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

% *Date of Decision : 02.04.2026*

\+ RFA(COMM) 81/2022

KAPIL AGGARWAL

.....APPELLANT

Through: Mr. Rajiv Bakshi, Mr. Pranav Pareek and Mr. Ram Pravesh Rai, Advs.

versus

SATBIR SAINI & ANR

.....RESPONDENTS

Through: Mr. Paras Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO , J. *(ORAL)*

CM APPL. 1476/2025 (Condonation of delay)

1. For the reasons stated in the application, the delay of 17 days in filing the affidavit is condoned.

2. The application is disposed of.

RFA(COMM) 81/2022 & CM APPL. 45612/2022

3. This appeal has been filed against the judgment and decree dated 19.09.2023 passed by the District Judge (Commercial Court), Central District, Tis Hazari Courts, Delhi in CS (COMM.) 3475/2021 dismissing the suit of the appellant while holding that the appellant has committed perjury

and imposing costs Rs. 1,00,000/- payable to the Prime Minister's Relief Fund and further Rs. 50,000/- payable to the respondents.

4. At the outset, we may briefly narrate the factual matrix leading to filing of the suit, as set out in the appeal. The appellant/plaintiff is the proprietor of Prime Marketing, operating its business from Delhi and Faridabad for which separate GST Identical Number (GSTIN) for Delhi and Haryana have been issued in the name of the said firm. The appellant/ plaintiff has been manufacturing aluminium composite panel/plastic window etc. for the past many years. Respondent no. 1 herein, the proprietor of respondent no. 2 firm, had been placing purchase orders through telephone and personal visits at the office of the appellant.

5. The appellant/plaintiff supplied the desired goods to the respondents from Delhi and Faridabad on different dates and has been maintaining separate statement of accounts/ledger statements for separate transactions from Delhi and Faridabad. The appellant/plaintiff supplied goods worth Rs. 6,87,356/- to the respondent/defendant from Faridabad and raised two tax paid invoices for Rs. 66,329/- dated 09.03.2018 and Rs. 6,21,027/- dated 15.04.2018 respectively. The appellant/plaintiff also paid GST as applicable, against the value of the said invoices and input tax credit thereof has been taken by the respondents/defendants.

6. Respondents/defendants during the period from 19.04.2018 to 09.07.2018 made payment of Rs. 6,87,356/- against the said invoices raised for the supply of goods from Faridabad and nothing was due and pending against the same. One payment of Rs. 1,50,000/- made by the respondents on 11.09.2018 was partly adjusted by the appellant to the extent of Rs.

86,329/- in the Faridabad ledger account and the balance of Rs. 63,671/- is shown as credit in the ledger account for Delhi.

7. In 2018, the appellant was also supplying goods to the respondents from Delhi for which a separate account of ledger was maintained, but the respondents made only part payments against the said invoices raised from the Delhi office of the plaintiff/appellant, which led to accumulation of outstanding amounts to the tune of Rs. 6,47,832/-. The appellant issued a legal notice dated 06.03.2021 demanding the outstanding payment and thereafter, filed the suit for recovery of amount of Rs. 6,97,732/-, which was outstanding. Since the goods were supplied only from Delhi, the appellant did not refer to supply of goods from Faridabad and any receipt of payment thereof. The respondents entered appearance in the suit and belatedly filed their written statement, which was taken on record by the Commercial Court, subject to payment of costs of Rs. 10,000/-

8. In the written statement, the respondents admitted the statement of accounts/ledger statement filed by the appellant along with his suit but it was contended that there was nothing due and payable by the respondents as the entire payment has been made by the respondents to the appellant.

9. It is alleged that the respondents *inter-alia* filed a false statement of accounts which reflected all payments made for goods supplied from Faridabad as payment for goods supplied from Delhi, which according to the appellant, was an attempt to mislead the Court. The said payments could not match the amount of invoices raised by the appellant for supplies made from Delhi.

10. The Commercial Court *vide* order dated 08.06.2022 framed the

following issues:-

> *"1. Whether plaintiff is entitled to recover suit amount as prayed for? OPP*
> *2. Whether plaintiff is entitled to any interest, if so for which period and at what rate?*
> *3. Whether the defendant had already cleared and made the entire payment to the plaintiff of the goods received and nothing is due now? OPD*
> *4. Relief."*

11. The Commercial Court found that there is no dispute as to the supply of goods. The only defence of the respondents was that they had made paid the entire due amounts to the appellant. Therefore, the Commercial Court decided to first record the evidence of the respondents while holding that after examination of the respondents, there might not be need for examination of witnesses of the appellant. On 02.07.2022, the appellant filed an application under Order XI of the Code for Civil Procedure, 1908 (CPC) seeking permission of the Court to place on record two tax paid invoices for Rs. 66,329/- dated 09.03.2018 and Rs. 6,21,027/- dated 15.04.2018 regarding supply of goods from Faridabad to the respondents and also a screenshot of the GST website. In the meanwhile, the respondents filed an application under Order VII Rule 11 CPC for rejection of plaint, which was dismissed by the Commercial Court subject to costs of Rs. 5,000/-. By order dated 15.07.2022, the Commercial Court allowed the application of the plaintiff under Order XI CPC.

12. Respondent no. 1 filed his affidavit of evidence as DW-1. However, in the affidavit of evidence, the payments made towards supply of goods from Faridabad were clubbed with part payments for goods supplied from

Delhi in order to show that he made all the payments to the appellant *qua* invoices raised for supply of goods from Delhi. In his affidavit of evidence, he accepted three documents including the ledger maintained by respondent no. 1 (Ex. DW-1/1), clubbing payments of Delhi and Faridabad transactions allegedly filed by the plaintiff *qua* supply of goods. The respondents also claimed that an excess payment of Rs. 53,290/- has been made to the appellant.

13. On 18.07.2022, the respondent no. 1 was cross-examined as DW-1 wherein he deposed that he made payments of Rs. 1,21,027/- against the invoice of Rs. 7,655/-, Rs. 1,40,000/- against the invoice of Rs. 73,139/-, Rs. 90,000/- and Rs. 50,000/- against the invoice of Rs. 82,503/-.

14. The respondent no. 1 also deposed that he had made a cash payment of Rs. 1,00,000/- whereas in his ledger he mentioned that it was through self cheque, which was not withdrawn from the Bank.

15. The appellant/plaintiff also put two tax paid invoices for Rs.66,329/- dated 09.03.2018 (Mark A) and Rs.6,21,027/- dated 15.04.2018 (Mark B) (regarding supply of goods from Faridabad) but he denied receipt of goods against the said invoices and he also deposed that he did not receive any goods from the Faridabad office of the appellant. The DW- 1 was confronted with Mark C and Mark D regarding the GST deposits made by the appellant against Rs.66,329/- dated 09.03.2018 and Rs.6,21,027/- dated 15.04.2018 he did not offer any comment on the same. The DW-1/1 (ledger maintained by respondent no.1) filed by the respondent no.1 with the written statement and produced during evidence were different and DW-1/1 was not accompanied by Certificate under Section 65-B of Indian Evidence Act, 1872. The DW-

1/respondent No.1 also denied the suggestion that payments made from 19.04.2018 to 09.07.2018 were towards bills Mark A and Mark B.

16. It is also stated that the respondent no.1 examined himself as the only witness and closed his evidence. In view of the order dated 08.06.2022 the parties closed their evidence on 18.07.2022. The matter was fixed for final arguments on 29.07.2022.

17. On 23.07.2022, the respondent no.1 filed an application under Section 151 CPC to place on record two pages of the ledger statement from 01.04.2018 to 15.01.2019 and 01.04.2020 to 31.03.2020 along with the certificate under Section 65-B of the Evidence Act.

18. The Commercial Court, pursuant to an application by the respondent no.1 took on record the bank statements of Bank of Baroda and Yes Bank and marked the same as Exhibits DX and DY. The application filed on 23.07.2022 was also withdrawn by respondent no.1 with liberty to file fresh application. The counsel for the respondents submitted that he would file a fresh application for placing on record the original documents of Ex. DW-1/1 & Ex. DW-1/3. On 17 .08.2022, the respondent no.1 filed an application under Order XI Rule 1(10) CPC which was considered by the Commercial Court on 20.08.2022. During the hearing of the application, it was observed by the Court that the original of DW-1 is different from the copy of the same which was tendered by the respondent no.1 at the time of evidence and as such the same was not accepted. The Commercial Court dismissed the said application of the respondent no.1 by passing a reasoned order dated 20.08.2022 and matter was fixed for final arguments on 31.08.2022.

