



2026:DHC:2631-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 26th February, 2026

Pronounced on: 30th March, 2026

Uploaded on: 30th March, 2026

+ **RFA (COMM) 162/2025, CM APPL. 16990/2025 & CM APPL. 8357/2026**

FEROZ KHAN AND ORS.

...Appellants

Through: Mr. Gaurav Dalal, Adv.
versus

ANIL JAIN

...Respondent

Through: Mr. Tejveer Singh Bhatia & Mr.
Sanjog Singh Arneja, Advs. (M:
8888887663)

**CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE MADHU JAIN**

J U D G M E N T

MADHU JAIN, J.

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Appellants under Section 13 of the Commercial Courts Act, 2015 read with Section 96 of the Code of Civil Procedure, 1908, *inter alia*, assailing the Impugned Judgment and Decree dated 1st June, 2024 passed by the Id. District Judge (Commercial Court - 05), Tis Hazari Courts, West Delhi, in *CS (COMM.) No. 116/2019* titled '*Sh. Anil Jain v. Sh. Feroz Khan & Ors.*' (hereinafter, '*Impugned Judgment and Decree*').
3. *Vide* the Impugned Judgment, the suit preferred by the Respondent/Plaintiff has been decreed in the following terms:



“RELIEF

11. In view of my issues wise findings, the suit of the plaintiff is decreed for recovery of Rs.8,89,350/- alongwith costs. Plaintiff is also awarded pendente lite and future interest @ 9% per annum. The defendants shall be jointly and severally liable to pay the decretal amount to the plaintiff. Decree sheet be prepared. File be consigned to record Room.”

Factual Background

4. The brief factual matrix giving rise to the present appeal is as follows:
5. The Respondent/Plaintiff (*hereinafter, ‘Plaintiff’*) is engaged in the business of sale and supply of various chemical products and carries on business in the name and style of its proprietorship firm M/s Jain Chemicals. Appellant No. 3/Defendant No. 3 is a partnership firm in the name and style of M/s New Chemical Industries, engaged in the business of wholesale and retail trade of various acids and chemicals, and Appellant Nos.1 and 2/Defendant Nos.1 and 2 (*hereinafter, collectively ‘Defendants’*) are its partners.
6. The Plaintiff and the Defendants had an established business relationship for several years. The Defendants placed orders for chemical products on credit, and goods were supplied in accordance with their instructions. In March 2016, the Plaintiff raised three invoices amounting to Rs.5,77,500/-, and the goods were dispatched from Nangloi, Delhi, in accordance with the specifications provided by the Defendants, who are stated to have acknowledged receipt thereof.
7. The Plaintiff issued a legal notice dated 23rd February, 2019 calling upon Defendant No.1 to discharge the outstanding principal amount of Rs.



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5,77,500/-. The Plaintiff also claimed interest at the rate of 18% per annum on the said amount, which was calculated at Rs. 3,11,850/-. Accordingly, the total amount claimed by the Plaintiff was Rs. 8,89,350/-.

8. On the contrary, the Defendants stated that although the invoices were delivered by Mr. Ashok Jain, the Special Power of Attorney holder of the Plaintiff, in March 2016, the goods corresponding to those invoices were never physically supplied or delivered to them. According to the Defendants, the said invoices were inadvertently entered in the books of account of Defendant No. 3 and were also reflected in their VAT returns, despite no goods having been received and no corresponding payment having been made.

9. In the Written Statement filed by Defendant No. 1, the stand taken by the Defendants was that the invoices in question were fictitious bills or entry bills and that no goods were ever supplied to them. Furthermore, the entries in the books of accounts were inadvertently made by their accountant and, therefore, no liability arises against them in respect of the said invoices. In the Replication, the Plaintiff denied the averments made by the Defendants in the Written Statement and reiterated the contents of the plaint.

10. Prior to institution of the suit, the Plaintiff had initiated Pre-Institution Mediation Proceedings before the District Legal Services Authority (West) (*hereinafter*, 'DLSA') on 5th March 2019, wherein Defendant No. 1 had appeared and stated that mediation in the present dispute was not possible. Consequently, a Non-Starter Report was issued on 12th April 2019.

