

IN THE COURT OF DR. SAEMA JAIN
JSCC-ASCJ-GUARDIAN JUDGE, EAST,
KARKARDOOMA COURTS, DELHI

CNR No. DLET030021282022



IN THE MATTER OF:

CS NO. 1080/22

KIPS LEARNING PVT LTD

45, Beniatola Lane, Kolkata,
West Bengal – 700009

..... Plaintiff.

Versus

SHEFALI HUSAIN

Proprietor
Apex International School
NH 927, KM 78 (Firozpur)
Kaiserrganj, UP – 271903

..... Defendant.

SUIT FOR RECOVERY

Date of filing	:	23.12.2022
Date of Institution	:	24.12.2022
Date of judgment	:	06.08.2025

EX-PARTE JUDGMENT

1. The brief facts of the case, as per the plaint, are as follows:

(i) The plaintiff is a company duly registered under Companies Act, 1956 having its registered office at 45, Beniatola Lane Kolkata, West Bengal – 700009. Its erstwhile office was at A-23, Radhey Puri, Near Krishna Nagar, Delhi-110051. The plaintiff is engaged in the business of publishing books all over India under the name and style of Kips Learning Private Limited.

(ii) The defendant, being aware of the reputation and goodwill of the plaintiff, approached the plaintiff in and around March, 2017 and expressed his desire to enter into a business transaction with the plaintiff. The plaintiff considering the quantity of order of books and assurances given by the defendant of timely payment, agreed to enter into a business transaction with the defendant.

(iii) At the time of discussion, it was decided that time shall be essence of the contract and the defendant shall make timely payments within i.e. 60 days of the delivery, against which, invoices shall be raised by the plaintiff at the time of delivery. It was decided that in case, the payment is not made within 60 days of delivery, the defendant shall be liable to pay interest @ 24% per annum as per the agreed terms stated in the invoices.

(iv) The defendant raised purchase order for 801 books to the plaintiff and the plaintiff accepted the said orders and promised to deliver the books at the desired place and time of the defendant.

(v) The plaintiff supplied various categories of books to the defendant as per the order and raised invoices from A-23, Radhey Puri, Krishna Nagar, New Delhi-110051 which are as

follows:

S.No.	Date of Invoice	Invoice No.	Amount
1.	27.03.2018	INV/17-11041	Rs.70,200/-
2.	26.04.2018	INV/18-02186	Rs.59,438/-
Total			Rs.1,29,638/-

(vi) Based on the false representation and assurances of the defendant, the plaintiff successfully delivered the books to the defendant and no complaint was raised on behalf of the defendant against the delivered books. The defendant, despite receiving the books in time, defaulted in making the payment towards the invoices raised by the plaintiff. Further, the plaintiff, considering the business relationship with the defendant, took back books worth Rs.18,713/- on 25.04.2019. Despite the plaintiff giving special accommodation to the defendant and despite repeated requests and reminders, the defendant failed to pay the outstanding balance amount of Rs.1,25,308/-.

(vii) Consequently, the plaintiff was constrained to file the present suit seeking recovery of Rs.1,25,308/-.

2. Summons were directed to be issued to the defendant and were served upon her through speed post on 18.11.2024. However, the defendant never appeared in Court and failed to file WS within the statutory period provided in CPC. Accordingly, her defence was struck off and she was proceeded ex-parte vide order dated 14.05.2025.

3. The matter was then listed for ex-parte PE. The AR of plaintiff company stepped into witness box and examined

himself as PW1. In his testimony, PW1 tendered his evidence by way of affidavit Ex.PW1/1 in which he reiterated the contents of the plaint. PW1 also relied upon the following documents:

- (i) The board resolution dated 08.06.2022 i.e. Ex.PW1/A (OSR).
- (ii) The invoices dated 27.03.2018 and 26.04.2018 i.e. Ex.PW1/B (colly running into 2 pages).
- (iii) The ledger account from 16.03.2019 to 16.10.2020 i.e. Ex.PW1/C.
- (iv) Legal notice dated 21.12.2020 i.e. Ex.PW1/D (colly running into 5 pages).
- (v) Postal receipt i.e. Ex.PW1/E.
- (vi) Certificate u/s 65B of IEA, 1872 i.e. Ex.PW1/F (colly running into 2 pages).
- (vii) Track consignment report i.e. Ex.PW1/G (inadvertently not mentioned in the affidavit).

No other witnesses were examined by the plaintiff and PE stood closed. The matter was then listed for final arguments.

4. Ex-parte final arguments have been heard on behalf of the plaintiff. Record has been perused.

5. During the arguments, Id. Counsel for the plaintiff adverted to invoices dated 27.03.2018 and 26.04.2018 i.e. Ex.PW1/B and ledger account (16.03.2019 to 16.10.2020) i.e. Ex.PW1/C to show that orders were placed by the defendant and delivered by the plaintiff and that an outstanding amount of Rs.1,25,308/- is due against the defendant respectively.

6. The testimony of PW1 is unrebutted and uncontroverted. Further, the unrebutted testimony of PW1 is duly supported by the documents present on record i.e. ledger account (Ex.PW1/C) and invoices (Ex.PW1/B) which corroborate the version of the plaintiff. Further, certificate u/s 65 B of the Indian Evidence Act i.e. Ex.PW1/F has also been placed on record in support of the electronic evidence produced.

7. There is nothing on record to displace the testimony of PW1. Reference can be placed upon the judgment of Hon'ble High Court of Delhi in *M/S Eco Lab I.M.C.N. v. Eco Labs Ltd. 2011 (185) DLT 664* wherein it was held that,

“if the defendant has failed to cross-examine the plaintiff, the evidence of plaintiff is presumed to be correct. The unrebutted testimony of the plaintiff therefore stands proved”.

8. The suit of the plaintiff is also well within limitation.

9. Further, keeping in mind the mandate of Section 34 of CPC, interest of justice would be served if the plaintiff is granted pendente lite simple rate of interest @ 6% per annum and future simple rate of interest @ 9% per annum till its realization.

RELIEF

I In view of the above consideration, the plaintiff is awarded a decree of Rs.1,25,308/- against defendant alongwith pendente lite simple rate of interest @ 6% per annum and future simple rate of interest @ 9% per annum till the actual realization of the

amount.

II The cost of the suit is also awarded in favour of the plaintiff and against the defendant.

Deficient court fee, if any, be paid by the plaintiff before the execution of the decree. Copy of the decree sheet shall be supplied to the plaintiff only after payment of deficient court fee, if any.

Decree-sheet be prepared accordingly.

Announced in open court on this 06th August, 2025, this judgment consists of 06 pages.

**(Dr. Saema Jain)
JSCC-cum-ASCJ-cum-Guardian Judge
East/KKD Courts/Delhi
06.08.2025**