

IN THE COURT OF Dr. RAKESH KUMAR: DISTRICT JUDGE
(COMMERCIAL COURT)-04, SOUTH EAST DISTRICT
SAKET COURT COMPLEX, NEW DELHI

CS (Comm) No. 651/2023
CNR No. DLSE010073162023

In the matter of:

**Kaenat Glass Agencies,
Gaffar Manzil, Shop no. 3,
Opp. Transformer, Main Road, Jamia Nagar,
Okhla, New Delhi-110025.**Plaintiff

Versus

**Simplex Infrastructure Ltd.,
Vaikunth, 2nd Floor,
82-83, Nehru Place, New Delhi-110019,
Tel.(91 11) 26432515/6818, 26219636
email:simplexdelhi@simplexinfra.com**

**Also at:
Simplex House,
27, Shakespeare Sarani, Kolkata-700017,
Tel (91 33) 230116200
email:simplexkolkata@simplexinfra.com**Defendant

Date of Institution	: 17.09.2023
Date of reserving order	: 13.03.2026
Date of pronouncement of order	: 16.03.2026

For plaintiff : Mr. Rambhakt Aggarwal, Advocate
For defendant : Ex-parte

JUDGMENT

1. This is a suit for recovery of ₹16,78,871.50/- (Sixteen Lakh Seventy Eight Thousand Eight Hundred Seventy One and Fifty Paise only) with pendent-lite and future interest and costs instituted by the plaintiff Anwar Kamil, partner of Kaenat Glass Agencies, a partnership firm against the defendant company Simplex Infrastructure Ltd.

2. Facts, as per the plaintiff's version, are that the plaintiff company is carrying on business of glass works and installation of windows, etc., in projects of repute and has a very high goodwill in the market; that the defendant procured works execution contract at Godrej Summit, Gurugram which included installation of aluminum doors and windows and the defendant came to know about the good quality work executed by the plaintiff from the market and, accordingly, after some negotiations, the plaintiff and the defendant came to an agreement for execution of the works contract for ₹3,74,08,320/-; that the defendant started giving the requirement as per the site availability and the plaintiff carried out the works to the satisfaction of the defendant: that the plaintiff raised bills

as per the Letter of Intent; that the defendant had partially cleared the bills, however, has not cleared the arrears of ₹23,54,933/-.

3. It is further averred in the plaint that the plaintiff has been maintaining regular Book of Accounts in the ordinary course of their business and as per Statement of Account, maintained by the plaintiff, an amount of ₹23,54,933/- is due upon the defendant and the defendant has never disputed the outstanding due amount payable to the plaintiff, however, by a whatsapp communication, the defendant has agreed to a liability of ₹16,78,871.50/- on 08.12.2021; that in order to cut the losses and controversy, the plaintiff agreed to the amount of ₹16,78,871.50/- as full and final settlement, however, despite several efforts and e-mails, the defendant has failed to pay the same.

4. It is further averred in the plaint that the defendant is also liable to pay the interest @ 18% per annum on the principal amount of ₹16,78,871.50/- .

5. It is further averred in the plaint that the plaintiff was constrained to issue a Legal Notice dated 14.12.2022 calling upon the defendant to pay outstanding dues, however, the defendant neither replied nor paid any amount to the plaintiff.

6. It is further averred in the plaint that as per section 2 (1)(c) of the Commercial Courts Act, 2015, the subject matter of the present suit is a commercial dispute, therefore, before institution of the suit, the plaintiff approached the South-East District Legal Services Authority for pre-litigation mediation against the defendant, but the defendant failed to appear before the said authority for settlement of the issues leading upto the institution of the suit.

7. On 23.09.2023, this court observed that summons for the settlement of the issues have been served to the defendant on both the addresses, however, none appeared for the defendant on any date nor any written statement was filed and as such, the defendant was proceeded ex-parte on the said date and the matter was posted for ex-parte hearing.

8. After the defendant was proceeded ex-parte, counsel for the defendant appeared on 04.03.2024 and made an application under Order IX Rule 7 of the Code of Civil Procedure, 1908 (in short 'CPC'). On 25.04.2024, it was contended on behalf of the plaintiff that the defendant had a right to file application under Section 8 of Arbitration and Conciliation Act, 1996 even if he had no right to file written statement as 120 days of service had expired. Vide order dated 17.05.2026, this

court allowed the application under Order IX Rule 7 CPC only to the extent that the defendant was allowed to cross-examine the authorized representative of the plaintiff.

