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

% Judgment Pronounced on: 22.09.2025

\+ **RFA(COMM) 92/2023**

MS. SWASTI OJHA

..... APPELLANT

Versus

SH. CHARANJIT RAMGARIA

..... RESPONDENT

Advocates who appeared in this case

For the Appellant : Mr. Shashi Shekhar Pandey, Advocate.

For the Respondent : Mr. Amit Vohra and Ms. Simran, Advocates

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

VINOD KUMAR, J.

1. This Regular First Appeal is directed against a judgment and decree dated 14.11.2022 passed by learned District Judge (Commercial Court)-01, West District, Delhi vide which civil suit CS (COMM.) No. 59/2019 filed by the respondent for recovery of Rs.5,79,444/- was decreed.

2. For the sake of convenience, the appellant would also be referred to as ‘defendant’ and the respondent as ‘plaintiff’.

3. For the disposal of this appeal, it is necessary to refer to the pleadings and evidence led by parties before the Trial Court.

Plaint

4. As per the plaint, plaintiff is a contractor dealing in business of civil, interiors, electrical works from its office at B3/10, Rajouri Garden, New Delhi. The defendant is a proprietor of M/s. Decode Space Design and is in profession of architecture. The defendant approached the plaintiff for interior work with material in Showroom of M/s. Adsun Impex Pvt. Ltd. at shop no. 12/16, G Floor, Metro Mall, W.E.A., Karol Bagh, New Delhi. The plaintiff submitted the quotation of the work and the same was accepted by the defendant. The defendant paid a sum of Rs.2,50,000/- as advance to the plaintiff. As per the plaint, the defendant added more work in the already assigned work to the plaintiff. The work was done by plaintiff under supervision of defendant. The defendant made further payment of Rs.5,65,000/- to the plaintiff. Thus as per plaint defendant made total payment of Rs.8,15,000/- (Rs.2,50,000+Rs.5,65,000 = Rs.8,15,000/-).

5. As per the plaint, the plaintiff had completed the work in accordance with the specifications and requirement of the defendant on 03.10.2018 and thereafter, the plaintiff raised a final bill for a sum of Rs.13,94,444/-. The defendant in discharge of his liability had paid a sum of Rs.8,15,000/- on different dates as stated above leaving the balance amount of Rs.5,79,444/-. The said outstanding amount of Rs.5,79,444/- had not been paid by the defendant despite repeated reminders and legal notice dated 20.11.2018.

Therefore the plaintiff had no option but to file the suit praying for recovery of the outstanding amount of Rs.5,79,444/- along with interest @ 24% per annum before the trial court.

Written Statement

6. In written statement, the defendant raised three preliminary objections. First the suit is bad for non-joinder of necessary parties. It was averred that the plaintiff worked for M/s. Adsun Impex Pvt Ltd. At 12/16, Ground Floor, Metro Mall, WEA Karol Bagh, New Delhi and the said company had made all the payments to the plaintiff and therefore the said company ought to have been impleaded as necessary party to the suit. Second, there was no privity of contract between plaintiff and defendant and therefore the plaintiff has no *locus standi* to file the suit against the defendant. And third, suit suffers from suppression of material facts.

7. In the reply on merit, the defendant denied that there was any outstanding amount to be paid by the defendant. It is stated that the defendant is proprietor of M/s. Decode Spare Design and is in business of Architectures and Interiors. The plaintiff was known to defendant's father and as requested by plaintiff, the defendant had introduced the plaintiff to the representative of M/s. Adsun Impex Pvt. Ltd. She denied that the plaintiff submitted any quotation for work. It was averred that the defendant was engaged by M/s. Adsun Impex Pvt. Ltd. for the designing purposes only and the plaintiff for interior work. As requested by M/s. Adsun Impex Pvt. Ltd., the defendant assessed plaintiff's work and found

that flooring and wall paper work was not complete and there was gas leakage in two air conditioners due to negligence of plaintiff. It was further averred that as per her knowledge, the plaintiff had received a total sum of Rs.11,15,000/- from M/s. Adsun Impex Pvt. Ltd. for the interior work and out of the said amount, a sum of Rs.5,65,000/- was paid by M/s. Adsun Impex Pvt. Ltd. through defendant on 18.10.2018. The defendant denied that she is liable to pay any amount to the plaintiff.