19. The matter was finally heard by the Commercial Court on 12.09.2022

and *vide* judgment and decree dated 19.09.2022, the suit of the appellant/plaintiff was dismissed.

20. It is the case of the appellant that the Commercial Court failed to consider that the two tax paid invoices for Rs.66,329/- dated 09.03.2018 and Rs.6,21,027/- dated 15.04.2018 were against the supply of goods from Faridabad. The payments made between 19.04.2018 to 09.07.2018 do not show any nexus with the invoices raised by appellant *qua* supply of goods from Delhi.

21. It is also averred that the Commercial Court did not consider the screenshots taken from the GST website establishing the deposit of Rs. 5058.95 towards CGST and Rs. 5058.95 towards SGST *qua* invoice for Rs. 66,329/- dated 06.03.2018 and further deposit of Rs. 47,366.49 towards CGST and Rs. 47,366.49 towards SGST *qua* invoice for Rs. 6,21,027/- dated 15.04.2018, which would make it clear that the respondent No. 1 falsely deposed before the Commercial Court that he did not receive any goods from Faridabad. Further, it is stated that the Commercial Court also failed to appreciate that there was no nexus between the payments shown by DW-1 in Table B of his affidavit of evidence with invoices raised for supply of goods from Delhi as shown in ledger account DW-1/2 (ledger statement maintained by plaintiff). It is evident from the deposition of DW-1 that he falsely deposed that he made payments of Rs. 1,21,027/- against the invoice of Rs. 7655/-, Rs.1,40,000/- against the invoice of Rs. 73,139/-, Rs. 90,000/- & Rs.50,000/- against the invoice of Rs. 82,503/-. Even the statement that DW-1 made a cash payment of Rs. 1,00,000/- is also contradictory to the ledger exhibited as DW-1/1, which shows the payment was through self

cheque which was not withdrawn from the Bank.

22. It is also stated that the Commercial Court while observing that the affidavit of evidence of DW-1 is beyond pleadings in the written statement, yet it proceeded to rely upon the same, going against the settled law that evidence beyond pleadings is not permissible.

23. Further, it is submitted that the Commercial Court also committed an error in observing in paragraph (e) of impugned judgment that appellant never tried to rectify the alleged mistakes done in this regard in its own ledger by stating that entries of transactions from Faridabad have been inadvertently incorporated in the ledger maintained in Delhi. The said observation, according to the appellant is without any basis as it was never his case at any stage of suit that the payment of Rs.3,55,279/- (gross total of credit entries of Rs.63,761/-, 1,10,000/-, 60,000/-, 40,000/-, 50,000/-, 16385/- and 15223/- in the ledger account filed with the suit) are part payments for Faridabad. All through the proceedings, it was the case of the appellant that amount claimed in the suit is *qua* the invoices raised from Delhi.

24. It is also stated that the Commercial Court has erroneously held that the appellant changed its stand and created a story regarding some different transactions of his firm situated in Faridabad. The appellant in order to clarify the deliberate confusion created by the respondents, filed an application under Order XI CPC for placing on record documents Mark A to Mark D to show the falsity of stand of respondents. The respondent did not even file any reply to the said application to deny the averments made about the supply of goods from Faridabad. Therefore, as per the appellant there is

no change of stand as held by the Commercial Court.

25. Another submission on behalf of the appellant is that the Commercial Court has failed to appreciate that the appellant/plaintiff did not step into the witness box in view of the order dated 08.06.2022 wherein it was recorded that after the evidence of defendant, there may not be any necessity to examine the witness of the plaintiff. Therefore, non-appearance of appellant as witness is not sufficient to draw any adverse inference against him.

