



2026:DHC:5611-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 13th July, 2026******Uploaded on: 14th July, 2026***+ **RFA(COMM) 336/2025 & CM APPL. 34929/2025****PAWAN KUMAR GUPTA****.....APPELLANT**Through: Mr. Rahul Ranjan, Mr. Surender
Gupta and Mr. Deepak Rana, Advs.

versus

NURUDDIN**.....RESPONDENT**

Through: Mr. Mohd. Tariq, Adv.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE VIKAS MAHAJAN****ORDER****% 13.07.2026**

1. This hearing has been done through hybrid mode.

CM APPL. 34928/2025 (condonation of delay)

2. The present application has been filed seeking condonation of delay of 209 days in filing the appeal.

3. For the reasons stated in the application, the delay of 209 days in filing the appeal is condoned.

4. The application is allowed and disposed of.

RFA(COMM) 336/20255. The present appeal has been filed by the Appellant under Section 96 of the Code of Civil Procedure, 1908 read with Section 13(1) of the Commercial Courts Act, 2015 against the judgment dated 30th August, 2024 (hereinafter, '*impugned judgment*') passed by Id. District Judge (Commercial Court),

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North East, Karkardooma Court in **CS (Comm) No. 27/2024**. Vide the impugned judgment, the suit is decreed against the Appellant in the following terms:

“13. The suit is also commercial in nature and squarely falls within the purview of section 2 (1) (c) of Commercial Courts Act and plaintiff has also duly complied with mandatory provisions of pre-institution mediation and conciliation as provided in section 12A of Commercial Courts Act.

14. Moreover, this court has the territorial jurisdiction as the goods were supplied from the office of plaintiff situated at Arvind Nagar, 3rd Pusta, Delhi and part payments were also made to the plaintiff at his office. This court has also the pecuniary jurisdiction over the matter since the suit amount claimed by the “plaintiff is more than the specified value of Rs.3 lacs of the Commercial Court. As per sales register pertaining to Mr. Pawan Kumar Gupta Ex. PW1/10, the defendant made the last payment of Rs. 5,000/- in cash to the plaintiff on 13.11.2022 and the plaintiff has filed the present suit on 27.02.2024 i.e. within the limitation period.

15. From the documents proved on record by PW-1 and PW-2, it is clear that the plaintiff supplied the goods worth Rs. 7,11,800/- to the defendant and out of which defendant had paid only Rs. 2,90,000/- and Rs. 4,21,800/- is still outstanding against him. It further shows that the defendant failed to pay the outstanding amount and thus committed default. Hence, the plaintiff is entitled for a decree as prayed for.

16. Plaintiff has claimed interest @24% per annum but there is no agreed rate of interest between the parties. The transactions between the parties are commercial in nature. Thus, as per section 34 CPC



being commercial transactions, plaintiff is entitled to interest at which moneys are lent by nationalized bank i.e. @ 9% per annum. In view thereof, it is held that the defendant is liable to pay to the plaintiff a sum of Rs. 4,21,800/- alongwith interest @9% per annum from the date of filing of suit till its realization. Accordingly, the present suit is decreed for a sum of Rs. 4,21,800/- (Rupees Four Lacs Twenty One Thousand Eight Hundred Only) alongwith interest @9% per annum from the date of filing of suit till its realization in favour of the plaintiff and against the defendant. Costs of the suit are also awarded to the plaintiff.”

6. The appeal arises out of a commercial suit filed by the Respondent seeking recovery of Rs. 4,21,800/-. The case of the Respondent/Plaintiff is that he had supplied certain goods against delivery challans and the amount was not re-paid by the Appellant/Defendant.

7. Summons was issued in the present suit on 29th February 2024 and the Appellant/Defendant was served on 14th March, 2024. However, according to the Appellant/Defendant, he had engaged a Counsel, as there were multiple cases between him and the Respondent. As per the Appellant, in this particular suit i.e., **CS (COMM.) 27/2024**, for some inexplicable reason, the Counsel did not appear and the Appellant was proceeded *ex-parte* on 25th April, 2024.