Replication

8. In the replication, the plaintiff asserted that all payments were made to him by the defendant and denied that he had direct dealing with M/s. Adsun Impex Pvt. Ltd. The plaintiff reiterated that against the total bill amount of Rs.13,94,444/-, he had received Rs.8,15,000/- only and the balance amount of Rs.5,79,444/- was not paid by the defendant.

Issues

9. From the pleadings of the parties, the following issues were framed by the Trial Court:

1. *Whether the plaintiff is entitled for recovery of Rs.5,79,444/- alongwith interest from the defendant as alleged? OPP*
2. *Whether the suit is bad for non joinder of necessary parties as alleged by the defendant? OPD*
3. *Whether the plaintiff has no locus standi as there is no privity of contract between the plaintiff and the defendant? OPD*
4. *Whether the suit is not maintainable on the ground that plaintiff has suppressed material facts? OPD*
5. *Relief.*

Plaintiff's Evidence

10. The plaintiff examined three witnesses in support of his case. He examined himself as PW1 and tendered his evidence affidavit Ex.PW1/A, in which he reiterated the contents of the plaint and proved following documents:

1. Ex. PW1/1 - the final bill dated 03.10.2018 amounting to Rs.13,94,444/-.

2. Ex. PW1/2 – an email dated 13.10.2018 through which he sent final bill Ex. PW1/1 to defendant.

3. Ex. PW1/3 - an email dated 15.10.2018 making demand for outstanding amount.

4. Ex. PW1/4 - an email dated 12.11.2018 making demand of payment of bill.

5. Ex. PW1/5 – print out of whatsapp chat between plaintiff and defendant.

11. PW1 in his cross-examination admitted that he knew the defendant through her father. PW1 denied that he requested the defendant to introduce him to M/s. Adsun Impex Pvt. Ltd. He stated that he did not retain copy of quotation and that the defendant had mentioned all work would be done on '*kaccha*' bill. PW1 stated that he did not directly work with M/s. Adsun Impex Pvt. Ltd. and he did not even know the name of the owner. PW1 denied that PW1/1 is not the original bill. He testified that work was completed by 03.10.2018.

12. PW2 Sh. Sunny Jain, Director of M/s. Adsun Impex Pvt. Ltd. testified that the shop at the premises belonged to his friend Sh. Mitaksh Goel @ Bunty. He testified that he introduced Bunty to the defendant for entire interior and civil work of the showroom.

13. PW3 Sh. Mitaksh Goel @ Bunty is the owner of the showroom, where work was done. He testified that he had engaged the defendant for entire interior work, amounting to about Rs.10 lakhs. He paid the entire amount and no balance was left to be paid to the defendant. PW3 further testified that he knew the plaintiff but had no direct acquaintance with him nor did he make any direct payments to him. He further testified that he could not recall anything about quotation. He denied that defendant was engaged only for designing work of the interior. He also denied the claim that he had made part payment to plaintiff and part payment to defendant.

14. In cross-examination PW3 testified that he had paid entire payment in instalments to defendant in cash but he did not take any receipt of payments from her. During cross-examination, the defendant confronted PW3 with a document Mark D-X (later on marked as Ex. D-1) but PW3 stated that he has no knowledge if the payment mentioned in Mark D-X was full and final payment received by son of respondent-plaintiff on behalf of respondent-plaintiff.

Defendant's Evidence

15. The defendant examined herself as DW1 and thereafter closed her evidence. She testified in her evidence affidavit Ex. DW1/A that she was engaged by M/s. Adsun Impex Pvt. Ltd. and her role was limited to design

and periodic site visits. DW1 claimed that she had introduced the plaintiff to M/s. Adsun Impex Pvt. Ltd. As per her evidence affidavit, plaintiff was awarded the contract of entire interior work of the showroom by M/s. Adsun Impex Pvt. Ltd. and payments were directly made by them to plaintiff except the last payment of Rs.5,65,500/- which was made through defendant to the son of plaintiff.

16. DW1 in her cross-examination testified that she visited the site once in 15 days, pointing out defects and giving instructions but denied being responsible for execution. She denied that plaintiff had completed the work to satisfaction of the client but has not produced any evidence of incomplete work. DW1 in her cross-examination stated that plaintiff had already received more than Rs.8.15 lakhs and on 16.10.2018 it was agreed between the plaintiff and M/s. Adsun Impex Pvt. Ltd. that plaintiff would be paid Rs.5.65 lakhs. DW1 further in her cross-examination stated that there were heated arguments between plaintiff and the Bunty (PW3), who requested her to handover the remaining amount to plaintiff. DW1 admitted that bill Ex. PW1/1 was raised by plaintiff but same was not approved by her. She made some corrections on the bill Mark DY, which are visible in its copy. DW1 denied that plaintiff was directly contacted by her for execution of interior work of the premises. She further denied having received any quotation from the plaintiff and also denied plaintiff's claim of outstanding amount of Rs.5,79,444/- being payable by her.

17. Perusal of the order sheet dated 30.08.2022 of the Trial Court record shows that after completion of her evidence, defendant's Counsel wanted to

further substantiate his case and presented a receipt Ex. D-1, which shows that defendant had paid a sum of Rs.5,65,000/- to the son of the plaintiff on 18.10.2018. For the purpose of proving this receipt, learned Counsel for defendant urged the Trial Court to call son of the plaintiff as a witness. However, the plaintiff admitted this document and the defendant therefore did not insist her request for summoning son of the plaintiff as her witness to prove the receipt Ex. D-1.

Crux of the Impugned Judgment

18. On issue no.3, the Trial Court held that there was privity of contract between plaintiff and defendant and therefore, he decided issue no.3 in favour of plaintiff. On issue no.2, the Trial Court declined to reject the suit on the basis of non joinder of necessary party holding that as there was privity of contract between plaintiff and defendant, there was no need for joining M/s. Adsun Impex Pvt. Ltd. as a party and therefore, it was held that suit was not bad for non joinder of necessary party. On issue no.4, the Trial Court held that defendant had not led any evidence as to what material facts had been suppressed by the plaintiff. Accordingly, issue no.4 was also decided against the defendant and in favour of plaintiff.

19. After holding so, the Trial Court took up the issue no.1, which is the substantial issue in the present case. The Trial Court held that in cross-examination, DW1 has admitted that plaintiff had raised a bill Ex. PW1/1. In para 36 of the impugned judgment, the Trial Court accepted the bill Ex. DY (which is similar to Ex. PW1/1) as produced by the defendant, which shows that after correction by defendant, total amount payable to plaintiff

was Rs.13,64,367/-. It was held that plaintiff himself had admitted that he has received Rs.8,15,000/-. Therefore, the balance amount payable by the defendant to plaintiff was Rs.5,49,367/-. Consequent to this finding on issue no.3, the Trial Court decided the issue no.1 in favour of plaintiff and decreed the suit for Rs.5,49,367/- along with interest @ 6 percent per annum from the date of filing of the suit till realisation of the same.

20. The appellant-defendant has strongly assailed the aforesaid judgment, whereas respondent-plaintiff has supported this judgment in appeal. Their submissions are now being taken up issue wise.

ISSUE NO.3

21. This issue was decided in favour of plaintiff and against the defendant by the Trial Court after discussing the evidence led by the parties. Learned Counsel for the appellant-defendant argued that the Trial Court has not properly analysed the evidence on the issue of privity of contract. It is argued that the consistent stand of the defendant had been that the work for interior furnishing was assigned to respondent-plaintiff directly by M/s. Adsun Impex Pvt. Ltd. and the defendant was simply assigned the job of supervising the work. It is argued that the plaintiff had been directly dealing with M/s. Adsun Impex Pvt. Ltd. and had been taking payments from them. However, there was some altercation between the plaintiff and PW3 Sh.Mitaksh Goel @ Bunty, the owner of the shop. Therefore, Mr. Bunty handed over the amount of Rs.5,65,000/- to defendant, which she delivered to plaintiff on instructions of M/s. Adsun Impex Pvt. Ltd. Hence it is argued that the contract was between

respondent-plaintiff and M/s. Adsun Impex Pvt. Ltd. and the appellant-defendant was not a privy to the contract.

