



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgement delivered on: 22.05.2025

+ **RFA(COMM) 182/2024**

PANDEY TRADERS, THROUGH ITS PROPRIETOR
MR. RAM CHARAN PANDEY & ANR. Appellants

versus

CHAUHAN WATER SUPPLIER THROUGH ITS
PROPRIETOR MR. ROSHAN SINGH CHAUHAN
..... Respondent

Advocates who appeared in this case

For the Appellant : Mr Romil Pathak, Mr Aryan Pathak and Mr
Shoaib Ahmed Khan, Advocates.

For the Respondent : Mr Jatin Kumar, Mr Rakesh Chauhan and
Mr Manish Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

VIBHU BAKHRU, J.

1. The appellants have filed the present appeal under Section 13(1A) of the Commercial Courts Act, 2015 [**the CC Act**], *inter alia*, impugning the judgment and decree dated 21.12.2023 [**impugned judgment and decree**] rendered by the learned Commercial Court in CS DJ No.877/2022 captioned



Chauhan Water Supplier v. Pandey Traders & Another.

2. The learned Commercial Court had allowed the said action instituted by the respondent [**plaintiff**] and passed the decree for recovery of ₹34,87,947/- along with interest at the rate of six percent per annum from the date of the filing of the suit till its realization against appellants [**defendants**]. Additionally, learned Commercial Court passed the decree for the costs quantified at ₹50,000/-.

FACTUAL CONTEXT

3. The plaintiff is the sole proprietorship concern of Mr Roshan Singh Chauhan. He is, *inter alia*, engaged in the business of water supply through water tankers in Delhi-NCR area, which he carries on as proprietorship concern in the name and style of '*M/s. Chauhan Water Supplier*'. The plaintiff had instituted the aforementioned suit [being CS DJ No. 877/2022] against '*M/s. Pandey Traders*' through its proprietor – Mr Ram Charan Pandey [defendant no.1] and defendant no.2 – Mr Shiv Sahay Pandey [son of defendant no.1]. The plaintiff claimed that he had good relations with the defendants at the material time. It is stated that the defendant no.1 [Mr. Ram Charan Pandey] was carrying on the business of Sand/Morrum mining in the states of Uttar Pradesh and Madhya Pradesh at the material time. The said business was controlled and managed by the defendants. The plaintiff claimed that the defendants visited the plaintiff's office on 10.02.2018 and approached him for investing an amount of ₹50.00 Lac in two sand mining projects in Yamuna River. The first project is at Khand No. RK-IA, at Village Ramanagar Kauhan, Fatehpur, Uttar Pradesh; and second at Khand



No. A-11, at Village Adawal, Fatehpur, Uttar Pradesh. The plaintiff claimed that defendant no. 2 assured him that the defendants would give him one percent share in the said two projects, failing which they would refund the amount of ₹50.00 Lac within the stipulated time. The plaintiff also furnished the photographs of the two mining sites. The plaintiff claimed that he accepted the said proposal and thereafter, defendant no.2 sent the details of the current bank account of defendant no.1 to the plaintiff [current bank account No.510101005502161] and on 28.02.2018, the plaintiff transferred the sum of ₹50.00 Lac to the said account through banking channels.

4. The plaintiff claimed that defendant no.2 visited his office on 15.04.2018 and gave certain documents relating to the mining projects. He also sent another set of documents on 29.05.2018. The plaintiff claimed that on seeing the documents he was convinced that the mining projects would commence in the month of October/November, 2018. Thereafter, defendant no.2 informed the plaintiff that the projects are getting delayed and the same would commence in January/February 2019. The said projects commenced at both sites in the month of January 2019 and on 09.03.2019, defendant no.2 sent sales report for the months of January and February 2019, which did not reflect the plaintiff's one percent share. On further enquiries being made, the plaintiff was assured that his one percent share would be mentioned in the next sales report.

5. The plaintiff claimed that on 09.03.2019, defendant no.2 handed over cash amount of ₹2.00 Lac to the plaintiff. He was paid a further sum of ₹3,71,654/- on 05.04.2019. Thereafter, the plaintiff received additional payments of ₹1.50 Lac and ₹2.00 Lac on 26.04.2019. These were transferred



by one Mr Vineet Kumar and one Mr Dilip Kumar to the plaintiff's account through banking transfers on 27.05.2019, a sum of ₹1,21,654/- was paid by defendant no.2 in cash on 27.05.2019; and on 09.11.2019 another amount of ₹5,12,053/- was paid in cash. The plaintiff claimed that thereafter the defendants did not pay any amounts and also did not receive any satisfactory response from defendant no.2. Although, defendant no.2 assured the plaintiff that payments would be made as soon as possible, but the same were not made.

