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

% *Date of decision: 09th January, 2026*

+ **RSA 5/2026, CM APPL. 1377/2026, CM APPL. 1378/2026, CM APPL. 1379/2026 & CM APPL. 1380/2026**

BALA DUTT SHARMA

C-888, DDA LIG Flats

East of Loni Road,

Delhi-110093

.....Appellant

Through: Mr. Pawan Sharma, Advocate

versus

DAV PUBLIC SCHOOL

East of Loni Road,

Delhi-110093

.....Respondent

Through: Counsel for Respondent (Appearance not given)

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+ **RSA 6/2026, CM APPL. 1381/2026, CM APPL. 1382/2026, CM APPL. 1383/2026 & CM APPL. 1384/2026**

BALA DUTT SHARMA

C-888, DDA LIG Flats

East of Loni Road,

Delhi-110093

.....Appellant

Through: Mr. Pawan Sharma, Advocate

versus

DAV PUBLIC SCHOOL



East of Loni Road,
Delhi-110093

.....Respondent
Through: Counsel for Respondent (Appearance
not given)

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Regular Second Appeals under Section 100 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed on behalf of the Appellant against *the Judgment dated 14.08.2025 in RCA DJ No. 60/2025* whereby the learned District Judge has upheld the Order of the learned Senior Civil Judge dated 20.01.2012 whereby a decree in the sum of Rs.1,44,008/- has been passed, against the Appellant, *and similarly, against the Judgment dated 14.08.2025 in RCA DJ No. 20/2024*, whereby the learned District Judge has upheld the Order of the learned Civil Judge dated 21.11.2023 whereby a decree in the sum of Rs.36,236/- has been passed, against the Appellant.

2. ***Briefly stated, two Suits for Recovery in the sum of Rs.1,44,008/- and Rs.36,236/- alongwith pendente lite interest,*** were filed by the Respondent-DAV Public School against the Appellant. As per the Plaintiff, Masters Rishabh Bharadwaj and Yash Bhardwaj, sons of the Appellant were studying in the school of the Plaintiff since 2009-10 and 2006 respectively, and had been getting regular education. It was claimed that the Defendant-Appellant was a chronic defaulter in payment of school fees and had not deposited the fee for the last five years in the case of Master Rishabh and six



years in case of Master Yash. The sums of Rs.2,64,223/- and Rs.2,48,878/- had become due from the Appellant which he had failed to pay despite repeated requests; rather, he abused the Principal of the school and pressurised her to admit his son in class XI. When the Principal refused to do so, he threatened her with the consequences.

3. Notices for dues was served upon the Appellant, despite which he failed to make the payment and, therefore, **the Suits for Recovery of Rs.1,44,008/- and Rs.36,236/- alongwith interest, were filed.**

4. The summons of the Suits were served upon the Appellant on 03.11.2019, despite which he failed to file his *Written Statement* within the statutory period of 30 days, as per Order VIII Rule 1 CPC. Consequently, *vide* Order dated 18.02.2020, the right of the Defendant to file the Written Statement was closed and the defence was struck off.

5. Subsequently, the Defendant moved an Application under Section 151 CPC on 12.03.2021 seeking recall of Order dated 18.02.2020 and for restoration of his right to file the Written Statement. However, this Application also got dismissed by the learned Trial Court *vide* Order dated 25.11.2021.

6. The Plaintiff in his evidence, examined the Principal of the school as PW-1 who proved the Chart showing pending payment of fee of Master Rishabh which is Ex. PW-1/2. Legal Notice dated 03.05.2019 is Ex. PW-1/3.

7. PW-2 Sh. Dilip Kumar Rai, Clerk in Accounts Department of the Plaintiff School, proved the Fee Bill of the student for the year 2017-18 Ex. PW-2/1 and proved the Chart showing the pending school fee which is



already Ex. PW-1/2. Both the witnesses were cross-examined at length by the Counsel for the Defendant.

8. Even though the defence of the defendant had been struck off on 18.02.2020, the Defendant No. 1 was permitted to examine himself as DW-1. He tendered his evidence and was duly cross-examined by the Plaintiff. In case pertaining to fees of Master Yash, the learned Civil Judge, had taken into consideration the submissions of the Counsel appearing on behalf of the Defendant.

9. After considering the evidence on record, the learned Trial Court *vide* Judgment and decree dated 20.04.2023 and 21.11.2023, decreed the Suit of the Respondent School.

