



IN THE COURT OF SHRI SUNIL CHOUDHARY
DISTRICT JUDGE-01 (WEST), TIS HAZARI COURTS,
DELHI

Civ DJ No. 994/23

Bilkis Bano
W/O Late Mohammad Nurul
R/o RZE-226, Nihal Vihar
Nangloi, Delhi-110041

... Plaintiff

versus

Sattar Khan
S/o Aspak Khan
R/o GH-6, 417
Guru Harkishan Nagar
Paschim Vihar, Delhi-110087

... Defendant

Date of Institution	25.11.2023
Date of Final Arguments Heard	03.06.2026
Date of Pronouncement of Judgment	09.06.2026

EX-PARTE J U D G M E N T

1. Vide this judgment, this Court shall decide the present suit filed by plaintiff against defendant seeking recovery of Rs.4,50,000/- alongwith interest @ 18% per annum.

CASE OF THE PLAINTIFF IN BRIEF

2. It has been asserted by the plaintiff that the plaintiff was searching a property on rent on security (*pagdi*) basis and in this

regard, she met with the defendant who is a Property Dealer. The defendant introduced himself as the owner of the property bearing no. RZ-K2-30, Nihal Vihar, Nangloi, Delhi-110041 and offered the plaintiff to let out the entire ground floor of the said property on security (pagdi) basis for an amount of Rs. 4,50,000/-, which the defendant agreed to refund to the plaintiff without any interest at the time of vacating the property. In lieu of the security amount, the plaintiff was not required to pay any rent to the defendant. Thereafter, on 02.02.2023, the plaintiff paid the security amount of Rs. 4,50,000/- to the defendant and for this, they executed a security agreement/ rent agreement. After executing the security agreement, the plaintiff asked the defendant for possession of the suit property, the defendant stated that the construction work of the suit property is going on and he will hand over the possession to the plaintiff very soon. However, the defendant never handed over the possession to the plaintiff and avoided her on one pretext or the other.

3. It has been further asserted that on seeing such suspicious behaviour of the defendant, the plaintiff went to the suit property where she met one person who disclosed himself to be the real owner of the suit property. Thereafter, plaintiff came to know that the defendant is not the real owner of the suit property and he has fraudulently taken money from her. The plaintiff approached the defendant and demanded her money of Rs. 4,50,000/- from him. However, the defendant flatly refused to return the money and threatened the plaintiff and her son to face dire consequences if they demanded money from him again and again.
4. It has been further asserted that the plaintiff sent a legal demand notice through her counsel on 04.09.2023 to the defendant

for recovery of Rs. 4,50,000/-. The said legal notice was duly served upon the defendant, however, the defendant neither replied to the legal notice nor returned the amount of Rs. 4,50,000/-. Feeling aggrieved, present suit has been filed by plaintiff against defendant seeking recovery of Rs.4,50,000/- alongwith interest @18% per annum.

PROCEEDINGS BEFORE THE COURT

5. In pursuance of the suit, summons were issued to defendant, however, despite service of summons, none appeared for defendant and the defendant was proceeded ex-parte vide order dated 17.03.2025. On 02.06.2025 vakalatnama was filed by the Ld. Counsel for the defendant. The defendant was granted opportunity to cross examine the plaintiff witness, however, when none appeared for the defendant, the right to cross examine the plaintiff witness was closed. No written statement has been filed on behalf of the defendant.

PLAINTIFF'S EVIDENCE

6. The ex-parte PE was led by plaintiff, in which she examined herself as PW-1. In her affidavit of evidence (Ex.PW1/1) plaintiff has deposed in terms of facts mentioned in the plaint. She relied upon following documents:
1. Security agreement/ rent agreement is Ex.PW1/A (OSR).
 2. Copy of complaint sent to higher authorities of police is Ex.PW1/B.
 3. Postal slip is Ex.PW1/C.
 4. Copy of legal notice sent to the defendant and its postal receipts are Ex.PW1/D & Ex.PW1/E.

5. Copy of computer/ net generating tracking report is Ex.PW1/F & Ex.PW1/G.

7. PW-2 Mohd. Saleheen has tendered his affidavit Ex.PW2/A. The said witness is son of the plaintiff and has deposed in support of the plaintiff and stated to be a witness to the security/ rent agreement **Ex. PW 1/A**. PW-3 Yasmin Bano has tendered her affidavit Ex.PW3/A who stated that she is a witness to the security agreement **Ex. PW1/A**. Further, PW-3 Yasmin Bano has deposed in support of the plaintiff.

