IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 6174 of 2025
In
R/FIRST APPEAL/107/2026
(F/FIRST APPEAL NO. 33557 OF 2025)
With
R/FIRST APPEAL NO. 107 of 2026
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/FIRST APPEAL NO. 107 of 2026

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RUTU HOME APPLIANCES & ANR.
Versus
PRAVEEN KUMAR MITTAL

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Appearance:
BALKRISHNA B VARMA(6467) for the Applicant(s) No. 1,2
MR. SHAKTI MATHEWS(14172) for the Applicant(s) No. 1,2

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CORAM:**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and
HONOURABLE MR.JUSTICE D.N.RAY

Date : 08/01/2026

ORAL ORDER
(PER : HONOURABLE MR.JUSTICE D.N.RAY)

ORDER IN CIVIL APPLICATION NO. 6174 OF 2025:-

The delay of 38 days caused in filling the First Appeal has been explained to the satisfaction of the Court. The delay is condoned. The Civil Application is disposed of.

The Registry is directed to give the regular number to the First Appeal, forthwith.

ORDER IN FIRST APPEAL NO.107 OF 2026:-

1. Heard Mr. Shakti Mathews, learned advocate with Mr. Balkrishna B. Varma, learned advocate appearing for the

appellant.

2. Shorn of details, the facts which lead to the present appeal are as follows:-

2.1 The appellant No. 1 is a proprietorship concern carrying on business in the name of Rutu Home Appliances, which was owned and managed by appellant No. 2. The said firm was engaged in the retail sale of electronic goods from its establishment at Bodeli, District Panchmahal, until the year 2019. The respondent is a private limited company engaged in the wholesale supply of electronic appliances and carries on its business from Vadodara.

2.2 In the course of regular commercial dealings, the appellants used to purchase electronic goods from the respondent on credit and a running account was maintained between the parties. The respondent raised various invoices for the goods supplied, against which the appellants allegedly made intermittent payments. According to the respondent, certain invoices remained unpaid, resulting in outstanding dues.

2.3 Prior to the institution of the civil proceedings, a cheque dated 20.04.2019 came to be deposited by the respondent. The respondent asserted that the said cheque was issued by the appellants towards part payment of outstanding dues amounting to ₹3,50,000/-. The appellants, however, contended that the cheque was handed over merely as security. The cheque was dishonoured on presentation on the ground of insufficiency of funds, whereupon the respondent issued a statutory notice dated 22.04.2019 under Section 138 of the Negotiable Instruments Act, 1881. It is an admitted position that no complaint under the said provision was ultimately pursued.

2.4 Subsequently, in the year 2020, the respondent initiated Commercial Pre-Litigation Mediation proceedings, being Pre-Mediation Case No. 60 of 2020, claiming recovery of ₹7,12,473/- allegedly arising from unpaid invoices. During the said mediation, the parties entered into a settlement agreement dated 23.10.2020, which was recorded before the Commercial Court at Vadodara. Under the settlement, the parties agreed to resolve their disputes on fresh terms, whereby the respondent agreed to settle its claim for a consolidated amount of ₹7,00,000/-, payable on or before 31.03.2021.

2.5 The respondent alleged that the appellants failed to comply with the terms of the settlement and did not make any payment thereunder. The appellants, on the other hand, asserted that they had made cash payments aggregating to ₹3,50,000/- in two instalments, namely ₹2,00,000/- on 19.01.2021 and ₹1,50,000/- on 19.07.2021, in the presence of a witness.

2.6 Alleging breach of the settlement agreement, the respondent instituted Commercial Civil Suit No. 225 of 2021 before the Commercial Court, Vadodara, on 02.11.2021, seeking recovery of ₹7,12,473/- along with interest at the rate of 12% per annum. During the pendency of the suit, the appellants filed affidavits in support of their plea regarding part payment.

2.7 By judgment and decree dated 28.07.2025, the learned Commercial Court allowed the suit and decreed the respondent’s claim for ₹7,12,473/- together with interest at

12% per annum till realization.

3. Aggrieved thereby, the appellants have preferred the present appeal under Section 13 of the Commercial Courts Act, 2015 (for short “**the Act, 2015**”) read with Section 96 and Order XLI of the Code of Civil Procedure, 1908 (CPC).

4. Mr. Shakti Mathews, learned Counsel appearing on behalf of the appellant had submitted that the parties had arrived at a settlement dated 23.10.2020 upon Pre-Institution Mediation proceedings. According to Mr. Mathews, such agreement would give rise to an independent cause of action based solely on the terms of the settlement agreement. Therefore, the learned Commercial Court had committed grave error in decreeing the suit which was based on the original invoices. According to Mr. Mathews, after the agreement dated 23.10.2020 was arrived at between the parties, the disputes between the parties based on the invoices had come to an end and had culminated in a mutual understanding as recorded in the said agreement. Thereafter, at best, the plaintiff could have instituted a fresh suit upon a Pre-Institution Mediation for non-adherence of the terms of

the agreement dated 23.10.2020. Further, even otherwise, the learned Commercial Court has erred on merits in decreeing the suit.

