2026:DHC:4058-DB

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

% *Date of Decision : 08.05.2026*

\+ RFA(COMM) 98/2025 CM APPL. 9997/2025 CM APPL. 6536/2026

FALAK NAAZ & ORS. .....APPELLANTS

Through: Mr. Pawan Reley, Mr. Kashif Athar., Mr. Akshay Lodhi, Mr. Farak Mirza, Ms Simran Singh and Mr. Tanish Rawat Advs.

versus

RAJ KUMAR SARASWAT .....RESPONDENT

Through: Mr. Rajiv Bakshi, Ms. Kajal Sharma and Mr. Pranav Pareek, Advs.

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

MANMEET PRITAM SINGH ARORA, J. *(ORAL)*

RFA(COMM) 98/2025

1. The present appeal has been filed under Section 13 of the Commercial Courts Act, 2015, read with Order XLI Rule 1 of the Code of Civil Procedure, 1908, against the impugned judgment and final order dated 11.11.2024 passed by the District Judge (Commercial Court), North East District, Karkardooma Courts, Delhi in CS (Comm) No 51 of 2022. The Trial Court has passed a decree for a sum of Rs. 38,73,000/- along with pendent lite and future interest at 9% in favour of the Respondent (i.e., plaintiff).

2. Learned counsel for the Appellants sets up the Appellants' case as follows:

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2.1. Appellant No. 1 is the widow of Late Mr Mohammad Shahid ['deceased'], who was engaged in the cloth trading business and carried on business in the name and style of KGN Trading Company as its proprietor. Mr Mohammad Shahid expired due to COVID-19 in May, 2021. Appellant Nos. 2 to 5 are the minor children of the deceased. He states that Appellant No. 1, being a homemaker, was neither associated with the business of her deceased husband nor was aware of any alleged commercial transactions with the Respondent, who carries on business in the name and style of Pawan Garments.

2.2. He states that after the demise of the Late Mr Mohammad Shahid, the Respondent instituted the recovery suit for a sum of Rs. 38,73,000/- with interest at 18% per annum, based on unsubstantiated ledger entries, unaudited accounts and self-serving documents, without producing any purchase orders, delivery challans, acknowledgements or sale invoices to prove the alleged liability.

2.3. He states that the records of the firm of the late Mr Mohammad Shahid disclose no outstanding liability, and that the learned Trial Court erred in relying upon the GST records of the said firm, while rejecting the ledger, i.e., Ex. DW-1/1, which evidenced a credit balance of only Rs. 1,462/-.

2.4. He states that the onus to prove that no goods were delivered to the Respondent against the payment of Rs. 30 lakhs was on the Respondent (i.e., plaintiff in the suit); however, the Trial Court wrongfully shifted the onus on the Appellants to prove the delivery of goods. In this regard, reliance is

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placed on **Soward v Leggatt[1], Nirmal Kumar Nawlakha vs. Sant Lal Mahto[2]** and **Stoney v. East Bourne R D Council**[3] to contend that such a burden could not have shifted upon the Appellant (i.e., defendant) unless the Respondent (i.e., plaintiff) had first led sufficient prima facie evidence to prove non-receipt of goods.

2.5. He states that the ledger, i.e., Ex.PW1/1 produced by the Respondent was neither certified nor authenticated by a Chartered Accountant or Auditor, which constitutes a critical procedural prerequisite for its admissibility and evidentiary credibility.

2.6. He states that no formal demand Notice was served either upon the late Mr Mohammad Shahid during his lifetime or upon Appellant No. 1 before institution of the suit. He states that Appellant No. 1 was not afforded an adequate opportunity to effectively challenge the Respondent's insufficient evidence, contrary to the principles of procedural fairness.

2.7. He states that the impugned judgment is contrary to the pleadings, evidence on record, and is therefore liable to be set aside.

3. In reply, learned counsel for the Respondent relies upon the documentary evidence available on record to contend that the payment of an amount of Rs. 30 lakhs to Late Mr Mohammad Shahid is not in dispute and the Appellants failed to prove the delivery of any goods against the said amount. He states that no goods as alleged were delivered between 21.03.2021 and 28.03.2021. He refers to a legal notice dated 06.12.2021 (Ex. PW 1/4) served on the Appellant No. 1 before instituting the suit. He

[1] 7 CAR. & P. 613
[2] 16 P 622: AIR 1937 PAT 563
[3] (1927) 1 CH 367,395

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refers to the GST returns of the late Mr Mohammad Shahid to show that no alleged sales for March 2021 were declared with the concerned statutory authority.

