



2026:DHC:1764-DB



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

% ***Reserved on: 10th February, 2026***

Pronounced on: 27th February, 2026

+ RFA(COMM) 665/2025, CAV 461/2025, CM APPL. 74948/2025,
CM APPL. 74949/2025 & CM APPL. 74950/2025

1. TANISHQ AGENCIES,

No. 3 GRD FLR. KAVERI ROYAL APT.
SWARN JAYANTI NAGAR, RAMQHAT ROAD,
ALIGARH- 202001, UTTAR PRADESH.
THROUGH ITS PROPRIETOR/AR-
SMT. NEHA GUPTA,
ALSO AT: 2/614, RMBAGH COLONY,
GALI NO. 3, RAMGHAT ROAD, ALIGARH,
UTTAR PRADESH.

2. TANISHQ AGENCIES,

No. 3 GRD FLR. KAVERI ROYAL APT.
SWARN JAYANTI NAGAR, RAMGHAT ROAD,
ALIGARH- 202001, UTTAR PRADESH .
THROUGH ITS PROPRIETOR/AR
MR. RAJNEESH VARSHNEY (RAJA).APPELLANTS

Through: Mr. Amish Tiwari, Adv.

versus

M/S VENTURA INTERNATIONAL PVT LTD

AT.1/120, FIRST FLOOR, WHS, KIRTI NAGAR,
NEW DELHI-110015.
THROUGH ITS FINANCE CONTROLLER



2026:DHC:1764-DB



SH. SANJAY AGARWAL.

.....RESPONDENT

Through: Mr. Karan Sinha, Adv.

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT

AJAY DIGPAUL, J.

CM APPL 74949/2025 & CM APPL 74950/2025 (Condonation of delay of 1,000 days in filing and 14 days in re-filing the appeal)

1. These applications by the appellants/defendants¹ seek condonation of delay in filing and re-filing the present appeal. The time limit for challenging a money decree as laid down under Section 13 of the Commercial Court Act, 2015, is 60 days, with the present appeal being filed after a delay of 1,000 days.

2. Section 5 of Limitation Act, 1963, allows a court to condone delay where sufficient cause is shown. The application for condonation assigns the reason for this delay as an inability to contact their counsel due to COVID-19 and update themselves regarding the dates of hearing, and that their counsel was negligent in not appearing at the stage of plaintiff evidence. The application states that the existence of the *ex-parte* decree against the appellants only first came to the appellants' knowledge on

¹ Appellants hereinafter



receipt of notice in execution proceedings against them in February 2025 from a commercial court in Aligarh, U.P.

3. Seeing as to how all allegations against the appellants' previous counsel are unsubstantiated by any earlier formal action against him, we are not inclined to condone the present delay of 1,000 days. We emphasise that sufficient cause to condone delay cannot exist in the absence of diligence shown on the part of a litigant.

4. This is especially so due to the object of the Commercial Courts Act in ensuring strict adherence of timelines by parties to facilitate the speedy disposal of suits, coupled with the law laid down by the Hon'ble Supreme Court in *Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. M/s Borse Brothers Engineers & Contractors P Ltd.*

5. The applications stand disposed of for the aforesaid reasons.

RFA (COMM) 665/2025

6. Despite our refusal to condone the delay of 1,000 days in filing the present appeal, we deem it appropriate to apply our minds to its substance, owing to a litigant's substantive right to a first appeal.

7. This regular first appeal² filed under Section 13 of the Commercial Court Act, 2015, assails *ex-parte* judgment and decree dated 21.12.2022 passed by the learned District Judge (Commercial Court) – 01, West

² RFA



District, Tis Hazari Courts, Delhi, in CS (COMM) 185/2019, whereby the suit filed by the respondent/plaintiff³ has been partially decreed in its favour to the extent of ₹8,34,336/- along with interest at 10% per annum accruing from 09.01.2019, along with costs of ₹15,707/-.

