



2026:DHC:5020



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 2nd April, 2026

Pronounced on: 1st June, 2026

+ RFA NO. 189/2023, CM APPL. 11289/2023

SH. FIDA HUSSAIN

S/o Late Sh. Anwar Hussain

R/o 1738 Bazar Lal Quan, New Delhi.

.....Appellant

Through: Mr. Sunil Lalwani, Advocate.

versus

SH. ABDUL WAHID

S/o Late Sh. Zahid Hassan

R/o 468, Gali Bazar Wali,
Chhatta Lal Gunj, New Delhi.

ALSO AT:

216, Essel House, Ashaf Ali Road, New Delhi.

....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed on behalf of the Appellant, against the *ex parte Judgment and Decree dated 04.11.2022*, of the learned Additional District Judge-02, New Delhi, *whereby the Suit filed by the Appellant/Plaintiff seeking recovery of Rs.7,46,900/-, was dismissed.*



2. The *Civil Suit bearing CS DJ No. 284/2020* was filed by the Appellant/Plaintiff, *seeking recovery of Rs.7,46,900/-*.
3. The **facts as narrated in the Plaint**, were that the *Plaintiff Fida Hussain*, was introduced to the *Defendant* through a common friend in the beginning of January, 2016. The *Defendant* claimed himself to be a Civil Engineer and a registered Architect, engaged in preparation of building plans and obtaining sanctions from the Municipal Corporation of Delhi (MCD). The *Plaintiff*, intending to avail such services in respect of property bearing No. 1738, Bazar Lal Kuan, Delhi, approached the *Defendant* for preparation and sanction of the building plan.
4. The Defendant informed the Plaintiff that a sum of Rs.4,85,000/- would be required as his professional charges and out of the said amount, some amount will be paid towards statutory fees, payable to MCD. Believing the representations, the Plaintiff handed over all the relevant documents pertaining to the property to him.
5. Initially, the Building plan was submitted by the Defendant and the Plaintiff signed the requisite documents, whenever required, and also made payments from time to time, to the persons at his instruction, against the Receipt. The last payment was made on **16.03.2017** through **cheque bearing No.149468** for a sum of Rs.25,000/-, and the said cheque was given in blank on the request of the Defendant, which was encashed in the account of Ms. Aasif, stated to be related to the Defendant. The payments were made on the assurance that the Defendant would render the agreed services, however, since the said services were not provided, the Plaintiff claimed refund of the said amount.



6. However, despite repeated assurances by the Defendant that the work would be completed, no substantial progress was made and the Defendant gradually stopped responding to the calls and communications of the Plaintiff.

7. Thereafter, Plaintiff started receiving letter from MCD for completion of the formalities, while the Defendant stopped responding to his telephonic calls and communications. In the compelling circumstances and non-cooperation of the Defendant, the Plaintiff was constrained to avail the services of another Architect for completion of the requisite formalities and incurred additional expenses amounting to Rs.2,00,000/-.

8. Despite receiving substantial amounts from the Plaintiff for rendering the agreed services, the Defendant failed to perform his obligations and did not refund the amount, despite repeated requests. Consequently, the Plaintiff got issued a legal notice dated **15.06.2019** for refund the said amount. However, the Defendant failed to make the payment.

9. *The Plaintiff, thus, filed the Suit for Recovery of Rs.7,46,900/-, comprising the principal amount of Rs.4,85,000/- along with interest calculated at the rate of 18% from 17th March 2017 to till date of filing of suit a sum of Rs.2,81,900/-.*

10. ***The Defendant/Respondent was duly served with the Summon on 14.01.2021.*** However, despite service, none appeared on behalf of the Defendant and ***no Written Statement*** was filed. Therefore, he was proceeded *ex parte vide* order dated **23.03.2021**.

11. **The Plaintiff, in support of his case, examined himself as PW-1 and deposed on the same lines as the averments made in the Plaint. He proved all the requisite documents, i.e. original receipts of payments,**



Ex.PW-1/1 to Ex. PW-1/11; Photocopy of pass book of the plaintiff showing entry for cheque bearing No.149468 as Ex. PW-1/12, and Copy of Legal Notice along with postal receipts, Ex. PW-1/13 to Ex. PW-1/15.

12. The **learned District Judge** considered the evidence led by the Plaintiff and observed that even in ex-parte proceedings, the Plaintiff is required to establish his case on the basis of reliable evidence and cannot succeed merely because the Defendant has chosen not to contest the proceedings.

