



2025:DHC:10769-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 24.11.2025

Judgment pronounced on: 03.12.2025

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RFA(COMM) 44/2024, CM APPL. 8145/2024 and CM APPL. 8146/2024

MRS. MINAL DESAI

.....Appellant

Through: Mr. Lakshay Dhamija and Ms. Liza Kesi, Advs.

versus

MR. KAWALJEET SINGH

....Respondent

Through: Mr. Abhishek Kumar and Mr. Shrish, Advs along with the Respondent in-person.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal, the Defendant [Appellant herein] assails the correctness of judgement dated 17.10.2023 [hereinafter referred to as 'Impugned Judgment'] passed by the learned Trial Court allowing the commercial suit filed by the Plaintiff [Respondent herein], seeking the relief for a recovery of Rs.6,00,000/- along with *pendente lite* and future interest @ 10% p.a. till its realisation.

2. For sake of convenience, the parties before this court shall be referred to in accordance with their status before the Trial Court.

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FACTUAL MATRIX:

3. The Plaintiff is engaged in the business of movers and packers, under the name and style of M/s Sikka Packers & Movers. The Defendant approached the Plaintiff at their office (No.36, Ram Vihar, Near Anand Vihar Petrol Pump, Delhi-110092), for shifting of their furniture/articles/material from the Defendant's previous office, i.e., 174, Golf Links, 1st Floor, New Delhi-110003, to the Plaintiff's place. An agreement was entered into to this effect, under which the Defendant was obligated to pay monthly rent of Rs.25,000/- to the Plaintiff, until the Defendant retrieves the said goods.

4. Pursuant to the said agreement, on 23.06.2017, the Plaintiff through its associates/employees, duly shifted the furniture/material/articles belonging to the Defendant from their above-mentioned address and stored the same at the Plaintiff's godown.

5. On account of non-payment of rent amount by the Defendant, for the period from December 2017 till August 2018, the Plaintiff filed a suit for recovery of Rs.1,25,000/- *vide* suit, bearing No. CS (COMM) 416/2018 against the Defendant. Therein, the Defendant compromised/settled the matter with the Plaintiff and in terms of the document signed between Plaintiff and Defendant on 23.08.2018 paid the balance rent of Rs.2,25,000/- to the Plaintiff. Pursuant thereto, the Plaintiff withdrew the aforesaid suit on 17.09.2018.

6. Subsequently, the Defendant once again, failed to pay the rent owed to the Plaintiff since October, 2019, compelling the Plaintiff to

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file a commercial suit for recovery of Rs.4,00,000/- including the rent owed from October, 2019 to January, 2021, *vide* suit, bearing No. CS (COMM) 139/2021. This suit was decreed by the Trial Court, in favour of the Plaintiff. In accordance with this decree, the Execution proceedings were filed, which has been pending for disposal and the Defendant has not challenged the said decree till date.

7. Owing to the Defendant's persistent default in making the payment of monthly rent amount of Rs.25,000/-to the Plaintiff, despite repeated requests, the Plaintiff also initiated a Pre-institution Mediation Application before the Ld. Secretary, DSLSA, District Sahadara, Karkardooma Court, under Section 12A of the Commercial Court Act, 2015 [hereinafter referred to as 'CCA'], but the Defendant did not appear therein.

8. Accordingly, the Plaintiff instituted the civil commercial suit, i.e., CS (COMM) 193/2023, seeking the following reliefs:-

"I. Pass a decree for recovery of RS.6,00,000/-along with litigation cost, pendente-lite expenses and future interest @ 18 % per annum, till the date of realisation of the amount, in favour of the Plaintiff against the Defendant.

II. Award the costs of the present suit along with the legal professional charges vide certificate of counsel for the Plaintiff to be filed as per direction of this Hon'ble Court, in favour of the Plaintiff and against the Defendants.

III. Pass such other or further orders which this Hon'ble Court deems fit and proper under the facts and circumstances of the case, in favour of the Plaintiff and against the Defendant."