8. The appellants later moved an application under Order IX Rule 13 of the Code of Civil Procedure, 1908, praying that the *ex-parte* judgment and decree dated 21.12.2022 be set aside. This application came to be dismissed *vide* order dated 05.07.2025, which has not been impugned in the present appeal.

9. Upon consent of counsel for both sides, we have decided to hear this appeal finally.

The Impugned Judgment & Decree dated 21.12.2022

10. The case of the respondent is that the appellants are a proprietorship concern carrying out trading related business and that the respondent is a company engaged in the business of architectural interior products, including laminates and allied materials. The respondent supplied goods to the appellants against multiple invoices, of which six invoices raised during the period of February to May 2016 comprised the decretal amount sought. A running account was said to have been maintained between the parties, against which, only part payments were received against the invoices in question.

³ Respondent hereinafter



2026:DHC:1764-DB



11. A legal notice dated 09.01.2019 was issued by the respondent demanding payment of the outstanding amount, to which no response was received from the appellants.

12. Application for mandatory pre-institution mediation was made by the respondent on 21.02.2019. Subsequently, noting that there was no appearance on behalf of the appellants on both dates (16.03.2019 and 08.04.2019) despite service of notices upon the appellant, a non-starter report came to be issued on 08.04.2019, i.e., about 46 days later, by the Delhi Mediation Centre, Tis Hazari Courts.

13. The respondent instituted a suit for recovery of money on 23.05.2019 seeking recovery of ₹13,68,311/- inclusive of interest of 24% on the ground of unpaid dues against goods supplied to the appellants, as well as non-supply of requisite C forms, attracting a payment of ₹ 1,11,257/- and ₹7,122/- as penalty and interest thereon, respectively. However, it is only the latter amount of ₹7,122/- on Bill no. 1766 dated 29.02.2016 which had been claimed as recoverable on account of non-supply of C forms.

14. The appellants filed their written statement dated 17.12.2019, wherein it was pleaded that the suit lacks requisite cause of action, and that the suit is barred by limitation, since parties did not have a running account, leading to the correct computation of limitation periods to run from the date of each individual invoice. The appellants also pleaded that the respondent had suppressed material facts, and that transactions on the



basis of which the suit was instituted involved the supply of defective goods.

15. In response to the written statement, the respondent filed its replication denying the averments contained within the written statement. The respondent's replication, along with other documents and the statement of truth were taken on record thereafter *vide* order dated 20.01.2022.

16. The parties were referred to mediation pursuant to joint request *vide* order dated 12.04.2022, and were directed to appear in person before the Mediation Centre on 05.05.2022 at 2.00 pm. Yet again, a non-starter report dated 14.07.2022 was issued due to non-participation of parties.

17. Issues were framed *vide* order dated 07.07.2022, noting that oral submissions were made regarding failure of mediation. Issues framed stand reproduced thus:

- “1. Whether the plaintiff is entitled for recovery of Rs. 13,68,311/- alongwith interest from the defendant as alleged? **(OPP)**
2. Whether the plaintiff is entitled for decree of Rs. 7,122/- on account of non submission of Form-C as alleged.? **(OPP)**
3. Whether there is no cause of action in favour of plaintiff? **(OPD)**
4. Whether the suit is time barred by limitation? **(OPD)**
5. Relief.”



2026:DHC:1764-DB



18. The respondent led evidence by way of affidavit dated 22.08.2022 of PW-1/ Sanjay Kumar Agarwal, authorised signatory, whereby purchase history of goods by the appellant from the respondent during the year 2016 for the months of February to May were tabulated. The same stands reproduced below for ready reference:

Sr. No.	Invoice No.	Date of Purchase	Quantity	Amount
1	83	16.04.2016	74.06 sqmt.	73,749.00/-
2	163	29.04.2016	73.72 sqmt.	74,168.00/-
3	180	03.05.2016	103.49 sqmt.	1,28,077.00/-
4	257	18.05.2016	54.12 sqmt.	67,112.00/-
5	258	18.05.2016	297.58 sqmt.	4,91,230.00/-
6	1766	29.02.2016	35.72 sqmt.	48,171.00/-

19. The respondent contended that no grievance of defective goods was raised by the appellants in connection with these supplies. It was further pleaded that the appellants assured to send the relevant C Forms concerning the bills raised, and that upon their failure to do so, the respondent made multiple requests for their supply along with payment of the outstanding amount of ₹ 13,68,311/- with interest at 24% per annum.