10. Aggrieved, the Appellant filed the **RCA No. 60/2025 and RCA No. 20/2024** wherein the learned District Judge considered all the rival contentions of the parties and noted that despite receiving the summons of the Suit on 02.11.2019 and 03.11.2019, he failed to file the Written Statement and his defence had been struck off.

11. It was further observed that the Defendant on the dismissal of his Application for recall of the Order striking off his defence, failed to challenge the same before the superior Court and the Order dated 25.11.2021 therefore, attained finality. It was further noted that the testimony of PW-1 and PW-2 fully established the case of the Plaintiff and therefore, ***upheld the judgement of the learned SCJ.***

12. Aggrieved by the impugned judgement, the ***Second Regular Appeal*** has been filed wherein it is submitted that there are substantial questions of law raised in the Second Appeal which are that the first Appellate Court did



not appreciate the fact of the Appellant's right to defence had been struck off and he could not lead evidence in his proof; that the Appellant had not been supplied with the documents alongwith the plaint in terms of Order dated 18.02.2020 and that the purpose of Order VIII Rule 1 had not been construed properly as it is directory and not mandatory.

13. The rules of procedure had been ignored which has led to a miscarriage of justice. By striking off the defence of the Appellant, his right to defend the case and to produce evidence was curtailed and that once the defence of the Appellant was struck off, he could neither cross-examine the witnesses of the Plaintiff or lead evidence in his defence.

14. The **grounds** of challenge are that it has not been appreciated that the Appellant is the father of the school student and his right to education being a fundamental right, the defence of the Appellant was not to have been struck off.

15. Reliance is placed on Sushil Kumar Sen vs. State of Bihar (1975) 1 SCC 774 wherein it was held that the rules are hand-made to justice. Moreover, the timeframe for filing the written statement as given in Order VIII Rule 1 CPC is directory and not mandatory as held in the judgement of Kailash vs. Nanhku, (2005) 4 SCC 480 and State of Punjab vs. Shamlal Murari (1976) 1 SCC 719.

16. Because the defence of the Appellant was struck off, he was not able to produce evidence in defence and the statements were in the nature of factual assertions and could not be proved by leading evidence. The limited right of cross-examination of the witnesses which was availed by the Defendant was only to demonstrate that they were not speaking the truth and



to demolish the case of the Plaintiff as has also been held by the Supreme Court in Kanchhu vs. Prakash in Civil Appeal No. 5319/2025.

17. The Suit itself was defective and not maintainable since the school Principal failed to produce any Board Resolution authorising her to institute the Suit. Moreover, the documents annexed with the Plaint, were not supplied ever to the Appellant which is mandatorily required to be served alongwith the plaint at the time of service of summons, as held by Gujarat High Court in Yogi Infrastructure vs. RMC Readimix (Special Civil Application No. 15878 of 2021).

18. It has not been considered that the right to education is a fundamental right and such practice of witch-hunting ought to have been discouraged. The Appellant was a layman and cannot be made to suffer for the fault of the lawyer. Hence, the prayer is made that the impugned Judgment and the Order of learned District Judge dated 14.08.2025 be set aside and an opportunity be given to the Defendant to adduce his evidence.

Submission heard and record perused.

19. It is a simple case where the school fee of Master Rishabh was not paid by the Appellant for five years, and more than 6 years in case of Master Yash Bhardwaj, resulting in filing of the Suit for Recovery of legally recoverable school fees for three years, by the Respondent School.

20. The first objection taken by the Appellant was that his defence was struck off erroneously merely on account of non-filing of Written Statement within 30 days in terms of Order VIII Rule 1. However, it is pertinent to note that the defence got struck off on 18.02.2020 and thereafter, his



Application under Section 151 CPC for recall of this Order was also dismissed on 25.11.2021.

21. Pertinently, there is nothing shown on record placed by the Appellant to explain his reason for not filing the Written Statement in time except putting a blame on his Counsel. There is no cogent reason shown even in this Appeal as to why Written Statement was not filed in time. Merely putting the blame on the Counsel, is not sufficient to challenge the correctness of the Order dated 18.02.2020.

22. It is further significant to note that even though the defence of the Appellant had been struck off, he was given full opportunity to cross-examine PW-1 as well as PW-2 and he also led his own evidence as DW-1, in the case pertaining to Master Rishabh Bhardwaj. He had absolute opportunity to challenge the testimony of the Plaintiff witnesses and also to lead his defence. His assertion that he has been adversely impacted because his Written Statement was not permitted to be taken on record, is completely fallacious. Even in the case pertaining to Master Yash, the Counsel on behalf of the Defendant were heard.