11. In the subject suit, the *Id.* Commercial Court framed issues on 3rd August, 2022. The issues framed are reproduced below:



“ISSUES

1. Whether the plaintiff is entitled for recovery of amount of Rs.8,89,350/-? *OPP*
2. Whether the plaintiff is entitled to interest @ 18% per annum, if any? *OPP*
3. *Relief*’

12. Evidence was led by both parties. On behalf of the Plaintiff, Mr. Ashok Jain, was examined as PW1, who tendered his affidavit in evidence and proved the Special Power of Attorney (Ex. PW1/1), Statement of Account (Ex. PW1/2), Invoices/Bills (Ex. PW1/3 (Colly.)), Legal Notice with postal/courier receipts (Ex. PW1/4 (Colly.)), original returned envelope (Ex. PW1/5) and the non-starter report of pre-institution mediation (Ex. PW1/6). PW1 also relied upon Annexure-2B of the VAT return for the period 01.01.2016 to 31.03.2016 (Ex. PW1/7) and the certificate under Section 65B of the Indian Evidence Act, 1872 (*hereinafter*, ‘IEA’) (Ex. PW1/8).

13. On behalf of the Defendants, Defendant No.1, Mr. Feroz Khan, was examined as DW1. The Defendants relied upon details of ‘C-Forms’, which were de-exhibited by the Id. Commercial Court and marked only as Mark-D1.

14. Upon appreciation of the evidence, the Id. Commercial Court held that the Plaintiff had proved its claim for recovery under the three invoices. The Court observed that although the Defendants alleged that the invoices were fictitious bills, they had themselves entered the same in their books of accounts and reflected them in their VAT returns. The Court further noted that the Defendants failed to produce any cogent evidence, including examination of their accountant or production of account books, to substantiate their defence. The Court concluded that the defence was an afterthought and decreed the suit in favour of the Plaintiff.



15. Aggrieved by the Impugned Judgment and Decree passed by the Id. Commercial Court; the Defendants have preferred the present Appeal.

Submissions on behalf of the Appellants/Defendants

16. Mr. Gaurav Dalal, Id. counsel for the Appellants submits that the Id. Commercial Court failed to properly appreciate the evidence on record while decreeing the suit. Id. Counsel submits that the entire case of the Plaintiff rests on the allegation that the Defendants had purchased certain chemicals under three invoices and had failed to make payment in respect thereof. However, the consistent defence of the Defendants has been that the said invoices are fictitious and that no sale transaction ever took place between the parties.

17. Id. counsel further submits that the Plaintiff failed to place on record any material to establish that the goods mentioned in the said invoices were ever supplied or delivered to the Defendants. He further submits that even according to the Plaintiff's own admission in cross-examination, there is no acknowledgment of receipt of goods by the Defendants or their representatives. Reliance in this regard is placed on the cross-examination of the Plaintiff dated 24th March, 2023, wherein the Plaintiff admitted as under:

“It is correct that there is no signature on behalf of the defendant or his representative to receive the chemicals on credit basis as mentioned in Ex. PW1/3 (Colly.) and as stated by me in my plaint. I cannot produce any document which can show receiving of chemicals on behalf of defendant or his representative which is mentioned in Ex. PW1/3 (Colly.).”

18. Id. Counsel submits that once receipt of goods was specifically



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disputed by the Defendants, the burden lay upon the Plaintiff to establish delivery through cogent evidence. However, no such evidence has been produced on record.

19. Ld. Counsel further submits that during the course of cross-examination dated 10th February 2023, when the Plaintiff was questioned regarding documents evidencing dispatch or delivery of the goods, the Plaintiff sought to shift the responsibility on the defendants by stating that preparation of such documents was the responsibility of the Defendants and not the Plaintiff.

20. Ld. Counsel submits that the invoices relied upon by the Plaintiff do not contain essential particulars such as the name of the transporter, vehicle number, or other transportation details which could establish that the goods were actually dispatched or delivered. In a transaction involving supply of large quantities of chemical substances, the existence of such records would ordinarily be expected, and their absence raises doubt regarding the genuineness of the alleged transaction.

