On that date, the defendant filed an application for recall of the order dated 12.02.2024 whereby, it was proceeded *ex parte*. The said application was allowed with costs quantified at Rs.500/-. On that day, the plaintiff filed a memo along with Form No.4(A) for summary judgment and the defendant sought time for filing objections. The suit was thereafter listed on 06.03.2024 for the said purpose. However, none appeared for the defendant on 06.03.2024. Accordingly, the suit was posted for summary judgment on 20.03.2024. The suit was called out on 20.03.2024, but was adjourned to 26.03.2024 at the request of the counsel for the plaintiff. The defendant was not present on that date as well.

7. On 26.03.2024, the learned counsel appearing for the plaintiff presented his arguments. On this hearing as well, none



was present on behalf of the defendant. The suit was posted for summary judgment on 06.04.2024. However, the judgment was not ready on that date and therefore, the suit was posted on 24.04.2024. It was thereafter listed on 07.06.2024, 21.06.2024, 27.06.2024, 29.06.2024 and was adjourned on each of the occasions as the judgment was not ready. The judgment was finally pronounced on 29.06.2024.

8. It is material to note that the defendant did not file any leave to defend and therefore, in absence of the same, the plaintiff was entitled to a summary judgment.

9. The appellant filed an application under Order IX Rule 13 of the CPC to set aside the *ex parte* decree, which was decreed in terms of the impugned order.

10. The explanation provided by the appellant for remaining unrepresented was that the counsel for the appellant had not appeared before the Court due to ill-health. The medical records produced by the appellant indicate that the counsel was under treatment from 05.02.2024 to 26.03.2024. However, the Commercial Court noted that the counsel had appeared on



21.02.2024. Additionally, the learned Commercial Court observed that the counsel had not appeared at any stage after 21.02.2024 although the suit was listed on several occasions.

11. Considering the said material on record, the learned Commercial Court rejected the appellant's application for recall of the *ex parte* decree.

12. We find no flaw in the reasoning of the learned Commercial Court. We also note that an application under Order IX Rule 13 of the CPC would not be maintainable as the suit was filed under Order XXXVII of the CPC. The learned counsel for the appellant fairly concedes that the correct course would be to file an application under Order XXXVII Rule 4 of the CPC for recall of the *ex parte* decree.

13. It is settled law that an application under Order XXXVII Rule 4 of the CPC would require to set out special circumstances which prevented a party from appearing or applying for leave to defend. The applicant would also have to establish the relevant facts which would entitle the applicant for grant of leave to defend the suit as held by the Supreme Court in **Rajni Kumar v. Suresh Kumar**



**Malhotra and another: (2003) 5 SCC 315.** This is a vital difference between an application under Order IX Rule 13 of the CPC and an application under Order XXXVII Rule 4 of the CPC. We have examined the application filed by the appellant under Order IX Rule 13 of the CPC. It does not disclose sufficient grounds for grant of leave to defend. It is also not accompanied by the relevant documents which would be necessary to support an application for leave to defend.

14. In view of the above, the present appeal is dismissed.

15. Pending application also stands disposed of.

**Sd/-  
(VIBHU BAKHRU)  
CHIEF JUSTICE**

**Sd/-  
(C.M. POONACHA)  
JUDGE**

KPS  
List No.: 1 Sl No.: 9