9. The Defendant has made the following submissions:

9.1 That the Plaintiff is guilty of concealing the vital documents while filing the present suit. Although, the Plaintiff has firmly relied

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upon the document issued, enlisting all the furniture/material/articles, which mentions the amount agreed between the parties, but the Plaintiff opted to not place the complete documents before the Court. This omission renders the Statement of Truth false and on this ground alone the suit deserves dismissal.

9.2 The Defendant claims that no written and signed agreement exists between the parties to constitute a valid agreement or contract.

9.3 It is asserted that the present suit ought to have been filed as a civil suit, under Order IV of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'] and not as a Commercial suit.

9.4 It is further stated that although the original understanding between the parties was that the Defendant shall pay a rent @ Rs.15,000/- per month only, the Plaintiff, acting with malafide intent, manipulated and allegedly influenced the Defendant to pay an amount of Rs.25,000/- per month, as rent. The Defendant, acting under a bonafide belief in the legitimacy of the arrangement, continued to pay rent @ Rs.25,000/- per month, till November 2017.

9.5 The Defendant asserts that the Plaintiff had an obligation/duty to maintain all the furniture/material/articles, as they were perishable in nature and certain items were inherited by the Defendant, yet, the Plaintiff never allowed the Defendant to inspect whether the goods were in good conditions or not. Thus, the Plaintiff failed to perform reciprocal obligations.



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10. Upon perusal of the submissions made by the parties and the certified copies of the judgements passed in earlier suits, the Trial Court came to a conclusion that the Plaintiff shifted the articles/goods of the Defendant from her office to the Plaintiff's godown as agreed, and rent payable was Rs. 25,000/- per month. The first suit was withdrawn by the Plaintiff upon payment of Rs.2,25,000/-, and the second suit was decreed '*ex-parte*', due to non-appearance of the Defendant. The *ex-parte* judgement dated 01.07.2022, remains unchallenged till date.

11. Even in the present suit, the Defendant led no cogent evidence in her defence. Accordingly, the Trial Court decided the issues in favour of the Plaintiff and against the Defendant, thereby decreeing the suit for a sum of Rs.6,00,000/- along with pendente lite and future interest @10% per annum, till its realisation.

CONTENTION OF THE APPELLANT/DEFENDANT

12. The Defendant contends that the present suit was not a commercial suit on the premise that no written and signed agreement exists between the parties, so as to constitute a valid agreement or contract. The Defendant further urged that no mercantile document has been filed by the Plaintiff in support of his assertion.

13. In addition to this, the Defendant asserts that as per Section 2(1)(c) of the CCA, which defines the "commercial dispute", several disputes are included therein, but not specifically those for recovery of money. Hence, the present suit ought not to have been filed as a commercial suit, but as a regular civil suit under Order IV of the CPC.

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14. Besides this, the Defendant additionally submits that under Order XI Rule 6 of the CPC, the Plaintiff is required to file a declaration in detail regarding the electronic record sought to be relied before the Court for inspection. It is asserted that the established practice mandates compliance with both i.e., declaration on oath as contemplated under Order XI Rule 6(3) of CPC and a certificate under Section 65B of the Indian Evidence Act, 1872 [hereinafter referred to as 'IEA']/ Section 63 of Bhartiya Sakshya Adhiniyam, 2023 [hereinafter referred to as 'BSA']. As, the Plaintiff has furnished neither, the suit, according to the Defendant, is liable to be rejected for not being in accordance with law.

15. Apart from that, the Defendant also alleges that Plaintiff is guilty of concealing the vital documents while filing the present suit. Such non-disclosure and non-filing of the documents according to the Defendant, makes their Statement of Truth false and consequently warrants dismissal of the suit with exemplary cost.

16. Moreover, it is further urged that the Plaintiff has miserably failed to demonstrate on what grounds the said legal remedy is applicable against the Defendant, particularly when no agreement was ever executed by the Defendant in her personal capacity. The absence of any contractual agreement evidencing obligations between the parties, establishes that the suit is devoid of cause of action.

