

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH**

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RSA-2617-2018 (O&M)**Date of decision: 31.07.2025****Ashwani****...Appellant(s)****Vs.****Vibhor Jain and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Rajan Bansal, Advocate as
Legal Aid Counsel (HCLSC), for the appellant.

*********NIDHI GUPTA, J.****CM-6870-C-2018**

Prayer in this application filed under Section 151 CPC is for
condonation of delay of 13 days in refiling the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is duly
supported by affidavit of the counsel, the same is allowed and delay of 13
days in refiling the appeal is condoned.

CM-6871-C-2018

Prayer in this application filed under Section 5 of the Limitation
Act is for condonation of delay of 119 days in filing the accompanying
appeal.

2. Heard.



3. For the reasons mentioned in the application which is duly supported by affidavit of the applicant-appellant, the same is allowed and delay of 119 days in filing the appeal is condoned.

RSA-2617-2018 (O&M)

The appellant/plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned Courts below; whereby the suit filed by the appellant for recovery of Rs.53,540/-, has been dismissed by both the Courts below.

2. The only argument made on behalf of the appellant is that PW2 who is an ex-employee of the respondents has deposed in favour of the plaintiff. It is submitted that the respondents did not even step into witness box to state that plaintiff has not done work for the outstanding amount of Rs.53,540/-. It is submitted that therefore, case of the appellant stood proved; and the suit could not have been dismissed.

3. Brief facts of the case are that the plaintiff is a painter. Respondents/defendants had appointed the plaintiff for their factory painting work. It is the case of the plaintiff that he had completed the work within stipulated period. The plaintiff had submitted bills Ex.P3 to Ex.P9 for an amount of Rs. 34,860/-. The defendants had admittedly paid Rs.45,000/- and Rs.8,979/- to the plaintiff. It is the case of the plaintiff that an amount of Rs.53,540/- is still due towards the defendants. However, admittedly no bills in respect of the said amount allegedly outstanding against the defendants, had been produced by the plaintiff.



4. There is no merit in the sole argument raised on behalf of the plaintiff as it is trite law that case of the plaintiff has to stand on its own leg. In this regard, relevant findings of the learned trial Court as contained in judgment and decree dated 29.01.2016 are as under: -

“10. It is not disputed by the defendants that plaintiff has done the work in their factory. As per plaintiff, the defendants have only paid Rs. 53979/- and a sum of Rs. 53,540/- is due towards the defendants. To prove his case plaintiff has appeared in the witness box as PW1 and tendered an affidavit in his evidence wherein he reiterated the contents of the plaint. He also examined PW2 Ajay Singh who has proved the bills Ex.P3 to Ex.P9. Ex.P3 to Ex.P9 are bills dated 28.04.2010, 18.09.2010, 28.09.2010, 21.10.2010, 30.10.2010, 04.01.2011 and 02.05.2011 respectively, the total amount mention in the above said bills is equal to Rs. 34860/- only. However, the plaintiff has claimed an amount of Rs. 53,540/- from the defendants. On the other hand, the defendants have taken the stand the plaintiff has done the work of Rs. 53,979/- which has been paid and now no amount is outstanding against the defendants. In these circumstances plaintiff was required to prove that he has done the work in defendants factory to the tune of Rs. 1,07,519/- (i.e. Rs. 53979 + Rs. 53540). It was incumbent upon the plaintiff to prove the outstanding amount claimed by him by leading cogent and convincing evidence. However, the amount mentioned in bills Ex.P3 to Ex.P9 comes to Rs. 34,860/- only. Although, plaintiff has also filed bills no. 412 and 413 dated 14.03.2012 of Rs. 3500/- and Rs. 1440/- however, same remain unproven on file.

Likewise, the plaintiff has also filed copy of bill detail dated 01.01.2011 and 16.03.2012 ie. Mark A and Mark



B a perusal of which would show that an amount of Rs. 53,540/- is outstanding, however, no witness was examined by plaintiff to prove the statements Mark A and Mark B. It is settled proposition of law that marked document is not a substantive piece of evidence and as such not admissible in evidence. Defendants did not admit the documents mark A and mark B, as such bill details mark A and mark B cannot be relied upon against the defendants. Moreover, a perusal of bill detail dated 16.03.2012 mark B shows a bill no. 25 dated 05.04.2010 of Rs. 52,705/- however, plaintiff has not placed said bill on record.

13. In the light of above discussion, this Court is of the considered view that the plaintiff has failed to prove that amount of Rs. 53,540/- is payable by the defendants. He has only proved the bills amounting to Rs. 34,860/- whereas it is the case of the plaintiff that defendants have already paid Rs. 53,979/-. As such, the plaintiff has miserably failed to prove his case by leading cogent and sufficient evidence. Accordingly, issue no. 1 is decided against the plaintiff.”

5. Given the undisputed facts on record, no ground is made out to interfere in the concurrent findings of learned Courts below. **Dismissed.**

6. Pending application(s), if any, stand(s) disposed of.

31.07.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No