6. Since the defendants failed to repay the amount, which according to the plaintiff was due and payable, the plaintiff issued a legal notice dated 27.07.2022 to the defendants, which was received by them on 03.08.2022. The plaintiff called upon the defendants to pay the amount due, however the defendants failed and neglected to pay the outstanding sum. This led the plaintiff to institute the aforementioned suit [being CS DJ No. 877/2022] for recovery of balance amount of ₹34,87,947/-, which according to the plaintiff, was due and payable by the defendants.

7. The defendants contested the suit and filed their written statement. They claimed that they became familiar with the plaintiff as he used to visit Banda, Uttar Pradesh quite often. They stated that the plaintiff had told to them that he was investing his funds in various sand mining projects including two projects in question. One at Khand No. RK-1A, at Village Ramanagar Kauhan, Fatehpur, Uttar Pradesh; and second at Khand No. A-11, at Village Adawal, Fatehpur, Uttar Pradesh. According to them, the plaintiff informed them that he was facing some problem in remitting the sum in respect of two projects and was facing certain scrutiny issues. He



accordingly requested the defendants to remit the amount in connection with the aforesaid two mining projects.

8. The defendants claimed that they offered their assistance in remitting the money. Accordingly, the plaintiff remitted a sum of ₹50.00 Lacs in the account of defendant no.1, which was sent to the accounts of mining companies at the instance of the plaintiff.

9. In view of the rival pleadings, the learned Commercial Court framed the following issues: -

- “1. Whether the suit is bad for mis-joinder of defendant no.2? OPD2
2. Whether the plaintiff is entitled for recovery of sum of Rs.34,87,947/- from the defendant? OPP
3. Whether the plaintiff is entitled for any interest, if so, for which period and on what rate? OPP.
4. Relief.”

10. The parties led their evidence. The plaintiff tendered his affidavit by way of evidence being Ex.PW1/A. He affirmed the averments made in the plaint. He proved that he had transferred the sum of ₹50.00 Lacs on 28.02.2018 and produced the transfer receipt [Ex.PW1/3]. He also produced his bank account statement for the month of February 2018 [Ex.PW1/4] which recorded the payments made to defendant no.1.

11. The plaintiff also examined Mr Shiv Karan Singh [PW2] who is his brother-in-law. He tendered his affidavit [Ex.PW2/A] affirming that defendant no.1 was carrying on the business and dealing in sand mining / Morrum in the states of Uttar Pradesh and Madhya Pradesh. He also affirmed that on 26.06.2021, the plaintiff along with his wife visited the



defendants' house at sub-village Jamuniya of village Pauhar, district Banda, Uttar Pradesh for demanding the balance amount of ₹34,87,947/- where, in the presence of about ten persons, defendant no.2 assured the plaintiff that he would pay the amount within the period of one year as his family was facing certain financial problems.

12. He deposed that defendant no.2 was not a labourer, as claimed by the defendants were engaged in the business of sand /morrum projects in the state of Chhattisgarh. He also affirmed that defendant no.2 owns a motor vehicle [Mahindra Bolero] bearing registration No. UP90W7214 and the defendants have various properties in district Banda, Uttar Pradesh. He also stated that defendant no.1 along with his brother owned 19.949 bighas of land in district Banda, Uttar Pradesh. Additionally, the plaintiff also examined Mr Lakshman Singh [PW3] and Mr Narendra Singh [PW4], who duly supported the stand of the plaintiff.

13. The defendants examined one Mr Anshul Kumar [DW1], who was Branch Manager of Union Bank of India, Civil Lines Branch, district Banda, Uttar Pradesh. He produced the record of current bank account No.510101005502161 maintained with the bank in the name of M/s. Pandey Traders. He established that an amount of ₹50.00 Lac was credited in the said account on 28.02.2018 and this amount was transferred through RTGS to the account of one M/s. Maa Annapurna Traders. He also furnished the attested copies of the statement of account [Ex.DW1/A]. In his cross examination, he confirmed that Mr Ram Charan Pandey was the sole proprietor of M/s. Pandey Traders.



14. The learned Commercial Court, after hearing the submissions of the learned counsel for the parties and perusing the evidence and material on record, did not find any merit in the defense of the defendants and thus, decreed the suit in favour of the plaintiff.

15. The learned counsel for the defendants earnestly contended that the defendants had no connection with the business of sand mining and were not involved in the projects as claimed by the plaintiff. He contended that the plaintiff had merely used the bank account of defendant no.1 for transferring the amounts to M/s. Maa Annapurna Traders. He further submitted that the suit was liable to be dismissed for non-joinder of necessary parties as the said entity [M/s. Maa Annapurna Traders] was not arrayed as a party in the suit. He contended that the statement of his bank account [Ex.DW1/A] clearly established that the payments made by the plaintiff had been transferred to the account of M/s. Maa Annapurna Traders. According to him, this established that the defendants did not have to repay the said amount. He also submitted that the defendants had denied repaying any part payment of ₹50.00 Lacs. The learned counsel for the plaintiff controverted the aforesaid submissions.