21. Ld. Counsel further submits that the Plaintiff has relied primarily on copies of invoices and a statement of account maintained by him. Such documents are self-serving in nature and cannot by themselves establish liability unless supported by independent proof of the underlying transaction. In the absence of evidence demonstrating actual supply or delivery of goods, the reliance placed on such documents is insufficient to sustain the decree passed by the Id. Commercial Court.

Submissions on behalf of the Respondent/Plaintiff

22. Mr. Tejveer Singh, Id. counsel for the Respondent submits that the



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defence raised by the Appellants/Defendants that the goods were never received is clearly an afterthought to avoid liability.

23. Ld. Counsel submits that prior to the institution of the suit, the Plaintiff had issued a legal notice to the Defendants and the parties had also participated in Pre-Institution Mediation proceedings before the DLSA. At no stage during this period did the Defendants dispute the said invoices or contend that the goods covered thereunder were never supplied. The plea denying receipt of goods has been raised for the first time only after the institution of the suit before the Id. Commercial Court and therefore lacks credibility.

24. Ld. Counsel further submits that the conduct of the Defendants is inconsistent with their present stand. Ld. Counsel submits that the Defendants admittedly availed input tax credit in respect of the invoices in question under the Delhi Value Added Tax Act, 2004. Having availed such credit on the strength of the said invoices, the Defendants cannot now contend that the transactions were fictitious or that no goods were received.

25. Ld. Counsel further submits that the explanation offered by the Defendants regarding the alleged fictitious nature of the invoices is unsupported by any evidence. The Defendants have not produced any document or taken any action to show that the entries made in their tax returns were incorrect or required rectification. Their failure to take any such step clearly indicates that the defence raised is merely an attempt to avoid payment of the outstanding dues.

Analysis and Findings

26. The submissions advanced on behalf of the Appellants/Defendants and the Respondent/Plaintiff have been heard and the material placed on record



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by the parties has been duly perused. This Court now proceeds to examine the issues arising in the present appeal.

27. In light of the rival submissions advanced by the parties and the material placed on record, the following questions arise for consideration in the present appeal:

- i. Whether the Plaintiff has been able to establish that the transactions reflected in the invoices Ex. PW1/3 (colly.) represent genuine commercial transactions and that the amount reflected in the statement of account Ex. PW1/2 is legally recoverable from the Defendants?*
- ii. Whether the award of pendente lite and future interest @ 9% per annum by the ld. Commercial Court calls for any interference in the present appeal?*

28. Before delving into these issues, it would be apposite to briefly notice the scope and duty of a First Appellate Court. As explained by the Supreme Court in *Santosh Hazari v. Purushottam Tiwari*, 2001 (3) SCC 179, a first appeal is a valuable right of the parties and, unless restricted by law, the whole case is open for rehearing both on questions of fact and law. The first appellate court is therefore required to apply its mind to the entire evidence on record and record findings supported by cogent reasons on the issues arising in the appeal.

29. The Plaintiff has relied upon the statement of account Ex. PW1/2 maintained in the regular course of business and the invoices dated 28.03.2016, 29.03.2016 and 30.03.2016 exhibited as Ex. PW1/3 (colly.). The evidentiary value of entries in books of account maintained in the ordinary course of business is governed by Section 34 of the IEA, 1872.



30. It is well settled that while such entries are relevant evidence, they are not by themselves sufficient to fasten liability upon a person. In ***Chandradhar Goswami and Others v. Gauhati Bank Ltd., 1966 SCC OnLine SC 255***, the Supreme Court observed as follows:

“Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.”

It is clear from a bare perusal of the section that no person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the regular course of business. There has to be further evidence to prove payment of the money which may appear in the books of account in order that a person may be charged with liability thereunder, except where the person to be charged accepts the correctness of the books of account and does not challenge them.”

