

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

145

RSA-2597-2025 (O&M)

Date of decision: 12.01.2026

M/s. Modgill Building Material and another ...Appellant(s)

Vs.

M/s. Shiv Shanker Enterprises and another ...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

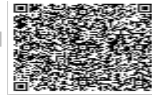
Present:- Dr. Sumati Jund, Advocate and
Mr. Rahul Saini, Advocate for the appellants.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the defendants against the judgment of reversal dated 31.05.2018; whereby the first Appellate Court has decreed the suit of the respondents/plaintiffs for recovery of Rs.1,63,218/-.

2. Brief facts of the case in chronological order are as follows: -

23.08.2016: The respondent/plaintiffs had instituted the suit with the averments that plaintiff No.1 is proprietorship Firm and plaintiff No.2 is a Proprietor/Incharge of the said Firm. Similarly, defendant No.2 is the Proprietor/Incharge and responsible person of defendant No.1-Firm. It was averred that defendants had placed an order for purchase of iron and steel goods with the plaintiffs. Plaintiffs had supplied the said goods to the defendants vide Bill No. 265 dated 13.09.2013 for a value of Rs.1,63,218/- on credit basis. It was contended that the said goods had been duly



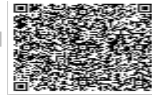
received and accepted by the defendants as per the terms and conditions of Sale Bills. As such, as on 31.03.2014, amount of Rs.1,63,218/- was outstanding towards the defendants. It was further averred that as per the terms and conditions of the Sale Bills duly accepted by the defendants, defendants had agreed to pay interest @ 36% per annum if the payment was not made on due date. Plaintiff had got issued legal notice dated 22.01.2016 calling upon defendants to pay outstanding amount alongwith interest @ 18% per annum but the defendants failed to pay the same. Accordingly, present suit was filed on 23.08.2016.

01.07.2017: Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Amloh had dismissed the suit of the plaintiffs vide exparte judgment and decree dated 01.07.2017 on the ground that plaintiffs had failed to produce original bills and had only produced photocopy of the bills and Ledgers of the Firm.

06.09.2017: The plaintiffs then filed Civil Appeal No. 120 dated 06.09.2017.

22.12.2017: In the said Appeal, service of the respondents was dispensed with by the District Judge, Fatehgarh Sahib vide order dated 22.12.2017.

31.05.2018: Thereafter, the learned District Judge, Fatehgarh Sahib had decreed the suit of the plaintiffs taking into account the fact that plaintiffs by way of application under Order 41 Rule 27 read with Section 151 CPC had led additional evidence; and the appeal of the plaintiffs was accepted vide judgment and decree dated 31.05.2018 as follows:-



“Suit of the appellants/ plaintiffs stands decreed with costs for the recovery of Rs.1,63,218/- alongwith interest @ 12% p.a, w.e.f. 13.09.2013 till date of decree and future interest @6% p.a, till actual realization.”

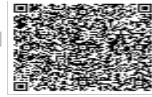
16.04.2024: Thereafter the appellants/defendants filed application dated 16.04.2024 before the learned District Judge, Fatehgarh Sahib seeking setting aside of the exparte judgment and decree dated 31.05.2018 as also for setting aside exparte order dated 22.12.2017.

29.03.2025: Vide order dated 29.03.2025, learned District Judge, Fatehgarh Sahib had allowed the said application of the appellants and had set aside the order dated 22.12.2017; as also the exparte judgment and decree dated 31.05.2018 and had restored the appeal to its original number.

09.04.2025: Thereafter, after hearing learned counsel for both the parties, the Civil Appeal filed by the plaintiffs was finally once again accepted and suit of the plaintiffs was decreed by the learned District Judge, Fatehgarh Sahib, vide judgment and decree dated 09.04.2025 as follows: -

“The appeal filed by the appellants is allowed with costs and suit filed by the plaintiffs for recovery of Rs.1,63,218/- is decreed. The plaintiff concern will be further entitled to interest at the rate of 9% per annum w.e.f. 13.09.2013 till the date of decree and future interest at the rate of 6% per annum from the date of decree till actual realization.”

3. Hence, the present second appeal by the defendants.
4. It is *inter alia* submitted by learned counsel for the appellants that learned First Appellate Court was in error in accepting the suit of the

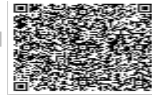


plaintiffs as it failed to appreciate that plaintiffs had not been able to prove the documents which had been placed on record by them beyond reasonable doubt. Moreover, the learned First Appellate Court ignored the fact that present appellants/defendants were not allowed to test the suit on merits as they were not properly served by the plaintiffs. Yet the First Appellate Court has decreed the suit in favour of the plaintiffs by observing that evidence put forth by the plaintiffs stand unrebutted by the defendants. It is contended that therefore, the impugned judgment and decree is based on conjectures and surmises; and is liable to be set aside. It is accordingly prayed that the present Appeal be allowed; and the impugned judgment and decree be set aside.

5. No other argument is made on behalf of Id. counsel for the appellants. I have heard Id. counsel and perused the case file in a great detail. I find no merit in the submissions made on behalf of the appellants.

6. The sequence of facts has already been noted herein above. Contention of the appellants that they were not served in accordance with law is without merit as the learned First Appellate Court has also recorded the fact that *“registered letter was sent for service of the defendants but the defendants did not appear in the learned trial Court and this Court is of the considered opinion that defendants have been rightly proceeded exparte in the learned trial Court.”*

7. Further, application filed by the appellants for setting aside exparte order dated 22.12.2017 and the exparte judgment and decree dated 31.05.2018 had been set aside by the learned First Appellate Court



vide order dated 29.03.2025; whereby Civil Appeal No. 120 has been restored to its original number. Thus, in any event, no prejudice was caused to the appellant.

8. Even further, at the time of passing of impugned judgment and decree dated 09.04.2025, the learned First Appellate Court has taken due note of the fact that plaintiff as PW1 had proved copy of the bill dated 13.09.2013 Ex.P1; copy of cash book for the year 2013-2014 as Ex.P2; statement of account from 01.04.2013 to 31.03.2014 as Ex.P3; legal notice dated 22.01.2016 Ex.P4; and copy of purchase bill Ex.P5. The learned First Appellate Court has also returned findings of fact that the sale made by the plaintiffs concerned to the defendants concerned is also reflected in the VAT Returns showing the sale and audited balance sheet which were produced by the plaintiffs by way of additional evidence. Although the appellants had filed reply to the said application denying all the facts however, the said objections were rejected and application for additional evidence was allowed. Therefore, from all the documentary evidence produced by the plaintiffs, it was proved on record that vide Bill Ex.P1, the plaintiff concern had sold material worth Rs. 1,63,218/- to the defendant concern. It is not denied that the appellants led no evidence to rebut the evidence of the plaintiffs.

9. Learned counsel for the appellants is unable to controvert or dispute the above said findings of fact.

10. In view of the above discussion, the present Regular Second Appeal is hereby **dismissed**.

11. Pending applications, if any, stand disposed of.

12.01.2026

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE