



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 05th August, 2026
Pronounced on: 11th August, 2026

CNR No: DLHC010159322020

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RFA 194/2020, CM APPL. 9932/2020

M/S D. B. PROJECT ENGINEERS

.....Appellant

Through: Mr. Puneet Singh Bindra, Mr. Deepak Singh, Ms Charu Modi, Mr. Vikrant Singh, Mr. Shubham Jaiswal, Mr. Upendra Yadav, Mr. Sahil Sansanwal and Mr. Tushar Yadav, Advocates.

versus

M/S MALIK ENTERPRISES

.....Respondent

Through: Mr. Sunil Dalal, Senior Advocate with Ms. Mehak Nakra, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 of CPC has been filed on behalf of the Appellant Company against the *ex-parte* Judgment dated 18.01.2018, whereby Suit of the **Plaintiff / Respondent for Recovery of Rs.14,27,640/-** along with *pendente lite* and future interest @ 12% per annum, **has been Decreed.**
2. The Plaintiff M/S Malik Enterprises had filed a Civil Suit bearing CS DJ No.56891/2016 for Recovery of Rs.14,27,640/- along with *pendente lite* and future interest @ 18% per annum.
3. ***Facts in brief***, as stated in the Plaint, are that Defendant / Appellant was engaged in the business of electrical contractor and works in Delhi, Haryana and Uttar Pradesh. Plaintiff / Respondent was the sub-contractor of Defendant and was engaged in the



similar business of electrical contracts. The Defendant assigned job works to the Plaintiff, which had been completed, and part payment was made by the Defendant towards that work. A sum of Rs.25,000/- was paid on 22.10.2014 through RTGS in the account of the Plaintiff, after which no payment has been made. The Plaintiff has been maintaining the account details, according to which the sum of Rs.14,27,640/- was due, which the Defendant failed to pay despite repeated requests. A Demand Notice dated 25.04.2015 was served upon the Defendant, despite which he failed to pay the due amount. **Consequently, the Plaintiff filed the present Suit for Recovery of Rs.14,27,640/- along with *pendente lite* and future interest @ 18% per annum.**

4. The Summons dated 25.07.2015 were issued for service of the Defendant. The Process Server gave a Report on oath that one Sonu, who stated himself to be the employee, was found present at the premises, who stated that the 'owner' visits the property occasionally and there was no fixed time for him to come.

5. Thereafter, learned ADJ directed service to be affected for affixation. However, subsequently the Court on the basis of this Report of the Process Server dated 24.08.2015, Defendant was held to be served and **was proceeded *ex-parte* on 18.07.2016.**

6. The Plaintiff, in support of his case, examined PW-1 Mr. Parmod Kumar Malik, Sole Proprietor of M/s Malik Enterprises, who in his testimony deposed on similar lines as the assertions made in the Plaint and proved the three Statements of Accounts as Ex.PW-1/1 and Legal Notice dated 25.04.2015 was Ex.PW-1/2.

7. **Learned ADJ**, on appreciation of the evidence and on consideration of three Statements of Accounts as Ex.PW-1/1, held that the Plaintiff had proved its case. Consequently, an *ex-parte* money decree for the sum of Rs.14,27,640/- along with *pendente lite* and future interest @ 12% per annum was passed.

8. Thereafter, Defendant / Appellant filed an **Application under Order IX Rule 13 CPC for setting aside this *ex-parte* Judgment and Decree, but the same was dismissed by the learned ADJ.**

9. Aggrieved by the same, Defendant / Appellant has filed present Regular First Appeal against *ex-parte* Judgment and Decree dated 18.01.2018.



10. **The grounds of challenge** are that it has not been appreciated that the Plaintiff / Respondent, in fact, had not affected the service of the summons and the Decree has been obtained by the Plaintiff, by playing fraud and by misrepresentation by giving intentionally false address of the Appellant, in order to get an *ex-parte* Order / Judgment.

11. It is further contended that the Plaintiff could not have got a Decree unless the averments made in the Plaint are established, irrespective of the Appellant being *ex-parte* as Supreme Court has held in the case of Bogidhola Tea & Trading Co. Ltd. vs. Hira Lal Somani, (2007) 14 SCC 606.

12. It is asserted that *no primary evidence or document* has been filed by the Plaintiff in support of his claim. Reliance on three Statements of Accounts as Ex.PW-1/1, has been placed wrongly, since there is no primary evidence led to prove these Statements.

