

Ravi Grover vs A K Gupta And Ors on 20 February, 2025

Ravi Grover Vs. A K Gupta and Ors.

DLCT010030632021

IN THE COURT OF SH. DEEPAK GARG,
DISTRICT JUDGE-COMMERCIAL COURT-09
(CENTRAL DISTRICT), TIS HAZARI COURTS, DELHI.

CIVIL SUIT (COMMERCIAL) NO.:- 687/2021

IN THE MATTER OF :-

Ravi Grover

Proprietor of:-

M/s R.G. Traders,
3189, Second Floor,
Gali Sui Wali,
Ram Bazar, Mori Gate,
Delhi-110006

... Plaintiff

VERSUS

1.

A.K. Gupta Partner of :-

M/s Orient Motors, R/o 101, 1st Floor, Manjur Hasan, Opp. Krish Hyundai, Kankar Bagh, Main Road, Distt. Patna-800020, Bihar

2. M/s Orient Motors Through its Partner Office Address at :-

Ganga Complex, Kankar Bagh, Main Road, Distt. Patna-800020 Bihar .. Defendants
Ravi Grover Vs. A K Gupta and Ors.

SUIT FOR RECOVERY OF RS.3,64,753/-

Date of institution	:	27/02/2021
Date on which Judgment was reserved	:	10/02/2025
Date of Judgment	:	20/02/2025

::- J U D G M E N T -::

1. By way of present judgment, this court shall adjudi-

cate upon suit filed by the plaintiff against the defendants for recovery of Rs.3,64,753/- alongwith pendent elite and future interest @ 18% per annum.

PLAINTIFF'S CASE

2. Brief facts necessary for just adjudication of the present suit, as stated in the plaint, are as under:-

i. The plaintiff is proprietor of M/s R.G. Traders, having its mercantile office at the above said address and is engaged in the business of trading of automo- bile parts, tractors, electrical parts, bearings, elec- tronic parts & accessories.

ii. The defendant no. 1 representing himself as owner/partner of defendant no. 2 approached the plaintiff at its business place dat Morigate, Delhi Ravi Grover Vs. A K Gupta and Ors.

and purchased the auto parts and have acknowl- edged the receipt of the goods from the plaintiff by recording its satisfaction with regard to quality, quantity and prices as agreed stated in the invoices and no complaint was made by the defendant of any kind with regard to the goods supplied by the plain- tiff.

iii. Accordingly, on demand and requirements of the defendant, plaintiff supplied auto parts to the defendants against invoices/bills which were issued to the defendant no. 2 during the period from 25 th of August 2017 to 30th of November, 2017 and defen- dant made part payments to the plaintiff but an amount of Rs.3,64,753/- is still outstanding against the defendant.

iv. In the ordinary course of business, the plaintiff as well as the defendant are maintaining Books of accounts including Ledger and Balance Sheet which have been reconciled from time to time and as per the statement of account of the plaintiff in its Books, a sum of Rs.3,64,753/- is outstanding against the defendant towards the goods supplied to the defendant and on demand by the plaintiff from the defendant, instead of making any single pay-

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ment, defendant continuously insisted to supply more goods.

v. At last, finding no other alternate the plaintiff sent a legal demand notice dated 28.07.2020 to the defendants calling upon them to pay the outstanding amount and interest accumulated thereon and the same were duly served upon the defendants but de- fendants neither paid the amount nor replied prop- erly. Hence, the plaintiff has filed the present suit against the defendants.

DEFENDANT'S CASE

3. In the written statement, the defendants have averred that the suit is not maintainable as the plaintiff had not approached this court with clean hands and the present suit is filed with distorted facts.

4. The defendants have not denied the business relations with the plaintiff.

5. Defendants has specifically denied that the plaintiff are entitled to recover Rs.3,64,753/- from the defendants. Defendants have averred that they have made the payment in cash to the plaintiff and no record has been served to them in this regard.

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6. Defendants have taken a plea that the goods supplied by the plaintiff were defective and damaged and the plaintiff did not respond on their repeated request to replace the same.

REPLICATION

7. Plaintiff has filed the replication controverting the al-

legations of the defendants in the written statement and the contents of the plaint has been reiterated and reaffirmed.

