Autocare Enterprises vs New Age Contractor And Suppiers on 9 January, 2025

IN THE COURT OF SENIOR CIVIL JUDGE CUM RENT
CONTROLLER (WEST), TIS HAZARI COURTS, DELHI
Presided by : Ms. Richa Sharma

Civil Suit No. 1212/2023

CNR No. DLWT03-002319-2023

M/S. AUTOCARE ENTERPRISES
THROUGH ITS PROPRIETOR MR. SAHIL GUPTA

REGISTERED OFFICE AT:
H-3, 1ST FLOOR, SHIVAJI PARK,
PUNJABI BAGH, DELHI-110026.

VERSUS

M/S. NEW AGE CONTRACTOR & SUPPLIERS
THROUGH ITS PARTNER MR. NEERAJ

AT : GALI NO.16, SUBHASH NAGAR, GANDHI
COLONY, MUZAFFARNAGAR, U.P.- 251001.

Date of Filing of the suit :
Date of Judgment :
Decision :

JUDGMENT

1. The present suit has been filed by the plaintiff for recovery of Rs.

1,92,829/- along with pendent-lite and future interest at the rate of 18% per annum.

BRIEF FACTS OF THE MAIN CASE

2. In brief the facts of the present case as per plaint are, that the plaintiff is a Proprietorship Firm in the name and style of "AUTOCARE ENTERPRISES", having its office at H-3, 1 st Floor, Shivaji Park, Punjabi Bagh, Delhi 110026 and is engaged in the business of trading of Oil. It has been averred, that Mr. Sahil Gupta is the Proprietor of the plaintiff. It has been averred, that the Defendant Firm is a Partnership Firm working under the name and style of M/s New Age Contractor & Suppliers, having its office at Muzaffarnagar, U.P. 251001 and Mr. Neeraj is the Partner of the Firm, who is responsible for the day to day affairs of the Defendant.

3. It has been averred, that the Plaintiff and Defendant have long business relations and that on the agreement of the payment terms and delivery terms with regard to the orders between the Plaintiff

and the Defendant, the plaintiff delivered goods in accordance with the defendant's requirements and even delivered goods to the defendant on credit basis.

4. It has been averred, that the plaintiff in the regular course of business, raised bills and invoices for the goods delivered to the defendant and the defendant started making adhoc payments by way of cash, bank transfer and by way of cheques on regular basis and in lieu of the same the plaintiff started maintaining a running account. It has been averred, that on the basis of the running account and the ledger account maintained by the Plaintiff concerning the goods delivered to the defendant, a total amount of Rs.1,92,829/- (Rupees One Lakh Ninety- Two Thousand Eight Hundred Twenty-Nine Only) is legally due and payable till date by the Defendant.

5. It has been averred, that despite various reminders through messages and telephonic conversations by the Plaintiff Firm to the Defendant at various occasions, the Defendant Firm has miserably failed to clear the outstanding dues of Rs.1,92,829/- and accordingly, the Plaintiff Firm is left with no other alternative but to file the present suit for recovery of Rs.1,92,829/- along with pendent-lite and future interest @ 18% p.a..

WRITTEN STATEMENT FILED BY THE DEFENDANT

6. It has been contended, that the defendant is a partnership firm and is running their business of road constructions on contract basis in various states and operates all business from registered office in Muzaffarnagar (UP). It has been contended, that the defendant knew the plaintiff and its sister concern namely M/S K.M. Gupta & sons Enterprises, who supplied lubricant oil to the defendant when the latter placed the order with the plaintiff.

7. It has been contended, that in the 2 nd week of December 2020, the defendant had placed an order with the plaintiff for purchase of machinery oil for site work machine and vehicles of defendant i.e. motor grander CAT 120K, Escort soul compactor 2 no., Tata Hiwa 6 no., Tractor, camper Mahindra, JCB, Volvo 210, etc. It has been contended, that the defendant received one tanker oil as per invoice no 2020-2021/039 on 21.12.2020 and another tanker vide invoice no.2020-2021/001 dated 22.12.2020. Thereafter, the defendant started to use the oil on their above said machinery but all machinery of the defendant was effected badly due to duplicate / mix oil of the plaintiff and the same got jammed due to which the defendant suffered heavy losses on repairing, hiring charges and has also suffered a lot of losses on their site work which was stopped due to above said machines.

