



2026:DHC:217



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

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*Reserved on: 7th January, 2026
Pronounced on: 12th January, 2026*

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RSA 112/2024 & CM APPL. 37166/2024

MS. ROMA JAIN

W/o Sambhav Jain

R/o C-1/3D-1,

Model Town-III,

Delhi-110009.

.....Appellant

Through: Mr. Gurbaksh Singh and Mr. Arjun
Dhamija, Advocates.

versus

M/S R.K. STOCKHOLDING PVT.LTD

Through its Director

Corporate Office at:

A-7, Block B-1, Mohan Co-operative

Industrial Estate, Mathura Road,

New Delhi-110044.

.....Respondent

Through: Mr. J. P. Pathak, Advocate

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular Second Appeal has been filed on behalf of the Appellant Roma Jain (Defendant in the main Suit) against the Judgment dated 28.03.2024 whereby the learned ADJ-04, Saket Courts, New Delhi has upheld the *Ex-parte Decree* in the Civil Suit No.1677/2019 dated



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19.12.2019, whereby the Suit of the Plaintiff/ Respondent was decreed in the sum of Rs.69,792/- along with interest @ 6% per annum.

2. The **brief facts** are that a Suit for Recovery of Rs.69,792/- along with interest @ 18% per annum was filed by the Respondent against the Appellant, who failed to appear despite service and was proceeded ex-parte *vide* Order dated 09.12.2019.

3. The Plaintiff/Respondent examined *PW1 Navdeep Varshney Director/AR of the Respondent Company* who proved the requisite documents. On the appreciation of the documents and evidence, the **Trial Court decreed the Suit of the Respondent** and held he was entitled to recovery of Rs.69,792/- along with interest @ 6% per annum.

4. Subsequently, the **Execution proceedings** were initiated by the Respondent, in which the Appellant appeared. Thereafter, he moved an Application under **Order IX Rule 13 CPC dated 21.12.2022**, to challenge the Ex-parte Judgment dated 19.12.2019. This Application was dismissed by the learned Civil Judge, *vide* Order dated 08.07.2023.

5. **An Appeal** was preferred by the Appellant against the Ex-parte Judgment dated 19.12.2019, but the same was dismissed by the learned ASJ *vide* Order dated 28.03.2024, which is the subject matter of the present Appeal.

6. The **grounds** on which the Impugned Judgment has been challenged is that the Suit was **barred by limitation**, which was not considered by the learned Trial Court and also by the learned Appellate Court. It has not been appreciated that the First Appeal under Section 96 CPC is independent remedy and has different yardstick for its decision and cannot be dismissed on the ground that the Application under Order IX Rule 13 CPC was



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dismissed, even without looking into the merits of the Suit and also that it was barred by limitation. The **Ledger Account** filed by the Plaintiff stated that after 19.09.2016 there was no trading done by the Defendant. The Suit ought to have been filed on or before 18.09.2019, whereas the present Suit was filed on 03.10.2019. The Suit was therefore, barred by Limitation.

7. **On merits**, it is contended that the Plaintiff/Respondent had not placed on record documents of sale and purchase of shares that were effected by the Plaintiff, on the instructions of the Appellant. As per the Financial Ledger of the Respondent for the period 01.04.2016 to 31.03.2017 there was a credit entry of Rs.12,72,429.07/- in favour of the Respondent on 19.09.2016 and there was no trading thereafter, and the question arose as to how could the liability of Rs.69.792/- be created. The perusal of the Statement of Account relied upon by the Respondent clearly reflects that these accounts have been manipulated and fabricated and the alleged liability has been fastened upon the Appellant illegally. These aspects have not been discussed in the impugned Judgment of the learned Civil Judge as well as the learned ADJ. *Therefore, the impugned Judgment is liable to be set aside.*

8. The **Respondent in his Reply** has taken a **preliminary objection** that the Appellant has not approached the Court with clean hands and has concealed material facts and the present Appeal amounts to gross abuse and misuse of the process of law. The Second Appeal is based on wrong, incorrect, false and baseless facts and has no truth.

9. The Respondent has submitted that the Plaintiff Company was registered under the Companies Act and earlier had its registered Office at Neel Kanth Marg, Civil Lines, Moradabad, Uttar Pradesh and thereafter,



changed its address to Mathura Road, New Delhi. The Plaintiff Company was engaged in providing *Trading services in cash and derivative segments*. It has Membership of NSE, BSE and MSEI as Trading Members. It provided other related financial services such as IPOs, sale of mutual funds, depository services, investment advisory and online trading for its clients.

10. On 01.03.2013, the Appellant had entered into an Agreement with Respondent/Plaintiff and a Client Code bearing No.NV290 was opened in the name of the Appellant. Thereafter, the services were being provided by the Plaintiff Company for dealing in securities/derivative markets through National Stock Exchange/Bombay Stock Exchange.

11. Under the terms of the Agreement, the Appellant had undertaken to pay all liabilities (i.e. market price of securities/derivatives purchases, applicable margin in the form of cash/securities, brokerage, stamp duty, securities transaction charge, service tax, etc.) and had also agreed that in case the Appellant trade on NSE/BSE/MCS-SX/USE and suffer adverse consequences or loss, the Appellant shall be solely responsible for the same.