20. On 09.11.2022, PW-1's examination in chief stood completed, but despite multiple calls, the appellants did not enter appearance. Owing to



2026:DHC:1764-DB



this, cross examination of PW-1 stood closed, along with defence evidence, and the appellants were proceeded against *ex-parte*.

21. The learned Trial Court, based on its findings *qua* the four issues delineated, decreed the suit partially in favour of the respondent to the tune of ₹ 8,34,336/- with interest at 10% per annum from 09.01.2019 until realisation, along with costs.

Proceedings under Order IX Rule 13

22. Against impugned *ex-parte* judgment and decree dated 21.12.2022, the appellants preferred an application under Order IX Rule 13 of the Code of Civil Procedure, 1908, whereby it was argued that summons were received in February 2025 from the Commercial Court, Aligarh, U.P, concerning execution proceedings, and that subsequently on 18.02.2025, when the appellants appeared before the said court, it was only then that it became aware that it was proceeded against *ex-parte* vis-à-vis the impugned judgment and decree. Thereafter, it is the appellant's case that the previous counsel was unreachable between 18.02.2025 to 23.03.2025, after which a new counsel was engaged.

23. The court observed that at the time of framing of issues, the appellants' previous counsel was duly present, and that their allegations regarding previous counsel's lack of diligence was not substantiated by any complaints to the concerned Bar Council. Holding that it was the



duty of the appellants to pursue their case diligently, and that the plea against their previous counsel's conduct appears to be an afterthought to evade liability, the application under Order IX Rule 13 stood dismissed.

Submissions before this Court

24. Mr. Amish Tiwari, learned counsel for the appellants, advances his submissions on the following fronts:

- a. The plaint of the respondent was not accompanied by a statement of truth, rendering it *non est* and unreliable, and that the plaint has not been appended with signatures of the respondent on every page.
- b. There has been non-compliance with Section 12 A of the CC Act due to non-service of notice for pre-litigation mediation on appellant (by post and electronic means) in terms of Rule 3(2) of the CC Rules, 2018, and that the non-starter report was obtained by fraud, vitiating the impugned judgment and decree.
- c. Complaints regarding defective goods raised by the appellants' customers were duly communicated to the respondents, who, in turn assured resolution.
- d. The suit was decreed on the basis of false invoices and no dues are outstanding on the side of the appellants with respect to the respondent.



- e. Non-compliance with order dated 23.12.2021 in terms of payment of costs of ₹ 2,000/- to the appellants along with one last opportunity to comply with order dated 28.10.2020, and non-supply of copy of replication to the appellants resulted in the respondent failing to prove contents of their replication during examination-in-chief, amounting to admission of all contents of the appellant's written statement.
- f. The suit was time barred as there was no running account between the parties.

Analysis

25. Dealing with preliminary objections at the outset, we deem it appropriate to examine whether the suit of the respondent was barred by limitation.

26. The learned Trial Court has returned its finding on this issue, being issue no. 4, at paragraph 16 of the impugned judgment. The same stands reproduced below for ready reference:

“16. Issue no.4:- Whether the suit is barred by limitation:-

Defendants stated that suit was barred by limitation as the goods were stated to be supplied in 2016 and there was no running account. Plaintiff disputed this fact and stated that they were maintaining a



running account and the limitation would start from the date of last invoice. Defendants have not led any corroborative evidence nor have cross examined PW-1 on this issue. The plaintiff on the contrary has placed on record the ledger account for the period 01.04.2016 to 31.03.2017. As per the same, there were entries being maintained both for sales as well as part payments received from time to time. This document supports plaintiff's contention that there was a running account between the parties. In regard to limitation, the last entry is shown to be of 18.05.2016 and the closing of the financial year would be of 31.03.2017. The suit is shown to be filed in May 2019 and plaintiff had also approached pre-litigation mediation on 21.02.2019 and the report was issued on 08.04.2019, as such, the suit is within the limitation, period of 3 years from date of cause of action. Hence, this issue is decided against the defendants and in favour of plaintiff."