8. It has been contended, that the defendant contacted the plaintiff on mobile phone due to covid-19 restrictions and told about defective oil due to which they suffered heavy loss on repairing of the machines to the tune of Rs. 2,65,000/, hiring charges to the tune of Rs. 5,85,000/- and their site work losses to the tune of Rs.7,00,000/-. It has been contended, that the defendant told the expenses without personal losses of Rs. 8,50,000/- to the plaintiff and the plaintiff assured the defendant and also on behalf of sister concern to adjust the loss of the defendant with the bill amount and nothing shall be due against the defendant.

9. It has been contended, that thereafter, the defendant had released Rs.6,00,000/- on 29.12.2020 and the balance sum of Rs. 1,92,829/- was to be adjust by the plaintiff against losses of the defendant.

10. It has been contended, that on 31.05.2022, the defendant received a legal notice sent by the plaintiff through his counsel Mr. Vinod Kumar and was surprised to know, that the plaintiff did not adjust the above said repairing amounts and issued notice for demanding remaining amount of bill despite knowing the losses of the defendant due to the mixing of defective oil by the plaintiff.

11. It has been contended, that the entire balance amount of bill of the plaintiff is Rs.1,92,829/-, while the defendant has suffered losses to the extent of Rs. 8,50,000/-, in addition to the torture and harassment and loss of business/work due to adulterated supply of the oil by the plaintiff, rather on the contrary, the plaintiff is liable to pay balance amount of Rs.6,67,171/- after adjusting bill and Rs. 2,00,000/- due to the torture and harassment and suffering of business loss of Rs. 7,00,000/- approx and the plaintiff is liable to pay a total sum of Rs.15,67,171/- after deduction of bill amount to defendant against the losses.

ISSUES

12. From the pleadings, following issues were framed on 15.01.2024 :-

1. Whether the plaintiff is entitled to decree for recovery of Rs.1,92,829/- alongwith interest, as prayed for? OPP

2. Relief, if any.

EVIDENCE LED BY THE PLAINTIFF

13. In order to prove its case, plaintiff examined Sh. Sahil Gupta, its Proprietor as PW-1, who filed his evidence by way of affidavit as Ex.PW-1/1. He relied upon the following documents:-

Ex.PW1/A Copy of GST Registration of Plaintiff Firm Ex.PW1/B Copy of GST Registration of Defendant Firm Ex.PW1/C Copy of e-way bills (colly) (running into 2 pages) Ex.PW1/D Copy of invoices (Colly) (2 pages) Ex.PW1/E Copy of Ledger Account (OSR)

14. PW1 was cross-examined at length by the Counsel for the defendant.

Thereafter, the plaintiff evidence was closed on 17.05.2024.

EVIDENCE LED BY THE DEFENDANT

15. In order to prove its case, the defendant examined Sh. Neeraj Sharma as DW-1, who filed his evidence by way of affidavit i.e Ex.DW-1/1. He relied upon the following documents:-

Mark A	Repairing Bill dated 04.01.2021
Mark B	Machinery repairs and maintenance bill dated 09.01.2021
Mark C	Hire Charge Bill dated 15.01.2021

Ex.DW1/D Legal notice dated 26.05.2022 (also marked Ex.PW1/DX)

Ex.DW1/D Reply of Legal notice dated 26.05.2022 (also marked Ex.PW1/DY) Ex.DW1/D Postal receipts and tracking report (also marked Ex.PW1/DZ) (colly)

16. DW1 was cross-examined at length by the Counsel for the plaintiff. Thereafter, the defendant evidence was closed on 14.10.2024.

17. Pursuant to the completion of evidence advanced by both the parties, the present matter was listed for final arguments. I have heard the final arguments advanced by both the stakeholders at length and have gone through the record carefully. My issue-wise findings are as under :-

> ISSUE WISE FINDINGS Issue no. 1
>
> 1. Whether the plaintiff is entitled to decree for recovery of Rs.1,92,829/- alongwith interest, as prayed for? OPP

18. The burden to prove the first issue found in the suit was on the plaintiff.

Before delving into the merits of the case, this Court deems it fit to discuss in brief the law pertaining to the burden of proof as entailed under the earlier Indian Evidence Act, 1872 and the present Bhartiya Sakshya Adhiniyam, 2023.