ISSUES

8. On the basis of the pleadings following issues were settled on 25.04.2024 :

i. Whether the plaintiff has not approached this court with clean hands and concealed the material facts? (OPD) ii. Whether the plaintiff is entitled for the recovery of the amount as claimed in the plaint? (OPP) iii. If the issue no. (ii) is decided in affirmative, whether the plaintiff is entitled for the pendente-lite and future interest, if so at what rate and for what period? (OPP) Ravi Grover Vs. A K Gupta and Ors.

iv. Relief.

EVIDENCE OF THE PLAINTIFF

9. In order to prove its case, plaintiff Sh. Ravi Grover has examined himself as PW1, who filed his evidence by way of affidavit Ex.PW1/A and has relied upon the docu-

ments as under:

#. The office copies of invoices/bills are ExPW1/1 to ExPW1/9.

#. Copies of transport consignment receipts are ExPW1/10 to ExPW1/12.

#. Copy of ledger account alongwith Section 65B of Indian Evidence Act is ExPW1/13 colly. #. The calculation of outstanding amount on the Letter head of the plaintiff firm is ExPW1/14. #. Copy of acknowledgment and rough estimate given by the defendant no. 1 are ExPW1/15 to ExPW1/16 colly respectively.

#. Copy of legal notice dated 28.07.2020 along with the speed post receipt sent by plaintiff to defendant is ExPW1/17 and ExPW1/18 respectively. #. Copy of non starter report dated 08.01.2021 is ExPW1/19.

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10. This witness was cross-examined by Ld. counsel for the defendants which will be discussed in the later part of the judgment.

EVIDENCE OF THE DEFENDANT

11. The defendants neither filed the affidavit in support of their evidence nor produced any witness to support their case despite several opportunities given by the court and hence DE was closed by the court on 13.01.2025.

ISSUE WISE FINDINGS Issue no. 1

(i) Whether the plaintiff has not approached this court with clean hands and concealed the material facts? (OPD)

12. It is settled law that a person who approaches Court for granting relief, equitable or otherwise, is under a solemn obligation to candidly & correctly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. He owes a duty to the court to bring out all the facts and desist from concealing/suppressing any material fact within his knowledge or which he could have known by exercising due diligence expected of a Ravi Grover Vs. A K Gupta and Ors.

person of ordinary prudence. The doctrine is often stated as those seeking Equity must do Equity or Equity must come with Clean Hands.

13. If a petitioner is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to summarily deny relief to such person to prevent an abuse of the process of law and reject the Petition on this ground alone without going to the merits of the case. The Apex Court has repeatedly invoked and applied the rule that a person who does not disclose all material facts has no right to be heard on the merits of his

grievance. (Reliance G. Jayshree and others v. Bhagwandas S. Patel and others (2009) 3 SCC 141 and Dalip Singh v. State of U.P. (2010) 2 SCC 114).

14. The onus was on the defendant to disclose the material facts which ought to have been disclosed by the plaintiff before the court and the failure to make such disclosure would render the plaintiff ineligible to seek relief from the court.

15. In the present case, defendants have taken a plea that they have made the payment in cash to the plaintiff and no record has been served to them in this regard. Defendants have admitted the receipt of goods but Ravi Grover Vs. A K Gupta and Ors.

they have taken a plea that the goods were defective and damaged. This is vehemently controverted by the Ld. Counsel for the plaintiff, who states that all the goods delivered were of fine quality. Whether the goods were defective or damaged as alleged by the defendants would be decided by the court in the later issues regarding the entitlement of the plaintiff to recover the amount in question but the defendants have miserably failed to show as to what material facts have been suppressed by the plaintiff, which is of such nature that the plaintiff is not entitled to any relief from the Court.

16. Hence, this issue is decided against the defendants and in favour of the plaintiff.

Issue no. 2

(ii) Whether the plaintiff is entitled for the recovery of the amount as claimed in the plaint? (OPP)

17. The onus to prove this issue was on the plaintiff.

18. In order to prove its case, the plaintiff Sh. Ravi Grover has examined himself as PW1 and he has categorically deposed that on the basis of the orders placed by the defendants, the plaintiff supplied goods to the defendants vide invoices/bills Ex.PW1/1 to Ex.PW1/9. He has further proved the Ravi Grover Vs. A K Gupta and Ors.

copies of transport consignment receipts as Ex.PW1/10 to Ex.PW1/12. He has further deposed that as per ledger account alongwith Section 65B of Indian Evidence Act Ex.PW1/13 (colly.), an amount of Rs.1,45,544/- is due and outstanding against the defendants being principal amount. He has also proved the calculation of outstanding amount on the letter head of the plaintiff firm as Ex.PW1/14, copy of acknowledgment and rough estimate given by defendant no. 1 as Ex.PW1/15 and Ex.PW1/16 (colly.) and legal notice dated 28.07.2020 sent by the plaintiff to the defendants as Ex.PW1/17 and speed post receipt as Ex.PW1/18.

