2026:DHC:4863

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

% ***Reserved on: 06th April, 2026***
Pronounced on: 29thMay, 2026

\+ **RFA 689/2023, CM APPL.44289/2023&44352/2023**

ASHISH KUMAR JAIN

S/O Shri Labh Chand Jain,
Proprietor of M/S Tanishq Cares
846, Opposite Tiwari Ji Ka Bagh.
Acharya Kriplani Marg,
Adarsh Nagar, Jaipur, Rajasthan.

Also at:

D-26, Shanti Path,Patrakar Colony,
Tilak Nagar,Jaipur, Rajasthan. .....Appellant

Through: Mr. Prateek Gupta and Mr. Karan Malhotra, Advocates.

versus

M/S D. R. JOHN'S LAB HEALTHCARE PVT. LTD.

through its Authorized Representative
212, Shahpurjat, New Delhi. ....Respondent

Through: Mr. Ashok Chhabra and Mr. Kunal Jaggi, Advocates.

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 of the Code of Civil Procedure, 1908 ('CPC') has been filed on behalf of the Appellant/Defendant, Mr. Ashish Kumar Jain against the *Judgment and Decree dated 16.02.2023*, whereby the Civil Suit of the Plaintiff/Respondent has been decreed in the sum of Rs.8,35,928.14/- along with *pendente lite* and future interest @ 18% per annum (totaling to Rs.11,36,862.4/-along with *pendente lite* and future interest @ 18% per annum).

2. The Plaintiff/Respondent M/s D. R. John's Lab Healthcare Pvt. Ltd. bearing CS DJ 8255/16, was filed for recovery of *Rs.11,36,862.4/- (principal including interest @ 18% per annum till the filing of the Suit) along with pendente lite and future interest @ 18% per annum.*

3. **The facts in brief,** are that Defendant Mr. Ashish Kumar Jain, Proprietor of Tanishq Cares, pursuant to his request vide Letter dated 08.09.2011,was appointed as a consignee agent of the Plaintiff, for the distribution of pharmaceutical goods in Rajasthan.

4. During the course of business, Plaintiff supplied pharmaceutical goods to the Defendant, on different dates on demand of the Defendant, against Form-F. The Goods were sold by the Defendant to various stockiest / distributors, against various invoices. Defendant was liable to collect the sale proceeds from the stockiest / distributors, to whom the goods were sold by him and make the payment of the same to the Plaintiff, within 30 days from the receipt of the consignment.

5. Eventually, Plaintiff noticed that Defendant had not been making the payments regularly to the Plaintiff. Despite repeated requests to the Defendant to clear the huge amounts lying pending against it, the Defendant failed to make payment. The Plaintiff terminated the consignee agency of the Defendant after 31.03.2014, and requested the Defendant to make the payment of all the stocks transferred to the Defendant and sold by him, in the due course of business.

6. However, despite repeated requests, Defendant failed to make the payments. He handed over one cheque of Rs.18,954/- issued by 'Medicose India', one of the distributors to whom the goods had been supplied by the Defendant.

7. The Plaintiff was maintaining a running current non-mutual ledger account of the Defendant, according to which *there was a balance of Rs.8,35,928.24/- as on 31.03.2014,*that was payable by the Defendant. Form-F was also required to be issued by the Defendant in favour of the Plaintiff, but this was also not done. The Plaintiff was unable to get the tax exemption and had to incur monetary losses.

8. The Plaintiff served a Legal Notice dated 15.03.2016 on the Defendant, making the claim for the outstanding amount along with 18% interest. However, Defendant failed to pay the outstanding amount. *Consequently, the Suit was filed for recovery of Rs.11,36,862.4/- (principal including interest @ 18% per annum till the filing of the Suit) along with pendente lite and future interest @ 18% per annum.*

9. The Defendant though appearing through counsel, failed to file the Written Statement or have any effective participation in the Suit.

10. The Plaintiff, in support of its case, examined ***PW-1 Sh. Pradip Kumar Das, its Authorized Representative,*** who approved the Board Resolution Ex.PW-1/1; Letter dated 06.09.2011 Ex.PW-1/2; Ledger Statement of AccountEx.PW-1/3; and Postal and courier receipts, envelope Ex.PW-1/5 (colly); e-mail correspondences Ex.PW-1/6 and Certificate under Section 65B of the Indian Evidence Act Ex.PW-1/7.

11. By way of additional evidence, the Plaintiff also examined ***PW-2 Sh. Bibhuti Kumar Mishra,*** who approved the invoices as Ex.PW-2/1 (colly) (running from page 1 to 134) and Certificate under Section 65B of the Indian Evidence Act Ex.PW-2/2.