REASONS AND CONCLUSION

16. The plaintiff [PW1] had tendered his affidavit affirming the averments made in the plaint. He was also cross examined and his responses to the suggestions/questions put to him, clearly support the averments made in the plaint.



17. PW2 also tendered his affidavit affirming that defendant no.1 was carrying on the business of sand/Morrum in the name and style of M/s. Pandey Traders from various sites in the states of Uttar Pradesh and Madhya Pradesh. He also testified that the plaintiff had informed him about his investment in the two mining projects run by the defendants. He confirmed that on 26.06.2021, the plaintiff along with his wife, who is PW2's sister visited the house of the defendants at sub-village Jamuniya of Village Pauhar, District Banda, Uttar Pradesh to discuss the issues regarding the pending payments of ₹34,87,947/-. He deposed that defendant no.2 had assured the plaintiff in his presence and other persons that he would pay the pending amount of ₹34,87,947/- within the period of one year from that date; that is, within one year from 26.06.2021. He also affirmed that his brother Ekram Singh and Lakshman Singh were present at the site amongst other persons. He also proved the photograph [Ex.PW1/6] which showed his presence and Mr Ekram Singh's presence at the residence of the defendants on 26.06.2021. He also stated that defendant no.2 was not a labourer and was currently working in sand /Morrum projects in the state of Chhattisgarh. He confirmed that the defendants owned a motor vehicle [Mahindra Bolero] bearing registration No. UP90W7214 and also owned various properties in district Banda, Uttar Pradesh. He was cross examined. However, there is nothing in his cross examination, which would cast any doubt as to the facts as affirmed by him in his affidavit. The plaintiff also examined one Lakshman Singh, as PW3, who was a neighbor of plaintiff's in-laws. He also affirmed that he was familiar with the defendants' family and their business. He also confirmed that the defendants were carrying on



sand/Morrum mining business in the name of M/s. Pandey Traders. He also deposed that he was present along with the plaintiff, his wife, her brother – Ekram Singh and Shiv Karan Singh on 26.06.2021 at the residence of the defendants at sub-village Jamuniya of Village Pauhar, District Banda, Uttar Pradesh and defendant no.2 in his presence had assured the plaintiff that he would pay the remaining amount of ₹34,87,947/- within the period of one year as his family was facing certain financial problems. The plaintiff also examined Narendera Singh, who was the brother-in-law of Mr Ekram Singh. He too filed his affidavit on similar lines as PW3. Both the said witnesses PW3 and PW4 were also cross examined. However, there was nothing in their cross examination that casts any doubt as to the affirmations made in their respective affidavits.

18. It is clear from the evidence on record that the plaintiff had remitted an amount of ₹50.00 Lacs to the account of defendant no.1. The fact that defendant no.1 had received the said amount in his account is not disputed. The only defense raised by the defendants that they paid the said sum to M/s. Maa Annapurna Traders at the instance of the plaintiff. However, there is no credible evidence led by the defendants to establish the same. The amount was remitted into the account of defendant no.1, however, he did not examine himself. There is no plausible reason as to why the plaintiff would use defendant no.1's account to remit the money to another concern.

19. The defendants have also not examined the person to whom they had transferred the amount of ₹50.00 Lac or produced any evidence to establish that the plaintiff had made any investment with M/s. Maa Annapurna



Traders.

20. In our view, in absence of the defendants establishing that the payments made by them were at the instance of the plaintiff, the plaintiff's case is required to be accepted. However, the plaintiff, as noted above, led overwhelming evidence to show that on 26.06.2021 he had visited the residence of the defendants, and defendant no.2 in the presence of several other persons had assured the plaintiff that he would repay the pending amount within the period of one year from the said date. Although, the evidence to the said facts is largely oral, however, there are no reasons to reject the same. The oral evidence of PW2 to PW4 are also supported by the photographs, which indicate their presence at the residence of the defendants on 26.06.2021.

21. It is material to note that the plaintiff has also acknowledged receipt of certain amount and has given due credit for the same to the defendants. However, the defendants have denied that they have paid any amount to the plaintiff. On the preponderance of probabilities, we find it difficult to accept that why the plaintiff would voluntarily acknowledge receiving payments, if he desires to raise a false claim against the defendants.

22. In view of the above, we concur with the decision of the learned Commercial Court that the plaintiff would be entitled to a decree for recovery of ₹34,87,947/- along with the costs and interest, as decreed.

23. The present appeal is unmerited and, accordingly, dismissed.

24. In compliance of the orders of this Court, the defendants have deposited the amount of ₹34,87,947/- and the same is lying with the



Registry of this Court in the form of the fixed deposit. We clarify that disbursal of the said amount shall abide by the directions issued by the learned Executing Court that may be passed in future.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 22, 2025

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