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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 30.07.2026

Judgment delivered on: 12.08.2026

Judgment uploaded on: 12.08.2026

CNR No. DLHC011015202024

+ RFA(COMM) 39/2025 & CM APPL. 46529/2025

ANUP KOTHIWAL

..... Appellant

versus

SINGHASAN PRASAD

.....Respondent

Advocates who appeared in this case

For the Appellant : Ms. Niyati Pathak, Advocate

For the Respondent : Mr. Rakesh Mittal, Ms. Yamini Mittal
and Mr. Ajay Harshana, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J.

1. The present regular first appeal has been filed under Section 13 of the Commercial Courts Act, 2015, ['Act of 2015'] assailing the judgment dated 26.10.2024 ['impugned judgment'] passed by the District Judge (Commercial Courts)-05, South East District, Saket, in CS DJ NO. 144/2020 titled as **Singhasan Prasad v. Anup Kothiwal** ['Trial Court'].

1.1. *Vide* impugned judgment the suit filed by the Respondent for the



recovery of the amount of Rs. 9,02,686/- has been decreed in favour of the Respondent along with interest at 10% per annum from the date of filing of the suit till its realisation, along with the costs of Rs. 20,000/-.

FACTUAL MATRIX

The brief facts as set out in the appeal are as under: -

2. The Appellant engaged the Respondent in June 2017 to carry out interior renovation work in Appellant's flat at M-67 Third Floor, Greater Kailash-II, New Delhi ('flat'). The scope of work was settled *vide* e-mail dated 03.07.2017 which included carpentry, electrical, plumbing, plastering and painting. It is stated that payments were to be made progressively based on the work completed.

3. In July, 2017, Appellant shifted to a rented accommodation to enable the Respondent to carry out renovation work in the flat. The Respondent carried out renovation work thereafter until December, 2017. In November/December, 2017, Appellant shifted back to the flat.

4. According to the Appellant, the Respondent delayed the work considerably and ultimately handed over the flat in an incomplete and defective condition in November-December 2017, despite the agreed completion date being October 2017. The Respondent raised claims for its outstanding dues *vide* e-mail dated 12.12.2017.

5. It is stated that the Appellant raised the defects in the work through an e-mail dated 13.03.2018¹. However, in its reply dated 29.10.2018², the

¹ Refer to printed page no. 147 of the appeal

² Refer to printed page no. 149 of the appeal



Respondent acknowledged that certain snags may arise after handover and offered to undertake repairs, while maintaining that the same could not justify withholding payment.

6. Thereafter, the Respondent instituted a suit seeking recovery of principal amount of Rs. 9,02,686/- plus interest, which has been decreed by the Trial Court in favour of the Respondent. Aggrieved by the said decree, the Appellant has filed the present appeal for seeking to set aside the impugned judgment dated 26.10.2024.

SUBMISSIONS OF THE PARTIES

7. Ms. Pathak, learned counsel for the Appellant, states that after taking possession of the flat, the Appellant noticed that the interior work carried out by the Respondent was incomplete and unprofessional.

7.1. She states that the existence of defects and snags, in the work executed by the Appellant, is evident from a conjoint reading of the e-mails dated 13.03.2018 and 29.10.2018 exchanged between the parties.

7.2. She states that the Appellant accordingly engaged an Architect on 12.02.2020 to inspect the flat. She states that the Architect has submitted an estimate of a sum of Rs. 4,13,000/- towards rectification and repair of the defects in the Appellant's work.

7.3. She states that the learned Trial Court ought to have granted set-off for this amount of Rs. 4,13,000/- from the principal amount of Rs. 9,02,686/- found due and payable.

7.4. Also, she submits that there are inconsistencies in the outstanding



amount demanded by the Respondent. In the e-mail dated 13.03.2018³, the Respondent claimed an outstanding amount of approximately Rs. 9.8 lakhs along with taxes, whereas in the e-mail dated 29.10.2018, a demand of Rs. 8 lakhs were raised, and finally the suit was ultimately instituted for recovery of Rs. 9,02,686/-.

7.5. She contends that these inconsistent demands of the alleged outstanding support the Appellant's case that the bills were not prepared in accordance with the actual measurements at the site.

