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

+ **RSA 88/2022**

KEWAL KRISHAN SAINI

.....Appellant

Through: In-person

versus

POSH LIVING FURNISHERS

.....Respondent

Through: Mr.____, Advocate (Appearance not given)

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

18.03.2025

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1. The present regular second appeal under Section 100 read with Order XLII of the Code of Civil Procedure, 1908 has been filed on behalf of the appellant challenging the judgment dated 18.10.2021 in RCA No. 127/2019 titled "Kewal Krishan Saini vs. M/s. Posh Living Furnishers". The first appeal was filed challenging the judgment passed in civil suit bearing No. 1336/2017 dated 31.08.2019.
2. The appellant had filed a suit for recovery of a sum of Rs.2,06,750/- alongwith future interest.
3. Briefly stated the facts of the case are that the appellant herein had purchased a sofa set with center table for Rs.78,750/- (inclusive of VAT @12.5%) from the respondent as per Invoice No. 2051 dated 28.09.2014. The case of the appellant is that his sofa set was never delivered by the respondent.



4. The appellant, who appears in-person, states that despite various demands, the respondent/defendant failed to return the money and deliver the sofa set alongwith center table and the present suit was filed.
5. The respondent/defendant contested the suit on the ground that the same has been filed at a much delayed stage. It is stated that the respondent/defendant was not supposed to deliver the sofa set with center table at the appellant's residence as the same was entrusted to the appellant himself, who took its custody there and then on 28.09.2014 at the respondent's premises after making the payment. The respondent took a plea that there was no delivery charges or cartage charged by the respondent and the same were also not reflected in the invoice raised. It was further stated that the address recorded by the appellant in the Invoice is of State Bank of Bikaner & Jaipur, Tilak Marg, Jaipur, whereas, the local address of the appellant in the plaint and legal notice is of Delhi. It was also stated that for around three years i.e. from 28.09.2014 (when the sofa set was purchased) to 10.05.2017 (when the suit was filed), the appellant remained silent.
6. The learned Trial Court framed the issues and after recording the evidence of the parties, *inter alia*, held that the appellant did not place on record any proof to show that during the period of three years, he had gone to the respondent's shop asking for the delivery of the sofa or return of the article. The learned Trial Court also took notice of the fact that three different addresses of Ashok Vihar, Dwarka and Jaipur were given and the same remained unexplained. It was noted



that in the plaint, the appellant/plaintiff alleged that the article was delivered at his residence at Ashok Vihar, Delhi, whereas the invoice reflected the address of Tilak Marg, Jaipur. It was also noted the original invoice was admittedly taken by the appellant/plaintiff and it did not include any transport or freight charges.

7. Aggrieved to this, the appellant/plaintiff filed a regular first appeal. The learned first Appellate Court also, after considering the material on record and submissions made by the parties, *inter alia*, held that as per Section 36 of the Sale of Goods Act 1930, it is for the parties to specify in the contract, expressed or implied, whether it is for the buyer to take possession of the goods from the seller or it is for the seller to send them to the buyer. If there is no such contract, the goods are to be delivered to the place at which they are at the time of the sale. The learned Trial Court noted that in the invoice, the local address of the appellant was missing. It was also noted that the invoice did not have any transportation charges. The learned Trial Court was, *inter alia*, of the view that had there been a contract that the seller was to deliver the goods at the house of the appellant, the column would have had details of vehicle number and driver name, etc. It was also noted that the original invoice was handed over to the appellant at the time of the sale.
8. The appellant's assertion that the sofa set and centre table were not delivered remains unsubstantiated, as there is no documentary proof or any evidence indicating continued demand for delivery within the statutory limitation period. The invoice does not reflect any obligation on the part of the respondent to transport the goods, nor does it



mention any delivery charges. The lower courts have rightly noted that the appellant's claim of non-delivery, without any contemporary communication or supporting evidence, does not meet the evidentiary standard required to disturb the findings of fact.

9. This Court takes note of the significant delay of nearly three years before the appellant chose to institute the suit. The Supreme Court in **K.S. Vidyadnam & Ors.v.Vairavan**, (1997) 3 SCC 1, *inter-alia* held that a person who sleeps over their rights cannot later claim relief as a matter of entitlement. Delay in asserting a claim raises serious doubts regarding its genuineness and, in the absence of any reasonable explanation, operates to the detriment of the claimant.
10. Further, it is well settled that a second appeal under Section 100 CPC can only be entertained on a substantial question of law and not on a mere re-appreciation of evidence. The Supreme Court in **Kondiba Dagadu Kadam v. Savitribai Sopan Gujar**, (1999) 3 SCC 722 and **Narendra Gopal Vidyarthi v. Rajat Vidyarthi**, (2009) 3 SCC 287, has reiterated that the High Court cannot disturb concurrent findings of fact unless a perverse interpretation of law is evident.
11. The appellant has failed to demonstrate any legal error or substantial question of law that would warrant interference by this Court. The plea regarding non-delivery of goods is a factual dispute that has been conclusively decided by the courts below based on available evidence. The appellant cannot seek to reopen factual determinations under the limited scope of Section 100 CPC.
12. The principle laid down in **Kirpa Ram v. Surendra Deo Gaur**, (2020) SCC OnLine SC 935 further emphasizes that when courts below have



correctly applied the law and rendered a concurrent decision, the High Court must refrain from interfering unless a manifest legal error is demonstrated. Similarly, in Satyender Kumar v. Raj Nath Dubey, (2016) SUPREME COURT 2231, the Apex Court clarified that mere dissatisfaction with the outcome does not constitute a substantial question of law. The appellant has failed to demonstrate any question of law that would warrant interference by this Court.

13. In light of the foregoing, and considering the concurrent findings of fact recorded by the Courts below, this Court finds no merit in the present appeal.

14. Accordingly, the present appeal is dismissed.

DINESH KUMAR SHARMA, J

MARCH 18, 2025

Dy/ht/vm..