27. In its finding, the learned Trial Court has held Article 1 of the limitation Act to be applicable to the facts of the case. Article 1 of the Limitation Act stands reproduced thus:

THE SCHEDULE (PERIODS OF LIMITATION) [See sections 2(j) and 3] FIRST DIVISION — SUITS		
Description of suit	Period of limitation	Time from which period begins to run
PART I — SUITS RELATING TO ACCOUNTS		



1. For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Three years.	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
---	--------------	--

28. A perusal of Article 1 reveals that the pre-requisites of its application are found in four factors –

- 1) mutual,
- 2) open,
- 3) current account,
- 4) where there have been reciprocal demands between the parties.

All four of these factors must stand to have been satisfied to compute limitation in accordance with the Article 1 of the Limitation Act.

29. On the point of factors 2) and 3), we observe that they stand satisfied by virtue of the ledger account maintained by the respondent concerning transactions with the appellant. The ledger account has been led into evidence and the same stands reproduced below:

Date		Particulars	Vch Type	Vch No	Debit	Credit
1-4-2016	To	Opening Balance			2,40,894.00	
6-4-2016	To	@ 2% CST Sales	Retail Invoice	83	73,749.00	
29-4-2016	To	@ 2% CST	Retail	163	74,168.00	73,414.00



		Sales	Invoice			
	By	HDFC Bank Ltd.	Receipt	130		
3-5-2016	To	@ 2% CST Sales	Retail Invoice	180	1,28,077.00	
17-5-2016	By	HDFC Bank Ltd CC A/C (CC HDFC)	Receipt	233		1,67,480.00
18-5-2016	To	@ 2% CST Sales	Retail Invoice	257	67,112.00	
	To	@ 2% CST Sales	Retail Invoice	258	4,91,230.00	
	By	Closing Balance			10,75,230.00	2,40,894.00
						8,34,336.00
					10,75,230.00	10,75,230.00

30. Against this ledger account relied upon by the respondent, the appellants in their written statement denied any outstanding liability towards the respondent. However, not a shred of evidence was led by the appellants to dispute this ledger of accounts, indicating that the transactions did take place between the parties. In fact, not a whisper is found in the written statement as to the appellants' version of transactions, or the quantum of money paid against these invoices raised by the respondent.

31. Owing to the same and agreeing with the observations of the learned Trial Court to the extent of lack of evidence led by the appellants as to the nature of account maintained with the respondent, we hold that the ledger account of the respondent stands unrebutted, and that the account was of a current and open nature.



32. As to factors 1) and 4), both premised on the existence of mutual obligations between the parties, we are of the view that goods appear to have been supplied by the respondent to the appellants, creating obligations of repayment upon the appellants, and that no cross obligation as created against the respondent. Reliance to this extent is placed upon paragraphs 13 to 15 of this Court's decision in *Bharath Skins Corporation v Taneja Skins Company Pvt. Ltd.*⁴:

“13. From the aforesaid observations, it can be deduced that for the creation of an open, current and mutual account, there must be an intention between the parties, either express or implied, which may be deducible from the course of dealings to have mutual dealings, creating reciprocal obligations, independent of each other. A ‘demand’ in relation to a matter of account means a ‘claim for money’ arising out of a ‘contractual business relationship’ between the parties. Where the dealings between the parties disclose a ‘single’ contractual relationship, there will be demands only in favor of one party. For instance, where the relationship between ‘A’ and ‘B’ is that of lender and borrower respectively, ‘A’ will have a ‘demand’ against ‘B’ in respect of every item of loan advanced. But ‘B’ can have no demand against ‘A’. Where the dealings between the parties disclose ‘two’ contractual relationships, there will arise demands in favor of each side against the other. For instance, where ‘A’ advances money to ‘B’ from time to time as loan, and ‘B’ engages ‘A’ as his agent for the sale of goods sent by ‘B’, there are two contractual relationships between the parties: one of lender and borrower and the other, that of principal and agent. ‘A’ as creditor may have several demands against ‘B’ who as principal may have, independently, several demands against ‘A’. The real test, therefore, to see whether there have been reciprocal demands in any particular case is to see: Whether there is a ‘dual contractual relationship’ between the parties.