12. Furthermore, the Plaintiff Company had a right to sell the Appellant's securities, both unpaid as well as collaterals deposited towards margins or close the Respondent's open positions, without giving prior Notice to the Appellant, if there was a failure or delay on the part of the client to meet the pay-in obligations and/or if there was a failure on the part of the client to bring additional margins to cover the increase in risk in the dynamic market conditions.

13. It was further stated that the Appellant did regular trading in her account till 19.09.2016 and got profits and losses, as per market trend. The Respondent Company also provided marginal funding to the Appellant as



and when requested by her. The Account of the Appellant stands with a debit balance for a long time which was intimated/informed to the Appellant regularly, but she failed to clear the debit balance. She was irregular in payments and the debit balance kept on increasing in the Books of Accounts, which she failed to clear despite repeated requests and assurances. She then started avoiding telephonic requests.

14. As on 17.05.2019 there was an outstanding amount of Rs.66,268.03/- in the account of the Appellant. A Demand Notice dated 17.05.2019 was served upon the Appellant despite which she did not clear the outstanding debts. The Appellant, thereafter, **filed a Suit for recovery which has been decreed ex-parte vide Judgment dated 19.12.2019.**

15. An Execution was filed by the Respondent the Notice of which was issued to the Appellant. On receiving the Summons, she appeared before the Executing Court through the Counsel on 30.09.2022 and undertook to pay the decretal amount. However, she thereafter, kept on delaying the matter on the false ground of settling it. Instead, she filed an Application under Order IX Rule 13 CPC which was dismissed by the learned Trial Court *vide* Order dated 08.07.2023. This Order was not challenged by the Appellant instead of which an Appeal was preferred before the learned District Judge against the ex-parte decree, which also got dismissed on 28.03.2024. **On merits**, all the grounds agitated in the Appeal have been denied.

16. It is further explained that on 22.09.2016 a sum of Rs.12,45,889.52/- was transferred in the account of the Appellant after which there was a credit balance of Rs.26,539.55/-. On 30.09.2016, an amount of Rs.69,405.21/- was charged as interest towards the late payment charges, and after adjustment of credit balance of Rs.26,539.55/-, there was a still a debit of Rs.42,865.66/-



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on 30.09.2016. The Statement of the Ledger Account is correct and the correct factual position has not been correctly reflected by the Appellant.

17. It is further submitted that *the issue of limitation* was never raised before the Appellate Court and is now trying to make a wrong statement in this Court. There is no illegality in the Ex-parte Decree and the present Second Appeal is liable to be dismissed.

Submissions heard and record perused.

18. Admittedly, the parties entered into a Share Trading Agreement dated 01.03.2013 and a Client Code NV290 was opened in the name of the Appellant in respect of purchase of shares and stocks through the Plaintiff. It is the case of the Plaintiff itself that there was regular trading done in the account of the Appellant till 19.09.2016 and the profit and losses as per market trend were accordingly reflected in the Statement of Account. It is further explained by the Plaintiff itself that there was regular trading in her Account till 19.09.2016.

19. As per the Ledger Account as on 22.09.2016, there was a credit in the account of the Appellant and a sum of Rs. 12,45,889.52/- to the account of the Appellant after leaving a credit balance of Rs. 26,539.55/- on the said date. On 30.09.2016 a sum of Rs.69,405.21/- was charged as interest on the late payment Charges after adjustment of credit balance of Rs.26,539.55/-; there remained a debit balance of Rs. 42,865.66/- on 30.09.2016 on which regularly interest was being charged till the filing of the Suit, which the Appellant failed to pay despite service of Legal Notice of Demand dated 17.05.2019. Plaintiff has proved from the statement of the Ledger Account that there was an outstanding amount of Rs.69,792/- in August, 2019 on account of non-payment of late payment charges by the Appellant.



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20. The first aspect for consideration is whether the Suit was filed within a **period of Limitation**. At the outset, an objection has been taken on behalf of the Respondent that the *issue of limitation* was never raised in any of the prior litigation and the same cannot be agitated for the first time in the second Appeal. However, this argument is not tenable for the simple reason that the question of limitation is purely a legal question of law, can be agitated by a party at any stage of litigation.

21. There was an entry of Rs.69,405.21/- made on 30.09.2016 as interest on the late payment Charges after adjustment of credit balance of Rs.26,539.55/-; there remained a debit balance of Rs. 42,865.66/- on 30.09.2016 on which regularly interest was being charged which added up to Rs.69,792/- in August, 2019, at the time of filing of the Suit. Present Suit has been filed on 03.10.2019 which is well within the period of limitation. Therefore, the contention of the Appellant that the Suit was filed beyond the period of limitation, is not tenable.

22. The *second ground* of challenge in the Appeal is that the Ledger Accounts are false and fabricated and the entries have been manipulated. However, this is the defence of the Appellant which should have been agitated in the Trial Court and proved the same by leading evidence. However, he failed to put his defence as he was proceeded ex-parte and the Suit was not contested by him. His Application under Order IX Rule 13 CPC has been dismissed not only by the Trial Court, but also in Appeal by the learned District Judge. Once the Defendant has failed to present any defence, the same cannot be agitated for the first time in the present Second Appeal.

23. There is no merit in the present Appeal which is hereby **dismissed**.



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24. The Appeal stands disposed of along with the pending Application(s).

**(NEENA BANSAL KRISHNA)
JUDGE**

JANUARY 12, 2026/VA