8. In reply, Mr. Mittal, learned counsel for the Respondent states that the measurement sheets were duly filed before the Trial Court and during the admission/denial of the documents, the said measurement sheets⁴ have been admitted by the Appellant.

8.1. He states that the total bills were duly sent by the Respondent to the Appellant through e-mail on 12.12.2017. He states that the bills were also sent on 21.12.2017 to the Appellant's Architect Mr. Karan Kapoor, who responded by e-mail dated 24.12.2017⁵, marked to the Appellant and raised an objection only with respect to the sum of Rs. 85,000/-.

8.2. He submits that the total bills for a sum of Rs. 20,72,686/- was raised by the Respondent upon the Appellant against which an amount of Rs. 11,70,000/- was duly received from the Appellant. He states that therefore the suit was filed for recovery of the balance principal amount of Rs. 9,02,686/-. He states that these bills are based on the measurement

³ Refer to printed page no. 146 of the appeal

⁴ Refer to Ex- PW 1/3

⁵ Refer to printed page no 129 of the appeal



sheets.

8.3. As regards the defects, he states that there was a single snag identified by the parties which was a broken tile. He states that the Respondent had offered to have the broken tile replaced, however, the parties differed as the new tile was not available in the same pattern. This led to discord.

9. In rejoinder, learned counsel for the Appellant submits that the bills raised by the Respondent do not match with the measurement sheets filed. She, however, fairly submits that this contention was neither raised in the written statement nor put to the Respondent's witness during cross-examination and was advanced for the first time at the stage of final arguments, before the learned Trial Court.

9.1. She further submits that the Appellant does not dispute that some amount is payable to the Respondent for the work carried out. She, however, claims a set-off of Rs. 4,13,000/- as estimated by the Architect to be payable towards rectification and repair of the defective work.

9.2. She admits that no repair or rectification work has, till date, been carried out at the flat by the Appellant after moving in November-December, 2017. In relation to the broken tile, she submits that its replacement of the tile would require removal and relaying of the flooring of the entire flat, thereby causing substantial inconvenience and expense to the Appellant. She submits that the outlet of the drainage of the kitchen is defective and cannot be restored.

9.3. She states that the Appellant had genuine concerns regarding the quality of the work executed by the Respondent.



9.4. She further states that the entire decretal amount has been deposited with this Court in compliance with the order dated 05.05.2025.

9.5. Lastly, she submits that the award of interest at the rate of 10% may be set aside given the genuine disputes between the parties, even if the Court upholds the grant of principal amount.

ANALYSIS and FINDINGS

10. This Court has heard the learned counsel for the parties and perused the record.

11. The following two issues arise for consideration in the present matter:

“1. Whether the plaintiff is entitled for decree of a sum of Rs.9,02,686/against defendant, as prayed for? OPP

2. Whether the plaintiff is entitled for any interest as claimed, if so, at what rate and for what period? OPP.”

12. Learned Trial Court has decided the Issue No. 1 in favour of the Respondent and held that on the basis of the evidence led on record the Respondent is entitled to recover a principal amount of Rs. 9,02,686/-, being the outstanding amount due and payable towards the bills raised.

13. The findings of the learned Trial Court are as under:

“14. Heard. Material perused.

It has not been disputed that defendant has engaged services of plaintiff for renovation of his house no. M-67, Third Floor, Greater Kailash-II. It is also not disputed that scope of work was enhanced after it was initially assigned. The record further reflects that defendant had engaged Mr. Karan Kapoor, Architect who has prepared drawings etc. of property which are on record as part of Ex.PW1/1. It is also not disputed that plaintiff used to correspond



with Mr.Karan Kapoor, Architect through email etc.

The plaintiff has filed copies of bills as Mark A and deposited to the effect that total amount of all bills was Rs.20,72,686/-. During cross-examination the witness has deposed to the effect that he has calculated amount of Rs.20,72,686 on the basis of entire work done and on the basis of entries made in account sheets prepared in this respect. During lengthy cross-examination of this witness, it is found that apart from putting mere suggestion that his claim from defendant is incorrect and wrongly calculated, no further explanation was called. There is nothing in the cross-examination of this witness which suggest that amount calculated to the tune of Rs.20,72,686/- for the entire work done is not correct.