8. After PE, final arguments were heard.

ANALYSIS AND CONCLUSION

9. I have heard the Ld. Counsel for the Plaintiff and have considered the submissions made. Further, I have also carefully gone through the entire record.

10. It is settled law that even if the defendant is proceeded ex-parte, the plaintiff has to prove his case. Mere non presence of the defendant does not entitle plaintiff to get his suit decreed. The Court is under bounden duty to examine and consider the material produced by the plaintiff in support of his case.

11. Recently, the Hon'ble Supreme Court, in the case of **PRAMOD SHROFF VERSUS MOHAN SINGH CHOPRA, SLP (C) NO.20779 OF 2025, 16.04.2026**, has held as follows:

17. Though, the framing of issues where defendant does not present a defense is not mandated, still the

importance of framing of issues cannot be underscored. This Court in the case of Makhan Lal Bangal v. Manas Bhunia and Others, (2001) 2 SCC 652, while stressing upon the importance of framing of issues held it as an imperative stage in any civil proceedings as it narrows down the scope of trial by separating wheat from the chaff. Therefore, the real dispute between the parties is determined and the conflict between the parties is narrowed. The petition may be disposed of at the first hearing if it appears that the parties are not at issue on any material question of law or of fact and the Court may at once pronounce the judgment.

18. Further, in Ramesh Chand Ardawatiya v Anil Panjwani, (2003) 7 SCC 350, it has been opined that the burden of proof on the Plaintiff is not too heavy in ex parte civil suits. The Plaintiff, however, must show prima-facie proof qua the existence of relevant facts and circumstances out of which the cause of action has arisen. Therefore, evincing that the court proceeds to record evidence of the Plaintiff qua the cause of action and accordingly decrees the suit. Further, it held that in a case which has proceeded ex parte, the court is not bound to frame issues under Order XIV and deliver the judgment on every issue as required by Order XX Rule 5. Yet the trial court should scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the “points for determination” and proceed to construct the ex parte judgment dealing with the points at issue one by one.

“Points for Determination” – Meaning and Role

21. The points for determination in a judgment are essentially the legal and factual issues the court must resolve. They correspond to the issues framed during trial (Order XIV), but in the judgment they are stated as the point(s) to be decided. In Rameshwar Dayal v. Banda (dead) through his LRs and Another⁵, the Apex Court explained that ‘points

for determination’ in Rule 4(1) are obviously nothing but ‘issues’ contemplated by Rules 1 and 3 of Order XIV. In practice, the trial court first frames issues (points of controversy) after examination of pleadings, the judgment then recites these as “points for determination” and answers them. These points focus the judgment on the exact matters in controversy between the parties. By explicitly listing points, the judgment guides the parties and the Appellate court to see what questions were in contest. The court must give its finding on each point. Order XX Rule 5 CPC further reinforces this: if issues have been framed in the suit, the court “shall state its finding or decision, with reasons, upon each separate issue”, unless deciding one issue resolves the suit. Thus, points for determination ensure that every controverted issue is addressed. A judgment that omits discussion of issues in dispute is defective. It was held that a Small Causes Court judgment which has not even stated the points for determination and given a finding thereon, is obviously not a judgment within the meaning of Section 2(9) of CPC.

22. Points for determination are the court’s restatement of the disputed questions (issues) that were placed before it, and the judgment must answer each. They serve to concentrate the court’s reasoning and ensure completeness of adjudication.

23. Even when a defendant fails to appear or file a written statement, the court cannot dispense with the points for determination altogether. In *Balraj Taneja* (supra), it was argued that if no written statement is filed the facts as set out in the plaint would be deemed to be admitted and thus, the court need not indicate the points. This Court while rejecting this submission held that ‘whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or is a case in which the written statement is not filed and the case

is decided under Order VIII Rule 10, the court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved'. In other words, even in default or ex parte suits, the court should identify the legal points (even if obvious) and give a reasoned answer. Simply granting a decree on default is not enough under Section 2(9) of CPC doing so would be a "material irregularity". Thus, points should be framed (or recited from existing pleadings) and addressed regardless of default.

26. In the light of the above legal precedents, it can be said that though the framing of issues in an ex parte suit is not mandatory by virtue of Order XIV Rule 6 of CPC, but the judgment must be in conformity with the provisions of the Code. Thus, Order XX Rule 4 of CPC comes into picture.

27. The courts must determine "points for determination", which are like issues, and answer them to resolve the matter of controversy between the parties.