19. PW1 Sh. Ravi Grover has been cross examined by Ld. Counsel for the defendants in which he deposed that he had business with the defendant firm around 2014-15 and that he has paid GST amount in respect of the bills Ex.PW1/1 to Ex.PW1/9 although he had not filed the GSTR-I record in respect of the said invoices. He further denied the suggestion that during telephonic conversation, the defendant had conveyed to him that there were defects in the goods and the plaintiff can get the

same lifted but instead of same, the present false suit was filed against the defendant. He further admitted that bills have been filed only for the goods worth Rs.95,554/- and not Ravi Grover Vs. A K Gupta and Ors.

for the remaining amount.

20. The factum of supply of goods under the said invoices is not disputed by the defendants.

21. As stated above, it is the case of the defendant that the plaintiff had supplied defective and damaged goods which inspite of request of the defendants were not taken back by the plaintiff. However, it is denied by the plaintiff.

22. Further, as per the case of the defendants, they are not liable to pay an amount of Rs.3,64,753/- to the plaintiff and the defendants paid the amount in cash and no record was served to them in this regard. The factum of payment of cash amount has been denied on behalf of the plaintiff.

23. Since the supply of goods in question to the defendants is admitted and the defendants have taken the plea of supply of damaged and defective goods and further cash payment to the plaintiff, by virtue of 106 of Bhartiya Sakshya Adhiniyam, 2023, the entire onus to prove the said averments lies on the defendants.

24. Section 106 of Bhartiya Sakshya Adhiniyam, 2023 provides that the burden of proof as to any particular Ravi Grover Vs. A K Gupta and Ors.

fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

25. As far as the plea of supply of poor quality of goods is concerned, the defendants have not led any evidence in court. The goods were supplied to the defendants through various invoices but the defendants have miserably failed to show that the goods of which particular invoice was defective, what was the defect, to what extent and when & how the defendants brought it to the notice of the plaintiff that the defective and damaged goods were supplied.

26. Further, I may note that the defendants have not led any evidence in court as to whom and on which date the cash payment was made. Further, it is not specified as to in whose presence and at what time and how much payment was made. No suggestion has been given to PW1 in his cross-examination that any amount was paid to the plaintiff in cash. Hence, the defendants have failed to prove the factum of any payment by cash and has taken bald plea.

27. Under Section 104 of Bhartiya Sakshya Adhiniyam, 2023, the defendant is expected to prove his defence Ravi Grover Vs. A K Gupta and Ors.

and assertions made against the plaintiff, though initial burden to prove is on the plaintiff, but once it is discharged onus shifts on to the other side to disprove the same.

28. The defendants have not led any evidence in this case. As the defendants have refrained from entering into the witness box, not submitting himself for the cross examination by the learned counsel for the plaintiff, adverse inference is liable to be drawn against the defendants. Their pleadings remain pleading only and not translated into proof. Any suggestions made to PW1 in the cross examination does not take case of the defendants anywhere unless the defendants are able to discharge its burden to prove certain facts alleged against the plaintiff as required under Section 104 of Bhartiya Sakshya Adhiniyam, 2023 by leading evidence. Any pleading without evidence is not the evidence and proof at all. Therefore, in the absence of the evidence of the defendants, it is needless to say that the defendants have failed to prove its defence. Reliance is placed on Vidyadhar vs. Manik Rao and anr. reported in AIR 1999 SC 1441.

29. Further Section 119 of Bhartiya Sakshya Adhiniyam, 2023 allows the court to draw certain presumptions based on the facts of the case and the conduct of the Ravi Grover Vs. A K Gupta and Ors.

parties. One such presumption is that if a party fails to produce evidence which it is within its power to produce, the court may draw an adverse inference against that party. Clause (g) of the said provision provides that court may presume that the evidence which could be and is not produced would if produced be unfavourable to the person who withholds it.

