



2025:DHC:10786-DB



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on: 12th November 2025*
Pronounced on: 04th December 2025
Uploaded on: 04th December 2025

+ **RFA(COMM) 630/2025 & CM APPL. 70661/2025, CM APPL. 70662/2025**

Between:-

M/S SOMYA GARMENTS

THROUGH ITS PROPRIETOR SH. AMIT KUMAR

S/O BANKEY LAL

OFFICE AT: X/2339, GALI NO.11,

RAGHUBARPURA NO.2,

GANDHI NAGAR, DELHI-110031

MOB. +91-9268435469

.....Appellant

Through: Mr. Kunal Mittal, Mr. Sachin Aggarwal, Mr. Shivdutt Kaushik, Mr. Mohit Aggarwal, Advocates.

versus

SHYAM KISHORE MISHRA

PROPRIETOR OF M/S KESHAV GARMENTS

REGISTERED OFFICE:

X/832, SHOP NO.2, PLOT NO.13,

CHAND MOHALLA, GANDHI NAGAR,

DELHI-110031

MOB. +91-9899503753

E-mail: sharmaadvocate1986@gmail.com

.....Respondent

Through: *Nemo.*

JUDGMENT

ANISH DAYAL, J.

1. This appeal has been filed by the appellant (*original defendant*) assailing the impugned judgment and decree dated 23rd August 2025, passed



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by the District Judge (Commercial Court)-03, *Shahdara District, Karkardooma Courts, Delhi* in **CS(COMM) No. 549/2024**.

2. By the said impugned order, suit of respondent (*original plaintiff*) was decreed in the sum of *Rs.11,85,701/-*, alongwith *pendente-lite* and future interest at the rate of 7% per annum.

Case set up by the Plaintiff/Respondent

3. Respondent/plaintiff, as a proprietor, runs a business under the name and style of *M/s Keshav Garments* with the registered office at *Chand Mohalla, Gandhi Nagar, Delhi-110031*, and is engaged in the business of readymade garments.

4. Respondent/plaintiff avers that he has been trading with appellant/defendant since March 2022. He raised bills for each and every supply for appellant/defendant who acknowledged the receipt of such bills.

5. Respondent/plaintiff sold to appellant/defendant T-shirts at regular intervals and did business of *Rs.19,85,701/-*, out of which appellant/defendant paid only *Rs.8,00,000/-* till date of filing of suit and did not clear the balance amount of *Rs.11,85,701/-*.

6. Fourteen tax invoices commencing from 26th April 2022 till 23rd July 2023, amounting to a total of *Rs.19,82,701/-*, were appended as supporting documents.

7. Part payment of *Rs.8,00,000/-* was made through ten instalments, the details of which form part of *paragraph 5* of the plaint filed before the Trial



Court.

8. Respondent/plaintiff kept waiting for the balance payments, pursued the appellant/defendant, however, appellant/defendant was delinquent in paying the said balance of Rs.11,85,701/-.

9. Legal notice dated 24th February 2024 was sent by speed post on 26th February 2024 to appellant/defendant raising the said demand and giving 15 days' time for payment. A reply dated 16th March 2024 was given by the appellant/defendant denying the liability.

10. Respondent/plaintiff applied for pre-Institution Mediation as per *Section 12A* of the *Commercial Courts Act, 2015* on 6th July 2024. Appellant/defendant did not appear despite two notices being sent, and a *Non-Starter Report* was generated on 31st July 2024.

Case set up by Appellant/Defendant

11. Appellant/defendant admitted that he had known the respondent/plaintiff since 2014 and that the respondent/plaintiff in 2013 had set up a small factory for manufacturing T-shirts at *Gandhi Nagar, Delhi*.

12. It was further admitted that the relationship between respondent/plaintiff and appellant/defendant remained cordial till March 2023, and relations became sour when appellant/defendant started asking for money, which was deposited in the account of wife of respondent/plaintiff wife's firm *M/s Shreya Traders*, for the goods sold by appellant/defendant through the firm of wife of respondent/plaintiff.