22. On the other hand, learned Counsel for the respondent-plaintiff argued that the defendant and the plaintiff, both, were privy to contract because it was the defendant who had awarded the work to the respondent-plaintiff. It is submitted that even though the site belonged to M/s. Adsun Impex Pvt. Ltd., the work was awarded by M/s. Adsun Impex Pvt. Ltd. to defendant, who further assigned the work to plaintiff and therefore M/s. Adsun Impex Pvt. Ltd. does not come in picture.

23. Onus of proving this issue was upon defendant. The stand of appellant-defendant is that the work was directly assigned by M/s. Adsun Impex Pvt. Ltd. to respondent-plaintiff and the job of defendant was to simply supervise the work being done by the plaintiff. The aforesaid argument was rejected by the Trial Court in para 19 to para 24 of the impugned judgment wherein the Trial Court relied upon the testimonies of PW2 Sh. Sunny Jain, Director of M/s. Adsun Impex Pvt. Ltd. and PW3 Sh.Mitaksh Goel @ Bunty, the owner of the site, who had testified in unequivocal terms that they had engaged defendant for carrying out the said work and had not engaged the plaintiff.

24. As against the bald statement of appellant-defendant in her testimony as DW1, the stand of the plaintiff is duly supported by the direct evidence of Sh. Sunny Jain, Director of M/s. Adsun Impex Pvt. Ltd. and Sh.Mitaksh Goel @ Bunty, the owner of the showroom. The appellant-defendant has

not been able to show anything to persuade this Court as to why the conclusion drawn by the Trial Court in respect of privity of contract between respondent-plaintiff and appellant-defendant should be dislodged. Hence she failed to discharge the onus to prove this issue.

25. Thus it is clear that the contract of the work was awarded by M/s. Adsun Impex Pvt. Ltd. to appellant-defendant, who in turn assigned the work to respondent-plaintiff. Therefore, the privity of contract between appellant-plaintiff and respondent-defendant is proved. We would like to refer to Section 40 of the Indian Contract Act 1872, which permits a person to assign the work to any other person. Reference may also be made to a judgment of Constitution Bench of Supreme Court in ***Khardah Company Ltd. v. Raymon & Co. (India) Private Ltd. AIR 1962 SC 1810.***

26. It is true that there is no written contract between the parties. The appellant-defendant has also not presented any written contract which may persuade this Court to believe her contentions. The Trial Court not only relied upon the testimonies of PW2 and PW3 but also relied upon the fact that defendant herself had proved a bill Ex. DY addressed to her on which she made corrections and mentioned the balance amount in her own handwriting. The Trial Court further relied upon the statement of defendant (DW1) in her cross-examination wherein she replied that "*at the time of first visit she told the contractor that their budget for work was Rs.7-8 lakhs and work had to be completed in the said budget*". This statement was taken as a strong indicator that the defendant herself was dealing with the plaintiff directly. Thus the plea that the appellant-defendant was not

privy to the contract has no substance at all and the Trial Court rightly held this issue of *locus-standi* in favour of respondent-plaintiff and against appellant-defendant. Hence the finding of Trial Court on this issue is upheld.

ISSUE NO.2

27. Next issue canvassed by the appellant-defendant is that M/s. Adsun Impex Pvt. Ltd. was a necessary party and therefore the suit suffered from non joinder of necessary party. As it has been held above that there was privity of contract between respondent-plaintiff and appellant-defendant, there was no necessity for plaintiff to join M/s. Adsun Impex Pvt. Ltd. as a party. Further, as the Director of M/s. Adsun Impex Pvt. Ltd., namely PW2 Mr. Sunny Jain and PW3 Sh.Mitaksh Goel @ Bunty, the owner of the site-shop, have been examined by the respondent-plaintiff in his support, no substance remains in this argument of the appellant-defendant. Onus of this issue was upon the appellant-defendant, who failed to discharge it and therefore, it is held that Trial Court rightly decided the issue against appellant-defendant and in favour of respondent-plaintiff.

ISSUE NO.4

28. The appellant-defendant claimed that respondent-plaintiff had suppressed material fact of him being directly assigned the work by M/s. Adsun Impex Pvt. The onus of proving this issue was upon appellant-defendant. While discussing issue no.2 and 3 it was held by the Trial Court that there was privity of contract between respondent-plaintiff and appellant-defendant. So far as non production of bills, ledgers etc. by

plaintiff are concerned, it is not in dispute that almost all work was done on oral instructions. Hence, it cannot be held that there is deliberate withholding of evidence by plaintiff. Therefore nothing remains in favour of appellant-defendant on this issue. Hence this issue was rightly decided against the appellant-defendant. Accordingly, we uphold the finding of the Trial Court on this issue.

