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

+ RSA 117/2025

DELHI TRANSPORT CORPORATION AND ORS.Appellants

Through: Ms. Rikky Gupta and Ms. Ananya
Singh, Advocates.

versus

M/S GOGIA MEDICOS THROUGH RAMESH GOGIA (SINCE
DECEASED) (THROUGH LRS)Respondent

Through: Mr. Avi Singh, Sr. Advocate with Mr.
Puneet Bajaj and Mr. Kirti Raj,
Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **08.08.2025**

CM APPL. 48591/2025 (exemption)

Exemption granted, subject to just exceptions.

The application stands disposed-of.

**CM APPL. 48592/2025 (condonation of 262 days' delay in filing the
appeal)**

By way of the present application filed under section 5 of the
Limitation Act 1963, the appellants seek condonation of about 262
days' delay in *filing* the regular second appeal.

2. In view of the order this court proposes to be pass, the delay is
condoned.
3. The appeal is taken on Board.
4. The application stands disposed-of.

RSA 117/2025 & CM APPL. 48590/2025 (stay)

5. By way of the present regular second appeal filed under section 100
of the Code of Civil Procedure 1908, the appellants impugn judgment



and decree dated 31.08.2024 passed by the learned District Judge-07, Central District, Tis Hazari Courts, New Delhi in appeal bearing RCA DJ No.61424/2016 (Old No.45/13), whereby the learned first appellate court has set-aside judgment dated 26.04.2013 passed by the learned trial court; and has partly decreed the suit filed by respondents.

6. The suit before the learned trial court was for recovery of a sum of money that was claimed to be due on 01.12.1985, which suit came to be dismissed *vide* judgment and decree dated 26.04.2013 passed by the learned trial court.
7. The court has heard Mr. Rikky Gupta, learned counsel appearing for the appellants, at some length.
8. Upon being queried, Mr. Gupta has drawn attention to the following proposed questions of law, as set-out in the memo of appeal :

“II. That the present Appeal involves the following substantial questions of law:-

1. Whether a decree could be passed holding that the Plaintiff was entitled for balance amount for supply of medicines without proving actual supply of medicines in terms of policy and office order (Notification bearing no. No.-Adm.1-7(29)/84 dated 16.04.1983, Office Order No.8 bearing no. No. AdmI-7(27)/84 dated 28.04.1984, Office Order No. 35 bearing no. No. AdmI-7(27)/84 dated 15.10.84) of DTC which disentitle a party for any reimbursement for non-specific/inadmissible product?

2. Whether a court can pass a decree on purported secondary evidence despite deliberate non production of primary evidence which were available with the Plaintiff and without either proving the necessity or requirement for leading secondary evidence?

3. Whether any liability can be fastened on a party merely on filing of invoices without either proving the entitlement of a claim



under such invoices or without proving the actual delivery of medicines under such invoices raised upon the Appellant?

4. Whether mere production of copies of invoices in itself proves the claim of the Respondents as has been held by the Learned Appellant Court?

5. Whether the Learned District Judge was correct in decreeing a suit for the amount claimed by the Plaintiffs while the claim made by the Plaintiff was partially barred by time and unenforceable in law?

6. Whether the Learned ADJ was justified in law in overturning the decree of dismissal of the suit passed by the Learned Civil Judge without there being any evidence in support of the claim made by the Plaintiff?

7. Whether the Respondent was entitled to sell the medicines above Rs. 50 in violation of the guidelines issued by DTC in which it was provided that a chemist like the Respondents cannot sell the medicines if the bill amount exceeds Rs. 50 and admittedly most of the bills were above Rs. 50?"

9. The foregoing proposed questions of law are required to be assessed in the backdrop of the essential dispute, which was about a scheme for supply of medicines by the respondents to the employees of the Delhi Transport Corporation (and their families) under a policy for supply of medicines, that was prevalent at that time.
10. In this backdrop, this court would proceed to deal with each of the proposed questions of law, as set-out in the Memo of Appeal:

II (1) The question whether a decree should be passed holding that the respondent (plaintiff) is entitled to the balance due against medicines supplied, without proving actual supply of medicines in terms of their policy and the office order, are clearly questions of fact, which have been decided by the learned trial court; and subsequently addressed by the learned first appellate court.



- II (2) The question whether secondary evidence could have been admitted despite (alleged) deliberate non-production of primary evidence, is again a matter that turns on the fact situation and the subjective satisfaction of the learned trial court as to whether the non-production of primary evidence was deliberate or not. In the present case, the issue was of non-production of the bills by the respondent, based on the assertion that original bills had already been submitted to the appellants; and calling for production of the original bills from the appellant, are yet again, a pure question of fact, that has been decided by the learned trial court based on the evidence available on record.
- II (3 & 4) The question whether liability can be fastened on a party merely on the filing of invoices, or on mere production of copies thereof, without proving entitlement to the claim based on such invoices, and without proving the actual delivery of medicines, are clearly questions of fact, which have been addressed by the learned trial court and the learned first appellate court on the basis of evidence.
- II (5) The question whether the suit could have been decreed based on a claim that was contested as being partially time-barred, is again a matter that has been decided by the learned trial court and the learned first appellate court based on the evidence that came on record.
- II (6) Whether the learned first appellate court was *justified* in overturning a decree of dismissal of the suit passed by the learned trial court, *without there being any evidence* in support



of the claim, is by the very words of the question, a matter of evidence; and is therefore, only a question of fact.

II (7) Whether the respondent was entitled to sell medicines of the value of above Rs. 50/-, allegedly in violation of the guidelines of the appellants, again refers back to the factual matrix of the matter and the evidence on record, and is therefore a question of fact.

11. In view of the above, this court is unable to discern any question of law, much less any substantial question of law, that arises in the present case.
12. In the passing, it may also be observed, that the suit from which the present regular second appeal emanates was filed in the year 1988; which eventually culminated in the passing of a money decree dated 26.04.2013 for Rs. 2,14,772/- alongwith 12% per annum interest w.e.f. 01.12.1985 till date of realisation, which now adds-up to a decretal amount of about Rs.12 lacs.
13. Accordingly, the present regular second appeal is dismissed at the stage of issuance of notice itself.
14. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

AUGUST 8, 2025

V.Rawat