



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 08th November, 2023

Pronounced on: 01st December, 2023

+ RFA 263/2011 & CM APPL. 3002/2013, CM APPL. 3003/2013

AFCONS INFRASTRUCTURE LTD & ANR Appellants

Through: Mr. Karan Batura and Mr. Jayant Chawla, Advocates.

versus

MAJOR BALWAN SINGH Respondent

Through: Mr. Deepender Hooda and Mr. A.S. Tiwari, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G E M E N T

SANJEEV NARULA, J.

1. This judgement shall decide the present appeal, which arises from the judgement and decree passed by Additional District Judge, Delhi on 27th January, 2011, and amended on 18th July, 2011 [*hereinafter*, “*impugned judgement*”]. The decree mandates the Appellants to pay to the Respondent an amount of Rs. 4,08,715/-, along with an interest rate of 12% per annum, covering both the *pendente lite* period and future accruals. The Appellants contest the findings and conclusions of the lower court, asserting that they are based on erroneous facts, and disregard the apparent lack of evidence in support of the Respondent’s claims.



THE FACTS AND THE IMPUGNED JUDGEMENT

2. Major Balwan Singh, Respondent (Plaintiff in the original suit), was the sole proprietor of M/s Balwan Service Station, an entity conducting business in PSP Institutional Area, Sector- 16, Rohini.¹ Appellant No. 1, Afcons Infrastructure Ltd. (originally, Defendant No. 1), a construction company, entered into an arrangement with the Respondent in 2002, for supply of diesel as fuel for machineries which were being used in building of a flyover at Punjabi Bagh, New Delhi. Under the agreed terms, the Respondent would issue invoices periodically for the goods supplied, and these invoices were to be settled by the Appellants in due course.

3. On 01st September, 2004, alleging that Appellants were evading payments of accumulated dues, Respondent issued a legal notice to the Appellants, which went unanswered. The Respondent then filed a lawsuit for recovery of Rs. 6,62,118/-, the outstanding dues allegedly reflected in Respondent's running account for the transactions between Appellants and Respondent. Additionally, interest at the rate of 24% per annum and costs were also claimed. The suit was accompanied with twelve allegedly unpaid invoices, which formed the basis for the suit claim.

4. The Appellants contested the suit, refuting the allegations of Respondent. They asserted that their own records, which were maintained in the regular course of business, and were duly audited, contradicted the claims made in the plaint. Appellants argued that Respondent's allegations were both vexatious and frivolous, and called for an outright dismissal of the suit.

¹ During the pendency of the present appeal, Major Balwan Singh deceased and his proprietary concern [M/s Balwan Service Station] was inherited by his son, Mr. Anil Kumar. Document evidencing the change



5. On the basis of the pleadings, following issues were framed by the Trial Court:

- “i). What amount the plaintiff is entitled to recover from the defendant?*
- ii). What rate of interest and for what period the plaintiff is entitled to recover from the defendant?*
- iii). Relief.”*

6. To substantiate his case, the Respondent led oral evidence and examined one witness. The Appellants also examined one witness in their defence. The Trial Court, after considering the documents and oral and documentary evidence, arrived at the following findings:

“8. ISSUE NO. 1 : As discussed above, it is not disputed by the defendants that they were purchasing diesel from the plaintiff to complete their project i.e. Flyover at Punjabi Bagh. As per defendants, all payments have already been made by them and there was no amount due. On the other hand, it is sworn on oath by the plaintiff in his affidavit i.e. Ex. PW1/A that he was Sole Proprietor of M/s. Balwan Service Station. There was an outstanding balance of Rs.4,08,715/- against the defendants in year 2005, the copy of statement of account is Ex. PW1/1. The plaintiff put on file 12 (twelve) invoices Ex.PW1/2 (collectively). Copy of legal notice is Ex.PW1/3. Same is stated to have been sent through post, AD Card in this regard is ExDW1/D3. Postal receipts are Ex.PW.1 /5. Similarly, copy of UPC receipt is Ex.PW1/6.