14. Where ‘A’ sells goods to ‘B’ from time to time and ‘B’ makes payments towards the price from time to time there is only a ‘single’

⁴ 2011 SCC OnLine Del 5523



contractual relationship, namely that of buyer and seller, between the parties. 'A' has demands against 'B' for items sold, but 'B' can have no 'demands' against 'A'. Such case is not one of reciprocal demands and thus Article 85 of the Schedule to the Indian Limitation Act, 1908 corresponding to Article 1 of the Schedule to the Limitation Act, 1963 will not apply to suits on such accounts...

15. In view of the above discussion, since the dealings between the parties disclose a single contractual relationship i.e. of buyer and seller between them, the account between them cannot be termed as a 'mutual' account. As a necessary corollary, Article 1 of the Schedule to the Limitation Act, 1963 has no application in the present case."

33. Therefore, we arrive at the conclusion that Article 1 of the limitation act would not apply to the present set of facts. Though the ledger account is undoubtedly of open and current nature, there is no indication of mutual obligations upon parties.

34. This conceives the question of how limitation may be computed in the present case, which also stands answered in *Bharath Skins (supra)*, wherein, it was observed that there being no Article in the Schedule to the Limitation Act dealing with suits for recovery of money due on running and current but non-mutual accounts, the residual article, Article 113, would stand attracted. Paragraphs 24 and 25 of the decision stand reproduced thus:

"24. There being no Article in the Schedule to the Limitation Act, 1963 dealing with suits for recovery of money due on running and current but non-mutual accounts, in such circumstances, the residual article viz. Article 113 applies to such suits.

25. Under Article 113, the period for limitation for filing a suit is three years and the same begins to run when the right to sue would



accrue when claim was denied in response to the legal notice dated 26.06.1985 on 13.07.1985 but since Rs. 7,000/- was paid on 13.07.1985 and 24.07.1985 (Rs. 2,000/- on the former date and Rs. 5,000/- on the latter date), limitation would commence from 24.07.1985. The suit being filed on 02.09.1985, governed for purposes of limitation by Article 113 the suit would be within limitation.”

35. Article 113 prescribes the computation of limitation for filing a suit as three years beginning to run from when the right to sue would accrue. In the present set of facts, legal notice dated 09.01.2019 was not denied, and the fact that this notice was sent years after the period during which debts accrued, cannot be construed as having an effect of extending the date from which limitation may be computed.

36. Apropos this interpretation, reference is drawn to the ledger account exhibited by the respondent, according to which the last payment by the appellants appears to be a sum of 1,67,480/- paid on 17.05.2016. Considering that payments were not made *stricto sensu* per invoice, and that sums were paid to discharge accruing obligations represented by the balance due at the foot of the ledger account, it is trite that limitation can be said to accrue from the date of last payment, as this speaks to an acceptance of obligation, and that the last payment on record would be the last event of such acceptance.

37. Keeping in mind the ratio of *Bharath Skins* (*supra*), 17.05.2016 becomes the operative trigger point for computation of limitation. Reckoned therefrom, the period of three years expired on 17.05.2019.



The suit having been instituted on 23.05.2019 would, *prima facie*, reflect a delay of six days.