31. The position that thus emerges is that while a statement of account constitutes relevant evidence, it must ordinarily be supported by additional material establishing the underlying transaction. In the present case, such corroboration is found in the invoices Ex. PW1/3 (colly.) as well as in the admissions emerging from the testimony of DW1 – Mr. Feroz Khan.

32. At this stage, it is necessary to notice the principle governing the burden of proof in such matters. The Supreme Court in ***Mohd. Abdullah Azam Khan v. Nawab Kazim Ali Khan, (2022) 20 SCC 233***, observed that in terms of Section 102 of the IEA, 1872, the initial burden to prove its claim lies upon the plaintiff and if he discharges that burden and makes out a case which



entitles him to relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff from the same.

33. Considering this legal position, the evidentiary material placed on record by the parties may now be examined. The evidentiary approach adopted by courts in commercial disputes involving supply transactions has been discussed by a Coordinate Bench of this Court in ***Haryana Medical Hall v Dr Roshanlal Aggarwal and Sons Pvt Ltd***, 2023 SCC OnLine Del 8105, where the Court observed:

“16..... We are of the view that the respondent had duly proved that the statement of accounts was maintained in the normal course of business and had reflected a balance of Rs. 28,80,847/- as outstanding and payable by the appellants.

17. The respondent had also produced GSTR returns, which were referred to by the learned Commercial Court. The contention that the said returns had no evidentiary value, is erroneous. The said returns clearly indicated that the respondent had paid central tax as well as state/UT tax and the benefit of such input tax credit of the said amount would be available to the appellants.”

34. The documentary evidence produced by the Plaintiff, including the invoices forming the basis of the claim and the statement of account maintained in the ordinary course of business, supports the transactions relied upon by the Plaintiff and must be considered alongside the Defendants’ conduct in availing VAT input credit in respect of the very same invoices.

35. In the course of examining the evidentiary record, a material admission emerges from the testimony of DW1. During the course of cross-examination, DW1 – Mr. Feroz Khan, made the following admission:



“It is correct that I have taken VAT input in regard to all these three invoices i.e. Ex.PW/3 (Colly.) (Vol-Mr. Ashok Jain had approached me as he wanted to raise certain fake invoices qua their stock and no sale had actually taken place and it was mutually agreed between me and Mr. Ashok Jain the we will share the VAT input equally. As per agreement I was to deposit the amount of these bills i.e. Rs.5,77,500/- in the bank account of Sh. Ashok Jain after he will pay the aforesaid amount in cash, however, he did not pay any cash amount to me thereafter I did not deposit the said amount in the bank account)”

36. This admission assumes considerable significance in the context of the defence raised by the Defendants. The claim of VAT input credit necessarily proceeds on the premise that the purchasing dealer recognizes the transaction as a genuine purchase from the supplier. The admission of DW1 therefore reflects the manner in which the Defendants themselves acknowledged and treated the transactions represented by the invoices.

37. The relevance of such conduct has been considered by a Coordinate Bench of this Court in ***Ranjeet Saini v M/s Banwarilal Arora and Sons, 2026 DHC: 444 – DB***. In that case, while dealing with a similar contention disputing supply of goods despite the availing of input tax credit, the Court observed:

“16. A perusal of the above two extracts from the cross-examination of the Appellant would show that the Appellant admits his signatures at all the invoices except one. Moreover, once the Appellant availed of the Input Tax Credit on the GST inputs in respect of all the invoices, the Appellant cannot argue that on the one hand, it is entitled to Input Tax Credit on the ground of supply of goods having been made and on the other hand, for the same very invoices, argue



that the goods have been returned.

17. Such contradictory pleas would not be permissible especially in a commercial case where the contract is for supply of goods, invoices are accepted, GST Input Tax Credit is availed of, and the Appellant admits during cross-examination that all the invoices except one bear his signatures.”

(EMPHASIS SUPPLIED)

38. The reasoning in the aforesaid decision assumes relevance in the present factual matrix. The Defendants have admittedly availed VAT input credit on the basis of the very invoices which they now seek to characterise as fictitious or entry bills. This conduct, when viewed in conjunction with the documentary evidence and the admissions of DW1, shows the lack of bona fides in the Defendants’ plea.