9. Sh. P. K. Unnie (DW1) stated in his affidavit that same was working as Manager (Administration) with defendant company and was well conversant with the facts of the case. As per him, present suit was gross misuse of the process of law as the plaintiff had already received full payment in respect of bills/invoices in question.

10. It is contended by Ld. Counsel for defendant that even as per his case, the plaintiff was maintaining a running account of defendant but no such account book is produced in record, in the absence of which the plaintiff has failed to prove his case.

11. True, as per Order 7 Rule 17 CPC, the plaintiff was required to produce the account book at the time of filing the plaint. The provision is reproduced as under:

in ownership has been produced on record.



Production of Shop-book - 1). Save in so far as is otherwise provided by the Bankers Books Evidence Act, 1891 (18 of 1891), where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

2). Original entry to be marked and returned - The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification, and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

12. The plaintiff did not produce in court the original account book maintained by him in this regard. The polemical question to be answered here is, as to whether in the absence of production of such account books, the suit of plaintiff is liable to be thrown away or not? As discussed earlier, the plaintiff stated on oath about the sum of Rs.600840/- as due against the defendants. The plaintiff also exhibited invoices/bills issued at the time sale of diesel, which are collectively **Ex.PW1/2, Ex.DW1/D2**. Defendants did not opt to cross examine said witness. From all this, it can be inferred that the defendants did not dispute the deposition of plaintiff. In such circumstance, even if, no original book of accounts was produced in court by the plaintiff, claim of same cannot be thrown away out rightly.

13. Trite it to say that even defendants had also claimed that they were maintaining accounts and no account book was produced by any one of them also.

14. As mentioned above, plaintiff examined himself as PW1 and stated on oath that no payment was made against 12 invoices (Ex.PW1/2 collectively). The defendants opted not to cross examine said witness (plaintiff) rather examined DW1 who simply stated that all payments had already been made. No other evidence was led by defendants to prove that any such payments were actually made by defendants.

15. As discussed above, though the plaintiff has claimed that a sum of Rs.4,08,715/- was due against the defendants in year 2005. Twelve invoices (Ex.PW1/2 collectively) are of Rs.50,070/- each. Counting in this way, total amount due against the defendants would have been Rs.600840/- but the plaintiff has claimed only Rs.4,08,715/-. In this way the plaintiff has entitled for recovery of Rs.4,08,715/- plus interest.

16. ISSUE No. 2 : As mentioned above, the plaintiff has claimed interest



pendentilite and future @24% p.a. It is not the case of anyone, that the defendants had agreed to pay interest at said rate of 24 % p.a. This rate of interest appears to be some excessive. However, in my opinion, the plaintiff is entitled for interest @12% p.a. which is stated to be prevalent rate for the nationalized bank. Plaintiff is thus awarded interest @12 % p.a. pendentilite as well as future i.e. till realisation of decretal amount.

*17. **Relief** : Suit of plaintiff is decreed for a sum of Rs. 6,62,118/- along with interest pendentilite and future @ 12% p.a.*

18. A decree sheet be prepared accordingly. File be consigned to Record Room."

7. Subsequently, on 18th July, 2011, on an application filed by the Appellants (Defendants), the Trial Court rectified the afore-noted relief, contained in paragraph No. 17, and revised the decretal amount to Rs. 4,08,715/- from Rs. 6,62,118/-.

GROUND OF CHALLENGE

8. Mr. Karan Batura, counsel for Appellants, assailed the impugned judgement on the following grounds:

8.1. The Trial Court failed to appreciate that Appellants had already made payments through payee cheques towards the twelve invoices, which were duly proved on the basis of bank statements and records presented before the Court. This critical evidence, indicating fulfilment of payment obligations, was overlooked in the impugned judgement.

8.2. Upon presenting the proof of payment along with the written statement, Respondent (Plaintiff) had initially expressed satisfaction and even proceeded to withdraw the suit through an application, supported by an affidavit dated 10th August, 2007. However, in a subsequent turn of events, he shifted his stance and instead, amended the suit. This amendment included a revised claim of Rs. 4,08,715/- along with interest, but without



specific details or substantiation regarding the unpaid bills.

