



\$~23

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA(COMM) 431/2025**

SH. K. K. MITTALAPPELLANT
Through: Advocate (Appearance not given)
versus

SH. DEVESH KHANNARESPONDENT
Through: Mr. Tushar Tyagi, Advocate

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE AJAY DIGPAUL

ORDER

24.02.2026

%

1. Heard.

2. The appellant- original plaintiff initiated a commercial suit being CS (Comm) No.138/2024 for recovery of an amount of Rs.4,40,910/- along with *pendente lite* and future interest @ 24% per annum. The claim for recovery was based on *inter se* business transaction between the parties.

3. Having regard to the rival claims, following issues were framed by the learned Commercial Court:-

“1. Whether the present suit is barred by Limitation? OPD

2. Whether this Court has no territorial jurisdiction to try and entertain the present suit? OPD

3. Whether the plaintiff is entitled to claim/recover the amount of Rs.4,40,910/- from the defendant, as claimed in the plaint? OPP

4. Whether the plaintiff is entitled to claim interest from the defendant? If so, at what rate and for which period? OPP

5. Relief.”

4. The appellant-original plaintiff has filed his affidavit of examination in chief and was subjected to cross examination. Similarly, the respondent-



original defendant has examined two witnesses in the matter.

5. The suit of the appellant-original plaintiff came to be dismissed for the reasons recorded in the impugned judgment. As such, this appeal.

6. Learned counsel for the appellant while questioning the legality of the judgment would urge that if the written statement of respondent-original defendant along with evidence given by DW-2 is admitted, it can be easily inferred that there exists a liability which was duly proved by the appellant-original plaintiff through evidence and there is a failure on the part of the respondent-defendant to discharge such liability.

7. So as to substantiate the said contentions, he would claim that though the respondent has stated that the account was settled, however, the said fact cannot be said to have been proved through the evidence of the parties, so also from the pleadings. He has also claimed that DW-2, whose evidence if appreciated, the only inference that can be drawn is that the appellant was in a position to establish the liability *qua* the recovery to be ordered.

8. Learned counsel for the respondents has opposed the aforesaid claim based on the finding recorded, so also, pleadings and evidence on record.

9. Having appreciated the submissions, it is aptly clear from the record that the appellant has examined himself as PW-1. The examination-in-chief of appellant bears a photocopy signature and does not contain his real signature. In such an eventuality, it is a case of absence of examination-in-chief of the appellant.

10. If we appreciate the issues which are framed by the learned Commercial Court, the *onus* is on the appellant to prove that there is a debt *qua* the recovery to be ordered from and against the respondent.

11. Once there is a failure on the part of the appellant to place on record



appropriate examination-in-chief, which can be legally accepted in evidence, the only option left with the learned Commercial Court and this Court is to record a finding that the appellant has failed to discharge his *onus* of proving the claim put forth in the plaint. The learned Commercial Court has specifically recorded a finding to that effect in relation to issue nos.3 and 4.

12. In view of above, we are of the opinion that the findings recorded by the learned Commercial Court are in tune with the provisions of the Evidence Act, which does not call for any interference.

13. Apart from above, the reliance placed by appellant on evidence of defendant *viz.* DW-2 is also not required to be gone into at this stage for the reason that the initial *onus* is on the appellant to discharge his claim of there being a debt receivable and recoverable from the respondent.

14. In such an eventuality, the finding recorded by the learned Commercial Court cannot be said to be illegal or suffering from statutory mandate of the Evidence Act.

15. That being so, the appeal lacks merits and stands dismissed accordingly.

16. Pending application, if any, also stands disposed of.

NITIN WASUDEO SAMBRE, J

AJAY DIGPAUL, J

FEBRUARY 24, 2026/ay/ok