13. Till 2020, appellant/defendant used to work at *M/s Garg Fancy Wear* at *Prem Gali, Gandhi Nagar, Delhi*, and respondent/plaintiff used to sell his goods to *M/s Garg Fancy Wear*. Thereafter, in June 2020, appellant/defendant left his job and started his trading business as customers were not coming to Delhi, due to COVID-19, and customers contacted appellant/defendant to deliver the goods directly to their workplace. Respondent/plaintiff paid salary amounting to *Rs.15,000/-* per month for part-time work done by appellant/defendant by selling goods. The salary certificate was filed as part of supporting documents.

14. Appellant/defendant needed GST number to deliver the goods to the customers as goods were to be shipped to other states, but did not have GST number and asked the procedure from respondent/plaintiff. Respondent/plaintiff told appellant/defendant that they can use the GST number of *M/s Shreya Traders* registered in the name of respondent/plaintiff's wife. Appellant/defendant thereafter used to purchase goods and sell/supply those goods to customers by using the *GST No.07DKRPM5439P1Z4* of *M/s Shreya Traders*.

15. Appellant/defendant avers that from August 2020, he continued to raise invoices and receive payments from customers in the account of *M/s Shreya Traders*.

16. Till date of filing of written statement, appellant/defendant had sold goods amounting to *Rs.78,69,073/-*, and invoices had also been raised in that respect. Customers had made payment amounting to *Rs.76,94,202/-*, which was received in the *DCB Bank Account* bearing *No.30922900004282* of *M/s*



Shreya Traders and the remaining amount was received in cash.

17. Appellant/defendant also paid GST to concerned authorities, amounting to Rs.1,80,538/- for the period from 1st October 2021 to 8th February 2022. An amount of Rs.51,04,130/- was transferred by appellant/defendant from the account of *M/s Shreya Traders* for the goods purchased by appellant/defendant.

18. Prior to using the GST number of *M/s Shreya Traders*, appellant/defendant used GST number of respondent/plaintiff for selling goods amounting to Rs.4,42,368/-, and the goods were delivered to *Sandeep Dresses* and *Das Garments*. Out of Rs.4,42,368/-, the amount of goods purchased from *M/s Keshav Garments* was Rs.1,18,760/- and remaining goods were purchased from other seller to supply to *Sandeep Dresses* and *Das Garments*.

19. In the month of July 2021, appellant/defendant asked the respondent/plaintiff to settle accounts. Respondent/plaintiff asked appellant/defendant to come on weekday holiday.

20. On 26th July 2021, respondent/plaintiff handed over cheque drawn at *DCB Bank* from the account of *M/s Shreya Traders* in favour of appellant/defendant. Appellant/defendant then asked respondent/plaintiff to transfer amounts of profits received in *M/s Shreya Traders*, but the respondent/plaintiff kept on dilating on the same. Thereafter, the GST number was applied by appellant/defendant in its own name in April 2022 at the address on 3rd Floor of property bearing no. X/2339, Gali No.11, Raghu



Bar Pura No.2, Gandhi Nagar, Delhi-110031.

21. Appellant/defendant from his firm *M/s Somya Garments*, also purchased goods from the firm of respondent/plaintiff, *M/s Keshav Garments*. Out of the purchase of goods amounting to *Rs.19,85,701/-*, appellant/defendant alleges that respondent/plaintiff raised a fake invoice bearing no.22-23/KG-95, amounting to *Rs.2,40,328/-* dated 9th August 2022. Further appellant/defendant contends that he had also returned goods amounting to *Rs.3,36,878/-*, which was not admitted by respondent/plaintiff in the legal notice. Further, respondent/plaintiff has not deducted amount of *Rs.1,47,338/-* for the discount received by appellant/defendant for selling goods of respondent/plaintiff. Further, an amount of *Rs.80,000/-* has not been deducted for inferior goods supplied by respondent/plaintiff to *Sandeep Dresses*.

22. On this basis, appellant/defendant alleged that respondent/plaintiff was liable to pay *Rs.23,71,283/-* for the amount received in the account of *M/s Shreya Traders* after deducting the amount of *Rs.3,81,157/-* due upon appellant/defendant for the goods purchased from *M/s Keshav Garments* and appellant/defendant had also filed a suit for recovery, which is pending before the *District Judge (Commercial Court), Shahdara, Karkardooma Courts, Delhi*.