13. It is further asserted that the *learned Trial Court was necessarily required to allow the Application under Order IX Rule 13 CPC* and set aside the impugned *ex-parte* Judgment and Decree dated 18.01.2018, which has been erroneously dismissed vide Order dated 18.01.2020.

14. A Prayer is therefore, made that the impugned *ex-parte* Judgment and Decree dated 18.01.2018 be set aside and the Suit be remanded back for trial, in accordance with the law.

15. ***Learned counsel for the Respondent*** has appeared on service of Notice and contested the Appeal. He asserted that the challenge to the Application under Order IX Rule 13 CPC was maintainable only under Order XLIII Rule 1(d) CPC and the same cannot be a subject matter of challenge in the present Appeal.

16. It is further submitted that the Appellant had been duly served and had intentionally not appeared before the Court. It is further asserted that the Plaintiff had duly proved three Statements of Accounts Ex.PW-1/1, on the basis of which the Suit of the Plaintiff has been decreed.

Submissions heard and record perused.

17. At the outset, it is noted that the *preliminary objection has been rightly* raised on behalf of the Respondent, that the challenge to the dismissal of the Application under



Order IX Rule 13 CPC could lie only under Order XLIII Rule 1(d) CPC, and it does not survive for consideration.

18. The present Appeal has been preferred under Section 96 CPC against the *ex-parte* Judgment and Decree dated 18.01.2018 itself, and not against the Order dated 18.01.2020 dismissing the Application under Order IX Rule 13 CPC. The two remedies operate independently of each other, and the outcome of the proceedings under Order IX Rule 13 CPC, does not bar a Regular First Appeal against the underlying *ex-parte* decree. This Court may therefore, consider the Appeal on merits, to ascertain if the plaintiff was successful in proving his case, on merits by adducing cogent evidence.

19. Plaintiff had claimed that it was the sub-contractor of the Defendant and had carried out the works. Though some payments had been made by the Defendant / Appellant, as per his three Statements of Accounts as Ex.PW-1/1, there was an outstanding amount of Rs.14,27,640/-.

20. The assertions of the Plaintiff and his evidence, clearly reflect that he had referred to a sub-contract, which he had entered into with the Defendant. He also asserted that he had been doing work, against which part-payments had been made. However, as rightly argued by the Ld. Counsel for the Appellant, neither any sub-contract Agreement nor any other document has been filed by the Respondent, to prove the work assignment or the work which had been carried out by him and those for which no payment had been made by the Defendant. No document whatsoever, either as an Agreement or Bill or Invoices or Purchase Order, has been placed on record by the Plaintiff. Aside from his bald assertions, there is nothing on record to support that it had performed the jobs, as per the directions of the Defendant / Appellant.

21. The only documents which had been produced by him, were three separate Statements of Accounts maintained by him for the Defendant, which have been exhibited as Ex.PW-1/1. However, these are self-serving entries in the Account Books, which have not been proved by the corresponding Bank Accounts, to reflect the payments made through cheques, as reflected in the Statements of Accounts.



22. Pertinently, these three Statements of Accounts (Ex.PW-1/1) are electronically generated and have not even been proved by submitting a Certificate under Section 65B of Indian Evidence Act.

23. In the absence of due proof of the Statements of Accounts, by producing the corroborative evidence, or the underlying documents and by filing a Certificate under Section 65B of Indian Evidence Act, learned ADJ fell in error in accepting the bald testimony of the Plaintiff, without any corroborative documentary evidence.

24. Therefore, impugned *ex-parte* Judgment dated 18.01.2018 is not sustainable, as it is bereft of any evidence whatsoever, in proof of the claim. No document has been placed on record, either before the learned Trial Court or in the present Appeal, to substantiate the claim of the Plaintiff. The three Statements of Accounts (Ex.PW-1/1) remained unproved, being neither corroborated by the underlying Bank records nor supported by a Certificate under Section 65B of the Indian Evidence Act. Even, in the present Appeal, there are no supporting documents placed on record, on the basis of which an opportunity could be given to the Plaintiff for adducing the evidence.

25. In the absence of any evidence in proof of the claim, and no ground having been made out for affording a fresh opportunity to lead evidence; the Suit of the Plaintiff is dismissed.

26. In view of the aforesaid, **Appeal is allowed and the impugned *ex-parte* Judgment and Decree dated 18.01.2018 is hereby, set aside.**

27. Pending Applications are also disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 11, 2026/R