30. In terms of Section 105 of Bhartiya Sakshya Adhiniyam, 2023 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.

31. Perusal of the file reveals that the plaintiff has filed its ledger account which is part of Ex.PW1/13 and in the said ledger account, plaintiff has mentioned about four sales made to the defendant for the goods amounting to Rs.1,45,554/- which is shown on the debit side in the said ledger account. It is further mentioned in the said ledger account that it has received an amount of Rs.50,000/- which is shown on the credit side in the said ledger account. Hence, this ledger account shows an outstanding amount of Rs.95,554/- payable by the defendant.

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32. It is relevant to note that the plaintiff has also filed calculation of outstanding amount due against the defendant which is Ex.PW1/14 and the said calculation sheet contains an entry of 08.08.2017 in the sum of Rs.1,67,944/-. Plaintiff has also filed copy of acknowledgment and rough estimate sheets which are Ex.PW1/15 and Ex.PW1/16 respectively in respect of the accounts between the parties.

33. In my view, the said rough estimate is not admissible in evidence and the court cannot take cognizance of the same as the same appears to be in respect of some cash transactions between the parties or in respect of some Kachha account (cash transactions) maintained between the parties for which no bills have been filed by the plaintiff and the ledger account of the plaintiff is also

completely silent in respect of the same.

34. It is settled position that in civil suits, the plaintiff must prove its claim through admissible evidence under the rules of procedure and evidence. The Kachha account (cash transactions) often informal and undocumented lack written agreement receipts and other reliable evidence and the same are in violation of GST Rules and the guidelines issued by Reserve Bank of India from time to time and hence Ravi Grover Vs. A K Gupta and Ors.

no credence can be given by the court to the entries in the said rough estimates Ex.PW1/15 and Exd.PW1/16 respectively.

35. In jurisdictions where Goods and Services Tax (GST) applies, transactions involving sales of goods and services must generally comply with GST Laws including proper invoicing, GST registration for applicable entities and filing of returns, informal transactions such as cash dealings often bypass these requirements, making them unlawful under GST Laws. Hence, plaintiff has miserably failed to prove entries contained in the said documents.

36. In the present case, the testimony of the witness of the plaintiff with respect to the entries with respect to ledger Ex.PW1/13 is convincing and truthful and has remained unimpeachable. It is corroborated by documentary evidence. As stated above, there is nothing in cross examination of PW1 to shake his credit. There is no ground for me to disbelieve the same. The defendant has not led any evidence in its defence and has miserably failed to prove its case.

37. After considering all the facts and circumstances, I hold that the plaintiff has been able to prove its case by preponderance of probability that the goods in question were sold by the plaintiff to defendants and Ravi Grover Vs. A K Gupta and Ors.

the defendants are liable to pay the principal amount of Rs.97,554/- jointly and severally.

38. Accordingly, this issue is decided in favour of the plaintiff and against the defendants.

Issue No. 3 :

(iii) If the issue no. (ii) is decided in affirmative, whether the plaintiff is entitled for the pendente-lite and future interest, if so at what rate and for what period? (OPP)

39. As far as grant of pendente-lite and future interest is concerned, in my view, since defendants have deprived the plaintiff for use of the amount of goods provided by him and considering the prevalent rate of interest, I grant interest @ 8% per annum on the decretal amount from the date of filing of suit till the date of decree and thereafter till the realization.

Issue No. 4:-

(iv) Relief

40. In view of the aforesaid discussions, the suit is decreed in favour of the plaintiff and against the defendants jointly and severally for a sum of Rs.97,554/- along with interest @ 8% per annum on the said amount from 28.07.2020 (date of issuance Ravi Grover Vs. A K Gupta and Ors.

of legal notice) till the date of filing of the suit. Further, plaintiff is also held entitled to recover pendente-lite and future interest @ 8% per annum on the aforesaid decreetal amount from the date of filing of suit i.e. 27.02.2021 till the date of decree and thereafter till its realization. The plaintiff is also held entitled to costs of the suit.

41. Decree-sheet be prepared accordingly.

42. File be consigned to Record Room after due compliance.

Digitally signed by DEEPAK GARG DEEPAK Date:

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Announced in the open Court
on 20 February, 2025
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(Deepak Garg)

Distt. Judge, (Comm. Court)-09,
Central District, THC : Delhi