12. **Learned District Judge,** in the impugned Judgment dated 16.02.2023, noted that despite the opportunities being given to the Defendant, no evidence was led, and he also failed to appear at the stage of final arguments. On consideration of the testimony of PW-1 and PW-2 along with the proved documents, i.e. invoices and ledgers, the Suit of the Plaintiff ***was decreed in the sum of Rs.11,36,862.4/- (principal including interest @ 18% per annum till the filing of the Suit) along with pendente lite and future interest @ 18% per annum.***

13. Aggrieved by the impugned Judgment dated 16.02.2023, Defendant /Appellant preferred **present Regular First Appeal.**

14. The **grounds of challenge** in the Appeal are that the Defendant had duly engaged Mr. K.K. Jha, Advocate, to represent them in the case before the learned ADJ, but the Advocate not only failed to file the Written Statement, documents, and evidence but also failed to defend the Appellant at any stage of the entire proceedings. He kept assuring the Appellant that he had been taking care, and the Appellant may be rest assured of the proceedings.

15. However, to the shock and surprise of the Appellant, it came to the knowledge of the Appellant only on 16.02.2023, that its counsel had failed to submit any documents or adduce any evidence on behalf of the Appellant. Learned counsel for the Appellant had taken signatures on certain Affidavits and got them stamped, but nothing was filed before the Court. Ld. Counsel also failed to cross-examine the Respondent or its witnesses or to adduce any evidence on behalf of the Defendant. He used to seek adjournment on one pretext or another, despite the last opportunity being granted by the Court.

16. A Complaint has been filed against Mr. K.K. Jha, Advocate, to the Chairman of the Bar Council of Delhi concerning his serious carelessness/misconduct, which has caused grave injustice and irreparable loss to the Appellant.

17. Reliance is placed on the judgment passed by the Supreme Court in Civil Appeal No.1741/2010 titled *Hemal Devendrakumar Kadia & Anr. vs. Devendrakumar Keshavlal Kadia & Ors*.; Judgment dated 28.04.2016 passed by Bombay High Court in the case of *Motilal Namdeo Nagdive vs. State of Maharashtra*; Judgment dated 26.10.2021 passed by Allahabad High Court in the case of *Shiv Kumar Pandey vs. State of U.P*.

18. Appellant has submitted that he never approached the Respondent / Plaintiff at his office in Delhi for being appointed as a Consignee Agent. In fact, the Respondent had approached the Appellant at its Jaipur, Rajasthan Office and had requested the Appellant to work as a consignee agent for Rajasthan, on their behalf. This Court ***has no territorial jurisdiction to entertain the present Suit***.

19. **It is further asserted that** the impugned Judgment dated 16.02.2023 is based on non-appreciation of the relevant facts and circumstances of the case. Learned ADJ ought not to have leniently decreed the Suit of the Respondent ignoring the conduct of the counsel for the Appellant, who had failed to adduce any evidence. The inaction of the counsel for the Appellant has resulted in grave injustice.

20. Hence, it is prayed that the impugned Judgment dated 16.02.2023 be set aside.

Submissions heard and record perused.

21. The Plaintiff in support of its Suit has examined PW-1Sh. Pradip Kumar Das, its Authorized Representative, who deposed that the Appellant had been appointed as consignee agent for Rajasthan by the Plaintiff / Respondent***, a fact which is admitted by the Appellant / Defendant as well.***

22. Furthermore, PW-2 has proved the copies of Invoices Ex.PW-2/1 (134 pages) to support that the pharmaceutical goods had been supplied to the Defendant for sale to the distributors/stockists. The authenticity of the Invoices has not been challenged, as the Defendant / Appellant failed to cross-examine the witnesses. Moreover, the Appellant in the Appeal has not questioned his working as the consignee agent of the Plaintiff. Not only this, PW-1 had proved the Ledger Statement of Account Ex.PW-1/3 to corroborate the Invoices and the outstanding payments.

23. The testimony adduced by the Plaintiff has remained totally uncontroverted, and as per the Ledger Accounts, the sum of Rs.8,35,928.24/-has been shown as due on 31.03.2014.

24. Moreover, the Appellant himself has relied on its letter dated 27.11.2012, which had been written to the various stockists, indicating the outstanding amount from them with a request to credit the amounts directly to the Plaintiff. These letters written by the Appellant further corroborate the case of the Plaintiff, that there were outstanding amounts due from the Appellant, which he failed to pay.

25. The Appellant cannot shy away from its obligation to pay the outstanding amount by merely asserting that the Plaintiff was at liberty to collect the outstanding payments from the stockists. It was a specific Agreement that the Defendant was liable to collect the amount for the stock supply to various distributors, stockists and thereafter, forward the payments to the Plaintiff. The burden of recovery could not have been shifted by the Appellant on the Respondent, rather his own documents and the assertions clearly show that there were outstanding amounts, which had not been paid, and the Plaintiff was entitled to recover the same.

26. Significantly, even though no Written Statement was filed on behalf of the Appellant / Defendant, he has not disclosed or challenged any of the material particulars in the grounds of Appeal. There is nothing whatsoever from where it could be inferred that the documents proved by the Plaintiff or the conclusion of the learned ADJ in support of the Plaintiff suffered from any infirmity.