Further this witness has also brought on record the measurement sheet as Ex.PW1/3 qua the complete work done by plaintiff at the site. The measurement sheet has been admitted by defendant in the affidavit of admission-denial.

One of the contention of Ld. Counsel for defendant is that there is contradiction between the claim made by the plaintiff in email dated 13.03.2018, part of Ex PW1/1 and claim made in the present suit. In this respect, as pointed out by Ld. Counsel for defendant, admittedly plaintiff in the email dated 13.03.2018 has claimed total amount of Rs.21.0 lac and has, inter alia, further mentioned in said email that he has received Rs.11.20 lac out of the said amount and balance of Rs.9.80 lac has not been paid, whereas in the present suit it has been mentioned that plaintiff has carried out work of Rs.20,72,686/- out of which Rs.11.70 lac has been paid but remaining sum of Rs.9,02,686/- has not been paid.

Now the question arises whether the said discrepancy disentitle the plaintiff from the relief claimed in the present suit. The answer to this query is in negative. First, on the ground that claim made by plaintiff in the present suit is less than the amount claimed in email dated 13.03.2018 and further that only on this ground the plaintiff cannot be denied his legal recoverable amount, if proved on record. Whether any claim of plaintiff stands proved on record, or not, would be considered only after appreciation of remaining evidence.

One of the contention of Ld. Counsel for defendant is that there was some defect in work done by plaintiff i.e. in the outlet of drainage of Kitchen, wooden cabinets and that certain tiles in the



drawing room and kitchen were damaged due to negligence of plaintiff. But as matter of fact, the defendant has not taken any action against the plaintiff on any of such lapses. He has not even brought on record any notice, if any, issued to plaintiff calling upon him to carry out necessary repairs or to complete the work etc.

However, the defendant has brought on record certain photographs that there was certain defects in the work done by plaintiff. The photographs on record are Ex.DW1/2 and the video of spot in the pendrive is Ex.DW1/3. From the careful scrutiny of cross-examination of DW1, it is found that this witness has submitted to the effect that certain photographs were taken prior to filing of the suit and certain photographs were taken subsequent of the suit. **However, from careful perusal of photographs Ex. DW1/2 and video in pendrive Ex.DW1/3, it is found that there is no substantial damage/defect in said photographs or video for which the claim of plaintiff can be denied.**

Further the defendant has examined DW-2 Mr.Arjun Sara, Architect and Interior Designer to prove that there were certain damages/defects in the property, which were not removed by plaintiff.

In respect to testimony of DW-2 Mr.Arjun Sara, it is found that during cross-examination of this witness, the fact came on record that DW-2 is relative of defendant being husband of his niece. In the examination in chief DW-2 has deposed to the effect that he was approached by defendant in the month of February 2020 to carry out inspection of the site which he has carried out and prepared report Ex.DW1/5. This witness has mentioned his address of Jaipur, Rajasthan. Here the Court failed to understand as to why the defendant had engaged architect from Jaipur, Rajasthan to carry out inspection at Delhi. Even otherwise it is prerogative of the party to engage any architect from anywhere, but there should be some reason that why a particular architect has been engaged from far place. **Considering the entire facts and circumstances, particularly the fact that this witness is related to defendant, it cannot be ruled out that he is an interested witness and no reliance can be made on his testimony.** Moreover, the fact that there are no substantial defects in the property has already been held. Under these circumstances the contentions of Ld. Counsel for defendant in this respect are found to be without any force.



One of the contention of Ld. Counsel for defendant is that defendant is required to incur a sum of Rs.4,13,000/- for getting the damaged/incomplete work completed. The said estimate has been calculated by DW-2 in his report Ex.DW1/5. The testimony of DW-2 has already been discarded as discussed earlier. Moreover, it has also been found that defendant has not taken any legal action against plaintiff before filing of the present suit. Even no counter-claim has been filed or set-off of the said amount has been claimed. Under these circumstances, the plea of defendant in this respect is found to be without any force.