12. In view of the mandate of law laid down by the Hon'ble Supreme Court, on the basis of the pleading in plaint and after examining materials on record, the following the point of determination are framed:

- a) Point of Determination No 1: Whether the plaintiff is entitled to a decree for a sum of Rs. 4,50,000/-?
- b) Point of Determination No 2: Whether the Plaintiff is entitled for pendente lite and future interest at the rate of 18% from the date of filing of the suit till the actual payment is made?

Point of Determination No 1

13. The PW-1 plaintiff has deposed that she had paid Rs. 4,50,000/- to the defendant for taking the property bearing no. RZ-K2-30, Nihal Vihar, Delhi-110041 on rent. However, she got to know that the defendant was not the owner of the said property. The security/ rent agreement **Ex. PW1/A** was executed between the plaintiff and the defendant. The plaintiff has examined both the witnesses of the said security/ rent agreement **Ex. PW1/A** who has proved the execution of the said Agreement. The Plaintiff witnesses have not been cross-examined and the defendant has failed to produced any material which can cast any doubt on the testimony of the said witnesses.

14. The para no. 2 of the said security agreement **Ex. PW 1/A** mentions that the tenant i.e. plaintiff has paid a sum of Rs. 4,50,000/- to the defendant as a security amount which will be refunded without interest at the time of vacation of the property by the plaintiff. The said para no. 2 of the security agreement **Ex. PW 1/A** is reproduced here under for ready reference-

“2. That the tenant has paid a sum of Rs. 4,50,000/- (Rs. Four Lakhs & Fifty thousand only), as a security amount to the first party which will be refunded without any interest at the time of vacation of the premises or at the termination of this agreement. Also the tenant will not pay any type of monthly rent.”

15. It is the plaintiff's case that the defendant was not the owner of the suit property and when she visited the said property she got to known that some other person is the owner of the property.

Therefore, the plaintiff could not take and enjoy the possession of the property even after giving Rs. 4,50,000/- to the defendant. In fact, as per the terms of the said security agreement/ rent agreement **Ex.PW1/A**, the defendant was even otherwise required to refund the said amount to the plaintiff at the time of vacation of the said property or termination of the agreement. The plaintiff had issued legal notice dated 04.09.2023 **Ex. PW1/D** to the defendant which remained unanswered despite service. No written statement has been filed by the defendant controverting the averments made by the plaintiff. The defendant in fact did not even cross examine the plaintiff witnesses despite opportunity.

16. This Court is of the considered view that testimony of plaintiff/PW-1 to PW-3 have remained unrebutted and uncontroverted in this matter as they were not cross-examined on behalf of defendant. Considering the unrebutted and unchallenged testimony of PW-1 to PW-3 and documents relied upon by them including **Ex.PW1/A** the security agreement/ rent agreement wherein it is categorically mentioned that the defendant has received Rs. 4,50,000/- from the plaintiff and he was liable to refund the same to the plaintiff, it is found that plaintiff has proved her case against the defendant.

17. In view of above, plaintiff is held entitled to recover the amount of Rs.4,50,000/- from the defendant. The point for determination no 1 is decided in favour of the plaintiff.

Point of Determination No 2

18. The plaintiff has not claimed the interest on the amount from

the date of payment on execution of the security Agreement till the date of filing of the suit.

19. Section 34 of the Civil Procedure Code, 1908 provides for grant of *pendente lite* and future interest. The transaction under consideration between the plaintiff and the defendant is not commercial in nature. Plaintiff has sought *pendente lite* and future interest @ 18% per annum on the aforesaid amount, however, such a high rate of interest is against the public policy. There is no agreement regarding the said rate of interest between the parties. This Court is of the considered view that in the facts and circumstances of the case, simple interest @ 6% per annum is justified. The point for determination no. 2 is decided accordingly.

Reliefs :

20. Accordingly, the suit is decreed in favour of plaintiff and against the defendant for the following relief:-
- (a) A Decree for recovery of sum of Rs.4,50,000/- is passed in favour of the plaintiff and against the defendant alongwith simple interest @ 6% per annum from the date of filing of the suit till its realization.
 - (b) The cost of the suit is also awarded in favour of the Plaintiff and against the defendant.
21. Decree sheet be drawn accordingly.
22. File be consigned to Record Room.

Announced in the open court on
this 09th day of June, 2026.

(Sunil Choudhary)
District Judge-01 (West)
Tis Hazari Courts/Delhi