19. The burden of proof in civil trial is the obligation upon the plaintiff that the plaintiff would adduce evidence that proves his claim against the defendant and is based on preponderance of the probabilities. Under Indian law, until and unless an exception is created by law, the burden of proof lies on the person making any claim or asserting any fact. A person who asserts a particular fact is required to affirmatively establish it. Relevant provisions of the Bhartiya Sakshya Adhiniyam, 2023 dealing with burden of proof are produced as under:-

> Burden of proof:-
>
> 104. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

105. On whom burden of proof lies.--

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

106. Burden of proof as to particular fact.-

The burden of proof as to any particular 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.

109. Burden of proving fact especially within knowledge.--

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

20. Therefore, on the basis of the law laid down as above, court proceeds with the appreciation of evidence as adduced in the present suit.

21. The plaintiff has examined Sh. Sahil Gupta as PW1. Further, PW-1 in his examination-in-chief has duly placed on record the copy of GST Registration of Plaintiff Firm, which has been exhibited as Ex.PW-1/A. Perusal of the said document shows, that Ms. Sahil Gupta is the Legal Name and Autocare Enterprises is the trade name and the plaintiff is a proprietorship concern. PW1 has also placed on record the copy of GST Registration of Defendant Firm exhibited as Ex.PW-1/B and as per which, the legal and trade name of the defendant was mentioned as New Age Contractors & Supplies and it is a partnership firm. Further, PW1 has placed on record the copy of E-Way Bills already exhibited as Ex.PW-1/C (colly), copy of Invoices exhibited as Ex.PW-1/D (Colly) and copy of Ledger Account exhibited as Ex.PW-1/E (OSR).

22. Vide its plaint, it is averred by the plaintiff, that it was engaged in business transactions with the defendants and in light of the said transactions, plaintiff duly supplied goods i.e. oil to the defendant. It is further averred by the plaintiff, that in the regular course of business, the plaintiff raised bills and invoices for the goods i.e. oil delivered to the defendant and the defendant made payments by way of cash, bank transfer and by way of cheques on regular basis and in lieu of the same the plaintiff started maintaining a running account. It has been averred, that on the basis of the running account and the ledger account maintained by the plaintiff, a total amount of Rs.1,92,829/- is still due by the defendant to the plaintiff and despite several endeavors made by the plaintiff to recover the said amount from defendant, latter has miserably failed to pay the same and therefore the present suit has been instituted by the plaintiff to recover the said amount.

23. In order to prove that the business transactions existed between the plaintiff and the defendant, plaintiff has duly placed on record of this court invoices running into two pages exhibited as Ex.PW1/D (colly). Perusal of the said invoices clearly reveals, that the same were raised by the plaintiff against M/s. New Age Contractors & Suppliers at Gali No. 16, Subhash Nagar, Gandhi Colony, Muzaffarnagar, U.P., being the defendant. Thus, comprehensively and cumulatively, by virtue of the Ex.PW1/D (colly), it can be safely culled out that there existed business relationship / transactions between the plaintiff and the defendant. Thus, on the basis of the documents placed on record plaintiff has duly established that there were business relationship that existed between the plaintiff and defendant.

24. In view of the above and as a result of existence of relationship between plaintiff and defendant, what is now left to be assessed by this court is, if an amount is due by the defendant to the plaintiff. In order to substantiate this averment, plaintiff has placed on record the statements of account / ledger running from period 01.04.2017 to 19.12.2022, which is exhibited as Ex.PW1/E. Perusal of the said statement of account clearly shows, that the closing balance as on 19.12.2022, shows that an amount of Rs.1,92,829/- is due by the defendant to the plaintiff.

25. It is further pertinent to mention, that PW1 was subjected to litmus test of cross-examination, whereby no material discrepancy could be seen in cross-examination of PW-1 and further, the stand of PW-1 through out the cross-examination is concurring with the averments of the plaint.

26. Thus, it is noteworthy to mention that plaintiff by virtue of invoices, ledger entries as well as the statement of account placed on record of this court, has been able to prove its case on the scale of preponderance of probabilities that there was existence of business transactions between the plaintiff and the defendant and that the plaintiff was entitled to receive the outstanding amount from the defendant as the same is duly reflected from the account statement. Thus, by examining PW-1 and placing on record all the relevant documents consisting of the bills raised by plaintiff against the defendant, the e-way receipt, ledger entries, plaintiff has duly substantiated its case and discharged the burden placed upon him as per Section 104 of the Bhartiya Sakshya Adhiniyam 2023. Now, the onus was upon the defendant to establish the averments made by him in his written statement.

27. It is apropos to state, that defendant has nowhere denied the existence of business transactions between him and the plaintiff company, but on the other hand defendant has taken a defence, that the oil supplied by the plaintiff was defective due to which the machinery of the defendant was effected badly due to duplicate / defective oil of the plaintiff and the machinery was got jammed due to which the defendant suffered heavy losses on repairing, hiring charges and has also suffered a lot of losses on their site work which was stopped due to above stated reasons.

28. At this stage, before proceeding further, it would be appropriate to discuss the provisions entailed u/s 37 of The Sale Of Goods Act, 1930 and the same is reproduced as under:-

> 37. Delivery of wrong quantity.--

> (1)Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate. (2)Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.
>
> (3)Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.
>
> (4)The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

29. Thus, clearly in light of the provision of 37 Sales of Goods Act 1930, it was the duty incumbent upon the defendant to return the goods that were duplicate / defective or else the same would be deemed to be accepted. Admittedly, in the case in hand, no endeavor was made by the defendant to either send back the defective goods or to write any letter / email / or any other correspondence to the plaintiff Auto Care Enterprises regarding the replacement of the defective goods / oil.

30. Apart from the above, it is imperative to note, that DW1 has not placed on record any document/authority letter to show, that he is the partner of the defendant firm and that he has been duly authorized by the other partner or the firm per say to depose before this Court on its behalf. The said fact pertaining to non-filing of any authority letter by DW-1 duly stands admitted by him in his cross- examination as well. The relevant excerpts of his cross examination to this effect are reproduced as under :-

> "The defendant firm is a partnership firm and I am the partner of the said firm. It is correct that I have not placed on record any documents to show whether I am the partner in the defendant firm. It is correct that I have not placed any authorization letter on behalf of the defendant firm authorizing me to appear in court on behalf of the defendant. It is correct that I am not authorized on behalf of the defendant firm to appear before the Hon'ble Court in the present matter. Vol. I am the owner of the firm."

31. Further, DW1 has duly admitted the transactions between the plaintiff and the defendant. He further admitted, that the defendant has received the goods from the plaintiff and not only this, he has also acknowledged the transaction invoices dated 21.12.2020 and 05.11.2020 Ex.PW1/D (colly). The relevant excerpts of his cross- examination to this effect is as under :-

> "It is correct that I have received goods from the plaintiff firm. At the stage witness is shown the court file. Witness is confronted with Ex.PW-1/D (colly) i.e. tax invoices dated 21.12.2020 and 05.11.2020 raised by the plaintiff upon the defendant which the

witness identifies to be correct."

32. Further, DW1 has also admitted the e-way bills i.e. Ex.PW1/C. The relevant excerpts of his cross examination to this effect are as under :-

> "Witness is confronted with Ex.PW-1/C(colly) i.e. E-way bills dated 21.12.2020 and 05.11.2020 raised by the plaintiff upon the defendant which the witness identifies to be correct."

33. Now, the vital question which arises for consideration is with regard to the averment of the defendant regarding the oil supplied by the plaintiff to be defective or not. In order to prove this averment, it was imperative upon the part of the defendant to prove in the first and foremost place as to what oil was supplied by the plaintiff to the defendant. A question was put to the DW1 in his cross-examination, that "what goods were supplied by the plaintiff to you?" and to this question, DW-1 replied that he was supplied with "Lubricant Oil". However, on being confronted with Ex.PW1/D (invoice), DW1 admitted that there was no mention of lubricant oil being supplied by the plaintiff to the defendant in the said bill.

34. Another aspect, which arises for consideration before this Court, is that the defendant had averred in his cross-examination that pursuant to the supply of the oil, when the defendant used the oil, it was only after 5 to 7 days of usage, that the defendant came to know that the the oil supplied by the plaintiff was defective. He further admitted, that vide the invoice dated 21.12.2020, 10,840 kg of oil was supplied by the plaintiff to the defendant. He denied the suggestion, that the bills mark-A, B and C were forged and fabricated and made in order to evade legal liability towards the plaintiff as the bills depicted the date of repair/maintenance starting from 22.12.2020 to 03.01.2021 and they were not aware about the defective Oil till 3 to 4 days of its delivery. Now, this statement made by the DW1 is contrary to the averment made by the defendant in its written statement as admittedly it is one of the averment of the defendant, that the oil was supplied on 21.12.2020 and for identifying as to whether the oil was defective, it took 5 - 7 days to figure out the adulteration of the oil so being the case, for the repair work to swing into action on 22.12.2020 is not perceivable as the oil was supplied only on 21.12.2020.

Thus, the averments of the defendant create a doubt in the defendant's story as it is the defendants own version that pursuant to the usage of the oil, its defect could be known only after 3-4 days of the usage, meaning thereby that immediate detection of any kind of defect in the oil was not possible. Therefore, so being the case, if the oil was supplied on 21.12.2020 as per the admitted facts of WS, the detection of the defects could not have been done earlier than 24.12.2020-25.12.2020 (3 to 4 days post supply) and accordingly the possibility of repair of the machine to be taking place on 22.12.2020 due to the defective oil being used in the machine is not perceivable as per the defendants own story.

35. Further, DW1 in his cross-examination has himself stated, that he wrongly stated in his WS that two tankers of the oil have been received. But he again stated that the second tanker of oil was received. The relevant excerpts of the cross-examination of DW1 in this regard are as under :-

> "I have wrongly stated in my written statement that two tankers of Oil were received by me. Asked again, the witness stated that it is correct that two tankers were received by him. It is incorrect to suggest that the second tanker of invoice no. 2020-2021/001 dated 22.12.2020 was received by you from some entity and not by the plaintiff."

36. From the above extracts, it can be safely deduced, that the DW-1 himself is not clear about his own version as the same is contrary to the contents of the WS and this creates doubt in the mind of the Court regarding the version of the defendant.

37. Further, the averment of the defendant regarding the second tanker being received from the plaintiff also does not stand proved as the said fact has been duly admitted by the DW1 in his cross-examination. The relevant excerpts of the cross-examination of DW1 in this regard are as under :-

> "It is correct that I have not placed any document to show that second tanker of invoice no. 2020-2021/001 dated 22.12.2020 was also given by the plaintiff. Vol. Plaintiff has filed the another suit which is still pending."

38. Further, there is another interse contradiction between the testimony of the DW-1 and averments made regarding the information being given to the plaintiff with regard to the alleged defective oil being supplied by the plaintiff to the defendant. The relevant excerpts of the cross-examination of DW1 in this regard are as under :-

> "I informed the plaintiff about the defective oil with a day or two of its receipt. It is correct that I had never informed the plaintiff about the defective oil and I am falsely stating so."

39. The court further observed that:-

> "16..... This rule is based upon an assumed intention on the part of the contracting parties, evidenced by the existence of the written contract, to place themselves above the uncertainties of oral evidence and on a disinclination of the courts to defeat this object. When persons express their agreements in writing, it is for the express purpose of getting rid of any indefiniteness and to put their ideas in such shape that there can be no misunderstanding, which so often occurs when reliance is placed upon oral statements. Written contracts presume deliberation on the part of the contracting parties and it is natural they should be treated with careful consideration by the courts and with a disinclination to disturb the conditions of matters as embodied in them by the act of the parties. (See McKelvey's Evidence, p.294) . As observed in Greenlear's Evidence, p. 563, one of the most common and important of the concrete rules presumed under the general notion that the best evidence must be produced and that one with which the phrase best evidence is now exclusively associated is the rule that when the contents of a writings are to be proved, the writing itself must be produced before the court or its absence accounted for before

testimony to its contents is admitted.

> 17. It is likewise a general and most inflexible rule that whenever written instruments are appointed, either by the requirement of law, or by contract of parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instrument, or to contradict or alter them. This is a matter both of principle and policy. It is of principle because such instrument are in their own nature and origin, entitled to a much higher degree of credit than parol evidence. it is of policy because it would be attended with great mischief if those instruments, upon which men's rights depended, were liable to be impeached by loose collateral evidence".