One of the contention of Ld. Counsel for defendant is that when plaintiff himself has mentioned in the plaint that he is weak in English and accounts then how he can claim the exact amount in this suit. On this aspect it is found that plaintiff has examined his son as PW-2 who has deposed to the effect that he used to take care of correspondences through email etc. and accounts of his father, in respect to work done for defendant. The testimony of PW-2 remained un-controverted in this respect, hence, no good ground is found to doubt the testimony of this witness and the plea of plaintiff that his son used to take care of his accounts and other correspondence with defendant. Therefore, it makes no effect on the claim of plaintiff, even if, he is weak in English and Accounts.

In the light of above discussion, it is found that the plaintiff has brought sufficient material on record that he is entitled for sum of Rs.9,02,686/- from defendant. This issue stands decided in favor of plaintiff and against defendant.”

[Emphasis supplied]

14. The Appellant has reiterated the pleas raised by it before the learned Trial Court. The first plea raised by the Appellant is that the claim of Rs. 9,02,686/- in the suit is contrary to the demand raised in the e-mail dated 13.03.2018. Leaned Trial Court has already noted in the impugned judgment that the demand in this suit of Rs. 9,02,686/- is lower than the demand made in the e-mail dated 13.03.2018 of Rs. 9.8 lakhs plus taxes.

15. Moreover, we note that the Respondent had duly placed on record all the invoices (Ex. PW 1/2) raised by it, aggregating to Rs. 20,72,686/- and



after giving credit to the Appellant for a sum of Rs. 11,70,000/- already received, the Respondent claimed the balance amount of Rs. 9,02,686/- only. The invoices are based on measurement sheets (Ex. PW 1/3). The claim for the balance sum of Rs. 9,02,686/- is thus founded upon the invoices prepared based on the measurement sheets placed on record.

16. The Appellant has been unable to rebut contents the invoices and the measurement sheets, which constitute the primary basis of the Respondent's claim.

In these circumstances, the alleged inconsistency in the demand raised through the e-mails dated 13.03.2018 or 29.10.2018 does not persuade us to interfere with the findings of the learned Trial Court.

17. The Appellant has contended that it has received an estimate of Rs. 4,13,000/- from an Architect i.e. DW-2 on 12.02.2020 for getting the damaged/incomplete work at the flat repaired.

18. In this regard, we note that the Appellant had examined an Architect Arjun Sara as its witness DW-2. The learned Trial Court has discussed the statement of the said witness and considering the close nature of relationship between the said witness and the Appellant, discarded the testimony of DW-2. The learned Trial Court declared that DW-2 is an interested witness being husband of the Appellant's niece.

Moreover, with respect to the claim of Rs. 4,13,000/- the Trial Court has noted that the Appellant has neither raised a counter-claim nor claimed a set-off in the written statement for this amount.

19. We find merit in the said finding of the Trial Court that the said



estimate of Rs. 4,13,000/- prepared by the DW-2 would not have any effect on the claims of the Respondent, as neither has this amount been incurred by the Appellant nor has any set-off been claimed on this account. Even if a set-off had been claimed, it could not have been granted because admittedly, the Appellant has not incurred this expenditure.

20. The interior work was undertaken in 2017, and the Appellant shifted back to his flat in November/December, 2017. Despite the lapse of nearly eight [8] years, the Appellant has not incurred the alleged expenditure for carrying out any alleged rectification work at the flat, till date. Therefore, no basis exists for permitting deduction of the said amount of Rs. 4,13,000/- from the overdue amount of Rs. 9,02,686/-.

21. Lastly, the Appellant has contended that there were certain snags which was acknowledged by the Respondent in its e-mail dated 29.10.2018 and therefore it is entitled to set off for the estimate of rectification work to be carried out. Learned Trial Court after examining the photographs and videos produced by the Appellant has returned a finding that it does not find any defect or damage in the flat. Moreover, as noted above the Appellant has till date not carried out any rectification work in the flat. In these peculiar facts there is no evidence available on record to quantify the value of the alleged defective work. Therefore, no ad-hoc deduction can be made from the principal amount of Rs. 9,02,686/-.

22. In its grounds of appeal, the Appellant has alleged that it is entitled to set off of Rs. 85,000/- as objected to by the Architect Karan Kapoor in its e-mail dated 24.12.2017. We however find that at trial, Appellant has not led evidence to substantiate the deduction of Rs. 85,000/- proposed by the said