Impugned order

23. The following issues were framed by order dated 15th May 2025:

- “1) Whether the plaintiff is entitled to a decree for recovery of Rs. 11,85,701/-, as prayed? (OPP)*
- 2) Whether the plaintiff is entitled to pendente-lite*



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and future interest @ 24% per annum? (OPP)”

24. Regarding issue no.1, the impugned judgment noted the admission in the *paragraph nos.16 & 17* of preliminary submission of written statement filed by appellant/defendant that he had purchased the T-shirts of *Rs.19,85,701/-* and had made payments of *Rs.8,00,000/-*. As per *paragraph nos.22 & 23* of evidence affidavit of appellant/defendant (Ex. **DW-1/A**), this was reiterated, and it was also confirmed in the cross-examination of appellant/defendant. To this extent, the fact that this particular purchase took place and outstanding balance was *Rs.11,85,701/-*, became crystalized and conclusive.

25. Appellant/defendant had raised four deductions *viz.* (i) *Rs.2,40,328/-* on the alleged fake invoice number *22-23/KG-95*; (ii) goods returned to respondent/plaintiff *vide* Debit Note dated 17th September 2023, *Rs.3,36,878/-*; (iii) discount *qua* the goods of respondent/plaintiff sold by appellant/defendant, *Rs.1,47,338/-* and; (iv) amount of *Rs.80,000/-*, deducted by *M/s Sandeep Dresses* towards supply of inferior goods. This total amounted to *Rs.8,04,544/-* and, therefore, according to appellant/defendant, an amount of *Rs.3,87,157/-* was due against him.

26. It was noted that appellant/defendant did not cross-examine the respondent/plaintiff regarding adjustment of *Rs.2,40,328/-*, *Rs.1,47,338/-* and *Rs.80,000/-*. *Secondly*, the District Judge notes that no evidence was placed regarding adjustment of the amounts of *Rs.1,47,338/-* and the return of goods worth *Rs.80,000/-*. There was no ledger nor any computation; however, only a mere statement had been given, which was legally not



sufficient.

27. As regards return of goods *vide* Debit Note of Rs.3,36,878/-, which was placed as **Ex. DW-1/13**, respondent/plaintiff had denied the suggestion of appellant/defendant in his cross-examination.

28. The Debit Note did not bear the signature of respondent/plaintiff, and appellant/defendant also admitted this in the cross-examination. Appellant/defendant examined **DW-2 (Manish Mishra)** to prove that he was an employee of respondent/plaintiff and that he had returned the goods worth Rs.3,36,878/-. DW-2 stated that he had sent the goods *via rickshaw*, which he used to hire.

29. Respondent/plaintiff challenged the identity of **DW-2 (Manish Mishra)**. **DW-2** did not file any proof of his employment with respondent/plaintiff and not even his identity proof. In cross-examination, he stated that he had not taken any receiving on the Debit Note at the time of handing over goods nor had led any evidence of him having any cycle-*rickshaw* or that he had hired it. He stated that he had come to depose at the instance of appellant/defendant. It was stated in his evidence, **Ex.DW2/A**, that all activities while taking back the return goods by appellant/defendant, were captured by appellant/defendant through his mobile camera, and videos are on record.

30. Further, the appellant/defendant did not lead any evidence that he had availed reversal of '*Input Tax Credit*' when he returned the goods to respondent/plaintiff. In the cross-examination of appellant/defendant, he



stated that he did not bring the necessary documents for the period 26th April 2022 to 25th August 2023.

31. The District Judge, therefore, holds that *qua* Debit Note (Ex.DW-1/13), it is evident that the Debit Note was neither signed nor acknowledged by respondent/plaintiff. Moreover, it does not state the particulars of invoices against which T-shirts were supplied to the appellant/defendant. Furthermore, ledger was not filed, and no evidence had been led relating to reversing of ‘*Input Tax Credit*’ availed on the Debit Note.