13. It was further observed that the Plaintiff paid a total sum of Rs.4,85,000/- to the Respondent for obtaining sanction of the building plan from the MCD. The Plaintiff proved the Receipts issued by different persons, stated to be employees or associates of the Defendant. The details of the said payment are as follows:

- i. 16.12.2014- Rs. 50,000/- to Sh. Shamshul, employee of the defendant.
- ii. 06.01.2015- Rs. 25,000/- to Sh. Mohd. Ramzan, employee of the defendant.
- iii. 20.04.2015- Rs. 25,000/- to Sh. Shamshad, employee of the defendant.
- iv. 13.05.2015- Rs. 2,25,000/- to the defendant and later on receiving crossed by defendant.
- v. 01.06.2015- Rs. 25,000/- to Sh. Shamshad, employee of the defendant.
- vi. 03.07.2015- Rs. 25,000/- to Sh. Ashif, employee of the defendant.
- vii. 07.08.2015- Rs. 25,000/- to Sh. Satender, employee of the defendant.



- viii. 05.09.2015- Rs. 25,000/- to Sh. Sarfarz Ansari, employee of the defendant.
- ix. 01.10.2015- Rs. 25,000/- to Sh. Satender Kumar, employee of the defendant.
- x. 01.03.2016- Rs. 25,000/- to Sh. Mohd. Ramzan, employee of the defendant.
- xi. 11.04.2016- Rs. 60,000/- to Sh. Satender Kumar, employee of the defendant.
- xii. Rs. 25,000/- paid through cheque bearing No. 149468 in the name of Mohd. Asif, son-in-law of the defendant with endorsement for "Abdul Wahid and Associates".

14. However, it was observed that the said Receipts were executed on plain paper and did not contain any description, seal, stamp or particulars connecting the said persons with the defendant. In the absence of any material showing authorization or employment, the Receipts by themselves, could not establish that the payments had in fact, been made to or on behalf of the defendant.

15. With regard to the Receipt concerning payment of Rs.2,25,000/-, it was noted that the document neither bore signatures of the parties nor clearly reflected the nature of transaction. The contents written in Urdu/Persian script were also not explained, before the court. It was further observed that the cross mark appearing on the document remained unexplained and, consequently held that no reliance could be placed upon the same.

16. The **learned District Judge observed** that although the Plaintiff had asserted that communications had been received from the MCD regarding



completion of pending formalities and that the building plan could not be sanctioned due to lapses on the part of the defendant, but no communication, Notice or record from the MCD had been placed on record. Moreover, no documentary evidence had been filed to substantiate the alleged expenditure of Rs.2,00,000/- claimed to have been incurred by the Plaintiff, towards engaging another Architect.

17. The learned District Judge held that the evidence placed on record was insufficient to substantiate the claim of the Plaintiff regarding payment of the alleged amount to the Defendant or the alleged engagement of the Defendant for rendering the service. **Accordingly, the Suit was dismissed.**

18. Aggrieved by the said Judgment, the present Regular First Appeal has been preferred.

19. The grounds of challenge are that the learned Trial Court failed to appreciate the true nature and effect of the evidence placed on record. It is contended that the entire case of the Appellant was supported by documentary material, in the form of receipts acknowledging various payments made towards the services undertaken by the Defendant for sanction of the building plan.

20. It is further contended that the payments were made from time to time, strictly in accordance with the instructions of the Defendant and were received either by the Defendant himself or through persons, acting on his behalf. But the learned Trial Court erred in discarding the Receipts merely on the ground that they were issued to the employees of the Defendant, despite there being no challenge to the said documents from the side of defendant.



21. The Appellant further contended that the learned Trial Court failed to appreciate the evidence in its proper perspective, particularly when the proceedings had remained ex-parte throughout. Appellant contends that even the Legal Notice dated **15.06.2019**, whereby demand for refund had been raised, remained unanswered, which constituted a relevant circumstance requiring due consideration.

22. It has been contended that the receipts were disregarded, merely because the payments had been received by persons other than the Defendant. However, the Receipts reflected that the payments were made on behalf of the defendant and, in absence of any rebuttal, the said documents should have been accepted.

23. The Appellant has also claimed that once a categorical assertion had been made that Mohd. Asif, was the son-in-law of the respondent, and the amount had been transferred at his instance; thus, such evidence should have been accepted.

