

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL FIRST APPEAL NO.5 OF 2024

Mayur Govind Nasa

Proprietor of Devansh Chemical, Mumbai

...Appellant / Orig.Plaintiff

Versus

Nitesh Traders

Proprietor Mrs. Nutan Andhare

...Respondent / Orig.Defendant

Mr. Jeetendra Ranawat a/w Gaurav Gupta, for Appellant.

None for the Respondent.

CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.

RESERVED ON: 13th AUGUST 2026
PRONOUNCED ON: 19th AUGUST 2026

JUDGMENT (Per Dr. Neela Gokhale, J.)

1. Admit. Although the Respondent is served, it is not represented. Accordingly, we have proceeded to hear the learned counsel for the Appellant and adjudicate the present Appeal.

2. The Appellant (Original Plaintiff) assails the judgment and order dated 25th October 2023 passed by the District Judge, City Civil & Sessions Court, Greater Mumbai, in Commercial Suit No. 101085 of 2021. The suit instituted by the Appellant was dismissed on the finding that the Appellant failed to prove the supply, transportation and delivery of goods to the Respondent (Original Defendant) against whom the recovery of money was claimed.

3. The facts of the case, in brief, are as follows:

3.1 The Appellant is stated to be the proprietor of Devansh Chemical, Mumbai, engaged in the business of supplying Sulfur and Coal, and the Respondent is stated to be engaged in the business of trading goods.

3.2 It is the case of the Appellant that he and the Respondent were in business relations for the past 15 years. Accordingly, orders used to be placed by the Respondent with the Appellant by telephone or through a duly authorised person of the Respondent. During the period from 05.02.2016 to 23.12.2017, the Appellant supplied goods to the Respondent. In respect of the said supply, invoices were raised. It is the case of the Appellant that, despite the supply of goods to the Respondent against invoices raised and delivered to the Respondent, the Respondent failed to settle the bills. The Appellant also claims to have paid GST and VAT on the invoices raised. According to the Appellant, the Respondent has also claimed benefits of VAT and GST as input tax credit in the returns filed by the Respondent with the Sales Tax Authorities of the State Government.

3.3 Despite delivery of the goods, the Respondent failed to make payment, and hence the Appellant instituted a Commercial Suit before the City Civil & Sessions Court, Greater Mumbai, bearing Commercial Suit No. 101085 of 2021. The Respondent appeared and filed a written statement (**Exhibit 3**) on 16.11.2021. After hearing the evidence of the Appellant and the Respondent, the Trial Court dismissed the suit. It is this decision of the Trial Court that is assailed in the present Appeal.

4. Heard Mr. Ranawat, learned Counsel for the Appellant. Despite notice being served on Respondent and on Mr. Abhijit Dilip Kulkarni, who had filed a

vakalatnama with Respondent, none appeared before the Court on Respondent's behalf to advance submissions. Hence, we proceeded to hear Mr. Ranawat, learned Counsel for the Appellant.

SUBMISSIONS OF MR. RANAWAT ON BEHALF OF THE APPELLANT:

4.1 It is submitted by Mr. Ranawat that the learned trial Judge has erred in concluding that each bill as raised constituted an independent transaction without recognising that the common ledger was maintained in the Appellant's books of accounts and hence, the case was of a running account being maintained in respect of the transactions. It is submitted that the learned trial Judge ought to have taken into account that the ledger accounts which were produced by the Appellant record the receipt of Rs.1,00,000/- from the Respondent on 22 March, 2017, which is contrary to the fact that there was no supply of goods to the Respondent. According to Mr. Ranawat, if there was no supply of goods, there was no question of the Respondent releasing the sum of Rs.1,00,000/- to the Appellant. It is also Mr. Ranawat's submission that the trial Court has failed to appreciate that the orders were placed only by telephone, as the goods were also picked up by the Respondent and hence there was no burden on the Appellant to prove the same. Mr. Ranawat has also questioned the finding of the learned trial Judge when the impugned order records that there were no delivery challans for the delivery of the goods and what was necessary to appreciate that the goods were taken by the Respondent and therefore, the respondent was in possession of the delivery challans. It is also his submission that the learned trial Judge could not have concluded that the Appellant has failed to provide details of the claims regarding

transport, the vehicle's registration number, the driver's name, etc., without appreciating that the Excise Invoice contained all the details of such delivery. He would submit that it was not necessary for the learned trial Judge to hold that the evidence lacked evidentiary value in the absence of a certificate under Section 65B of the Indian Evidence Act, 1872, especially when the Appellant had deposed to that effect in his examination-in-chief. It is his submission that even the finding that there was delay in filing of the suit was untenable.