ISSUE NO.1

29. Now we take up the substantial issue that arises in this suit. Onus of proving this issue was upon the respondent-plaintiff.

30. First let us see as to what evidence was led by the respondent-plaintiff before the Trial Court. He examined himself as PW1 and tendered his affidavit of evidence Ex. PW1/A. Para 4 and 6 of evidence affidavit are reproduced as under:

> *"4. That accordingly plaintiff submitted the quotation of thre work, which was duly accepted by defendant. Accordingly after acceptance by defendant plaintiff started the work on 23.08.2018. Defendant paid sum of Rs.2,50,000/- advance to the plaintiff. It is pertinent to mention here in that defendant added the more work in the original work which was assign to plaintiff. The work was done by plaintiff under supervision of defendant. It is pertinent to mention herein that defendant further make the payment of Rs.5,65,000/- to plaintiff.*
> *5. .....*
> *6. Plaintiff raised a final bill for the sum of Rs.13,94,444/- for the work done by plaintiff and defendant in discharge of his liability had paid in all to plaintiff sum of Rs.8,15,000/- on different dates and leaving the balance of Rs.5,79,444/-. It is pertinent to mention herein that since the completion of the work by plaintiff, defendant had not made any single payment to plaintiff. The final will dated 03.10.2018 is exhibited as EXPW-1/1."*

31. As per above evidence of PW1 (plaintiff), a total sum of Rs.8,15,000/- was paid by defendant on different dates in discharge of her liability, which amounted to Rs.13,94,444/- as specified in final bill Ex. PW1/1. Thus as per the plaint as well as above quoted portion of evidence affidavit, plaintiff claimed outstanding amount of Rs.5,79,444/- (i.e. Rs.13,94,444 – Rs.8,15,000 = Rs.5,79,444/-)

32. Defendant's case is that in addition to Rs.8,15,000/-, she had paid the amount of Rs.5,65,000/- vide receipt Ex. D-1 towards full and final settlement of dues and therefore no amount is outstanding. The plea of learned Counsel for respondent-plaintiff is that Rs.5,65,000/- is included in the amount of Rs.8,15,000/-. So this is the bone of contention in this issue.

33. Learned Counsel for respondent-plaintiff has questioned Ex. D-1 on the ground that defendant did not confront PW1 with this document, nor specifically put a question to PW1 regarding payment of Rs.5,65,000/- on 18.10.2018. We are of the opinion that this argument becomes immaterial in view of the fact that as per order sheet dated 30.08.2022 learned Counsel for defendant insisted the court for examining plaintiff's son, for proving this document. The order sheet reveals that the plaintiff instead of acceding to the request, admitted this document, leading to its exhibition as Ex. D1. Thus this admission rendered the request of learned Counsel for plaintiff infructuous. Therefore, the receipt of Rs.5,65,000/- dated 18.10.2018 stands duly proved.

34. Before proceeding further, we would like to discuss the concept of shifting onus in civil litigation and would refer to a judgment by a three Judges' Bench of the Supreme Court of India, which discussed the differences between '*burden of proof*' and '*onus of proof*' way back in 1963 in ***Addagada Raghavamma and Ors vs. Addagada Chenchamma and Ors. MANU/SC/0250/1963*** as under:

> *"There is an essential distinction between burden of proof and onus of proof; burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts. The burden of proof in the present case undoubtedly lies upon the plaintiff to establish the factum of adoption and that of partition. The said circumstances do not alter the incidence of the burden of proof. Such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of onus is a continuous process in the evaluation of evidence."*

35. The High Court of Madhya Pradesh (Gwalior Bench) in ***Pannu Jeegania vs. Dewi Prashad Sukh Chand, MANU/MP/0006/1963*** further elaborated the issue of shifting nature of onus as under:

> *"When, execution of a document is either admitted or proved, a natural presumption arises against the debtor that he must have received consideration when he executed it. Here it must be clearly understood that the burden of proof is not stationary. The expression "burden of proof" Is used in two senses, i.e., the burden of proving an issue or issues sometimes termed the 'legal burden', and the burden of proof as a matter of adducing evidence during the various stages of the trial. What is called the burden of proof on the pleading should not be confused with the burden of adducing evidence which is described as "shifting". See, observations in Narayan v. Gopal, MANU/SC/0173/1959 : AIR 1960 SC 100; Pickup v. Thames insurance Co. (1878) 3 QBD 594; Lakshmana v. Venkateswarlu 76 Ind App 202 : (MANU/PR/0051/1949 : AIR 1949 PC 278); 15 Halsbury (Simond) 267; Huyton-with-Roby Urban District Council v. Hunter (1955) 2 All E. R. 398 per Denning L. J. These two aspects of the burden of proof are enunciated in sections 101 and 102 of the Evidence Act, Section 101 shows that the initial burden of proving a prima facie case in his favour is on the plaintiff. When he gives such evidence as will support a prima facie case, the onus shifts, on the defendant to adduce rebutting evidence to meet the case made out by*

the plaintiff. As the case continues to develop, the onus may shift back again to the plaintiff.
In the case of a bond when execution and consideration are both denied by the defendant, the primary burden to prove execution as well as consideration is on the plaintiff. But once he proves that the signature or the thumb mark is of the defendant, the burden shifts to the latter. That burden the defendant can discharge either by establishing circumstances as would vitiate the contract, e. g. fraud, coercion, undue influence, mistake, want or failure of consideration or he can make out circumstances to show that no presumption fairly arises against him under section 114 of the Evidence Act. As soon as the defendant succeeds in this, then the burden shifts back to the plaintiff. The recital in the document that the defendant has received consideration is no doubt evidence against him but is not conclusive and the defendant can show that the recital is not correct. The defendant can discharge his burden either by himself producing evidence or from the evidence produced by the plaintiff."

36. The High Court of Gujarat while referring to judgment of *Addagada Raghavamma* (Supra) in ***Ranchhodbhai Somabhai and Ors. Vs. Babubhai Bhailalbhai and Ors.*, MANU/GAJ/0111/1982** also elaborated this issue as under:

> *"6. It is also well' to bear in mind that there is an essential distinction between "burden of proof" and "onus of proof"; burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence (see Raghavamma v. Chenchamma, MANU/SC/0250/1963 : AIR 1964 SC 136). Burden of proof has two distinct meanings, namely, (i) the burden of proof as a matter of law and pleadings, and (ii) the burden of proof as a matter of adducing evidence. Section 101 of the Evidence Act deals with the former and Section 102 of the Evidence Act with the latter. The first remains constant but the second shifts. In a claim application, therefore, the burden of proof, in the first sense, certainly lies on the claimant. If he examines himself and his witness, if any, and if the evidence, tested in the light of the principles set out above, is found to be acceptable, the onus shifts on the tortfeasor to prove those circumstances, if any, which dislodge the assertions of the claimants. If the tortfeasor fails to prove before the Court any fact or circumstance which tends to affect the evidence led by the claimant, the claimant would be entitled to ask the Court to hold that he has established the case and, on that basis, to make a just award it would thus appear, that though the legal*

burden, - the burden as a matter of law and pleadings - remains constant on the claimant, the burden as a matter of adducing evidence changes often times as the trial of the claim petition progresses."

37. In short whereas the burden of proof is static, onus of proof keeps on shifting. In light of this law, we shall analyse the evidence.

38. A portion of the cross-examination of PW1 (plaintiff) by defendant is reproduced as under:

"I have received in all sum of Rs.8,15,000/- approximately that to in three instalments. First payment of Rs.2,50,000/- was received by me on or about 29.08.2018 i.e. about 4-5 days after starting of work. Second payment was received by me on or about 13.09.2018 for the sum of Rs.3,00,000/-. The third payment of Rs.2,65,000/- was received by me on or about 24-25.09.2018."