<u>DISCUSSION & FINDINGS</u> :-

5. We have perused the paper-book of the First Appeal as well as gone through the impugned judgment and order dated 28.07.2025. We find that after the original transactions between the parties in 2018, the appellant had issued a cheque dated 20.04.2019 for a sum of Rs.3,50,000/-. Nothing has been brought on record before the suit Court that the cheque was issued for any liability other than towards discharge of the liability for the invoices referred to in the plaint.

6. Therefore, the cheque dated 20.04.2019 was clearly issued in acknowledgment of the appellant's liability towards the plaintiff. So also, the written compromise agreement dated 23.10.2020 is also evidence of the appellant's liabilities towards the plaintiff and constitutes a valid acknowledgment within the meaning of Section 18 of the Limitation Act, 1963. Consequently, the suit instituted on 02.11.2021, within the three year period of such acknowledgment must be held to be

within limitation.

7. We also find that the appellant did not file any written statement. On the other hand, the plaintiff's suit is based on the ledger account, invoices and delivery challans forming a consisting body of evidence. The compromise agreement where the liability of the appellant towards the plaintiff is acknowledged, signed, notarized and not challenged/contested except that a feeble attempt during the cross-examination of the appellant No.2 has been made to say that she was "stressed" and therefore, a question-mark on the compromise agreement has been sought to be imputed.

8. In our view, the learned Commercial Court has rightly rejected such an insinuation due to the weighty evidence supplied by the plaintiff. The learned Commercial Court had gone on to conclude as under :-

> *"The prayer for recovery of Rs. 7,12,473/- is grounded upon invoices, delivery records, a dishonoured cheque (Exh. T-A27), and a written compromise agreement (Exh. T-A32) whereby the defendant agreed to pay Rs. 7,00,000/- by 31/03/2021. Although the compromise agreement cites Rs. 7,00,000/- as the agreed amount, the additional Rs. 12,473/- claimed in the plaint is supported by ledger entries and transaction records predating the agreement. The cumulative evidentiary value of Exhs. T-A1 to T-A26 and admissions made during cross-examinations, along with the absence of*

contrary documentary evidence, establish the complete quantum of Rs. 7,12,473/- as legally recoverable.

The defendant's argument that Rs. 3,50,000/- was paid in cash remains unsupported by documentation, acknowledged receipt, or contemporaneous correspondence. No receipts were obtained, no legal notice was sent requesting confirmation, and no contemporaneous communication substantiating such payment was placed on record. Accordingly, the alleged payment cannot be credited against the claim. The principle of "onus probandi incumbit ei qui dicit, non ei qui negat" the burden of proof rests upon him who asserts, not upon him who denies reinforces the position that the plaintiff need not rebut undocumented claims unsupported by the defendant's evidentiary materials.

Therefore, the plaintiff is entitled to a decree for recovery of Rs. 7,12,473/- against the defendants jointly and severally."

9. As far as the appellant's specific contention that the non-payment of the amount recorded in the agreement dated 23.10.2020 would give rise to a fresh cause of action and would necessarily involve a fresh round of pre-litigation mediation mandated by Section 12A of the Act, 2015, the same deserves to be rejected outright for the following reasons:-

(a) The present suit was filed on 02.11.2021. The rigours of the compulsory mandate of pre-institution mediation in terms of the decision of the Hon'ble Apex Court in the case of **Patil Automation Private Limited and Others v. Rakheja Engineers Private Limited**, reported in **(2022) 10 SCC 1** came to be applicable only from 20.08.2022. Therefore, the suit filed against the appellant could not be dismissed only on that ground.

(b) The amount claimed in the suit against the appellant is itself based upon the pre-institution mediation in the earlier round between the parties where due to the agreement reached in the said mediation, the suit itself did not fructify. Therefore, for the appellant to insist on one more round of pre-institution mediation would be putting premium on the appellant's dishonesty. In fact, in such a situation, it is possible that the plaintiff can be put in an infinite loop, inasmuch as, a dishonest defendant like the appellant herein, can agree upon a settlement in the said mediation, get a document executed and thereafter decline to honour the same. Thereafter, the defendant can take up a plea that a new cause of action, entailing a new set of proceedings under Section 12A of the Act, 2015 must be undertaken by the plaintiff. Therefore, in the facts and circumstances of the case, we are of the opinion that there has been sufficient compliance of Section 12A of the Act, 2015.

10. As far as the interest part is concerned, we find that relying upon Section 34 of the CPC, the learned Commercial

Court has rightly concluded that pendente-lite and future interest at the rate of 12% per annum from the date of institution of the suit till realization is payable by the appellant. It will be seen that the plaintiff had sought a decree at the rate of 12% in the suit itself and the learned Commercial Court has concluded that under Section 34 of the CPC, a claim of 12% lies within the permissible band of interest as per the prevailing bank rates. Nothing could be brought on record by Mr. Mathews to demonstrate any error in such a finding of the learned Commercial Court.

11. In such view of the matter, we find no merit whatsoever in the present appeal and the same stands dismissed, though without any costs. Consequently, the connected Civil Application stands disposed of accordingly.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

BINA SHAH