5. We perused the records of the Trial Court. The Trial Court framed the following eight issues:

	<u><i>Issues</i></u>
1.	Whether plaintiff proves that on the oral order placed by the defendant, the plaintiff from time to time sold and delivered the goods to the defendant and raises invoices?
2.	Whether plaintiff proves that an amount of ₹ 34,03,124/- is due and payable by defendant to plaintiff?
3.	Whether plaintiff is entitled for recovery of ₹ 34,03,124/- as prayed?
4.	Whether suit is maintainable?
5.	Whether suit is within limitation?
6.	Whether defendant proves that this court has no jurisdiction to try and entertain the present suit?
7.	Whether plaintiff is entitled for future interest @24 % p.a. as prayed?
8.	What order and Decree?

6. Before we consider the evidence adduced before the Trial Court, it is necessary to refer to the relevant provisions of the Indian Evidence Act, 1872 ('the IEA'), which read as thus:

"34. Entries in books of account when relevant.- Entries in the books of account,

including those maintained in an electronic form, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.”

“101. Burden of proof. — Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

“102. On whom burden of proof lies. — The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

“103. Burden of proof as to particular fact. —The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

7. Against the backdrop of the provisions of the IEA, we now proceed to examine the evidence adduced before the Trial Court. The Appellant examined himself as PW-1. He filed an Affidavit in lieu of his chief-examination and reiterated the contents of the plaint. He produced a number of documents comprising copies of invoices pertaining to purchase orders orally placed by the Respondent with the Appellant. None of these documents were proved by the Appellant and hence none were exhibited. In his cross-examination, he admitted that he had not placed on record any delivery challans for the delivery of goods to the Respondent. In fact, in paragraph 50 of his cross-examination, the Appellant volunteered that he would have to check purchase orders from the clients. The Appellant also attempted to produce a voice message between his wife and one person called Guru, alleged to be a representative of the Respondent, who the Appellant says placed purchase orders on behalf of the Respondent. However, in cross-examination, the Appellant admitted that the electronic evidence sought to be proved by him was not supported by a 65B certificate as required under the

IEA. Apart from his bare words in his deposition, there is no documentary nor any corroborative evidence to prove that the goods were delivered to the Respondent.

8. The Respondent has denied receipt of any goods and, accordingly, any outstanding amount due to the Appellant. Clearly, the Appellant failed to discharge the burden of proof required under the IEA.

9. It appears that the Respondent has not stepped into the witness box.

10. Based on the deposition adduced before it, the Trial Court answered issues Nos. 1, 2, 3, 6 and 7 in the negative. The suit was challenged on the ground that it was time-barred. The said issue was answered in the affirmative and is not under challenge before this Court.

11. Having examined the evidence led by the Appellant before the Trial Court, it is clear that he has failed to establish his claim.

12. The Appellant submitted before us that he had no evidence to support his claim of delivery of goods, such as delivery *challans* or transportation details, because the Respondent himself transported the goods in his own vehicles. According to the Appellant, the delivery *challans* and transportation details are in the possession of the Respondent. Even if this is presumed to be true, the Appellant made no effort to serve any notice on the Respondent for the production of documents, etc., by making any application under the relevant provisions of the Civil Procedure Code, 1908. In relation to his submissions that the documents on record indicate that GST and other taxes were deducted on delivery of the goods to

the Respondent and that the Respondent took benefit of the said deductions, this submission is stated here only to be rejected, as none of the documents was proved or exhibited before the Trial Court.

13. In these circumstances, we find no infirmity in the findings of the Trial Court. The Commercial Appeal is thus dismissed.

14. No costs.

(DR. NEELA GOKHALE, J.)

(G. S. KULKARNI, J.)