



2025:DHC:8843-DB



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on : 21st August 2025*
Pronounced on : 08th October 2025

+ **RFA(COMM) 489/2025 & CM APPL. 51518/2025, CM APPL. 51519/2025**

MOHINDER KUMAR GANDHI

.....Appellant

Through: Mr. Pinaki Addy, Ms. Neetu Singh, Mr. Dheeraj Kumar, Ms. Jyoti, Mr. Ankur Sharma and Mr. Rahul Kumar, Advs.

versus

PRAVEEN KUMAR

.....Respondent

Through: *Nemo*

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. The present appeal has been filed under Section 13 of the Commercial Courts Act, 2015 (*'CC Act'*) read with Section 96 of the Code of Civil Procedure, 1908 (*'CPC'*), by Appellant (*original plaintiff*), *Shri Mohinder Kumar Gandhi*, Proprietor of *M/s Capital Plastic House*, assailing the judgment and decree dated 14th May 2025, passed by the learned District Judge (Commercial Court)-02, Central District, Tis Hazari Courts, Delhi in *CS (COMM) No. 1032/2024*, titled "*Mohinder Kumar Gandhi v Praveen Kumar*".



Factual Matrix

2. Appellant/plaintiff is the proprietor of *M/s Capital Plastic House*, engaged in the business of selling polycarbonate sheets, like PVC sheets and sunboard sheets. Respondent/defendant, *Shri Praveen Kumar*, is the proprietor of *M/s Pioneer Polyplast*, carrying on a similar business.
3. Respondent/defendant approached him for supply of various kinds of polycarbonate sheets, PVC Sheets and related items. The said goods were alleged to be supplied to respondent/defendant, and two invoices dated 31st July 2021 and 07th August 2021 were raised.
4. It was the case of appellant/plaintiff that multiple invoices were raised towards supply of goods, and as on 7th August 2021, an amount of Rs. 12,47,850/- was due as per the ledger. Despite repeated demands, respondent/defendant failed to clear the dues. Consequently, appellant/plaintiff issued a legal notice on 13th March 2023, demanding payment due, which went unanswered.
5. Appellant/plaintiff thereafter initiated pre-institution mediation under Section 12A of the CC Act. Respondent/defendant failed to appear, and a *Non-Starter Report* dated 02nd December 2023 was issued.
6. Consequently, appellant/plaintiff instituted the suit for recovery of Rs.21,42,199/-, which includes interest of Rs. 8,94,349/- w.e.f. 07th August 2021 to 03rd August 2024 on principal amount of Rs. 12,47,850/-, along with *pendente-lite* & future interest @ 24% p.a. from date of filing suit till realisation, alleging breach of commercial obligations by respondent/defendant.
7. On the basis of pleadings, the Trial Court framed the following issues:

“Issue no.1: Whether the Invoices raised by the Plaintiff against the Defendant are bogus, false and



fabricated and no such transactions ever took place between the parties? OPD

Issue no. 2: Whether the Plaintiff is entitled for recovery of an amount of Rs. 21,42,199/- i.e. principal amount of Rs. 12,47,850/- along with interest @ 24% from 07.08.2021 to 30.08.2024 and pendente lite and future interest? OPP

Issue no. 3: Relief.”

8. Appellant/plaintiff's Senior Marketing Manager/Special Power of Attorney ('SPA') was examined as **PW-1/Mr. Baljit Kumar Choudhary**, and **Mr Akash Gandhi**, son of appellant/plaintiff, was examined as **PW2/Mr Akash Gandhi**. The evidence comprised of invoices, e-way bills, GST filings, balance sheets, and ledgers. However, original delivery *challans* bearing acknowledgement of respondent/defendant were not produced.

9. Respondent/defendant denied receipt of goods. He disputed the genuineness of the invoices and asserted that appellant/plaintiff had concocted the claim.

10. Trial Court dismissed the suit of appellant/plaintiff *vide* judgment date 14th May 2025, and directed appellant/plaintiff to pay a sum of Rs. 50,000/- towards respondent/defendant's litigation cost and made the following observations:

- i. The onus is on plaintiff to establish its case, and it cannot use absence of defence in his favour. He failed to prove actual delivery of goods to the defendant. No signed delivery *challans*, transport receipts, or acknowledgement slips were produced.
- ii. The ledger account demonstrates only few entries, including those of 13th July 2021 and 07th August 2021 and is incomplete. Moreover, there is no record to show transactions were done on cash or credit basis, nor is it clear whether the account was current, open, mutual



or non-mutual account. Therefore, invoices and ledgers produced by plaintiff were held to be self-serving, prepared unilaterally, and insufficient to establish liability.