32. On the other issue that there was entitlement to recover an amount of Rs.29,20,290/- from *M/s Shreya Traders*. It was noted that *M/s Shreya Traders* and *M/s Keshav Garments* have separate identities in GST numbers. In addition to that a suit for recovery had also been filed by appellant/defendant against *M/s Shreya Traders*. The District Judge, therefore, held that the appellant/defendant’s claim for Rs.23,71,283/- is *sub-judice* in another suit and, therefore, simpliciter decreed the principal amount of Rs.11,85,701/- in favour of respondent/plaintiff and granted interest at the rate of 7% per annum applying *Section 34* of Code of Civil Procedure, 1908 (‘*CPC*’).

Analysis

33. Having traversed through the pleadings of the parties as well as the evidence and the impugned order and judgment, the Court does not find the appeal merited for, *inter alia*, the following reasons:



33.1. *Firstly*, respondent/plaintiff was able to prove the sale of goods to appellant/defendant and part payment of Rs.8,00,000/-. This was admitted by appellant/defendant in his written statement, affidavit of evidence and cross-examination.

33.2. Moreover, as per *Section 102* of Indian Evidence Act, 1872 (*‘IEA’*) the burden of proving documents rests on the plaintiff, and once plaintiff creates a strong *prima facie* case, the onus may shift to the appellant/defendant to disprove it. The Supreme Court in **Mohd. Abdullah Azam Khan v. Nawab Kazim Ali Khan** (2022) 20 SCC 233, observed as under:

78. In terms of Section 102 of the Evidence Act, the initial burden to prove its claim is always on the plaintiff and if he discharges that burden and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff of the same.

79. Where, however, evidence has been led by the contesting parties, abstract considerations of onus are out of place and truth or otherwise must always be adjudged on the evidence led by the parties.”

(emphasis added)

33.3. *Secondly*, as regards the adjustments, which the appellant/defendant had alleged, there was no cross-examination of respondent/plaintiff regarding the fake invoice or discount of Rs.80,000/-.

33.4. In **Muddasani Venkata Narsaiah v. Muddasani Sarojana** (2016) 12 SCC 288, the Supreme Court held that if a witness is not cross-examined,



then their testimony is deemed to be undisputed, and the court would presume that their account is accepted. The Court further clarified that any facts stated by one party in their pleadings, which are neither challenged in the pleadings nor through cross-examination by the opposing party, must be accepted as fully established. The relevant paragraph of ***Muddasani Venkata Narsaiah*** (*supra*) is extracted as under:

“15...The cross-examination is a matter of substance not of procedure one is required to put one’s own version in cross- examination of opponent. The effect of non cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in Bhoju Mandal & Ors. v. Debnath Bhagat & Ors. AIR 1963 SC 1906. This Court repelled a submission on the ground that same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the court would presume that the witness account has been accepted as held in M/s. Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. & Anr. AIR 1958 Punjab 440.

16. In Maroti Bansi Teli v. Radhabai w/o Tukaram Kunbi & Ors. AIR 1945 Nagpur 60, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by other party must be accepted as fully established. The High Court of Calcutta in A.E.G. Carapiet v. A.Y. Derderian AIR 1961 Cal. 359 has laid down that the party is obliged to put his case in cross examination of witnesses of opposite party. The rule of putting one’s version in cross-examination is one of



essential justice and not merely technical one. A Division Bench of Nagpur High Court in Kuwarlal Amritlal v. Rekhlal Koduram & Ors. AIR 1950 Nagpur 83 has laid down that when attestation is not specifically challenged and witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of Patna High Court in Karnidan Sarda & Anr. v. Sailaja Kanta Mitra AIR 1940 Patna 683 has laid down that it cannot be too strongly emphasized that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first Appellate Court as to the factum of execution of the sale deed in favour of the plaintiff."

(emphasis added)

33.5. *Thirdly*, as regards the amount of Rs.1,47,338/- towards discount of goods, this too was merely a statement of appellant/defendant, and there was no other evidence, as has been rightly noted by District Judge.

