

27.07.2026

Sl. No.: 5

Court No.7

BM

WPA 2397 of 2026

ITC LTD

VS

DALHOUSIE HOLDINGS LTD AND ORS

Mr. S. N. Mookherjee, Sr. Adv.

Mr. Ratnanko Banerji, Sr. Adv.

Mr. Anuj Singh

Mr. Zulfiqar Ali Alquaderi

Mr. Aman Khemka

Mr. Naman Chowdhury

Mr. Yash Singhi

... for the petitioner

Mr. C. A. Sundaram, Sr. Adv.

Mr. Airban Ray

Mr. Abhishek Gupta

Mr. Debrup Bhattacharjee

Mr. Subham Saha

Mr. Steven S. Biswas

Mr. Arjun Ray

Mr. Siddharth Singh

... for the respondent no.1

1. Affidavit of service filed in Court today is taken on record.

2. This revisional application is directed against an order dated June 1, 2026 passed by the learned Civil Judge(Senior Division) 1st Court, Alipore, South 24 Parganas whereby the opposite party No. 1/plaintiff's (hereafter "the opposite party") application under Order 11 Rule 14 read with Section 151 of the Code of Civil Procedure, 1908 has been allowed by directing the petitioner (defendant no.13) to produce the original as well as copies of certain documents referred to in the said application under Order 11 Rule 14 of the Code.

3. Title Suit No.607 of 2026 has been instituted by the opposite party praying for decrees of declaration and injunction. In the said suit the opposite party filed an application for injunction under Order 39 Rules 1 & 2 of the Code and pressed the same for *ex-parte* ad interim orders.

4. Learned Trial Court granted and *ex-parte* ad-interim order injunction on April 30, 2026 which has been extended from time to time.

5. The petitioner has filed an application under Order 39 Rule 4 of the Code seeking vacation of the said ad-interim order of injunction. About the same time the opposite party no.1 filed an application under Order 11 Rule 14 of the Code seeking a direction upon the petitioner to produce certain documents indicated in the said application.

6. The said application was taken up for hearing by the learned Trial Court on June 1, 2026 and the same was disposed of on the same date by directing the petitioner to produce the documents that have been indicated in the order impugned.

7. Feeling aggrieved by the said order the petitioner has approach this Court by filing the present revisional application.

8. Mr. Mookherjee, learned senior advocate appearing for the petitioner submits that the order passed by the learned Trial Court is palpably bad

inasmuch as the same does not satisfy mandatory requirements of Order 11 Rule 14 of the Code.

9. He has placed Order 11 Rule 14 of the Code and submitted that before passing an order directing production of documents the learned Trial Court must be satisfied that two conditions are met:

(a) that the documents are in possession or power of the party against whom the order is made and

(b) that the documents relate to the matter in question in the suit.

10. It is further submitted that such order can only be made if there is admission by the party against whom such order is made or if it is evident from an affidavit filed on his behalf or from any other material on record that the document directed to be produced is in possession and power of the party against whom the order is to made.

11. In support of his contention he relies on a Co-ordinate Bench decision of this Court in ***India Foils Ltd. vs. The 5th Industrial Tribunal, West Bengal and others*** reported at ***AIR 1972 Cal 308***.

12. He also relies on the judgment of the Hon'ble Supreme Court in the case of ***Basanagouda vs. Dr. S. B. Amarkhed & Ors.*** reported at ***(1992) 2 SCC 612*** and a co-ordinate Bench decision of this Court in the case of ***Amulyadhan Hait vs. Dinesh Hait & Another*** reported at ***2019 SCC Online Cal 6496*** to demonstrate

the manner in which discretion is to be exercised by the Court under Order 11 Rule 14 of the Code.

13. He next relies on a judgment of the Hon'ble Supreme Court in the case of ***Padam Sen & Anr. vs. State of Uttar Pradesh*** reported at ***AIR 1961 SC 218*** to indicate the consequence of non compliance with an order under Order 11 Rule 14 of the Code.