4. This Court has heard the learned counsel for the parties and perused the record. The arguments have been addressed only on Issue No. 1 raised in the impugned judgment.

5. The Respondent filed the suit for recovery of the principal amount of Rs. 30 lakhs paid to Late Mr Mohammad Shahid, in two tranches, on 11.08.2020 and 19.10.2020. In the said suit, the Respondent has prayed for pre-suit interest of Rs. 8,73,000/- computed at 18% per annum with effect from 19.10.2019 till 30.05.2022 and also prayed for pendente lite and future interest.

6. In support of its claim for the principal amount of Rs. 30 lakhs, the Respondent pleaded that the sum of Rs. 10 lakhs and Rs. 20 lakhs were transferred to the deceased's bank account through RTGS on 11.08.2020 and 19.10.2020, respectively. The proof of payment of the said entries has been led by bringing on record the bank statement, Ex.PW1/1, of the Respondent.

7. The Appellants filed their written statement and have not disputed receipt of the aforesaid payment of Rs. 10 lakhs and Rs. 20 lakhs. However, the Appellants have relied upon a ledger statement, Ex.DW1/1, in which it is reflected that goods equal to the value of Rs. 29,98,538/- through eight [8] invoices, all between 21.03.2021 and 28.03.2021, were supplied to the Respondent. The Appellants state that after adjusting the value of the aforesaid eight invoices, only a sum of Rs. 1,462/- was the credit balance in

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the ledger account of the Respondent as maintained by the firm of Late Mr Mohammad Shahid.

Pertinently, Appellant did not file or produce the eight [8] invoices in support of the aforesaid entries in the ledger.

8. However, the Respondent argued that the entries of the aforesaid eight [8] invoices are false, and disputed the receipt of any goods *qua* the said eight [8] invoices. The Respondent, to substantiate its plea of non-receipt of any goods, summoned the GST record of the firm of the deceased to show that no GST return was filed by the late Mr Mohammad Shahid for the relevant period, March 2021, with respect to the alleged eight [‘8’] invoices.

9. Parties also led oral evidence wherein the Respondent appeared himself as PW-1 and proved the documents relied upon by it. Respondent also summoned an official Sh. Prakash Kumar from its bank, i.e., Central Bank of India, as PW-2, to prove its bank statement. Respondent also summoned Sh. Bir Singh, Inspector of GST, as PW-3, to produce the GSTR-1 return of the late Mr Mohammad Shahid's firm, KGN Trading Company, for the period from December 2019 till March 2021.

The Respondent, in pursuance of its cross-examination, also produced upon directions of the Court its audit record for the relevant assessment years 2019-2020, 2020-2021 and 2021-2022 to prove that the payment of Rs. 30 lakhs as an advance to Late Mr Mohammad Shahid’s firm KGN Trading Company was duly reflected in the said return.

10. Appellants heavily relied upon the evidence of an employee, Sh. Chaman Lal, who appeared as DW-2 to prove the entries in the ledger, i.e., Ex. DW1/1. Appellant No. 1 appeared as a witness and relied upon the

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ledger statement Ex. DW1/1 to contend that goods have been delivered against the eight invoices. Neither of the Appellants' witnesses produced the eight invoices reflected in the ledger, nor any delivery challan, in support of the alleged delivery of goods.

11. The discussion of the Trial Court on the issue of the entitlement of the Respondent to recover the principal amount of Rs. 30 lakhs is under Issue No. 1, at paragraph nos. 15 to 22 of the impugned judgment dated 11.11.2024, which reads as under:

> "15. Onus to prove this issue was upon the plaintiff. PW-1 in his affidavit of evidence Ex.PW1/A deposed that he had business dealings with the husband of defendant no.1 for last about 15 years till his demise and during the course of business, he used to purchase cloth from deceased husband of defendant no.1 for manufacturing/fabrication of garments, against which, he used to pay cost of cloth in advance and the deceased husband of defendant no.1 used to raise tax invoice against every sale of cloth material which was adjusted from the advance payments made by him.
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> 16. PW-1 deposed that he made advance payments amounting to Rs.1,34,00,000/- from 07.12.2019 till 19.10.2020 against which, deceased husband of defendant no.1 sold and supplied cloth worth Rs. l ,04,00,000/-inclusive of GST w.e.f. 10.12.2019 till 08.07.2020, but the deceased husband of defendant no.1 did not supply any cloth against the advance payment of Rs.30,00,000/-. In order to prove that plaintiff made advance payments to the deceased husband of defendant no.1, plaintiff examined Sh. Prakash Kumar, Chief Manager of Central Bank of India as PW-2, who produced the account statement of plaintiff firm for the period 01.12.2019 to 31.10.2020 i.e. Ex.PW2/1 showing the payments made to the proprietorship firm of deceased husband of defendant no.1 i.e. M/s KGN Trading Co. as well as payments of Rs.10,00,000/- and Rs.20,00,000/- made by the plaintiff through RTGS to the firm of deceased husband of defendant no.1 on 11.08.2020 and 19.10.2020. PW-1 also proved ledger account of defendant firm M/s KGN Trading Co. as Ex.PW1/3, which shows the details of purchase and payments made to M/s KGN Trading Co.
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> 17. DW-1 in her affidavit of evidence Ex.DW1/A deposed that no

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dues are pending against her deceased husband and all the goods were supplied to the plaintiff in presence of Sh. Chaman Lal, who was working in the office of her deceased husband as MTS. DW-1 has relied upon the ledger account of plaintiff firm i.e. M/s Pawan Garments as Ex.DW1/1. The ledger account as filed by DW1 i.e. Ex.DW1/1 shows that the deceased husband of defendant no.1 has received advance payment of Rs.1,34,00,000/- from 07.12.2019 to 20.10.2020 as also deposed by the plaintiff, but it shows that goods were supplied regarding advance payment of Rs.30,00,000/- from 21.03.2021 to 28.03.2021. The details of the invoices as claimed by plaintiff which were raised by deceased husband of defendant no.1 till 08.07.2020 regarding supply of cloth are also appearing in the ledger account of defendant Ex.DW1/1.

18. It is also matter of record that defendants have not specifically pleaded in their written statement that the deceased husband of defendant no.1 had supplied goods/cloth to the plaintiff through invoices raised from 21.03.2021 to 28.03.2021 or filed those invoices alongwith the written statement. **The claim of the plaintiff is that no goods/cloths were supplied to him during 21.03.2021 till 28.03.2021.** PW-3 Sh. Bir Singh, GST Inspector brought the GSTR-1 i.e. return of KGN Trading Co. legal name of business Mohmmed Shahid Ansari i.e. deceased husband of defendant no.1 from December, 2019 till March, 2021 and proved the same as Ex.PW3/1 (colly) alongwith certificate u/s 65B of Indian Evidence Act as Ex.PW3/2. A perusal of GSTR-1 of deceased husband of defendant no.1 shows that no transactions were done by him with plaintiff in March, 2021. However, the GSTR-1 of the deceased husband of defendant no.1 shows all other invoices except of March, 2021 raised by him against the plaintiff as appearing in the ledger account maintained by plaintiff i.e. Ex.PW1/3 as well as of ledger account maintained by the deceased husband of defendant no.1 i.e. Ex.DW1/1.

19. It was argued by Ld. Counsel for plaintiff that plaintiff was involved in a case alongwith deceased husband of defendant no.1 and plaintiff was in judicial custody for 35 days w.e.f. 27.02.2021 in FIR No.71/2021 PS Amar Colony and therefore, there was no occasion for the plaintiff to receive any goods from the defendants. Per contra, it was argued by Ld. Counsel for defendants that no evidence is led by the plaintiff to show that when he was in judicial custody, his business was shut down. In this regard, DW-2 Sh. Chaman Lal, who as per case of defendant was aware about the day to day transactions between the