8.3. The Respondent did not sufficiently prove his case, primarily due to his failure to produce books of account, that would reflect the claimed amounts. This omission is significant, as it contravenes the mandatory requirements set out under Order VII Rule 17 of the Code of Civil Procedure, 1908 [“CPC”], raising questions about the validity of their claim.

8.4. Trial Court failed to acknowledge the lack of evidence and failure to discharge the burden of proof on the part of the Respondent.

8.5. The Trial Court initially decreed the suit for an amount of Rs. 6,62,118/-. This figure exceeds the Respondent’s restricted suit amount of Rs. 4,08,715/-. This discrepancy indicates total non-application of mind and patently erroneous findings by the Trial Court, deviating significantly from the facts presented on the record.

8.6. The Trial Court erred in its judgement by basing its findings primarily on the fact that the Appellants had not cross-examined the Respondent. This reasoning overlooks a crucial aspect: the Respondent’s own failure to substantiate his case and discharge the onus of proof. In contrast, the Appellants have thoroughly substantiated their case by presenting detailed records of payments and bank statements, all of which were annexed to their written statement. According to the Appellants, the Trial Court unjustifiably favoured the Respondent’s testimony, wherein he falsely claimed that payments were due.

8.7. Given the absence of compelling evidence from the Respondent, the decision to forego cross-examination was inconsequential, and should not have been a decisive factor in the Trial Court’s judgement.



SUBMISSIONS OF THE RESPONDENT

9. Mr. Deepender Hooda, counsel representing the Respondent, vehemently disputed the grounds raised by Appellants, and defended the findings in the impugned judgement on the following grounds:

9.1. The Appellants have not successfully demonstrated that they cleared the outstanding dues owed to Respondent. This failure to substantiate their claim of payment is a critical point of contention.

9.2. The findings of the Trial Court are firmly rooted in the evidence proved on record. The Appellants chose not to cross-examine the Respondent's witness, which legally implies acceptance of the Respondent's claims as truthful and accurate. Therefore, the Trial Court's decision, based on unchallenged evidence that substantiates the facts and issues, is well-founded.

9.3. The witness examined by the Appellants during cross-examination failed to corroborate any of facts asserted in their written statement. His responses were vague, and demonstrated a lack of familiarity with case's details. As a result, the Appellants did not successfully contest the facts and the issues as framed.

ANALYSIS AND FINDINGS

10. The Respondent's case before the Trial Court was predicated on the sale of diesel to the Appellants. He asserted that the Appellants had been consistently purchasing diesel, for which a running account was maintained in Respondent's books. After receiving the goods, per the Respondent, Appellants defaulted on their payment obligations, leading to outstanding dues. The amended suit claimed an outstanding balance of Rs. 6,62,118/-



(comprising of principal amount and the interest), with an additional claim for interest at 24% per annum, covering both *pendente lite* and future periods. To support his claim, the Respondent failed to produce the ledger or a copy of the running account. Instead, he submitted twelve invoices to the Court, allegedly unpaid by the Appellants. While the Appellants recognized the business transactions, they disputed any outstanding dues. They argued that all payments for the twelve invoices had been made *via* cheques, which were accepted and received by the Respondent. To substantiate their claim of payment, Appellants produced copies of bank statements that clearly showed the details of transactions pertaining to the bills raised, and payments made in respect thereof, which are tabulated as follows:

Invoice No.	Date	Amount (in rupees)	Payment made (in rupees)	Mode of payment/ Date
2	02.04.02	50,070		
3	04.04.02	50,070		
9	08.04.02	50,070		
15	10.04.02	50,070		
18	13.04.02	50,070	3,00,420/-	Ch.No.224863 dated 10.05.2002 drawn on SBI in favour of Plaintiff
1948	16.04.02	50,070		
22	18.04.02	50,070	1,06,776/-	Ch.No.224980 dated 08.06.2022 drawn on SBI in favour of Plaintiff
28	24.04.02	50,070		
29	26.04.02	50,070		
33	29.04.02	50,070		
1965	03.05.02	50,070		
47	06.05.02	50,070	3,00,420/-	Ch.No.224971 dated 10.06.2002 drawn on SBI in favour of Plaintiff
	Total	6,00,840	7,07,616/-	

11. In response to Appellant's assertions, the Respondent did not contest



the receipt of payments detailed in the afore-mentioned tabulation. Rather, he argued that these payments were adjusted towards other existing liabilities. He asserted that a running account was kept, which, according to him, still showed a balance owed by the Appellants.

