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

\+ **RFA 426/2021**

NIRMAL GOEL .....Appellant

Through: Mr.Prem Garg and Ms.Rinky Singhal, Advocates.

versus

MANOHAR LAL .....Respondent

Through: Mr. Sanjeev Aggarwal, Adv.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **11.03.2026**

CM APPL. 45151/2021

1. An Application under Section 5 of Limitation Act, 1963 has been filed on behalf of the Appellant seeking condonation of delay of 696 days in re-filing the present Appeal.

2. It is submitted that the Appeal was originally filed in June, 2019 by previous Counsel Mr. Ajay Gaur and Appellant was informed that Appeal was lying with the Registry of this Court for scrutiny and the same will be listed after approval. After few weeks, when the Appellant enquired the status of the Appeal, he was told that number of defects have been pointed out in the Appeal by the Registry and it would take some time to remove the same.

3. Thereafter, on 03.03.2021, previous Counsel contacted the appellant and told her that the defects could not be rectified and Registry has returned the file of original Appeal and they have to file fresh Appeal. Due to COVID-19 situation, Appellant was able to file the Appeal only in May,

2021. Prayer is therefore, made that the delay be condoned.

4. Application is supported with Additional Affidavit of the Appellant, wherein it has been explained that the Appeal got filed on 19.06.2019, but was eventually returned. It is submitted that Appellant also acquired COVID and remained hospitalised for 34 days. Moreover, because the prevailing COVID-19 situation, it was difficult for the Appellant to contact a new Advocate, resulting the delay in re-filing the Appeal.

5. Application is opposed by learned counsel for the Respondent/Defendant, who submitted that name of the Counsel by whom the Appeal was filed, has been mentioned incorrectly. There are no cogent reasons to explain the delay in re-filing the Appeal. It is therefore, submitted that this Application seeking condonation of delay in re-filing the Appeal, is liable to be dismissed.

Submissions heard and record perused.

6. The Impugned Judgment was passed on 12.03.2019 and the Appeal was preferred on 29.06.2019, while it should have been filed till 12.06.2019. Not only this, because of multiple defects, it was returned, after which it has been filed on 10.12.2021. It cannot be overlooked that there was COVID-19 Pandemic from 15.03.2020 till 28.02.2022 and this period has to be excluded.

7. There is some delay and explanation for delay from June, 2019 till March, 2020 is that there were multiple defects, which previous Counsel was unable to rectify, after which there was COVID-19 Pandemic and Appeal got delayed in re-filing.

8. Considering the explanation given, the delay of 696 days in re-filing the present Appeal, is condoned.

9. Application is disposed of.

CM APPL. 54206/2024

10. For the reasons stated in the Application, delay of 107 days in filing Additional Affidavit, in terms of Order dated 23.01.2024, is condoned.

11. Application is disposed of.

RFA 426/2021:

12. Appeal under Section 96 read with Rule 1 Order XLI of CPC has been filed on behalf of the Appellant against impugned Judgment and Decree dated 12.03.2019, wherein the *Suit filed by the Plaintiff /Appellant for Recovery of Rs.9,44,080/-, has been partly decreed* in the sum of Rs.2,14,960/- (Rs.4,90,000/- already paid) along with interest @ 8% per annum w.e.f. 01.04.2008 till its realization.

13. Initially, the Suit was filed by the Plaintiff under Order XXXVII of CPC, but Leave to Defend Application filed by Defendant was allowed *vide* Order dated 20.08.2009 and Suit was treated as Ordinary Suit.

14. Brief facts are that Plaintiff / Appellant was the proprietor of M/s. Alcon Plas and Defendant / Respondent had purchased moulding power on credit, from the Plaintiff during the period from 22.09.2007 to 31.03.2008 as per the Bills, but failed to make payment. Plaintiff has also paid Rs.23,601/- towards Central Sales Tax @ 3% per annum against the said Bills, but Defendant failed to issue C-Form for which Defendant is liable to pay Rs.7,867/- as 01% of the total sales excluding Central Sales Tax.

15. Hence, Suit for recovery of Rs.8,33,128/- along with interest @ 24% per annum (i.e. *of Rs.9,44,080/-*), was filed by the Plaintiff / Appellant.

