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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RFA(COMM) 364/2024 & CM APPL. 51113/2024**
SHUBHAM SINGHALAPPELLANT
Through: Mr. Govind Rishi, Adv.

versus

M/S TRAFIKSOL ELECTROMECHANICAL PRIVATE
LIMITED & ORS.RESPONDENTS
Through: Ms. Monica Goel, Adv.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
23.04.2026

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CM APPL. 51114/2024 [for condonation of 10 days delay in filing appeal]

1. For the reasons stated in the application, the delay of 10 days in filing the Appeal is condoned.
2. Accordingly, the present application stands disposed of.

RFA(COMM) 364/2024 & CM APPL. 51113/2024

3. The present first appeal has been filed by the Appellant (Defendant No.4 before the Court of First Instance) assailing the order and decree dated 04.06.2024 [hereinafter referred to as 'Impugned Order'], passed by the Learned District Judge, Commercial Court, Patiala House Courts, New Delhi [hereinafter referred to as 'LDJ']. By way of the Impugned Order, a summary suit filed by the Respondent Nos.1 to 5 (Plaintiffs before the Court of First Instance), came to be decreed in their favour, while rejecting the application made by the Appellant seeking condonation of delay in entering



appearance before the LDJ.

4. For the sake of clarity, consistency and ease of reference, the parties in the present Appeal shall be referred to in accordance with their respective status before the LDJ.

5. In order to comprehend the issues falling for the consideration before this Bench, relevant facts are required to be noticed.

6. The dispute before this Court arises out of the alleged outstanding dues claimed by the Plaintiffs, amounting to a sum of Rs. 51,14,215/-, against the Labour Survey Service rendered by them at the behest of the Defendants. According to the Plaintiffs, Defendant No.1, after receiving a work order dated 08.02.2022 for conducting a labour survey across India, engaged the Plaintiffs to carry out the said work. Further, it is asserted by the Plaintiffs, that upon duly discharging their contractual obligations in entirety, they raised invoices aggregating to Rs. 49,16,177/-.

7. However, despite repeated requests and reminders, the Defendants failed to make payment of the outstanding amount. Resultantly, the Plaintiffs, filed a summary suit under Order XXXVII of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'] seeking recovery of Rs. 51,14,251/- along with *pendente lite* and future interest, arising out of a Labour Survey Project carried by them. Originally, the suit was filed against four Defendants, namely, Defendant No.1, an incorporated company engaged, *inter alia*, in telecommunications design of high bandwidth systems; Defendant Nos.2 and 3, being directors of the said company and Defendant No.4, who was impleaded in an alleged capacity of a Guarantor.



8. Pursuant to the institution of the suit, summons came to be issued to the Defendants. However, subsequently, Defendant Nos.2 and 3 were deleted from the array of the parties, thereby leaving Defendant No.1 and 4, as the only contesting defendants against whom cause of action subsisted. The Defendant No.4 entered appearance for the first time before the LDJ on 31.01.2024, whereupon a complete set of documents was furnished to him. Notwithstanding the same, no appearance, in terms of Order XXXVII of the CPC, was entered by the Defendant No.4 within the statutorily prescribed period of ten days.

9. In the interregnum, an application came to be filed by the Defendant No.4 seeking condonation of delay in entering appearance. However, the LDJ while dismissing the said application, found that the explanation as provided therein was vague and unsupported by material particulars and documents. Since, Defendant No.1, had also failed to appearance till the date of adjudication, the suit came to be decreed in the favour of the Plaintiffs.

10. Aggrieved by the aforesaid findings and observations made by the LDJ, the Defendant No.4 has approached this Court, seeking our indulgence.

11. At this stage, we deem it appropriate to reproduce the Memo of the Parties, along with certain relevant paragraphs of the Plaint, which form the basis of our subsequent adjudication.

MEMO OF PARTIES TO THE SUIT

4. Sh. Shubham Singhal
(Promissor/Guaranteeer)
Sanjeela Fashions
765, First Floor, Katra Neel
Delhi 110006 IN.
Mob No. 981016694
Place New Delhi

Defendant No.4



Date: -23

PLAINT

“7. That the Defendant no. 4 on behalf of Defendant no. 2 Company proposed Plaintiffs to be Associates with Defendants no. 1 to 3 to get the Labour Survey services from the Plaintiffs.”