39. This part of cross-examination means that as per plaintiff, the defendant had made payments as under:

1. 29.08.2018 (first instalment)	- Rs.2,50,000/-	
2. 13.09.2018 (second instalment)	- Rs.3,00,000/-	Rs.5,65,000/-
3. 24-25.09.2018 (third instalment)	- Rs.2,65,000/-	
Total Amount =	Rs.8,15,000/-	

40. The aforesaid table would clarify the plea of plaintiff to the effect that payment of Rs.5,65,000/- as referred to by defendant is included in Rs.8,15,000/-. Plaintiff's case is that the second instalment of Rs.3,00,000/- plus third instalment of Rs.2,65,000/- comes out to Rs.5,65,000/-. Defendant on the other hand has stated that amount of Rs.5,65,000/- is in addition to Rs.8,15,000/-. This stand of defendant can be seen in following

portion of cross-examination of defendant (DW1) by plaintiff, which is reproduced as under:

> *"According to Para 12 of affidavit in evidence, I meant to say that the plaintiff had received much more than Rs.8.15 lacs. Besides the aforesaid payment an approximate amount of Rs.5.56 lacs was received by the son of the plaintiff as final payment agreed between the owner and the plaintiff. On 16.10.2018, it was agreed between the plaintiff and M/s Adsun Impex Pvt. Ltd. that the remaining payment of about Rs.5.56 lacs would be paid to the plaintiff."*

41. The aforesaid portions of cross-examinations of parties are the basis upon which the plaintiff and defendant had taken their respective stands before the Trial Court. These submissions have been noted by the Trial Court in para 33 of the impugned judgment as under:

> *"Ld. Counsel for the defendant argued that plaintiff had admitted receiving Rs.8,15,000/- by 25-09.2018 and defendant further paid an amount of Rs.5,65,000/- on 18-10.2018 vide Ex. D-1 to plaintiff's son. Thus, in total plaintiff has admitted receiving Rs.13,75,000/- and, therefore, there was no outstanding amount left to be paid to the plaintiff. Plaintiff on this issue stated that this amount of Rs.5,65,000/- was relating to the payment which was made prior to 25-09-2018 and included in Rs.8,15,000/- admitted by him."*

42. However, Trial Court did not render a specific finding as to whether amount of Rs.5,65,000/- was included in Rs.8,15,000/- or not.

43. As per plaintiff's (PW1) own evidence, the final bill raised by him amounted to Rs.13,94,444/-, out of which he had received an amount of Rs.8,15,000/- till 25.09.2018. Defendant on the other hand had presented a receipt of Rs.5,65,000/- Ex. D-1, which was admitted by plaintiff. This receipt shows that defendant had paid this amount to the son of plaintiff, who received it on behalf of the plaintiff, on 18.10.2018 i.e. after

25.09.2018, which is the date of receiving last instalment being part of Rs.8,15,000/-. Thus defendant discharged her onus to prove that amount of Rs.5,65,000/- paid through receipt Ex. D-1 is in addition to Rs.8,15,000/-.

44. In face of this evidence, the onus again shifted to plaintiff to prove that Rs.8,15,000/- included the amount of Rs.5,65,000/-, which was paid through receipt Ex. D-1. It is clear from the above discussion that the plaintiff failed to discharge this onus. Therefore plea of plaintiff on this point is rejected and stand of defendant is accepted.

45. Ideally, all the facts of a case are required to be proved by plaintiff. However, such ideal situation is not present in all the cases. One of the reasons is that large numbers of contracts are performed on oral instructions. Many of the contractors do not maintain proper accounting system. Lot of work is done on personal commitments and payments are made in cash. If the plaintiff establishes a good case supported with documents like invoices and ledgers etc. he may earn a decree but where it is not so, the case has to be decided on preponderance of probabilities. We would like to refer to a judgment of a Bench of three Judges of the Supreme Court of India in ***N.G. Dastane vs. S. Dastane, AIR 1975 SC 1534***. In the said judgment it held that:

> *"The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Section 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A. prudent man faced with conflicting probabilities concerning a fact-*

situation will act on the supposition that the fact exists, if on weighing the various probabilities he links that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note: "the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue" Per Dixon, J. in Wright v. Wright (1948) 77 C.L.R. 191 at p. 210; or as said by Lord Denning, "the degree of probability depends on the subject-matter. In proportion as the offence is grave, so ought the proof to be clear" Blyth v. Blyth [1966] 1 A.E.R. 534 at 536. But whether the issue is one of cruelty or of a loan on a pronote, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged."