12. It is imperative to highlight that following Appellants' submission of payment proofs, the Respondent initially filed an application to withdraw the suit, reserving his right to re-file it at a later date. However, this application was apparently not pursued. Instead, the Respondent chose to amend the suit, by filing an application under Order VI Rule 17 of CPC, seeking to reduce the claimed amount to Rs. 4,08,715/-. This revised claim, according to the Respondent, represented the outstanding balance due from the Appellants, exclusive of interest. This stance however, remained elusive as the unpaid invoices were never specified and no ledger account was produced. Further, the Respondent also failed to demonstrate to the Court the invoices against which these cheque payments were supposedly adjusted.

13. In his testimony, the Respondent (Plaintiff) reiterated the claims made in the plaint, asserting a right to recover Rs. 4,08,715/-. However, his evidence lacked essential details. Notably, he did not present the running ledger accounts, nor did he elucidate how the payments received from the Appellants against the twelve invoices were appropriated. Interestingly, the Appellants refrained from cross-examining the Respondent. While this decision might seem significant, a careful analysis of the examination-in-chief of Respondent's witness indicates that the Appellants' choice should not be interpreted as an endorsement of the Respondent's position. Instead, it appears to be a calculated legal strategy. The Respondent's sole witness, by failing to substantiate the essential elements of the case, did not



effectively advance his claims. Therefore, given the lack of compelling evidence from the Respondent's side, the Appellants seemingly deemed it unnecessary to proceed with cross-examination.

14. In contrast, the Appellants examined Mr. P. K. Unni, their Manager (Admin), as a witness to substantiate their defence. Mr. Unni unequivocally stated that all payments for the supplies in question had been made, leaving no outstanding dues. He emphasized that all cheques issued to the Respondents were honoured, suggesting that the suit was an afterthought and lacked merit.

15. A critical deficiency in Respondent's case is the conspicuous absence of books of account. Respondent's mere assertion of outstanding amounts, without the support of documentary evidence, falls short of substantiation. His claim of maintaining ledger and books of accounts for transactions with the Appellants lacked corroboration from any tangible evidence produced in Court. Given the Respondent's acknowledgment of cheque payments, it was his responsibility to either specify the invoices offset by these payments or to pin-point the invoices still unpaid. Regrettably, no such detailed accounting was provided to the Court. The Trial Court noted the missing original books of accounts, but opted not to dismiss the suit solely on this ground. It however, failed to take note that the amended plaint was purely based on the running accounts supposedly maintained by the Respondent, and no details of any outstanding invoices was given. In this background, production of the ledger accounts by the Respondent was imperative. Furthermore, even if one were to assume that the non-production of the books of account was not decisive on its own, but, in view of the invoices produced on record (Exhibit PW 1/2 and Exhibit DW1/D2), the lack of



ledger accounts gains critical importance in the context of the facts of this case. The central issue for the Court was to determine whether any invoices remained unpaid. This could have been effectively addressed with the ledger account, which would have detailed the status of each invoice. The absence of this ledger, therefore, becomes a significant shortfall, especially when no other convincing evidence was presented to fill this gap. Consequently, given this significant omission, the case merited dismissal.

16. The Trial Court observed that the Respondent testified under oath that no payments were received for the twelve invoices, and the Appellants chose not to cross-examine the witness. However, this fact must be weighed in the broader context, particularly considering the original replication filed by the Appellant, wherein cheque payments were acknowledged by the Respondent. Coupled with the Respondent's inability to produce corroborating evidence, the Appellants' documentation proving payment for these invoices should have been given due consideration, which unfortunately, the Trial Court overlooked. In the absence of such evidence from the Respondent, his bare assertions remain unsupported, casting doubts on the credibility of his claims and the Trial Court's decision to rely solely on his unverified testimony. For this reason, the entire discussion in paragraph No. 15 of the impugned judgement, reproduced below for emphasis, becomes vague and untenable.