17. Lastly, the Defendant contends that the reliance on previous judgements of the Court is barred by Section 43 of the IEA/Section 37 of the BSA, as these are irrelevant in the present suit, because the

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existence of such judgement, order or decree, is neither a fact in issue nor is relevant under any provisions of this Act/Adhiniyam.

CONTENTIONS OF THE RESPONDENT/PLAINTIFF:

18. The Plaintiff reiterates that at the request of the Defendant, on 23.06.2017, the Plaintiff, through its associates/employees duly shifted the furniture/material/articles of the Defendant from the aforestated address of the Defendant and kept the same at the godown of the Plaintiff.

19. Additionally, the Plaintiff contends that after framing of issues, when a local commissioner was appointed by the Court, to record the evidence of the parties, the Defendant failed to appear before the Local Commissioner for her examination. On 18.09.2023, the learned counsel for the Defendant made a statement before the said Commissioner that the Defendant did not intend to lead any defence evidence.

20. It is further contended that the Defendant has not only failed to adduce any evidence in support of her defence, but she has even substantially admitted the Plaintiff's claim. Thus, the evidence of the Plaintiff stands un rebutted, unchallenged and uncontroverted.

21. Lastly, the Plaintiff also asserts that the *ex-parte* judgement dated 01.07.2022, passed in CS (COMM) 139/2021, has not been challenged by the Defendant before any Appellate forum, till date.



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ANALYSIS & FINDINGS

22. This court has heard learned counsel for the parties at length and with their able assistance, perused the paper book along with the record of the civil suits.

23. With respect to the contention as to when a suit may be classified as a “Commercial suit”, the legal position is well-settled. A suit attains the character of a commercial suit, only upon fulfilling the dual requirements namely- (i) the subject matter of the dispute must fall within the ambit of “commercial dispute” as defined under Section 2(1)(c) of the CCA; and (ii) the pecuniary valuation of the suit must meet or exceed the monetary threshold prescribed for institution before the commercial court.

24. Adverting to the objection raised by the Defendant, that the suit filed does not qualify as a commercial suit, this Court finds no merit in such contention. The materials placed on record clearly discloses that the Plaintiff is engaged in the business of movers and packers. It is further established that the Defendant approached the Plaintiff for provision of service of transportation and storage of her goods to the Plaintiff’s godown. The transaction is, therefore, commercial in nature. Additionally, the suit is well within the prescribed pecuniary limit under CCA. As Section 2(1)(c) of the CCA while defining ‘commercial dispute’, explicitly includes within its ambit, transactions relating to immovable property, used exclusively for trade and commerce under Clause vii of the Section 2(1)(c) of the CCA as well as the provision of agreements for sale of goods or provision of



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services under Clause xviii of Section 2(1)(c) of the CCA and in the present case, the Plaintiff's godown is used for shifting and storage of furniture and articles, which were undertaken purely for business purposes. Consequently, the suit has been rightly entertained as a Commercial Suit, and the objection of the Defendant is without substance and is liable to be rejected. Where the rent sought to be recovered is relatable to a commercial arrangement or business usage, and the underlying transaction qualifies to be commercial in nature, the suit squarely falls within the definition of a "commercial dispute" under provisions of the CCA.

25. Regarding the plea that the suit lacks cause of action, this submission carries no weight. A suit can be said not to lack cause of action where, the Plaint discloses the material facts establishing a legal right in favour of the Plaintiff; breach or denial of such right by the Defendant is pleaded; the averments, if taken at face value, reflect a logical nexus between the facts pleaded and the relief sought; and, the claim should neither be illusory nor speculative. In the present case, the parties admittedly entered into an agreement for moving and packing her furniture/material/articles from her previous office, and *in lieu* of that, the Defendant was obligated to pay monthly rent of Rs.25,000/- to the Plaintiff, until retrieval of the goods. Further, the Defendant defaulted in payment since February 2021 to January 2023.

26. This Court further notes that the Plaintiff has duly complied with the mandate of Order XI Rule 6 of the CPC. The required Statement of Truth has been filed, disclosing electronic records intended to be relied upon, and is supported additionally by a

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certificate under Section 65B of the IEA/Section 63 of the BSA. Thus, the Plaintiff stands compliant with procedural requirements governing the production and inspection of electronic evidence.