46. The Supreme Court of India frequently relied upon the above judgment including in ***M. Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple Case) vs. Mahant Suresh Das and Others (2020) 1 Supreme Court Cases 1,*** while deliberating on the concept of preponderance of probabilities.

47. The aforesaid principle of law as explained in the above judgments is required to be applied to the facts of the present case.

48. It is necessary to mention here that the Trial Court also relied upon the bill Ex. DY, contents of which are same as Ex. PW1/1 except on some immaterial points. Photocopy of this bill Ex. DY was presented by the defendant (DW1) during her evidence as DW1. So many corrections and

calculations have been made by the defendant on and beneath the bill, which shows that the bill was seriously disputed by her. This bill once disputed, no inference can be drawn adverse to defendant on account of her not sending reply to emails and legal notice. So far as, chat Ex. PW1/5 is concerned, it does not prove as to what amount was admitted by defendant to be outstanding. At the same time it is to be noted that defendant has not denied that work was completed by plaintiff at the site. She admits that plaintiff had raised the bill Ex. PW1/1. Though she has made various corrections in similar photocopy of the bill Ex. DY (which is akin to Ex. PW1/1), she did not explain in her evidence as to how she justifies the corrections and her calculations below the said bill. She has also not specified in her evidence the amount deducted by her on account of defective work done by the plaintiff in the shop. Therefore, correction in the bill by her must be ignored and the bill Ex. PW1/1 raised by the plaintiff should be taken to be correct. The plea of defendant that payment of Rs.5,65,000/- through receipt Ex. D-1 was towards full and final settlement also cannot be accepted because in this receipt itself it is written that this amount was paid 'on account'.

49. Thus applying principle of preponderance of probabilities and assessment of weight of overall evidence as discussed above, the following facts emerge:

(i) Plaintiff raised a bill Ex. PW1/1 amounting to Rs.13,94,444/- after completion of work.

(ii) Plaintiff had admitted in his cross-examination that he had received a sum of Rs.8,15,000/- till 25.09.2018.

(iii) Thereafter defendant further made payment of Rs.5,65,000/- on 18.10.2018 through receipt Ex. D-1.

(iv) Sum total of Rs.8,15,000/- plus Rs.5,65,000/- comes out to be Rs.13,80,000/-

(v) Thus outstanding amount against the defendant is Rs.14,444/- (Rs.13,94,444 – Rs.13,80,000 = Rs.14,444/-).

50. Therefore, we disagree with the finding of the Trial Court on issue no.1, wherein it was held that a sum of Rs.5,49,367/- was payable by defendant to the plaintiff. It should be noted that the plaintiff had claimed an amount of Rs.5,79,000/- in the plaint but the Trial Court accepted corrections made by the defendant in the bill Ex. DY and reached to an amount of Rs.5,49,367/-, with which we disagree. Consequently, findings of the Trial Court on issue no.1 are hereby set aside and issue no.1 is decided to the effect that plaintiff is entitled to claim outstanding amount of Rs.14,444/- from the defendant.

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51. The Trial Court decided this issue in favour of the respondent-plaintiff and therefore, awarded interest @ 6 percent on the decreetal amount from the date of filing of the suit till realisation.

52. However, it is to be kept in mind that it is a commercial suit. Therefore it would be appropriate to award interest @ 9 percent per annum on Rs.14,444/- from the date of filing of the suit till realisation apart from the cost of the suit and appeal.

Conclusion

53. In view of above discussion, it is held that there was a privity of contract between the respondent-plaintiff and the appellant-defendant and the suit did not suffer from non-joinder of necessary party and there was no suppression of material facts. Hence, we uphold the impugned judgment on issues no. 2, 3 and 4. However, as findings on substantial issues no. 1 and 5 are overturned and modified, the impugned judgment and decree are set aside to the extent as discussed above. The suit is accordingly decreed in favour of respondent-plaintiff for a sum of Rs.14,444/- (Rupees fourteen thousand four hundred fourty four only) along with interest @ 9 percent per annum from the date of filing of the suit till realisation. Cost of suit and appeal are also awarded to the respondent-plaintiff. Appeal filed by the appellant-defendant is partly allowed as above.

54. Decree sheet be drawn accordingly.

55. Pending application(s), if any, stands disposed of.

VINOD KUMAR, J

V. KAMESWAR RAO, J

September 22, 2025
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