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parties, admitted in his cross examination that he was aware that in March, 2021 Sh. Raj Kumar Saraswat i.e. plaintiff was in judicial custody. To a specific question, as put by Ld. Counsel for plaintiff, DW-2 deposed that he cannot tell about the name of any other firm to whom goods were supplied by the defendant in March, 2021. Although, DW-2 was examined by defendants to prove that goods were supplied to the plaintiff in March, 2021, but to a specific question, put by Ld. Counsel for plaintiff, DW-2 in his cross examination deposed that he does not know if after 29.09.2020 the defendant had not supplied any goods to the plaintiff and voluntarily deposed that he remained in the office but he never heard that no goods were supplied to the plaintiff, therefore, the testimony of DW-2 is not helpful to prove that the deceased husband of defendant no.1 had supplied any goods in March, 2021 to the plaintiff or to any other employee of the plaintiff when the plaintiff was in judicial custody. The defendants in their written statement have stated that husband of defendant no.1 expired on 09.03.2021, but it is not explained that after the death of husband of defendant no.1, who supplied the clothes as allegedly claimed by defendants to the plaintiff from 21.03.2021 to 28.03.2021 and why transactions/invoices of these dates have not been shown in the GSTR-1 i.e. Ex.PW3/1 (colly) of the deceased husband of defendant no.1.

20. The plaintiff has claimed the suit amount only on the basis of advance payments made to the deceased husband of defendant no.1 for supply of cloth. The suit is commercial in nature and squarely falls within the purview of section 2 (1) (c) of Commercial Courts Act and plaintiff has also duly complied with mandatory provisions of pre-institution mediation and conciliation as provided in section 12A of Commercial Courts Act.

21. Moreover, this court has the territorial jurisdiction over the present case as both the parties are stated to be working for gain at Maujpur and New Jafrabad, Delhi, which areas falls within the territorial jurisdiction of this court. This court has also the pecuniary jurisdiction over the matter since the suit amount claimed by the plaintiff is more than the specified value of Rs.3 lacs of the Commercial Court. As per statement of account of plaintiff Ex.PW1/1, he paid the advance payment of Rs.10,00,000/- on 11.08.2020 and Rs.20,00,000/- on 19.10.2020 to KGN Trading Co. and plaintiff filed the present suit on 04.06.2022 i.e. within limitation period.

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22. Ld. Counsel for defendants vehemently contended that plaintiff has not disclosed how he received the goods amounting to Rs.1,04,00,000/- from the defendant and has not filed any acknowledgment/register to show the receiving of the goods. The plea of defendants is that deceased husband of defendant no.1 had supplied entire goods regarding the payments received from the plaintiff and there are no pending dues against the defendants. Section 104 of BSA, 2023 provides that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. As the defendants have taken a plea that the deceased husband of defendant no.1 has supplied goods regarding the entire payment received from the plaintiff, the onus is upon defendants to prove that goods were supplied and therefore, acknowledgment, if any given by the plaintiff in receipt of goods/clothes supplied in March, 2021 should have been with the defendants. An application u/s 151 CPC was also filed on behalf of defendants for issuing directions to the plaintiff to file on record the relevant documents, which was disposed of vide order dated 10.10.2023 while observing that the **plaintiff** had submitted that he is not in possession of record of goods received from the deceased husband of defendant no.1 or Road Certificate/Transportation receipts but he was directed to file the audit record of the plaintiff firm for the assessment years 2019-20, 2020-21 and 2021-22, as admitted by him in his cross examination. In compliance thereof, the plaintiff filed his audit report for the said financial/assessment years on record and Annexure F of the audit report of plaintiff of the assessment year 2021-22 shows a sum of Rs.30,00,000/- as advance to supplier i.e. to M/s KGN Trading Co. **As defendants have failed to prove that the deceased husband of defendant no.1 or some other on his behalf had supplied the goods/cloths to plaintiff regarding the advance payments of Rs.30,00,000/- received from the plaintiff, it is held that plaintiff is entitled for the suit amount. Accordingly, this issue is decided in favour of the plaintiff and against defendants**."

(Emphasis supplied)

12. The Appellants do not dispute that they did not produce on record the purported eight invoices, listed in the ledger Ex. DW1/1 for proving the discharge of the liability of Rs. 30 lakhs. The Appellants also did not file delivery challans evidencing the delivery of goods.

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13. The Appellants have argued that the error in the impugned judgment is that the Trial Court failed to appreciate that the burden of proof was on the Respondent to prove that no goods were received by it against the eight invoices shown in the ledger Ex. DW1/1 for the period 21.03.2021 to 28.03.2021.

14. We are unable to agree with the submissions of the Appellant. In our considered opinion, there is no error in the finding of the Trial Court with respect to the entitlement of the Respondent to recover the principal amount of Rs. 30 lakhs. The payment of Rs. 30 lakhs through bank transfer has been duly proved by the Respondent by leading cogent evidence of PW-2/Sh. Prakash Kumar, Chief Manager of the bank.