- iii. GST returns and e-way bills were also held inadequate in absence of independent proof of delivery.

11. Thereafter, respondent/defendant filed an execution petition to execute the impugned judgment. Warrants of attachment of appellant/plaintiff's two bank accounts were issued. Executing proceedings are pending before Executing Court.

Submissions of appellant/plaintiff

12. *Mr. Pinaki Addy*, counsel appearing for appellant/plaintiff, drew attention of the Court to the requirement stated under Section 114 (g) of the Evidence Act 1872, whereby he contends that the Trial Court erred in not considering the adverse inference under Section 114(g), which arises in favour of appellant/plaintiff, as respondent/defendant failed to respond to Legal Notice issued by appellant/plaintiff dated 13th March 2023.

13. Counsel for appellant/plaintiff further submits that the Trial Court failed to recognise appellant/plaintiff's right under Section 55 of the Sale of Goods Act, 1930, which is related to an unpaid seller who may sue for the price he is entitled to. He further submits that the Trial Court wrongly held that there was no proof of delivery of goods or corroborative evidence for invoices and ledger entries.

14. Counsel brought our attention to delivery *challans* dated 31st July 2021 and 07th August 2025 issued by appellant/plaintiff, which he claims to have been duly acknowledged by respondent/defendant with a signature along with date thereto; however, these delivery *challans* were not a part of record of the



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Trial Court. For ease of reference, the said Delivery *challans* are extracted as under:

GSTIN : 07AAHPG1263A1ZD Delivery Challan Ph. : 011-40334157

CAPITAL PLASTIC HOUSE
GODOWN : 7/22, LIBAS PUR, DELHI-110042
E.: capitalplastichouse3084@gmail.com

No. **1504** Dated **31-7-2021**

M/s. **Pioneer Poly Plast.**
2771-B, FF, Gali No 3, Chuna Mandi Pahar Ghar N. Del.

Party GSTIN : **07CZAPK1719812W** Vehicle No. **DL-1LAC-3632**

S. No.	DESCRIPTION OF GOODS	QTY.
1.	Acrylic Sheet (8x4) - 3mm.	150 Sheets.
2.	Acrylic Sheet (8x4) - 1.8mm.	100 Sheet
	Total.	250 Sheet

राम कुमार
31-07-2021

Received the Goods in Good Condition and order. For CAPITAL PLASTIC HOUSE

Signature of Receiver Auth. Signatory

GSTIN : 07AAHPG1263A1ZD Delivery Challan Ph. : 011-40334157

CAPITAL PLASTIC HOUSE
GODOWN : 7/22, LIBAS PUR, DELHI-110042
E.: capitalplastichouse3084@gmail.com

No. **1508** Dated **7-8-21**

M/s. **Pioneer Poly Plast.**
2771-B, FF, Gali No 3, Chuna Mandi Pahar Ghar N. Del.

Party GSTIN : **07CZAPK1719812W** Vehicle No. **DL-1LX-2677**

S. No.	DESCRIPTION OF GOODS	QTY.
1.	Acrylic Sheet (8x4) 3mm	125 Sheet.
2.	———— (8x4) 1.8mm	75 Sheet
	Total	200 Sheet

गयाबलस
7/8/21

Received the Goods in Good Condition and order. For CAPITAL PLASTIC HOUSE

Signature of Receiver Auth. Signatory



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15. Our attention was further brought to the ledger account filed by appellant/plaintiff, which, as per him, confirms the business transactions between appellant/plaintiff firm and respondent/defendant due to him by respondent/defendant. Same is extracted as under for ease of reference:

-151- ANNEXURE-A-14

CAPITAL PLASTIC HOUSE
3084/1, CHUNA MANDI, PAHARGANJ,
NEW DELHI-110055
Contact 9891078460

Pioneer Polyplast
Ledger Account
2971-B, FIRST FLOOR, GALI NO. - 03,
CHUNA MANDI, PAHARGANJ, DELHI - 110055