38. Notwithstanding this, the *proviso* to Section 12A of the Commercial Courts Act, 2015 mandates exclusion of the period spent in pre-institution mediation for the purposes of limitation. The record indicates that the respondent approached the District Legal Services Authority, West District, Tis Hazari Courts on 21.02.2019, and a non-starter report was issued on 08.04.2019. Therefore, the intervening period from 21.02.2019 to 08.04.2019, being less than three months, ought to be excluded. Upon such exclusion, the suit instituted on 23.05.2019 falls within the prescribed period of limitation.

39. However, we do not uphold the reasoning of the learned Trial Court, that, owing to the account being a running account, and the implicit application of Article 1 of the Limitation Act that is gatherable from an intelligent reading of paragraph 16, though not said in so many words, that limitation would stand to be calculated from the close of the relevant financial year, i.e., 31.03.2017.

40. Being satisfied on the point of limitation, we shall now consider the argument of non-service of the notices of pre-institution mediation upon the appellants. This argument lies in the teeth of the non-starter report by West District Legal Services Authority dated 08.04.2019, which specifically records notices to the appellants on two occasions, also recording the appellants' non-appearance on both counts.



41. The non-starter report is a document carrying the sanction of the concerned district legal services authority, a creature of statute, and would not stand vitiated by a mere allegation of fraud, or any allegation contrary to the observations contained in such report.

42. Section 29 of the Bharatiya Sakshya Adhiniyam, 2023, is relevant in this context and reads thus:

"Section 29. Relevancy of entry in public record or an electronic record made in performance of duty- An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record, is kept, is itself a relevant fact."

43. Section 23 of the Legal Services Authorities Act, 1987, operates as a deeming fiction to the extent of deeming members and officers of legal service authorities as public servants as under Section 21 of the Indian Penal Code, 1860.

44. These provisions imbue the non-starter report with a higher degree of credibility, which if assailed, must be done with ample proof and cogent reasoning to discredit its content. In the present case, there appears to be nothing more than a general averment of non-service of pre-institution mediation notice, coupled with vague allegations of the non-starter report being procured through fraud.

45. There is a significant burden upon the appellants to prove that no such notices were received if they wish to succeed on this line of



argumentation. Neither is such burden discharged by the averments contained within their written statement before the learned Trial Court, nor through the contents of the present appeal.

46. Addressing allegations regarding defective goods being supplied by the respondent, it is borne out of the written statement before the learned Trial Court, as well as the contents of the present appeal that the appellants have expended not a single breath in substantiating this averment. Aside from leading some handwritten complaints by customers into evidence, there is no proof of these complaints being put to the respondent.

47. All that remains for us to ascertain is the merit, if any, to arguments concerning deficiencies in the respondent's plaint, and the respondent's compliance with Order dated 23.12.2021, which records non-compliance with earlier order dated 28.10.2020 despite last opportunity, and also imposes costs of ₹ 2,000/- on the respondent.

48. As to the first portion of this argument, regarding the submission of the plaint not being appended with an affidavit of truth, we are, quite frankly, amused.

49. The appellants, notwithstanding this submission, have itself chosen to append the respondent's statement of truth with the present appeal at Annexure A-6. The presence of this document is also confirmed from a perusal of the learned Trial Court's record, as well as the content of the learned Trial Court's order dated 20.01.2022.



50. The appellant's argument of the respondent not signing every page of the plaint does not hold much water. This argument does not find mention in its written statement and appears to be an afterthought at the stage of first appeal. Even if taken at its absolute best, this could not possibly be a ground to invalidate the impugned decree since it is a curable defect. This is even more because the learned trial Court's record confirms that the evidence affidavit is signed, and that the plaint has been appended with a statement of truth.

51. Notwithstanding, it is trite that defects relating to verification, signatures, or non-filing of a Statement of Truth are procedural and curable in nature, and do not render the plaint *non est*. The Hon'ble Supreme Court as well as this Court has held that such irregularities do not go to the root of matter, and may be rectified at a later stage, with the rectification dating back to the institution of the suit, particularly in commercial matters where procedural compliance is intended to secure authenticity, rather than to defeat substantive rights.