15. The Appellants admit the receipt of the said amount. However, the Appellants have raised a defence that the goods for the value of Rs. 29,98,538/- were supplied vide eight [‘8’] invoices between 21.03.2021 and 28.03.2021. The Appellants, except for producing the ledger Ex. DW1/1, which contains the entries, have not brought on record either the invoices or the challans evidencing the supply of the goods.

16. The Respondent has denied receipt of the goods. It has also led to evidence by summoning the inspector of GST as PW-3 to show that the late Mr Mohammad Shahid, the proprietor of KGN Trading Company, had not filed any GST return pertaining to the alleged eight invoices, whereas the said firm otherwise had filed GST returns.

17. In our considered opinion, the onus to prove supply of goods worth 29,98,538/- through eight invoices between 21.03.2021 to 28.03.2021 was upon the Appellants. The said onus has to be discharged by them by filing

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invoices and delivery challans or leading credible oral evidence. The Appellants admit that they do not have any documentary evidence to prove the delivery, and also no oral evidence was led to prove the delivery. The testimony of DW-2/Sh. Chaman Lal has been duly considered by the Trial Court and, in our opinion, rightly held to have not proved any delivery of goods.

18. We are unable to accept the Appellant's submission that the onus to prove non-receipt of goods was on the Respondent, and only if he discharges the said onus, the onus would have shifted on the Appellants. The Respondent could not have proved the negative, though in this case, the Respondent in fact led evidence of the negative also by summoning PW-3, i.e., the Inspector of GST. The Appellant has no explanation for the non-declaration of the said eight invoices with the statutory authority, though otherwise the firm KGN Trading Company admittedly held a GST number and was regularly filing its returns.

19. In these facts, the findings returned by the Trial Court that the entries in the ledger Ex. DW-1/1 produced by the Appellants is not proof of supply and delivery of goods is correct.

20. The Appellants have admitted that KGN Trading Company was liable to file GST returns and also admitted that there is no GST return for the period March 2021, and the alleged sales have not been reported for the said period, whereas all prior sales between the same parties, as reflected in the ledger account, were duly reflected to the GST department as observed by the Trial Court at paragraph no. 18 of the impugned judgment.

21. We therefore held that the findings of the Trial Court holding that the

Respondent is entitled to recover a sum of Rs 30 lakhs is correct and require no interference.

22. We find that the Trial Court has awarded pendente lite and future interest at the rate of 9% per annum, which appears to be reasonable, keeping in view the commercial nature of the transaction between the parties. We, therefore, find no ground to interfere with the decree passed by the Trial Court to that extent. We, however, clarify that the pendente lite and future interest will be calculated on the principal amount of Rs. 30 lakhs.

23. However, we note that the Respondent herein had also claimed pre-suit interest at the rate of 18% per annum for the period from 19.10.2019 to 30.05.2022 and quantified the said amount as Rs. 8,73,000/-. Though the Trial Court has decreed the said claim at paragraph 25, we find that the impugned judgment does not contain any discussion or reasoning on this claim while adjudicating Issue No. 1 either for the period of claim or rate of interest.

24. The matter was listed for this purpose today, and counsels have given their clarification.

Mr. Bakshi, learned counsel for the Respondent, states that the legal notice for the principal amount was made for the first time on 06.12.2021. He states that the Respondent would be satisfied if the interest claim for the pre-reference period is truncated with effect from 06.12.2021 till 04.06.2022 (i.e., the date of institution of the suit). He also states that the pre-suit interest be reduced to 9%, which will conform with the pendente lite and future interest.

Learned counsel for the Appellant has not addressed any arguments

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on the rate of interest or the period of interest.

25. We have noted that the Respondent had indeed issued a legal notice dated 06.12.2021 calling upon the Appellant to pay a sum of Rs. 30 lakhs, and accordingly, we hold the Respondent is entitled to receive pre-suit interest with effect from 06.12.2021 until the date of institution of the suit at the rate of 9%. The rate of interest has been reduced from 18% to 9% as per the submission of the Respondent, and also, we are of the opinion that the rate of interest at 18% was high and not warranted in the facts of this case.

26. The decree shall stand modified to the extent of the aforesaid directions. The registry is directed to draw up a modified decree in accordance with this order.

27. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

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