8. After the suit proceeded *ex-parte*, evidence of one witness PW-1, was led by the Respondent/Plaintiff. No cross-examination was done by the Appellant/Defendant, and thereafter the impugned judgement was rendered by the Commercial Court.

9. An execution petition was also filed by the Respondent before the Executing Court in which notice was issued. At that stage, the Appellant/Defendant claims that he came to know that the suit has been



decreed against him and has then filed the present appeal.

10. *Vide* order dated 29th May, 2025 passed by this Court, it was recorded that the Appellant/Defendant is willing to deposit the entire decretal amount before the Executing Court. Accordingly, the Appellant/Defendant has deposited a sum of Rs.4,21,800/- before the concerned Executing Court.

11. Today, the matter has been heard and the record has been perused.

12. *Ld.* Counsel for the Appellant/Defendant submits that the only basis on which the suit is being decreed are the delivery challans, which according to the Appellant/Defendant are forged and fabricated. Moreover, an application for leave to defend was filed by the Appellant/Defendant in another suit between these parties has been shown to this Court in which the Appellant/Defendant had taken a stand that these were concocted, forged and fabricated.

13. In any event, the case of the Appellant/Defendant was that the amounts were paid *qua* these purchases in cash, however, the Respondent/Plaintiff has incorrectly sued the Appellant/Defendant for recovery, by making use of the blank cheques, which were issued.

14. After hearing the *ld.* Counsel for the parties and perusing the impugned judgment, this appears to be a case where one opportunity deserves to be given to the Appellant/Defendant to cross-examine the witness of the Respondent/Plaintiff as admittedly there is no written statement which has been filed. The stand of the Appellant/Defendant that there are multiple proceedings between the same parties is not doubted. In fact on the very same day when this suit was listed, the Court is informed that in the neighbouring court, another suit was also listed between the same parties, where the Appellant/Defendant was appearing. In the said suit, the same counsel who is



stated to have been engaged for this case was also also engaged by the Appellant/Defendant. There appears to have been some genuine confusion due to which the Appellant/Defendant has suffered the impugned decree. Moreover, in such cases, no opportunity for filing of written statement can be given. The only window available is an opportunity to cross examine PW-1, as to the genuinity and credibility of the delivery challans. Further, the litigant ought not to be made to suffer irreparably, for any fault on behalf of the counsel.

15. The argument that the delivery challans are forged and fabricated obviously has not been considered by the Trial Court which has decreed the suit on the basis of the unrebutted Respondent/Plaintiff's evidence.

16. The decretal principal amount of Rs. 4,21,800/- having been deposited, the interest of the Respondent/Plaintiff is fully secured. Under these circumstances, this Court is inclined to give one opportunity to the Appellant/Defendant to cross-examine the Respondent/Plaintiff's witness and thereafter, the matter can be adjudicated on merits.

17. In these circumstances and facts, the following directions are issued:

- (i) The impugned judgment dated 30th August, 2024 is set aside;
- (ii) The decretal amount lying deposited with the Executing Court of Rs. 4,21,800/- shall remain with the Executing Court in a Fixed Deposit Receipt in which interest shall be earned; and
- (iii) The parties shall appear before the Commercial Court on 27th July, 2026. The Appellant/Defendant shall be permitted to cross-examine PW-1 and thereafter, make submissions before the Commercial Court.

18. The amount lying deposited with the Executing Court shall be adjusted



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with the final order that may be passed in the present suit.

19. The appeal is allowed in the above terms. Pending applications, if any, are disposed of.

20. Parties to appear before the concerned Commercial Court on 27th July, 2026.

21. The concerned Commercial Court shall endeavour to dispose of the suit within three months

22. Copy of this order be communicated to the Id. Principal District and Session Judge, North East, Karkardooma Courts, Delhi by the Registry for necessary information and compliance .

PRATHIBA M. SINGH
JUDGE

VIKAS MAHAJAN
JUDGE

JULY 13, 2026
dss/Ck