9. To prove the case, the plaintiff examined Anwar Kamil, partner of the plaintiff firm as PW1, who reiterated the contents of plaint in his affidavit of evidence Ex.PW1/A. During his examination-in-chief, PW1 Anwar Kamil has also tendered in evidence the following documents:-

- i. Partnership Deed Ex.PW1/1.
- ii. Registration certificate of Partnership Deed Ex.PW1/2.
- iii. Agreement for execution of the works contract for ₹3,74,08,320/- executed between the plaintiff and the defendant Ex.PW1/3.
- iv. Ledger in pursuance of the contract Ex.PW1/4.
- v. Whatsapp communication between the plaintiff and the defendant Ex. PW1/5.
- vi. Photographs accompanied by an electronic copy of the whatsapp communication Ex. PW1/6.
- vii. Legal Demand Notice Ex. PW1/7.
- viii. Copy of one of the bills issued by the plaintiff in the defendant's name with original acknowledgement of goods received by the defendant's complaint at work site Ex. PW1/8.

ix. E-mail dated 29.05.2017 along with attachment Ex.PW1/9 (colly).

10. I have heard counsel for the plaintiff and perused the material available on record carefully.

11. Having drawn the attention of the Court on the testimony of PW1 Anwar Kamil and documents Ex.PW1/3, it is submitted by counsel for the plaintiff that the plaintiff and defendant came to an agreement for execution of works contract for ₹3,74,08,320/-. It is further submitted by counsel for the plaintiff that by way of legal notice Ex.PW1/7, the plaintiff called upon the defendant to make payment for the price of the goods and the said reminder was served upon the defendant. It is further submitted by counsel for the plaintiff that despite service of the reminder, the defendant did not make the payment as claimed by the plaintiff, therefore, left with no other option the plaintiff approached the South-East District Legal Services Authority for mediation before institution of the suit, but none appeared on behalf of the defendant for settlement of the dispute.

12. I have given my thoughtful consideration to the submissions made on behalf of the plaintiff.

13. From the testimony of PW1 Anwar Kamil and the document Ex. PW1/3, it has been proved that an agreement Ex. PW1/3 was entered into between the plaintiff partnership firm and the defendant company whereby work order for supply and installation of aluminum door and windows for a total sum of ₹3,74,08,320/- was given by the defendant company to the plaintiff. The relevant clauses from the agreement Ex. PW1/3 are 28, 29, 30 which read thus:

"28. The rates indicated in the Schedule of Item rates enclosed vide Annexure-I with this work order shall remain valid for any quantum of work to be executed.

29. The item rates as mentioned as per the Schedule are deemed to include the cost of all plant and machinery, P.O.L. and other consumables, small tools and appliances for the labourers to be deployed by you and nothing extra shall be paid to you on these accounts whatsoever. You will be permitted to take the small tools and appliances out of the project premises on specific request from you to this effect after satisfactory completion of the work.

30. The rates for the items of work as per this work order are firm and nothing extra shall be payable to you whatsoever on account of overtime/ holiday work and / or any other reasons throughout the tenure of the contract. The rates shall remain firm irrespective of any variations in the quantity to any extent (plus or minus) to be executed by you."

14. From the testimony of PW1 Anwar Kamil and document Ex. PW1/3 and Ex. PW1/4, the plaintiff carried out the

work to the satisfaction of the defendant and raised bills as per letter of intent, and as per the ledger Ex.PW1/4, a sum of ₹23,54,933/- is due and outstanding against the defendant.

15. Counsel for the plaintiff has referred to the judgment in Balmukund and Ors v. Jagan Nath, Second Appeal No. 221 of 1957, of the Hon'ble High Court of Rajasthan, decided on 14.12.1962 to contend that no corroborative evidence is required where the plaintiff produces the books of accounts and there is no cross-examination of the plaintiff witness. Relevant portion of the judgment reads as under:

"13.....The learned Judge seems to me to have fallen into a grave error of law when he thought that this was not corroboration of the entries appearing in the plaintiff's account books against the defendant. It may be pointed out at this place that Section 34 of the Evidence Act does not require any particular form of corroborative evidence, and that where in a suit the plaintiff produces books of accounts and a witness on his behalf gives evidence in support of the entries and there is no cross-examination of the witness with respect to his personal knowledge of the facts stated, that is sufficient corroboration. See Narain Das v. Firm Ghasi Ram Gojar Mal, MANU/UP/0164/1938: AIF 1938 All 353 in this connection. Again, there is ample authority for the view that the plaintiff's own statement, on oath in support of the entries made in his account-books would be sufficient to fix the defendant with liability. Further corroboration of the plaintiff's case is furnished by the evidence of P. Ws. Ratansingh, Nandram and Govindram. The courts below do not appear to have applied their minds-to-the-evidence of these Witnesses."

16. From the testimony of PW1 Anwar Kamil and documents Ex. PW1/5 and Ex. PW1/6, by way of whatsapp communication Ex. PW1/5, the defendant agreed to a liability of ₹16,78,871.50/-, a copy of whatsapp communication is also available in the e-file in USB drive Ex. PW1/6, therefore, in order to cut short the losses and controversy, the plaintiff agreed to that amount as full and final settlement.