33.6. *Fourthly*, issue relating to return of goods of worth Rs.3,36,878/-, as has been analysed by the District Judge painstakingly, relating to the evidence tendered before the Trial Court, it seems quite clear that the appellant/defendant was unable to produce any evidence of return of goods



nor was he able to give any GST forms for adjustment in that regard.

33.7. In ***Mohd. Abdullah Azam Khan*** (*supra*), the Supreme Court observed that the burden of proof lies on the person who asserts a fact and not on a party who denies it, particularly when it is not self-evident, and remains on them unless discharged. Relevant paragraphs of the said judgment are extracted as under:

“74. As per Section 101 of the Evidence Act, when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. This section is based on the rule, ei incumbit probatio qui dicit, non qui negat, which means that the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it, because a negative is usually incapable of proof. The burden of proving a fact always lies upon the person who asserts and until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom the burden lies has been able to discharge his burden. However, the above rule is subject to the general principle that things admitted need not be proved.

75. The question as to whether burden of proof has been discharged by a party to the lis or not, would depend upon the facts and circumstances of the case. If the facts are admitted or, if otherwise, sufficient materials have been brought on record so as to enable a court to arrive at a definite conclusion, it is idle to contend that the party on whom the burden of proof lies would still be liable to produce direct evidence, vide National



Insurance Co. Ltd. v. Rattani.

76. Burden to prove documents lies on the plaintiff alone as onus is always on the person asserting a proposition or fact which is not self-evident. This position is summarised in the observation to the effect that, an assertion that a man who is alive was born requires no proof; the onus, is not on the person making the assertion, because it is self-evident that he had been born. But to assert that he had been born on a certain date, if the date is material, requires proof; the onus is on the person making the assertion, vide Robins v. National Trust & Co. Ltd.

77. It is also to be noted at this juncture that there is an essential distinction between burden of proof and onus of proof. Burden of proof lies upon a person who has to prove the fact and it never shifts, onus of proof on the other hand, shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. For instance, in a suit for possession based on title, once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant, it is for the defendant to discharge his onus and in the absence thereof, the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiff's title, vide R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple.”

(emphasis added)

33.8. Further, the Supreme Court in *paragraph 80 of Mohd. Abdullah Azam Khan* also observed that *Section 103* of IEA provides that the burden of proving a specific fact lies on the party who wants the Court to believe in



its existence, unless the law places that burden elsewhere. This amplifies *Section 101* of IEA, which states that the burden lies on the party asserting the affirmative.

“80. As per Section 103, the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. This section amplifies the general rule in Section 101 that the burden of proof lies on the person who asserts the affirmative of the issue. It lays down that if a person wishes the court to believe in the existence of a particular fact, the onus of proving that fact, is on him, unless the burden of proving it is cast by any law on any particular person.”

(emphasis added)

33.9. It is apparent from the findings recorded by the Trial Court that the appellant/defendant has failed to discharge the burden of proof cast upon him to establish the alleged return of goods, grant of discount, or any other adjustments as claimed. The appellant/defendant did not lead sufficient evidence to substantiate these assertions, and in the absence of such proof, the law is clear that the person who asserts a fact needs to lead evidence to that respect. Therefore, the Trial Court rightly declined to accept these pleas.

33.10. *Fifthly*, Counsel for appellant assailed the Trial Court’s judgment on the basis that it was passed in a hurried manner without application of judicial mind and had not taken into account totality of evidence. This Court does not find any merit in that assertion.



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33.11. *Lastly*, as regards the video footage that the appellant/defendant was claiming through **DW-2** (*Manish Mishra*), no certificate under *Section 65B* of the IEA had been filed in support. Moreover, the District Judge noted that the video merely depicted **DW-2** standing in front of appellant/defendant's shop and, therefore, could not substantiate the defence which was being raised by appellant/defendant.

33.12. Other grounds, which have been taken in the appeal, are generic in nature and only reiterate the contentions which were taken up before the Trial Court.

34. Accordingly, the appeal stands dismissed.

35. Pending applications are rendered infructuous.

36. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

(NITIN WASUDEO SAMBRE)
JUDGE

DECEMBER 04, 2025/ak/bp