*“11. That, after many meetings parties were ad idem & then Defendant no. 2 on behalf of Defendant No. 1 Company decided to appoint Plaintiffs as Associates of Plaintiffs for the aforementioned purpose. Further, for the said purpose Defendant No. 4 assured the Plaintiffs of the work order and thus is a Guarantor/Promisor who promised on behalf of the Defendant no. 1 Company and for such services the Defendant no. 4 has been paid a -huge amount of Rs. 10 Lakhs by the Plaintiffs on 14-03-2022 through RTGS/ICICR42022031400525190/ FDRL0001262/ 13083716. The Bank Transaction on this behalf transferred through RTGS/IMPS by the Plaintiffs is annexed herein as **Document D-8.**”*

12. Upon consideration of the record, it is evident that the Plaintiffs have sought to fasten liability upon the Defendant No.4 primarily on the basis of a descriptive assertions in the Complaint, without placing on record any document evidencing a contract of Guarantee or a legally enforceable Promise.

13. A perusal of the memo of parties attached to the Complaint, makes it evident that the Defendant No.4 has merely been reflected as a Guarantor/Promisor. However, learned counsel representing the Plaintiff has fairly conceded that there exists no document of Guarantee or Promise, duly executed by the Defendant No.4. In such circumstances, it is manifest that the case as set out by the Plaintiffs rests solely upon the averments contained in Paragraph Nos.7 and 11 of the Complaint.

14. A bare reading of Paragraph No.7, reveals that the role attributed to the Defendant No.4, on behalf of Defendant No.1, is limited to having proposed that the Plaintiff be associated with



Defendant Nos.1 to 3 for the purpose of rendering the labour survey services. However, the said assertion, when read holistically, is merely suggestive of an intermediary role played by the Defendant No.4 and does not reflect and/or indicate any liability as has been claimed by the Plaintiffs.

15. Whereas, Paragraph No.11, contains an assertion that a sum of Rs. 10,00,000/-, has been transferred by the Plaintiff in favour of the Defendant No.4 on 14.03.2022. However, the said assertion, in the absence of any explicit undertaking by the Defendant No.4, to act as a guarantor, falls short of establishing that such payment was in fact made pursuant to a legally binding Guarantee or Promise on account of the Defendant No.4.

16. It is trite law that a summary suit for recovery under Order XXXVII of the CPC, is maintainable only in cases where the claim is founded upon a clear and definite documentary evidence establishing a prima facie liability. In the present case, the assertion made by the Plaintiff, as is evident from the pleadings in Plaint, is primarily founded upon an invoice, which has been issued by the Plaintiff in favour of Defendant No.1 company.

17. Moreover, it is undisputed that the Defendant No.4 is neither a director, an officer or an authorised signatory of Defendant No.1, nor there exists any privity of contract between the Plaintiffs and Defendant No.4, instead the underlying transaction is strictly inter se between the Plaintiff and Defendant No. 1.

18. In the aforesaid facts and circumstances, the LDJ before decreeing the summary suit against the Defendant No. 4, was expected to independently and carefully examine the specific allegations directed against him, particularly in light of the summary nature of the



proceedings.

19. In the absence of any document evidencing that the Defendant No.4 had furnished a guarantee or undertaken any binding promise, the essential ingredients for maintaining a summary suit against him remain unfulfilled. In such circumstances, the imposition of liability, would be contrary to the settled principles governing proceedings under Order XXXVII of the CPC.

20. Consequently, the Impugned Order passed against the Defendant No.4 cannot be sustained. However, it is clarified that the Plaintiff will have the liberty to avail remedy against the Defendant No.4 in accordance with law.

21. Accordingly, the Order and Decree dated 04.06.2024, *qua* the Defendant No.4, is set-aside.

22. The Petition is disposed of in the aforesaid terms.

23. Pending Application(s), if any, also stands disposed of.

ANIL KSHETARPAL, J

AMIT MAHAJAN, J

APRIL 23, 2026

“SK”/HR