39. However, this Court also considers the principal defence advanced by the Defendants. The principal contention advanced by the Id. counsel for the Defendants is that the Plaintiff has not produced any document evidencing physical delivery of goods, such as transport receipts or acknowledgments of receipt.

40. As per the record, it is correct that the invoices relied upon by the Plaintiff do not bear any signature of the Defendants acknowledging receipt of the goods. In this context, PW1 in his cross-examination dated 10th February 2023 stated that the responsibility for preparing the road permit and transportation built lay with the purchasing party and not with the supplier. The relevant portion of the cross- examination is reproduced below:

“The responsibility of preparing the road permit and transportation bilti relates to our clients only who purchase the product from our firm. At the relevant



time , procedure of e-way bill was not in practice.....”

41. This testimony carries weight in the present context. It offers an explanation, from the perspective of the Plaintiff’s witness, as to why transportation documents were not produced by the Plaintiff. The statement indicates that the preparation and retention of such documents was, according to the Plaintiff, the responsibility of the purchasing party.

42. In the light of the explanation furnished by PW1, the absence of transportation documents or acknowledgment of delivery on the invoices cannot, by itself, be treated as establishing non-supply of goods. The said circumstance must therefore be appreciated in conjunction with the other material appearing on record.

43. Apart from the above evidentiary aspects, another important legal principle is relevant here. The principle that a party cannot accept the benefit of a transaction and simultaneously dispute its existence is well recognised in law. In this context, the Supreme Court in *Cauvery Coffee Traders, Mangalore v. Hornor Resources Company Limited, 2011 SCC OnLine SC 1255*, has elucidated the doctrine of approbate and reprobate in the following terms:

“34. A party cannot be permitted to “blow hot and cold”, “fast and loose” or “approbate and reprobate”. Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

35. Thus, it is evident that the doctrine of election is based on the rule of estoppel—the principle that one cannot



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approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had.”

44. The underlying principle that a party cannot accept the benefit of a transaction and simultaneously deny its existence is clearly attracted in the present factual matrix. Having availed VAT input credit on the basis of the invoices in question, the Defendants cannot now be permitted to contend that the said invoices were fictitious or that the transactions never took place.

45. There is yet another circumstance which merits consideration. The record reflects that the Plaintiff had issued a legal notice dated 23rd February, 2019 calling upon the Defendants to discharge the outstanding amount claimed under the invoices in question.

46. Despite receipt of the said notice, the Defendants did not issue any reply disputing the transactions or denying their liability. In ***Metropolis Travels & Resorts (I) Pvt. Ltd. v. Sumit Kalra & Anr., 2002 SCC OnLine Del 521***, a Coordinate Bench of this Court while relying upon ***Kalu Ram v. Sita Ram, 1980 RLR (Note) 44*** observed that where a notice is served and the recipient fails to reply thereto, an adverse inference may be drawn from such conduct.

47. This factor merits particular attention when viewed alongside the fact that no contemporaneous dispute regarding the transactions had been raised by the Defendants at any earlier stage. The silence maintained by the Defendants both at the time of the transactions and upon receipt of the legal notice raises serious doubt on the defence taken by them. The further positive



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conduct of availing VAT credit also obliterates any doubt as to the genuinity of the transactions.

48. The operation of the evidentiary burden in such situations has also been considered by this Court in *Metropolis Travels & Resorts (I) Pvt. Ltd. (supra)*. The Court was dealing with a case wherein the plaintiff had proved invoices bearing the signatures of the defendant's employees acknowledging receipt of tickets. The Court observed that once such evidence had been led and it stood established that the persons whose signatures appeared on the invoices were employees of the defendant and had been dealing with the plaintiff on behalf of the defendant, the burden shifted upon the defendant to show, by cogent and reliable evidence, that the signatures were not genuine or that the said employees were not authorised or were not in service at the relevant time.

49. Tested on the touchstone of the aforesaid principles, the material on record shows that the Plaintiff has produced the invoices forming the basis of the claim and led evidence in support of the transactions reflected therein. Despite disputing their liability, the Defendants have not placed any credible material on record to substantiate the defence raised by them.