52. In *Vidyawati Gupta & Ors. v Bhakti Hari Nayak & Ors*⁵, the Hon'ble Supreme Court, with respect to the curable nature of procedural defects, *inter-alia* noted the following –

“49. In this regard we are inclined to agree with the consistent view of the three Chartered High Courts in the different decisions cited by Mr. Mitra that the requirements of Order 6 and Order 7 of the Code, being procedural in nature, any omission will not only be curable but will also date back to the presentation of the plaint. ...

⁵ (2006) 2 SCC 777



In our view, as has been repeatedly expressed by this Court in various decisions, rules of procedure are made to further the cause of justice, and not to prove a hinderance thereto. Both in *Khayumsab* and *Kailash* although dealing with the amended provisions of Order 8 Rule 1 of the Code, this Court gave expression to the salubrious principle that procedural enactments ought not to be construed in a manner which would prevent the Court from meeting the ends of justice in different situations.

“50. The intention of the legislature in bringing about the various amendments in the Code with effect from 1-7-2002 were aimed at eliminating the procedural delays in the disposal of civil matters. **The amendments effected to Section 26, Order 4 and Order 6 Rule 15, are geared to achieve such object, but being procedural in nature, they are directory in nature and non-compliance therewith would not automatically render the plaint non-est**, as has been held by the Division bench of the Calcutta High Court.”

53. As to the second portion, concerning non-compliance with order dated 23.12.2021, we deem it appropriate to reproduce the following orders:

“23.12.2021

Present: Sh Jitender Kumar, Ld. Counsel for the plaintiff.

None for the defendant.

Despite last opportunity, plaintiff has not complied with the order dated 28.10.2020.

In the interest of justice, subject to cost of Rs.2,000/- to be paid to the defendant one last opportunity granted to the plaintiff for compliance of order dated 28.10.2020.

List the matter on **20.01.2022**.

At 11.05 AM



2026:DHC:1764-DB



At this stage Ms Sanjana Tiwari, Ld Counsel for the defendant has appeared and she has been notified of the order passed today. Put up on the date fixed i.e. **20.01.2022.**”

XXXXXXXX

“28.10.2020

Present: None.

According to Reader, he sent whatsapp message to counsel for plaintiff and counsel for defendant nos. 1 & 2 but there is no response.

According to Reader, each page of plaint does not bear signature of plaintiff and same is not accompanied by statement of truth. Plaintiff to do the needful.

Further, according to Reader, each page of written statement filed by the defendant nos.1 & 2 does not bear their signatures. Same is also not accompanied by statement of truth. Defendants to do the needful.

IN view of non appearance today, application under Order 8 Rule 1 CPC shall be taken up on the next date.

Be put up on **11.01.2021.**”

54. The argument of non-compliance with Order dated 23.12.2021 is directly contradicted by Order dated 20.01.2022, which speaks for itself and stands reproduced thus:

“20.01.2022

VIRTUAL HEARING

Present: Sh JK Ghalyan,



2026:DHC:1764-DB



Ld Counsel for the plaintiff.

None for the defendant.

Ld Counsel for the plaintiff states that he has complied with the previous order and filed replication, list of documents and statement of truth. Same are taken on record. Copy is stated to be sent to the defendant through courier.

Put up for framing of issues on **12-04-2022**.

At 11.30 AM

At this stage, Sh AK Tiwari, Ld Counsel for the defendant has appeared and he has been notified of the order passed today and NDOH.”

55. Therefore, having examined the appellants’ contentions alleging that the suit was barred by limitation, that there were discrepancies with the plaint and the non-starter report *qua* pre-institution mediation, that the goods supplied were defective and were based on fake invoices, and that the respondent failed to comply with order dated 23.12.2021, we are not persuaded by the appellants’ case.

56. For the aforesaid reasons, the present appeal fails and is disposed of, along with pending applications, if any.

**AJAY DIGPAUL
(JUDGE)**

**NITIN WASUDEO SAMBRE
(JUDGE)**

FEBRUARY 27, 2026/gs/av