26. It is also submitted that the Commercial Court has misconstrued the facts of the case and observed in paragraph (e) of the impugned judgment that "*there was no averments made in the plaint that total 7 entries of Rs.3,55,279/- were relating to his other firm of Faridabad and not of the Delhi firm*". It was never the case of the appellant that 7 entries in the ledger statement filed with the suit are with regard to Faridabad. The case of the appellant was based on recovery of dues against the invoices raised from Delhi only. It is to clarify the deliberate confusion created by the respondents by clubbing the payments of transactions from Faridabad and Delhi, that the appellant placed on record the invoices, GST payment proof and ledger statement of the Faridabad transactions; however the Commercial Court did not consider the said documents in the right perspective.

27. On the other hand, the respondent No. 1 contested the case and in the written statement admitted that he used to purchase goods from the appellant from time to time since 2018 but alleged that he had already paid the entire amounts in respect of the goods received and nothing was outstanding against him. He relied upon bank statements and ledger statements of his own and also issued by the appellant. He also stated that in respect of the

good supplied, the appellant never raised any objection for the years 2018 and 2019 and made a false claim only in March 2020.

28. It is stated, that in the plaint, the appellant has mentioned "*Plaintiff was having business dealing with Defendants and has been supplied goods to Defendants from Delhi address*" and also that "*Plaintiff is having its office at Paharganj, Delhi. All the negotiations relating to the supply of goods took place between the parties at Delhi. The goods were supplied by the plaintiff from Delhi*". These facts prove that the entire business transactions between the parties took place in Delhi only.

29. It is also stated that there is a contradiction between the legal notice dated 06.03.2020 and the suit inasmuch as a claim of Rs. 6,47,732/- was mentioned in the former while an amount of Rs. 6,97,732/- was mentioned in the latter. This according to the respondents, show that the appellant does not have a legitimate claim.

30. According to the respondents, by way of the affidavit in evidence exhibited as Ex-DW1/A, all payments made to the appellant have been explained. The justification provided by the respondents is reproduced as under:

> *"i. Ex-DW-1/1-Ledger Account of Plaintiff maintained by Defendant was not accepted as evidence being photocopy.*
> *ii. Ex-DW-1/2-Ledger Account of Defendant maintained by Plaintiff (this document was also filed by Plaintiff in Plaint). As per Table A of para 2 of Affidavit-in-Evidence, it is a matter of record that the amount of total Sales made by Appellant and the total Purchase made by Respondent, is Rs. 10,53,011/- (Rupees Ten Lacs Fifty Three Thousand and Eleven Rupees only). As per DW-1/2 and Table C of para 5 of Affidavit-in-Evidence, Appellant has admitted that Appellant has received Rs. 3,55,279/- (Rupees Three Lac Fifty Five Thousand Two*

Hundred and Seventy Nine only) from Respondent.

iii. Ex-DW-1/3-Bank Statements (Yes Bank and Formerly Vijaya Bank, now Bank of Baroda) of account of Respondent was not accepted as evidence as the same was not certified as per Banker's Book Evidence Act. For this purpose, Respondent moved an application dated 23.07.2022 under Order 16 Rule 3,CPC for issuing summons to bank witnesses from Bank of Baroda and Yes Bank along with production of details of beneficiary of the bank entries and certificate as per requirement of Banker's Book Evidence Act.. In this application, Respondent also gave complete details of the bank entries which were earlier exhibited as DW1/3 showing payment made by Respondent to the Appellant-Prime Marketing.

iv. Accordingly, Bank appeared with respective record of bank entries (which were earlier exhibited as Ex-DW1/3) along with mandated certificate, showing payment made to Appellant by Respondent and the same were exhibited as Ex-DX and Ex-DY by the Respondent. It is also to be noted that Appellant did not object to these payments.

v. It is a matter of record that the Appellant admitted all bank entries of Rs. 6,51,027/- (Rupees Six Lac Fifty One Thousand and Twenty Seven only) exhibited as Ex-DX and Ex-DY without any objection/cross-examination, as recorded by Ld. Trial Court in its order dated 17.08.2022 (Pg 219 to 221 of RFA).

vi. In view of point ii and v, on the basis of evidence on record, Appellant admitted that Appellant has received Rs. 10,06,306/- (Rupees Ten Lac Six Thousand Three Hundred and Six Only) from Respondent, which the Ld. Trial Court has also observed in Para 5(d) at Page 9 of its impugned judgment.