50. In these circumstances, this Court is of the view that a mere denial of the transactions, unsupported by contemporaneous correspondence or denials or other reliable evidence, cannot prevail against the documentary evidence placed on record by the Plaintiff. The Defendants having failed to discharge the evidentiary burden cast upon them, the contention that the invoices were fictitious or merely accommodation entries cannot be accepted.

51. The documentary evidence on record, including the statement of account and the invoices, read in conjunction with the admissions of DW1



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regarding availing VAT input credit, clearly establishes the genuineness of the transactions relied upon by the Plaintiff. The Defendants' conduct in availing VAT input credit on these very invoices is manifestly inconsistent with their plea that the invoices were fictitious or that no goods were supplied.

52. In view of the aforesaid evidence and the surrounding circumstances, this Court is satisfied that the transactions reflected in the invoices were duly entered into between the parties. The defence raised by the Defendants is therefore untenable and cannot be accepted.

53. Consequently, the Plaintiff has successfully proved the transactions in question and is entitled to recover the amounts claimed on the basis of the said invoices and statement of account.

54. The next question that arises for consideration relates to the rate of interest awarded by the Id. Commercial Court.

55. The question of pre-suit, pendente lite, and future interest was examined and decided by the Id. Commercial Court as another important issue in the subject suit. The Plaintiff had claimed interest at the rate of 18% per annum on the principal sum, relying upon the terms and conditions set forth in the invoices Ex. PW1/3 (colly.), which provided that the Defendants would be liable to pay interest at 18% per annum in the event of non-payment within thirty days of supply of goods. Based on these facts and circumstances, the Id. Commercial Court granted pre-suit interest at the contractual rate of 18% per annum and awarded pendente lite and future interest at 9% per annum.

56. This Court finds no infirmity in the award of pre-suit interest at the contractual rate of 18% per annum, amounting to Rs. 3,11,850/-, as claimed by the Plaintiff. However, so far as pendente lite and future interest are concerned, the same fall within the discretionary domain of the Court under



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Section 34 of the Code of Civil Procedure, 1908. While the Id. Commercial Court has awarded pendente lite and future interest at the rate of 9% per annum, it is well settled that the Court, while exercising such discretion, may take into account the nature of the transaction, the period involved and the prevailing commercial lending rates.

57. Having regard to the facts and circumstances of the present case, this Court is of the view that interest at the rate of 6% per annum on the decretal amount would be just and reasonable for the purposes of pendente lite and future interest.

Conclusion

58. Subject to the modification in the rate of pendente lite and future interest as indicated above, the Impugned Judgment and Decree passed by the Id. Commercial Court are upheld. The rate of pendente lite and future interest shall stand reduced from 9% per annum to 6% per annum.

59. *Vide* order dated 24th March 2025, this Court directed the Appellants to deposit a sum of Rs.5,75,500/- with the Registrar General, to be kept in an FDR on auto-renewal mode. This direction was partly modified *vide* order dated 3rd July 2025, taking note that the FDR had been prepared in the name of the Registrar General and directing its submission for safe custody, with a stipulation for its encashment on maturity and reinvestment in an auto-renewable FDR.

60. In compliance thereof, FDR bearing No. 50301162976453 dated 22nd May 2025 for Rs.5,75,500/-, carrying interest @ 7.05% p.a. and maturing on 23rd November 2026, was deposited with the Registrar General. *Vide* order dated 20th November 2025, the Respondent was granted liberty to seek release of the deposited amount and, pursuant thereto, ***CM APPL. 8357/2026*** was



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filed. Accordingly, in view of the aforesaid discussion, the said FDR, along with accrued interest (after deduction of TDS on interest component), is directed to be released to the Respondent/Plaintiff.

61. The Respondent/Plaintiff shall be at liberty to execute the Impugned Judgment and Decree for the remaining amount in accordance with law.

62. The appeal, along with all pending applications, stands dismissed.

**MADHU JAIN
JUDGE**

**PRATIBHA M. SINGH
JUDGE**

MARCH 30, 2026/M