40. Thus, from the DW-1's own testimony deposed on oath, it can be deduced, that DW-1 is playing hot and cold at the same time and is approbating and reprobating the facts / averments in the same breathe and this puts the testimony of the defendant / DW1 under scanner. Admittedly, the defendant has not placed on record any evidentiary proof that he had informed the plaintiff about the defective oil. The relevant excerpts of the cross-examination of DW1 in this regard are as under :-

> "It is correct that I have not placed any evidentiary proof to show that I had informed the plaintiff about the defective oil."

41. Another aspect which puts a dent in the story of the defendant, is with regard to its admission that he had made payment to the plaintiff on 29.12.2020, i.e. after the delivery of the alleged defective oil on 21.12.2020. On one hand, the defendant has been stating, that the alleged oil was delivered on 21.12.2020 and the repair work of the machinery was undertaken on 22.12.2020, meaning thereby that the defect was discovered in the oil on the very next day of the delivery of the alleged oil but on the other hand, the defendant stated that he had made payment of Rs. 6,00,000/- towards the invoice dated 21.12.2020 despite knowing the fact that the oil was defective. This does not appeal the prudent mind and the defendant has adduced no plausible explanation to clear this discrepancy. The DW1 in his cross-examination had stated, that the said payment was made with regard to the previous delivery. Now the onus was upon the defendant to prove that the said amount was paid qua the previous delivery, but no evidence has been led by the defendant to prove this aspect as well.

42. Thus, on the observations and findings made as above and in absence of any cogent evidence being led by the defendant to prove its averments, it can be safely culled out that the averments made by the defendant are completely sham and illusionary as no material evidence is led by the defendant to prove its case.

43. Further, the issues in civil cases are to be decided on the scale of preponderance of probabilities. The doctrine of preponderance of probabilities was discussed in the judgment titled Postgraduate Institute of Medical Education and Research v. Jaspal Singh , (2009) 7 SCC 330 which reads as under:

> "17. In Syad Akbar v. State of Karnataka (1980) 1 SCC 30 this curt dealt with in details the distinction between negligence in civil law n din criminal law. It has been held that there is marked difference as to the effect of evidence, namely, the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the court, as a reasonable man, beyond all reasonable doubt".

44. In Dr. N.G. Dastane Vs. Mrs. S. Dastane on 19th March, 1975 AIR 1975 SC 1534, (1975), SCC 326, Hon'ble Supreme Court held as under:-

> "24.The normal rule which governs civil proceedings is that a fact can be said to be established if it 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 either believes it to exist or considers its existence so probably 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."

45. Therefore, in view of the detailed discussions above and as a result of the appreciation of evidence, this court is of the considered opinion, that plaintiff has duly proved on the scale of preponderance of probabilities that an amount of Rs. 1,92,829/- was due by the defendant to the plaintiff.

46. As a squeal to the above issue, plaintiff has prayed for pendentelite and future interest on the principal amount @ 18 % per annum from the date of the filing of the suit till its realization. But, in the considered opinion of this court, interest sought by the plaintiff is on a higher side and therefore, interest @ 6 % per annum being just, fair and reasonable is awarded. Therefore, plaintiff is awarded the interest @ 6 % per annum from the date of the filing of the suit till its realization.

47. Thus, the Issue No. 1 is decided in favour of the plaintiff and against the defendant.

Relief

48. Thus, as a squeal to the observations and findings made as above and after delving into the facts and evidences in detail, this court is of the considered opinion that plaintiff has sufficiently discharged the burden placed upon him on the scale of preponderance of probabilities to prove its case. Therefore, the suit of the plaintiff stands decreed for an amount of Rs. 1,92,829/- along with interest @ 6 % per annum from the date of filing of the suit till its realization.

49. No separate order as to cost.

50. Decree sheet be prepared accordingly, after filing of the deficient court fees, if any.

51. File be consigned to record room after due compliance.

RICHA RICHA SHARM

SHARMA Date: 2025.
11:26:57 +0

Announced in open Court
on 09.01.2025

(Richa Sharma)
SCJ-cum-RC (West)
Tis Hazari Courts, Delh