vii. In cross-examination, Appellate had only put irrelevant questions to the Respondent and could not disprove any evidence led by Respondent.

viii. It is a matter of record that Appellant has chosen not to lead any evidence to prove his own suit claim of Rs. 6,97,732/- in contrary to the evidence on record of having received Rs. 10,06,306/- from Respondent. It is also stated that in the application filed by the appellant under Order XI, Commercial Courts Act, it is mentioned that it was supplying goods to the respondent from Faridabad also, this runs contrary to all pleadings put forth by the appellant."

31. It is submitted on behalf of the respondents that the fact that the appellant failed to lead any evidence or call for any credible witness in his support has resulted in justifiable dismissal of the case of the appellant. Adverse inference under Section 114 of the Evidence Act needs to be drawn against the appellant as he did not enter the witness box.

32. It is the case of the respondents that the facts and the circumstances show that the appellant has filed a bogus, false and frivolous claim, and the appeal is an abuse of the process of law, and needs to be dismissed.

33. We have heard the learned counsel for the parties at length. It is noted that the suit has been dismissed by the Commercial Court holding that the plaintiff/appellant has committed perjury, as it concealed material facts and filed a false claim. The Commercial Court relying upon the judgment of the Supreme Court in ***Kishore Samrite v. State of U.P., (2013) 2 SCC 398*** imposed costs on the appellant, with Rs. 1,00,000/- to be deposited in the Prime Minister's Relief Fund, and Rs. 50,000/- to be paid to the respondents.

34. The primary issue that arises for consideration is whether the claim of the appellant for Rs.6,47,732/- in his plaint is genuine and justified. The appellant has contended that the two invoices for Rs. 66,329/- dated 06.03.2018 and for Rs.6,21,027/- dated 15.04.2018 were raised for the goods supplied from Faridabad. Against the said invoices, even GST has been paid. The stand is that the documents establish the supply of goods by the appellant from Faridabad to the respondents and the payments made by the respondents against the same.

35. The counsel for the appellant contended that the subject matter of the

suit before the Commercial Court was only with regard to the goods supplied from the Delhi office of the appellant and outstanding payments thereof. He submitted that the payment against the goods supplied from the Faridabad office had been represented by the respondents to mean that complete payment has been made in respect of the goods supplied by the appellant from the Delhi office. This resulted in the dismissal of the suit of the appellant.

36. The learned counsel for the appellant does concede that the case of the appellant was not represented before the Commercial Court in the manner as has been canvassed by him before us. He states that if such an aspect is established then the claim of the appellant before the Commercial Court would stand proved.

37. On the other hand, the learned counsel for the respondents seeks to justify the judgment rendered by the Commercial Court. Though he conceded during the course of hearing that against the invoices for the goods supplied from Faridabad, the appellant did pay GST, it is also his submission that after realising that the payments have not been received by the respondents, a revised return was filed for reversing the GST transaction.

38. Having noted the submissions made and perused the record, we find merit in the contention of the appellant that the reliance placed by the respondents on certain payments made for the supply of goods from the Faridabad office of the appellant shall have no bearing insofar as the claim of the appellant before the Commercial Court is concerned. It means, the appellant has to prove that his claim was only in respect of goods supplied by Delhi office against which the payments have not been received.

39. If that be so, we set aside the impugned judgment/decree dated 19.09.2023 and remand the matter back to the Commercial Court. The suit bearing CS (COMM.) No. 3475/2021 is revived on the board of the Commercial Court/Successor Court for re-consideration and to be listed within two weeks. The Commercial Court shall record evidence (if requested) relatable to the above documents in accordance with law and then proceed to decide the suit afresh.

40. Till final adjudication of the suit before the Commercial Court, *status quo* shall be maintained with regard to the amount of Rs. 50,000/- deposited by the appellant in interest bearing FDR in the name of the Registrar General of this Court, which shall be subject to the outcome of the suit.

41. Accordingly, the appeal is disposed of. Pending application has become infructuous and is dismissed.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

APRIL 02, 2026/sr