16. Defendant/Respondent in its Written Statement took the *preliminary objections* that Plaintiff had filed no document to show that she is proprietor of M/s Alcon Plas. Defendant asserted that Plaintiff had approached him somewhere in the March, 2008 and stated that she was in severe difficulty for the reason of some differences of about Rs.8,00,000/- in conciliation of the Account Statement and Chartered Accountant had advised that this problem can be effectively met if he could arrange some that Invoices for preceding 5-6 months. Consequently, Plaintiff requested the Defendant that if he would agree for issuance of such Invoices in his name without any actual transaction being done either way. On request of Defendant and because of old relations, Plaintiff agreed and issued certain Invoices to the tune of or about Rs.8,00,000/-, in the name of Defendant.

17. **On merits**, Defendant denied purchasing any moulding material from Plaintiff on credit basis from the period 22.09.2007 to 31.03.2008, as per the alleged Bills or even otherwise. It was denied that Plaintiff was liable to pay Rs.23,601/- towards alleged central sales tax @ 3% per annum against the said Bills or Rs.7,867/- for not providing C-Form. It was thus, submitted that by Defendant that Suit is liable to be dismissed.

18. **Issues were framed** on 25.11.2009 as under:

> "*1) Whether plaintiff is entitled to money decree of Rs.9,44,080/- against the defendant apart from interest @ 24% per annum pendent lite till date of realization as prayed? (OPP)*
>
> *2) Relief.*"

19. Plaintiff examined herself as **PW-1,** PW-2 Sh. Vijay Kumar Kohli, Asst. Manager, Syndicate Bank; **PW-3** Mohd. Jaffir Alam, Driver, to prove the delivery of goods; **PW-4** Sh. A. K. Bhandari, Asstt. Manager, Syndicate Bank; **PW-5** Sh. S. S. Rathi, VAT Inspector; **PW-6** Ms. Gomti Mattu, UDC from Office of VAT Officer; **PW-7** Sh. Sanjeev Kumar, UDC from Office of VAT Officer; and **PW-8** Sh. Satish Gael, her husband.

20. Defendant examined Sh. Satyawan Tejwani as DW-1; and its proprietor Sh. Manohar Lal as DW-2.

21. Learned Trial Court, after considering the evidence of the parties, *vide* impugned Judgment and Decree dated 12.03.2019, partly ***decreed the Suit of the Plaintiff in the sum of Rs.2,14,960/- along with interest @ 8% per annum.***

22. Aggrieved by *partial dismissal of the Claim* of the Suit, ***Plaintiff has filed present Appeal*** challenging the impugned Judgment and Decree dated 12.03.2019.

23. **The grounds of challenge** are that it has not been considered that Invoices had been admitted by the Defendant and had merely disputed actual delivery of goods, which has been proved by PW-3 Mohd. Jaffir Alam, Driver of transporting vehicle. The testimony of PW-3 has been erroneously disbelieved for want of documentary evidence, i.e. separate bilty, toll receipts, etc. It has also not been considered that in the cross-examination of PW-3, no question was put to him as to whether he could produce documents; despite that learned District Judge has rejected the testimony of PW-3.

24. Learned District Judge, in Paragraph No.32 of the impugned Judgment and Decree dated 12.03.2019, has observed that neither in the Bills Ex.PW-1/B1 to Ex.PW-1/46 nor in the Plaint, the vehicle number is mentioned, but it has not been noticed that on each and every Invoice, delivery vehicle number was mentioned and proved by witness PW-3.

25. Learned District Judge observed that Plaintiff failed to examine the receiver of the goods as a witness, but failed to observe that the receiver was a representative of Defendant and there would be no use of calling him into witness box, by the Plaintiff.

26. Defendant was giving a false defence of an illegal transaction of issuance of fake Invoices without actual delivery of goods, but the delivery of goods has been proved, despite which the learned Trial Court decided that only some of the goods, have been proved to be delivered.

27. Plaintiff's Suit has been partially allowed only on the basis of the purchases shown by the Defendant in his VAT returns, but it has not been considered that the Returns filed by the Defendant were beyond the control of Plaintiff and that the Plaintiff could not do anything, if Defendant chose not to show all the purchases from the Plaintiff, in his VAT returns.

28. While the Defendant had denied any kind of purchases of goods from Plaintiff, but on the other hand, the Defendant has shown purchases in his VAT returns. Therefore, no benefit of any kind could be given to the Defendant, as his complete defence disclosed in the Written Statement, was false.

29. A Prayer is therefore, *made that the Suit be decreed for the balance amount of Rs.1,25,941/- along with interest @ 8% per annum.*

30. ***Learned counsel for the Respondent*** submits that learned District Judge has rightly appreciated the evidence on record, to conclude that there was no proof of delivery of goods worth Rs.1,25,941/- and Plaintiff's claim has been partly rejected for various reasons. There is no infirmity in the impugned Judgment and the Appeal is liable to be dismissed.