1-Apr-18 to 28-Jul-25

Date	Particulars	Vch Type	Vch No.	Debit	Credit
28-Dec-18	To CENTRAL BANK OF INDIA	Payment	350	3,00,000.00	
11-Mar-19	By CENTRAL BANK OF INDIA	Receipt	1133		3,00,000.00
				3,00,000.00	3,00,000.00
11-Jul-20	By PURCHASE	Purchase	TI/49		5,76,290.00
12-Jul-20	By PURCHASE	Purchase	TI/54		1,83,917.00
14-Jul-20	By PURCHASE	Purchase	TI/61		70,210.00
15-Jul-20	By PURCHASE	Purchase	TI/63		1,12,147.00
28-Jul-20	By PURCHASE	Purchase	TI/83		2,83,200.00
5-Sep-20	To INDIAN BANK	Payment	148	5,00,000.00	
6-Oct-20	To INDIAN BANK	Payment	196	7,25,764.00	
				12,25,764.00	12,25,764.00
31-Jul-21	To Sales Local @18 %	Sales	2373	6,90,300.00	
7-Aug-21	To Sales Local @18 %	Sales	2397	5,57,550.00	
				27,73,614.00	15,25,764.00
	By Closing Balance				12,47,850.00
				27,73,614.00	27,73,614.00

For CAPITAL PLASTIC HOUSE
M. K. 89
Proprietor



16. It has been alleged by petitioner's counsel that the Trial Court misapplied Section 34 of the Indian Evidence Act, 1872, rejecting ledger accounts and entries supported by corroborative evidence. The Trial Court also failed to apply the settled law under the Sale of Goods Act, 1930, which recognises invoices, books of accounts, and delivery documents as valid proof of commercial transactions.

17. Appellant/plaintiffs' counsel contended that testimony of appellant/plaintiff's authorised representative was wrongly discarded. Counsel for appellant/plaintiff relied upon the judgment of the Supreme Court in *A.C. Narayanan v State of Maharashtra* (2014) 11 SCC 790, wherein it was held that an authorized agent/representative can depose on behalf of the principal and contends that rejection of such testimony is contrary to settled law.

18. Counsel for appellant/plaintiff further alleges that invoices were sent to respondent/defendant through courier, as recorded in evidence given by **PW2/Mr. Akshay Gandhi**, before the Trial Court.

19. Counsel for appellant/plaintiff submits that e-way bills were generated in favour of respondent/defendant against the impugned invoices. E-way bill dated 31st July 2021 against invoice dated 31st July 2021 and e-way bill dated 07th August 2021 against the invoice dated 07th August 2021, are extracted as under:



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e-Way Bill



1. E-WAY BILL Details

eWay Bill No: 7712 0213 2038 Generated Date: 31/07/2021 06:55 PM Generated By: 07AAH PG126 3A1ZD
Valid Upto: 01/08/2021

Mode: Road Approx Distance: 100km

Type: Outward - Supply Document Details: Tax Invoice - 2373 - Transaction type: Regular
31/07/2021

2. Address Details

From

GSTIN : 07AAH PG126 3A1ZD
CAPITAL PLASTIC HOUSE
DELHI

:: Dispatch From ::
3084/1
CHUNA MANDIPAHAR GANJ
New Delhi, DELHI-110055

To

GSTIN : 07CZA PK171 9B1ZW
PIONEER POLYPLAST
DELHI

:: Ship To ::
2971-B
FF GALI NO-03
CHUNA MANDI PAHAR GANJ, NEAR HARI MASJID, DELHI-110055

3. Goods Details

HSN Code	Product Name & Desc.	Quantity	Taxable Amount Rs.	Tax Rate (C+S+H+Cess+Cess Non-Advol)
39205111	ACRYLIC PLASTIC SHEET & ACRYLIC PLASTIC SHEET	250.00 Pcs	585000.00	9.000+9.000+NE+0.000+0.00

Tot. Tax'ble Amt	CGST Amt	SGST Amt	IGST Amt	CESS Amt	CESS Non-Advol Amt	Other Amt	Total Inv. Amt
585000.00	52650.00	52650.00	0.00	0.00	0.00	0.00	690300.00

4. Transportation Details

Transporter ID & Name : Transporter Doc. No & Date : & 31/07/2021

5. Vehicle Details

Mode	Vehicle / Trans Doc No & Dt.	From	Entered Date	Entered By	CEWB No. (If any)	Multi Veh. Info (If any)
Road	DL01LAC3632	New Delhi	31/07/2021 06:55 PM	07AAHPG1263A1ZD	-	-