"15 .As discussed above, though the plaintiff has claimed that a sum of Rs.4,08,715/- was due against the defendants in year 2005. Twelve invoices (Ex.PW1/2 collectively) are of Rs.50,070/- each. Counting in this way, total amount due against the defendants would have been Rs.600840/- but the plaintiff has claimed only Rs.4,08,715/-. In this way the plaintiff has entitled for recovery of Rs.4,08,715/- plus interest."

17. The Court opines that without the original books of account, the suit,



which primarily hinges on the twelve invoices, should not have been adjudicated based solely on their mere presentation. The existence of these invoices was never in dispute. The crux of the matter before the Trial Court was whether the amounts invoiced were still outstanding. In evaluating the claims and evidence presented, the Court is guided by the principle of preponderance of probabilities, a standard that weighs more heavily on the side of the balance that is more convincing and has greater evidentiary value. Given the circumstances, where the Respondent has failed to produce the original books of account, and the existence of the invoices is undisputed, the question turns to the appropriation of payments made by the Appellants. The Respondent had the obligation to demonstrate, on the balance of probabilities, that these payments were not applied to the invoices in question, but were instead directed towards other liabilities. However, in the absence of such evidence, and considering the Appellants' substantial proofs of payment, this Court finds that the scales tip in favour of the Appellants. The Respondent's inability to provide clear and convincing evidence that contradicts the Appellants' claims significantly weakens his position, leading this Court to question the validity of his assertions about the outstanding nature of the invoiced amounts. The Trial Court, however, failed to address this critical aspect. Instead, it placed undue weight on the mere exhibition of invoices, without thoroughly examining their payment status. The Court finds that the evidence produced by the Respondent fell short of conclusively proving his claim.

18. In legal disputes, particularly those involving financial claims, it is incumbent upon the party asserting a claim to provide sufficient evidence to support it. Books of accounts play a critical role in disputes centred on



financial dealings based on supplies. In matters where the claims and counter-claims revolve around the intricacies of accounting, the production of these accounts, especially when they are regularly maintained, as asserted by the Respondent, becomes indispensable. In this case, the Respondent, as the party asserting the existence of outstanding dues, bore the burden of proof. This burden entails not just the presentation of claims, but also their substantiation with credible evidence. The Respondent (Plaintiff) ought to have been subjected to the rule of best evidence, which dictates that the most authentic and direct evidence must be presented to the Court. Furthermore, when a claim is solely based on invoices, as in the present case, there is an inherent obligation on the claimant to provide a clear and comprehensive explanation of financial transactions, including how payments, such as the cheques issued by the Appellants, were accounted for, and adjusted. The Respondent's reliance solely on invoices, without accompanying these with necessary accounting records or other corroborative evidence, fails to meet the standard required to discharge his burden of proof. This failure to comply with the established standard, and inability to produce either the relevant ledger entries or any form of accounting clarification, significantly debilitates the legitimacy of Respondent's claim for outstanding payments. The Court, therefore, finds that the Respondent's failure to satisfactorily discharge the burden of proof necessitates setting aside of the impugned judgement.

19. In view of the foregoing analysis, the present appeal is allowed and the impugned judgement and decree dated 27th January, 2011, as modified on 18th July, 2011 is set aside.

20. The Appellants had, by virtue of order dated 02nd November, 2011,



deposited the decretal amount for seeking operation of the stay of the impugned judgement. The said amount is lying with the Registry of this Court in a fixed deposit, and has not been released in favour of Respondent. Accordingly, a direction is issued that the said amount be released back to Appellants, with the applicable interest.

21. The present appeal, along with the pending applications, is disposed of in above terms.

SANJEEV NARULA, J

DECEMBER, 1 2023

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