27. The main contention of the Appellant is that **this court has no territorial jurisdiction.** It is stated that he was appointed as a consignee agent for Rajasthan and that he had never approached the Plaintiff at their Office in Delhi. In fact, he had contacted the Plaintiff at their office in Rajasthan. Therefore, the Delhi court had no territorial jurisdiction.

28. However, admittedly, the Plaintiff has its basis in Shahpurjat, New Delhi. Not only this, a mere glimpse at the invoices shows that the Stock Transfer Notes were being issued from the Shahpurjat, Delhi Office of the

Plaintiff and the goods were dispatched through train to Jaipur, Rajasthan. Appellant's claim that Delhi has no jurisdiction is defeated by the document, i.e. the Invoices proved as Ex.PW-1/3.

29. Furthermore, the Letters had been addressed to the Defendant from their Delhi office. Hence, it is proved that Delhi has territorial jurisdiction, as part of the cause of action had arisen in Delhi. Therefore, Appellant's contention in this regard is not tenable.

30. ***In the end,*** the Appellant has contended about the misconduct of his counsel, Mr K. K. Jha, who failed to effectively represent the Defendant during the trial.

31. The record shows that the Defendant was served by way of publication in the newspaper Hindi Daily 'Veer Arjun' on 04.12.2017, and the matter was adjourned for the filing of Written Statement. *Mr. K. K. Jha and Mr. Manish Kumar, learned counsels appeared on behalf of the Defendant on 28.04.2018* and were given time to file their Written Statement, which they failed to do and their defense was struck off on 21.08.2018.

32. The counsel for the Defendant had appeared when the testimony of PW-1 was examined. Despite this, no cross-examination was done. Likewise, on the next day, i.e. 29.12.2018, the counsels were present, but neither was the Affidavit filed, nor was any witness present. An opportunity was granted for DE, subject to a cost of Rs. 1,000/-. But, despite two opportunities, no evidence was led, which was closed on 05.04.2019, at the stage of final argument.

33. The record further shows that the counsel for the Defendant had been appearing regularly, which means the Defendant had been duly represented by the counsel. The Appellant himself has asserted that the counsel had obtained some Affidavits duly signed and stamped by it, which show that the Defendant was duly aware of the pending case. It was the duty of the Defendant to be vigilant and to ensure that they were duly represented.

34. Furthermore, despite there being an *ex-parte judg*ment, no Application was ever filed under Order IX Rule 13 of CPC, to challenge the same. In view of the evidence and the documents of the Plaintiff, the learned Trial Court rightly held that the Plaintiff had proved his case.

35. There is, however, one significant aspect which merits consideration. Learned counsel for the Appellant had contended that the Respondent Company's Letter dated 12.11.2013, reflected an outstanding amount of Rs.5,87,785/-, but the Suit has been filed for Rs.8,35,928.24/- as per Ledger Accounts dated 31.03.2014, which is contradictory to the claim of the Plaintiff himself. The Respondent / Company has added an amount of Rs.3,57,564/- in the Suit, without any basis.

36. The Appellant has referred to the Letter dated 12.11.2013 addressed by the Respondent to the Appellant, reflecting that there were outstanding dues of Rs.9,54,822/-. There was an adjustment given of Rs.2,65,538/- towards market outstanding,Rs.11,499/- as commission and Rs.1,00,000/- of the security deposit, adding up to Rs.3,67,037/-, and after adjustment of the said amount, the sum of Rs.5,87,785/- remained due and payable to the Plaintiff.

37. As per the Ledger Account, the closing balance on 31.03.2014 reflected an outstanding payment of Rs.8,35,928.24/-, on which interest of Rs.3,00,934.16/- at the rate of 18% per annum had been added.

38. However, as had been reflected by the Plaintiff himself in his Letter dated 12.11.2013, there was an amount of Rs.3,67,037/-, which was liable to be adjusted from the outstanding amount. The Suit has been filed plainly based on the outstanding amount as per the ledger account, but there is no explanation given by the Plaintiff of having given the adjustment of Rs.3,67,037/-, while calculating the outstanding liability of the Defendant. Therefore, the Plaintiff has to make an adjustment of Rs.3,67,037/- in the outstanding amount of Rs. 8,35,928.24/-,*whereby the balance amount payable to the Appellant is Rs.4,68,891.24/-.*

39. The Appellant has added the interest at the rate of 18% per annum, but has not explained any basis for calculating the interest at the rate of 18%. Considering that it is a commercial transaction, the interest is reduced to 12% per annum on the outstanding amount from 01.04.2014 till the date of payment.

40. The **Appeal is therefore partly allowed and the decreed amount is reduced to Rs.4,68,891.24/-**along with interest at the rate of 12% per annum from 01.04.2014 when the amount was due, till the date of payment.

41. **Pending Applications are disposed of accordingly**.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 29th, 2026/*R*