771202132038

For CAPITAL PLASTIC HOUSE

M. K. Gargwal
Proprietor



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8/7/2021

E-Way Bill System

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e-Way Bill



1. E-WAY BILL Details

eWay Bill No: 7312 0336 7570

Generated Date: 07/08/2021 04:44 PM

Generated By: 07AAH PG126 3A1ZD Valid Upto: 08/08/2021

Mode: Road

Approx Distance: 100km

Type: Outward - Supply

Document Details: Tax Invoice - 2397 - 07/08/2021

Transaction type: Regular

2. Address Details

From

GSTIN : 07AAH PG126 3A1ZD
CAPITAL PLASTIC HOUSE
DELHIDispatch From :
30841
CHUNA MANDI PAHAR GANJ
New Delhi, DELHI-110055

To

GSTIN : 07CZA PK171 981ZW
PIONEER POLYPLAST
DELHIShip To :
2971-B
FF GALI NO-03
CHUNA MANDI PAHAR GANJ, NEAR HARI MASJID, DELHI-110055

3. Goods Details

HSN Code	Product Name & Desc.	Quantity	Taxable Amount Rs.	Tax Rate (C+S+H+Cess+Cess Non.Advol)
39205111	ACRYLIC SHEETS & ACRYLIC SHEETS	125.00 Pcs	337500.00	9.000+9.000+NE+0.000+0.00
39205111	ACRYLIC SHEETS & ACRYLIC SHEETS	75.00 Pcs	135000.00	9.000+9.000+NE+0.000+0.00

Tot. Tax'ble Amt : 472500.00 CGST Amt : 42525.00 SGST Amt : 42525.00 IGST Amt : 0.00 CESS Amt : 0.00 CESS Non.Advol Amt : 0.00

Other Amt : 0.00 Total Inv.Amt : 557550.00

4. Transportation Details

Transporter ID & Name :

Transporter Doc. No & Date : & 07/08/2021

5. Vehicle Details

Mode	Vehicle / Trans Doc No & Dt.	From	Entered Date	Entered By	CEWB No. (If any)	Multi Veh. Info (If any)
Road	DL01LX2677	New Delhi	07-08-2021 04:44 PM	07AAHPG1263A1ZD	-	-



731203367570

https://ewaybillgst.gov.in/BillGeneration/EwayBillPrint.aspx?ewb_no=731203367570

For CAPITAL PLASTIC HOUSE

M.C. Sandhu
Proprietor

1/1



20. Counsel for appellant/plaintiff further pointed out to *Rule 138(12)* of the Central Goods and Services Tax (CGST) Rules, 2017 (*‘CGST Rules, 2017’*), which creates a statutory presumption that if the buyer does not reject the e-way bill within 72 hours on the GST portal, acceptance of goods is deemed. Respondent/defendant never rejected or objected to the e-way bills. For ease of reference, relevant provisions are extracted as under:

“138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill.

11) The details of the e-way bill generated under this rule shall be made available to the -

(a) supplier, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the recipient or the transporter;

or

(b) recipient, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the supplier or the transporter, on the common portal, and the supplier or the recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the e-way bill

(12) Where the person to whom the information specified in sub-rule (11) has been made available does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, it shall be deemed that he has accepted the said details.

(emphasis added)

21. Lastly, reliance was placed on *Sanjana Aggarwal v Namashivai Apparel Pvt. Ltd.* 2024:DHC:9987 by counsel for appellant/plaintiff, specifically on *paragraph no. 38*, to infer that the Trial Court failed to draw adverse inference on the basis of *Rule 138(12)* of the *CGST, 2017*, against



respondent/defendant for not replying to legal notice and for contradictions in his testimony. Said is extracted as under:

“38. Rule 138 of CGST Rules provide for the rules for generation of “e-way bills”. Sub-Rule (11) and (12) of Rule 138 of the CGST Rules provide that the details of “e-way bills” generated under Rule 138 of the CGST Rules shall be available on the common portal and the supplier or the recipient, as the case may be, shall communicate his acceptance or rejection of the assessment of the goods covered in the “e-way bills”. Sub-Rule (12) of Rule 138 of the CGST Rules provides that if a rejection is not made available within 72 hours on the common portal or at the time of delivery, it shall be deemed that the recipient has accepted the goods.”