14. Mr. Mookherjee has taken this Court through the opposite party's application under Order 11 Rule 14 of the Code to assert that even the opposite party is not certain as to whether the documents whose production has been sought, are in the possession of the petitioner or not.

15. It is submitted by Mr. Mookherjee that the Syndicate Agreement dated October 6, 1961, which has been directed to be produced by the petitioner has been relied on by the opposite party itself in its own plaint.

16. It is further submitted that no opportunity of filing any written objection to the said application under Order 11 Rule 14 of the Code has been granted to the petitioner.

17. Mr. Sundaram learned senior advocate appearing for the opposite party submits that while the date of the Syndicate Agreement which has been mentioned the plaint matches with the document which has been annexed by the petitioner to its application under Order 39 Rule 4 of the Code, the content of such

document is different from one that has been referred to by the plaintiff in the plaint.

18. He elaborates that the document (Syndicate Agreement) on which plaintiff has relied is one in which the plaintiff is a party but the document on which petitioner places reliance, in the petitioner's application under Order 39 Rule 4 of the Code, does not mention the plaintiff's name as a party thereto.

19. It is further submitted by Mr. Sundaram, learned senior advocate appearing for the petitioner that the document which was produced with the petitioner's application under Order 39 Rule 4 was neither the original nor, a photostat copy of the original. He submits that since only it was a typed copy, which did not contain the signature therefore direction for production of such document was felt necessary.

20. Heard the learned senior advocates appearing for the respective parties and considered the material on record.

21. In this case, even if all arguments made by the parties, as regards the merits of the case are ignored, the order would still fail to stand judicial scrutiny. It would be evident from the order itself that the learned Trial Court has proceeded to pass the said order without affording any opportunity to the petitioner to use any affidavit/written objection against the application under Order 11 Rule 14 of the Code, filed by the plaintiff.

22. Further, the order impugned does not record any satisfaction that the documents are in possession and power of the petitioner who has been directed to produce the same.

23. **India Foils Limited (Supra)** has clearly held that for the Court to exercise its power under Order 11 Rule 14 of the Code, the Court must be satisfied that the documents are in possession or power of the party against whom the order is made and that the documents must relate to the matter in question in the suit. In the said case it was also held that such satisfaction of the Court must be derived either from the admission of the party against whom the order is made or from the affidavit filed on his behalf or from other materials such as correspondence.

24. The judgment in the case of **Basanagouda (supra)** which was followed in **Amulyadhan (supra)** instructs how the discretion under Order 11 Rule 14 of the Code is to be exercised. **Padam Sen (supra)** provides the consequences of defying the command under Order 11 Rule 14 of the Code.

25. In the case at hand since no opportunity to use any affidavit or written objection against the opposite party's application under Order 11 Rule 14 of the Code was ever granted to the petitioner, there was no occasion for the Court to derive satisfaction on the basis of the petitioner's affidavit. There is no material on record to

conclude that there was any admission on the part of the petitioner that the document, directed to be produced are in the petitioner's possession and power.

26. In such view of the matter since the order impugned has been passed without granting any opportunity to the petitioner to file any written objection to the opposite party's application under Order 11 Rule 14 of the Code, therefore the order deserves interference under Article 227 of the Constitution of India.

27. Accordingly, the order dated June 1, 2026 passed by the learned Civil Judge (Senior Division) 1st Court at Alipore, District South 24 Parganas is set aside to the extent the same allows the opposite party's application under Order 11 Rule 14 of the Code and directs production of documents mentioned in such order, by the petitioner.

28. Since, both parties are there before this Court, therefore let affidavit in opposition/written objection to the application under Order 11 Rule 14 of the Code be filed within two weeks from date.

29. The learned Trial Court shall thereafter fix a date for hearing of the application under Order 11 Rule 14 of the Code according to the convenience of the learned Trial Court.

30. With the aforesaid observation C.O. 2397 of 2026 stands disposed of. No costs.

31. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)