24. The learned Trial Court failed to properly appreciate the evidentiary value of the unrebutted testimony of the Plaintiff and adopted an unduly harsh approach while assessing the documents placed on record.

25. It is thus, contended that the impugned Judgment and Decree is contrary to the evidence and is based on erroneous appreciation of evidence. Hence, a prayer has been made for setting aside the impugned Judgment and Decree.

Submission heard and record perused.

26. The Plaintiff/Appellant had instituted the present Suit seeking recovery of Rs.7,46,000/- on account of failure of the Defendant/Respondent to perform the agreed services, despite receipt of substantial payment.



27. The case of the Plaintiff, in essence, was that the Defendant, while representing himself to be a Registered Architect and a civil Engineer, had received substantial amounts towards preparation and sanction of the building plan from the MCD, but failed to render the promised services and subsequently, stopped responding to the Plaintiff's communications.

28. The principal issue which arises for consideration is *whether the Plaintiff had been able to establish, by way of reliable and admissible evidence, the payments made to the defendant and the consequent liability of the defendant to refund the said amount arising out of the alleged failure to render the agreed services.*

29. The fundamental principle in civil litigation is that the burden of proof lies on the plaintiff to establish the case on the basis of credible evidence, which holds good even in *ex parte proceedings*.

30. The Apex Court in the case of Maya Devi vs. Lalita Prasad, (2015) 5 SCC 350, emphasised that when a defendant has been proceeded against *ex parte*, the court is under an even greater duty to satisfy itself about the factual and legal veracity of the Plaintiff's claim.

31. In the recent case of Pramod Shroff vs. Mohan Singh Chopra, 2026 SCC OnLine SC 589, the Apex court held that even when a defendant fails to appear or file a written statement, the court cannot dispense with the points for determination altogether. The Plaintiff must show *prima facie* proof qua the existence of relevant facts and circumstances, from which the cause of action has arisen. *Simply put, a court cannot mechanically decree on default, it must identify the real issues, examine the plaintiff's evidence on each and record findings.*



32. Applying these principles to the present case, the learned District Judge correctly appreciated the evidence of the Plaintiff, to prove the payments. The Plaintiff had proved the Receipts etc., Ex.PW-1/1 to Ex.PW-1/11, in support of the total payment of Rs.7,46,000/- made to the Associates/Relative of the defendant, from December, 2014 to April, 2016.

33. None of the receipts bear the Defendant's name, seal or signature. They are plain papers purportedly signed by various individuals with first names, without any indication that they were authorized to collect money on the behalf of defendant. In the absence of any official stamp paper or any indication, such receipts hold no evidentiary value. Moreover, the plaintiff has not shown that any of these persons were in fact, the defendant's employees or agents. As the learned Trial Court observed, the Receipts by themselves, did not establish that the defendant or anyone acting under him, accepted the payments.

34. The Cheque bearing No.149468 for Rs.25,000/- in favour of Mohd. Asif is similarly inconclusive, for there is no evidence that Mohd. Asif was related to the defendant.

35. Moreover, the Appellant placed evidence showing payment of Rs.2,25,000/- to the Defendant, this could also not be relied upon. The learned Trial Court rightly noted that the said document merely contained certain writings in Urdu/Persian script, but did not bear any signatures of either party. Moreover, the unexplained cross-mark on the document, created a doubt regarding its authenticity.

36. The Plaintiff's evidence suffers from many gaps. Plaintiff introduced no evidence to show that the building plan was never submitted for sanction



by the MCD, due to the Defendant's default. The absence of MCD correspondence or sanction letter, undermines the claim of the plaintiff.

37. At the appellate stage, the Plaintiff filed certain additional documents to address the issue that could support his claim. These included Defendant's renewed Civil Engineer License, communication from the MCD indicating that the defendant was empanelled, as a structural engineer. However, these documents establish the Defendant's professional qualifications and recognition. They do not assist in proving the core question of the defendant being engaged for his services. They also do not corroborate the Receipts nor fill the void of any written contract, MCD correspondence, or other admissible evidence.

38. The ***learned District Judge, rightly held*** after detailed scrutiny of the receipts that the evidence on record, even if unrebutted, did not legally establish the Plaintiff's cause of action. The Suit of the Plaintiff/Appellant, was rightly, dismissed.

39. There is no merit in the present Appeal, which is hereby, **dismissed**. Pending Applications, if any, are also disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

JUNE 01, 2026/R