(emphasis added)

Analysis

22. Upon careful examination of the evidence and pleadings on record, the following can be inferred.

22.1. *Firstly*, at the outset, it is observed that appellant/plaintiff failed to establish the fundamental requirement of proof of delivery of goods to respondent/defendant. The testimony of **PW-2/Mr Akash Gandhi** contradicted the assertions of **PW-1/Mr. Baljit Kumar Choudhary** by stating that the goods were delivered by a ‘Chota Hathi’ (small vehicle), without any particulars being provided, such as vehicle number, transporter name, driver’s particulars, or any transport receipt.

22.2. *Secondly*, the Trial Court noted contradiction wherein the e-way bill indicated a distance of 100 kilometres, and as per the statement of **PW2/Mr Akash Gandhi**, the distance between the business premises of appellant/plaintiff and respondent/defendant is 100-200 meters, which



remained unexplained. When questioned by this Court regarding the distance, appellant/plaintiff failed to provide any evidence in respect of the same. No material evidence has been furnished by appellant/plaintiff to show that delivery of the goods was made.

22.3. *Thirdly*, the contention of appellant/plaintiff that invoices were delivered to respondent/defendant through courier does not hold any merit, as when questioned by this Court regarding proof of delivery of invoice or receipt of delivery from the postal services appellant/plaintiff failed to provide any evidence in this respect. *Mr. Akshay Gandhi/PW2*, explicitly stated in his evidence that appellant/plaintiff sent invoices of acrylic sheets to respondent/defendant by courier, but did not place on record proof of their receipt. The Trial Court, in *paragraph 32* of the impugned judgment, rightly held that appellant/plaintiff failed to provide any evidence of a business transaction or material supply to respondent/defendant.

22.4. *Fourthly*, the Trial Court also correctly applied Section 34 of the Indian Evidence Act, 1872, which provides that entries in books of accounts, though relevant, are not sufficient by themselves to fasten liability. Appellant/plaintiff did not produce any supporting *roznama*, vouchers, Income Tax returns, daily cash books, balance sheets, or account registers to vindicate the transactions in issue. In the absence of such documents, an adverse inference must be drawn in accordance with the principles laid down by the Supreme Court in *Central Bureau of Investigation v V.C. Shukla & Ors.* (1998) 3 SCC 410, and *Gopal Krishna Ketkar v Mohamed Haji Latif* AIR 1968 SC 1413, as noted by the Trial Court.

22.5. *Fifthly*, *Rule 138(12)* of the *CGST Rules, 2017* creates a statutory presumption of deemed acceptance if no rejection is communicated by the recipient within seventy-two hours. However, such a statutory presumption is



intended solely for the purpose of tax administration and compliance and does not discharge the civil burden of proof in a claim of delivery or performance of a contract.

22.6. *Sixthly*, reliance placed by appellant/plaintiff upon ***Sanjana Aggarwal v Namashivai Apparel Pvt. Ltd.*** 2024:DHC:9987, to infer that the Trial Court failed to draw adverse inference laid down in *Rule 138(12)* of the *CGST Rules, 2017* is wholly misplaced, as none of additional supporting documents were substantiated in the present case, which deem to have been relied upon by the Division Bench to reach to the adverse inference. The relevant part of the judgment, whereby the Division Bench of this Court considered other corroborative evidence produced on record before accepting the presumption under *Rule 138(12)* of the *CGST Rules, 2017*, is extracted below for ease of reference:

“33. The authorised representative of the Banker of NAPL (CCW-3) produced the bank statement of NAPL evidencing the payments made to Molmek. NAPL also produced testimony of the driver of the vehicle (CCW-5).

34. The learned Commercial Court after examining the documents and evidence produced also relied on a series of Whatsapp chats, which were not denied by Molmek and the ledger details filed on 17.03.2020 to give a finding that an amount of Rs. 84,56,058.70/- was outstanding.

34.1 Molmek had contended that payments aggregating Rs. 3.5 lacs were made by NAPL on 08.06.2020, 07.07.2020 and 06.08.2020. There would be no need to make these payments if on those dates amounts were outstanding and payable by Molmek to NAPL. According to Molmek, this established that the invoices raised by NAPL are false. In our view, this contention is not disputed by Molmek that there were simultaneous transactions taking place between the parties. Hence, it is plausible that periodic payments would be made by a



party (NAPL) to the other (Molmek). The witnesses of NAPL explained in their testimony that supply of goods were not stopped on account of non-receipt of payments as the accounts used to be reconciled periodically, from time to time.

35. The learned Commercial Court relied on the Whatsapp chat dated 04.01.2021, which was sent by Molmek to NAPL on 04.01.2021 requesting to clear “small acc pending” and held that the contention of the Molmek cannot be correct since it has claimed approximately Rs. 79 lacs were pending at that time.”