Submissions heard and record perused.

31. The Plaintiff/Appellant had filed a Suit for Recovery of Rs.8,33,128/-

along with interest @ 24% per annum on the basis of the Invoices, through which the goods had been supplied to the Respondent. PW1, Ms. Nirmal Goel, in her testimony, had proved the Invoices being Ex.PW1/B1 to PW1/B46, against which the goods were supplied, during the period from 22.09.2007 to 31.03.2008.

32. The Respondent/Defendant in his Written Statement as well as in the evidence, examined DW1 Satyawan Tejasvi, his brother, and himself as DW2. They both in their testimony, did not deny the genuineness of the Invoices, but have asserted that the said Invoices were created on the request of the Plaintiff, who wanted entry adjustments during this period, on the advice of their Chartered Accountant.

33. While this defence was taken by the Defendant in his Written Statement, however DW2, Manohar Lal, in his cross-examination, admitted that they had been doing business with the Plaintiff and further stated that they were not maintaining accounts regarding purchases made from the Plaintiff or the payments being made to them. He was also not aware if C-Forms were issued by them to the Plaintiff against the purchase of the goods, as the paper work was handled by his brother, Satyawan Tejasvi.

34. DW1, Satyawan Tejasvi, in his testimony, admitted that the Defendant Firm, M/s Mehran Plastic, is engaged in the manufacturing of melamine crockery, for which melamine powder is used and that they had business dealings with the Plaintiff, since 2006. It was also admitted that they had been purchasing moulding powder from the Plaintiff, though it was claimed that such purchases were not on credit, but against payments. He further volunteered that whenever goods were delivered along with the Bill, they were making payments of the entire amount of the Bill.

35. Significantly, from the admissions of DW1 as well as DW2, it emerges that the Defendants had been regularly purchasing goods from the Plaintiffs since 2006. It has also emerged that the goods were being supplied as per the Invoices and that the payments were being made accordingly. Although both DW1 and DW2 were evasive with respect to the CST Forms, their testimony nonetheless, confirms the course of dealings between the parties.

36. The *learned District Judge,* in the impugned Judgment, relied on the testimony of PW7 Sanjeev Kumar, UDC, VAT Department, who proved the Invoices and deposed that in respect of the goods worth Rs.7,04,960/- shown to have been purchased from the Plaintiff, the same were duly reflected in the records of the VAT Department. These documents had been furnished to the VAT Department by the Plaintiff, evidencing that the goods were supplied to the Defendant.

37. It was further held that from the Bank Statement PW4/A, a sum of Rs.4,90,000/-, had been paid in the year 2007-2008 by the defendant, thereby making the Defendant liable to pay a balance of Rs.2,14,960/- out of the total value of Rs.7,40,960/-.

38. The learned District Judge found that out of Rs.7,04,960/- dur to the Plaintiff, Rs.4,90,000/- was found to have been paid, **leaving a balance of Rs.2,14,960/-.**

39. However, the claim qua the remaining amount of Rs.1,25,941/- was rejected on the ground that there was no corresponding VAT Certificate in respect of the said bill. It cannot, however, be overlooked that the Plaintiff had claimed that no C-Form had been issued in respect of these Bills and he had claimed an amount towards the C-Forms.

40. The few Bills which were not accepted, had been issued by the Plaintiff/Appellant in the same manner as the other Bills, which had been accepted. The plea of the Defendant that no goods were proved to be supplied is definitely untenable, particularly when the same set of transactions, has been accepted to the extent of Rs. 7,04,960/-.

41. On the same analogy there is no reason for the Court to not believe the supply of goods *viz-a-viz* the remaining Invoices in the sum of Rs.1,25,941/-. However, Invoice No.710 dated 03.03.2008 in the sum of Rs.21,321/- has admittedly not been placed on record and, therefore, the said amount cannot be granted to the Plaintiff/Appellant. Accordingly, it is held that the Plaintiff/Appellant is entitled to the recovery of Rs.1,04,620/-.

42. The impugned Judgment of the learned District Judge dismissing the claim of the Plaintiff for Rs.1,04,620/- is hereby, set aside.

43. In the light of the above discussion, ***the Suit is further decreed for the sum of Rs.1,04,620/- along with interest @ 9% from the date of institution of the Suit till the date of realization.***

44. The Appeal is accordingly, disposed of along with the pending Application(s).

NEENA BANSAL KRISHNA, J.

MARCH 11, 2026/*R/VA*