17. Counsel for the plaintiff has relied upon ITC Limited v. Aashna Roy, Civil Appeal No. 6391 of 2021, decided on 07.02.2023, Pankaj Singh v. The State of Haryana, Criminal Appeal No. 1753 of 2023, decided on 21.03.2022 and Ambalal Sarabhai Enterprise Limited and ors v. KS Infrastrure LLP Limited and ors, Civil Appeal No. 9346 of 2019, decided on 06.01.2020, all passed by the Hon'ble Supreme Court to argue that whatsapp communication can be taken into consideration. Relevant portion of ITC Limited's case (supra) reads as under:

"10. The question as to whether there was a deficiency in service or not would be a question of fact. The NCDRC, based upon the evidence led which included the affidavits, photographs, CCTV footage, whatsapp chats and other material on record, came to the conclusion that there was deficiency in service. We are not inclined to interfere with the said finding regarding deficiency in service as the same is based upon appreciation of evidence and thus would be a pure question of fact. "

18. Relevant portion of Pankaj Singh's case (supra) reads as under:

"Thus, the evidence of the Prosecutrix and the other prosecution witnesses shows that more than one month before the alleged incident, the Appellant-Accused and the prosecutrix exchanged frequent whatsapp messages, Secondly, the Appellant-accused met the Prosecutrix when she was travelling on the way to Hansi. The Prosecutrix had informed the appellant about his visit to Hansi. Thirdly, while coming out of the hotel room, the Prosecutrix did not raise any protests, did not make any hue and cry, or did not complain. She signed the hotel register while leaving the hotel with the Appellant. Lastly, while entering the Hotel, the Appellant-Accused and the Prosecutrix posed as husband and wife. All this has to be appreciated in light of the fact that we are dealing with a case of a well-educated victim who was married and a graduate. Her age at the time of the incident was about 28 year"

19. Relevant portion of Ambalal Sarabhai's case (supra) reads as under:

"17. The negotiations between the Plaintiff and the Defendant is reflected in approximately 17 e-mails exchanged between them commencing from December 2017 to 31.03.2018. The file size of the attachment to the mails has varied from 48-50-52-48-57-56 KBs indicating suggestions and corrections from time to time. The WhatsApp messages which are virtual verbal communications are matters of evidence with regard to their meanings and its contents to be proved during trial by evidence-in-chief and cross examination. The e-mails and WhatsApp messages will have to be read and understood cumulatively to decipher whether there was a concluded contract or not. The use of the words

'final draft' in the e-mail dated 30.03.2018 cannot be determinative by The e-mail dated 26.02.2018 sent by the Defendant at 11:46 AM had also used the same phraseology. The Plaintiff was well aware from the very inception that the Defendant was negotiating for sale of the lands simultaneously with two other..."

20. From the testimony of PW1 Anwar Kamil and document Ex. PW1/7, despite several efforts and emails in that regard and despite having admitted his liability, the defendant refused to settle the dues, therefore, before institution of the present suit, the plaintiff also sent a legal notice Ex. PW1/7 dated 14.12.2022, calling upon the defendant to make payment of the outstanding amount of ₹16,78,871.50/- within 30 days of receipt, thereafter, the plaintiff approached the South-East District Legal Services Authority for pre-litigation mediation against the defendant, but defendant failed to appear before the said authority for settlement of the issues and non-starter report was issued.

21. From the testimony of PW1 Anwar Kamil and document Ex. PW1/8, it has been proved that as per the said tax invoice Ex. PW1/8, 'all the disputes are subject to Delhi jurisdiction' and the plaintiff's registered office is also at Jamia Nagar, New Delhi and the work /letter of intent was also signed at Jamia Nagar, Okhla, New Delhi, therefore, this court has jurisdiction to entertain this suit.

22. From the testimony of PW1 Anwar Kamil and the whatsapp communication Ex. PW1/5, it has been proved that the defendant has acknowledged his liability to pay a sum of ₹16,78,871.50/- on 08.12.2021 and the present suit has been instituted on 17.09.2023, which is, thus, within limitation.

23. From the evidence led by the plaintiff, it has been proved that the defendant is liable to pay ₹16,78,871.50/- to the plaintiff on account of agreement executed between the plaintiff and the defendant Ex.PW1/3.

24. The plaintiff has also claimed pendente lite and future interest at the rate of 18% per annum, which is excessive. Taking into account the fact that transactions were commercial, it is held that the plaintiff is entitled to the interest @ 10% per annum on the said amount of ₹16,78,871.50/-from the date of the institution of the suit till realization of the said amount.

25. In view of above discussion, the suit is decreed with costs in terms that the plaintiff is found entitled to recover ₹16,78,871.50/- from the defendant along with pendente lite and future interest at the rate of 10% per annum from the date of institution of the suit till realization of the said amount.

26. Decree sheet be prepared accordingly and after necessary compliance file be consigned to the record room.

Pronounced in the open Court
on the 16th day of March, 2026

(Dr. Rakesh Kumar)
District Judge(Commercial Court)-04
South-East, Saket Courts Complex,
New Delhi.