22.7. *Seventhly*, appellant/plaintiff did not possess any documentary evidence or communication showing any demand for payment from respondent/defendant during the period between alleged delivery of goods and issuance of the legal notice.

22.8. *Eighthly*, no original delivery *challans* bearing the signature or acknowledgement of respondent/defendant were produced. Appellant/plaintiff's claim that goods were delivered remained wholly unsubstantiated, and no receipts or dispatch records were annexed to the pleadings or evidence. Delivery *challans*, which are material documents evidencing delivery, were also conspicuously absent from the record.

22.9. At this stage appellant/plaintiff has filed an application under Order XLI Rule 27 (1)(aa) of the CPC, to place the delivery *challans* on record. For ease of reference Order XLI Rule 27 is extracted as under:

“27. Production of additional evidence in Appellate Court.

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or



*(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or
(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,*

the Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

(emphasis added)

22.10. A bare perusal of the aforementioned provisions indicates that *sub-rule (1) of Rule 27* explicitly states a negative condition, i.e. ‘*the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court*’. The legislative intent behind the provision, as a general principle, is that the Appellate Court must adjudicate the appeal based on the evidence presented before the Trial Court, without permitting the introduction of new evidence at the appellate stage.

22.11. However, this rule is further subject to exceptions, whereby evidence can be admitted by the Appellate Court. *Clause 1 (aa) of Rule 27* lays down criteria under which additional evidence may be considered by the Appellate Court when a party can show that it was impossible for them to present such evidence earlier due to lack of knowledge or because they could not have obtained it despite exercising due diligence.



22.12. The Supreme Court, in *Union of India v Ibrahim Uddin* (2012) 8 SCC 148, has interpreted the provision of *Order XLI Rule 27 CPC* and opined as under:

“38. Under Order 41 Rule 27 CPC, the appellate court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence.

39. It is not the business of the appellate court to supplement the evidence adduced by one party or the other in the lower court. Hence, in the absence of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this Rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal.

40. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a “substantial cause” within the meaning of this Rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.”

(emphasis added)



22.13. It is apparent from reading of the said Rule as well as from the observations made by the Supreme Court that while considering the application for production of additional documents, the Court must consider the inability of party to produce the documents before the Trial Court. In the present matter, the delivery *challans* were well within the knowledge of appellant/plaintiff, and the reason stated by appellant/plaintiff in the application that appellant/plaintiff handed over the documents to counsel and the counsel did not give any weightage to same and did not file the same is unwarranted and untenable. Counsel for appellant/plaintiff failed to induce any reasons as to why these documents should be considered at this stage.

22.14. *Ninthly*, appellant/plaintiff did not produce the original purchase orders nor any communication, contemporaneous or otherwise, showing that respondent/defendant had placed orders for the goods. The contention that orders were given telephonically remained wholly unsupported by any call logs or records.

22.15. *Lastly*, the Trial Court also rightly discredited the testimony of appellant/plaintiff's authorised representative, who was examined under SPA. It is well-settled that a person cannot depose on matters which are not within his personal knowledge. **PW1/Mr. Baljit Kumar Choudhary** admitted ignorance of material facts such as the period of prior dealings, the GST proof annexed to the plaint, and even basic transactional details. Such testimony is, therefore, rightly held to be inadmissible and of no evidentiary value. Therefore, the Trial Court had rightly applied the principle laid down in ***A.C. Narayanan v State of Maharashtra*** (2014) 11 SCC 790.

23. A close perusal of the evidence on record reveals that appellant/plaintiff utterly failed to adduce any evidence establishing the existence of a business



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transaction between the parties or supply of alleged goods to respondent/defendant, as rightly noted by the Trial Court.

24. In the absence of any cogent and independent evidence proving delivery of goods, this Court finds no merit in the appeal. The Trial Court has recorded a well-reasoned and unimpeachable finding that appellant/plaintiff has failed to discharge the primary onus of proof.

25. Accordingly, the appeal is dismissed.

26. The judgment and decree of the Trial Court dated 14th May 2025 are upheld.

27. Pending applications are rendered infructuous.

28. Judgment be uploaded on the website of this Court.

**ANISH DAYAL
(JUDGE)**

**NITIN WASUDEO SAMBRE
(JUDGE)**

OCTOBER, 08 2025/RK/bp