27. The allegation of suppression of material documents by the Plaintiff is without any basis. The Plaintiff has placed on record all the relevant documents, including the certified copy of agreement/list of articles dated 23.06.2017, duly evidencing the terms mutually agreed between the parties. Further, no material has been brought forth to demonstrate any act of concealment.

28. Turning to the objection premised on Section 43 of the IEA/Section 37 of the BSA, it is pertinent to clarify that the provision does not impose an absolute bar on the reception of relevant previous judgements; the exclusion applies only, where such judgements lack relevance otherwise. This section itself contemplates that judgements not falling within the ambit of Sections 40 to 42 of the IEA/Section 34 to 36 of the BSA, may nonetheless be admissible, if rendered relevant under any other provisions of the Act. In the present case, the prior judgement is *inter-partes* and demonstrably reflects a continuing pattern of default in payment of rent. Such conduct is squarely relevant within the meaning of Sections 8 and 13 of the IEA, and therefore, the judgement cannot be excluded merely by invoking Section 43 of the IEA/Section 37 of the BSA. Though not conclusive, the earlier judgement may legitimately be considered as an evidentiary indicator of the parties' conduct, established habit, and consistent course of dealings.



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29. Consequently, the prior judgements relied upon by the Plaintiff are not sought as conclusive proof of liability of the Defendant towards the payment of rent amount, but to show continued conduct and repeated default. Their admissibility is, therefore, contextual and limited to establishing conduct rather than determining liability solely on the basis of past decree. Accordingly, such judgements cannot be excluded and may be considered subject to relevance and proof.

30. The appointment of the Local Commissioner was made at the behest of the Defendant for inspection, whether all 62 items entrusted to the Plaintiff were intact, and to ascertain any instance of misappropriation, sale or deterioration. The inspection report, however, reveals that except for two to three damaged items, the goods were overall in serviceable and usable condition. The deterioration found in outer packaging is attributable to long-term storage spanning over several years, rather than any negligence or mishandling on the part of the Plaintiff. Since, the Defendant did not allow opening of several completely packed items, thereby preventing a complete assessment, such conduct, may reasonably invite an adverse inference against the Defendant, particularly if any allegation of extensive damage is subsequently raised without substantiating evidence. Taken as a whole, the findings tend to support the inference that the goods were duly preserved, that there is no material proof of major loss or misappropriation by the Plaintiff, and that save for minor damage to few items and superficial external wear due to age, the goods remain intact. Therefore, the report leans in favour of the conclusion that the goods were largely preserved and usable.



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31. Lastly, with respect to the oral arguments advanced by the Defendant that the receipt/agreement dated 26.06.2017 is merely a 'quotation', the Court finds the same untenable. A quotation, by its very nature, does not result in or accompany the physical transfer of goods, whereas in the present case the articles were admittedly moved from Defendant's previous office to the Plaintiff's godown on the same date. The very act of delivery establishes entrustment, irrespective of the nomenclature given to the document. Even assuming, for the sake of argument, that the said document is a quotation, the list dated 26.06.2017 serves as a proof of the number and type of items handed over and a contemporaneous record of the number and nature of goods entrusted, and thus stands as a prima facie evidence of the actual delivery. This lends credence to the Plaintiff's case and materially weakens the Defendant's stand. Therefore, the plea that the document is only a quotation appears to be an afterthought, advanced merely to evade accountability or to dispute the inventory.

32. Therefore, in light of the above findings, it becomes manifest that the Defendant has attempted to evade her contractual and legal obligations, while continuing to enjoy the benefit of the arrangement, thus, seeking to reap the benefits of the fruits without paying the consideration that the law and equity demand.

CONCLUSION

33. In light of the foregoing discussion, this court finds no illegality, perversity or incorrect approach in the reasoning adopted or the conclusions arrived at by the Trial Court in the Impugned Judgement.

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34. Hence, having found no merit, the present Appeal along with pending applications, stand dismissed.

ANIL KSHETARAPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

DECEMBER 03, 2025

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