23. The Plaintiff had examined PW-1, the School Principal who had proved the school Chart Ex. P-1/2 showing the pending fee of Master Rishabh Bhardwaj, which was also corroborated by the testimony of PW-2, Dilip Kumar Rai, the Clerk in Accounts Department of the School.

24. It had been explained that though the school fee had not been paid for last five years from 2019 onwards and a sum of Rs.2,64,223/- was due and payable, but the claim was limited to Rs.1,44,008/- for the period from 01.08.2016 to 2019 due to the limitation period in the case of Master



Rishabh, while in case of Master Yash, the sum of Rs.2,48,878/- was outstanding, however due to limitation, the Respondent was entitled to recover only Rs.36,236/-.

25. The Appellant has contended that his right to cross-examination, cross-examination of Plaintiff witnesses was curtailed, but the learned District Judge has observed correctly that there is nothing to indicate that any objection was raised during the trial nor does it reflect that Application was filed by the Appellant to seek recall of the witnesses or for further cross-examination. The PW-1 and PW-2 were not only cross-examined, but Appellant even led his evidence as DW-1. The striking of his defence, has not resulted in any curtailment to prove his defence. These are general allegations of denial of fair opportunity, which is not demonstrable from the material on record.

26. The learned Civil Judge had relied upon the Account Statement Ex. PW-1/2 to conclude that there was an outstanding fee which had not been paid. The Defendant on the other side, claimed that he had paid the fee, but candidly admitted in his cross-examination that he was not in possession of any fee Receipt. Moreover, he never ever pleaded at any forum about the Fees having been paid by him. In the Reply to the Legal Notice dated 03.05.2019 Ex.PW-1/5 as well, there was no averment about payment of fee or non-issuance of the Fee Receipts.

27. The learned District Judge further noted that the contention that the contention of the Appellant that the Suit was bad for non-rejoinder of Master Rishabh Bhardwaj, was devoid of merit as the obligation to pay the school fee was of the father and not of the child. A minor student being



incompetent to contract under law, cannot be treated as a independent contracting party to such an arrangement. The liability to discharge outstanding fee rested squarely with the Appellant.

28. The Appellant had further taken a defence that the *Transfer Certificate* was issued in the name of the child. It was contended that no Transfer Certificate could have been issued without clearance of school fee. However, PW-1 in her testimony deposed that the Transfer Certificate was an act of fairness aimed at ensuring academic continuity of the child and did not in any way signify a waiver of the Plaintiff school's claims. In the absence of any evidence produced by the Appellant of having paid the school fee as claimed by him, it was rightly concluded that the Plaintiff school was entitled to the suit amount.

29. Another contention was raised on behalf of the Appellant that PW-1, School Principal had no authority to institute the suit. However, the Authority letter Ex. PW-1/1 was proved in the testimony of PW-1. This objection of the Appellant is also without merit.

30. In the end, the learned Counsel for the Appellant has vehemently contended that this Suit amounts to infringement of the fundamental right of the child to education. The right to education is a fundamental right, but it is subject to reasonable restrictions. The school had undertaken to provide the education subject to payment of school fee. When there is no School Fee paid, the Appellant cannot claim an absolute right. Rather, it emerges that the School being cognizant of the Child's right to Education and that he may not unnecessarily suffer, had continued the children in the School for five and



six years respectively, despite non payment of School Fees; so much so that Transfer Certificate was also issued despite the outstanding Fees.

31. It was also contended that there was an unreasonable fee hike done by the School against which various Complaints had been filed by the Appellant and the Suit for Recovery is a counterblast to his multiple Complaints. The Appellant may have filed various complaints, but he has not been able to in any way prove that he had paid the school fee thereby entitling the school to recover the Fee by way of the Suit.

32. The learned District Judge has rightly appreciated the entire evidence to uphold the judgement of the learned Civil Judge dated 20.04.2023 and 21.11.2023 whereby the Suits of Plaintiff has been decreed in the sum of Rs.1,44,008/- and Rs.36,236/- respectively, along with interest and costs.

33. There is no merit in the present Appeals, which are hereby dismissed alongwith pending Applications.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 9, 2026

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