



2026:CGHC:15712-DB

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
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18.02.2026	07.04.2026	--	07.04.2026

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on: 18.02.2026

Judgment delivered on: 07.04.2026

FAM No. 35 of 2024

- 1 - Rajat Ispat Pvt. Ltd. Marshal House, 33/1 N.S. Road, Room No. 234, 2nd Floor Kolkata 700001, Through its Director Shankar Lal Agrawal S/o Shri Kundan Lal Agrawal Aged About 52 Years R/o House No. 61,- 62, Park Avenue Colony Dhimrapur Raigarh District - Raigarh (C.G.)
- 2 - Shankar Lal Agrawal S/o Shri Kundan Lal Agrawal Aged About 52 Years R/o House No. 61, 62 Park Avenue Colony Dhimrapur P.O. Raigarh Chhattisgarh
- 3 - Dayanand Agrawal S/o Shri Kundan Lal Agrawal Aged About 48 Years R/o House No. 61, 62, Park Avenue Colony Dhimrapur P.O. Raigarh Chhattisgarh

... Appellants

versus

- 1** - Champion Ceramics Pvt. Ltd. Industrial Area Korba Road Post Office
Champa District - Janjgir - Champa Chhattisgarh (Respondent/ Plaintiff)
- 2** - Subhash Agrawal S/o Gulab Chand Agrawal R/o 40/424 Kotra Road
Post Office Raigarh District - Raigarh (C.G.) (Respondent / Defendant
No. 2)
- 3** - Rekha Agrawal W/o Subhash Agrawal R/o 40/424 Kotra Road Post
Office Raigarh District - Raigarh (C.G.) (Respondent/ Defendant No.3)
- 4** - Bhushan Power and Steel Limited Village Thekoloi Post Office
Lapanga Tehsil Rangali District - Sambalpur (Orissa) (Respondent /
Defendant No. 6)

... Respondents

For Appellants	:	Mr. B.P. Sharma along with Mr. Vivek Chopda and Ms. Mitisha Kotecha, Advocate
For Respondent No.1	:	Mr. Kshitij Sharma, Advocate
For Respondents No.2 & 3	:	Mr. Shobhit Mishra, Advocate
For Respondent No.4	:	Mr. Ankit Singal, Mr. Amartya Bajpai and Mr. Varun Vats, Advocate

Hon'ble Smt. Justice Rajani Dubey

Hon'ble Shri Justice Radhakishan Agrawal

C A V Judgment

Per Rajani Dubey, Judge

1. The appellants have preferred the present appeal against the judgment and decree dated 26.09.2024 passed by the Commercial Court (District Judge Level), Nava Raipur Atal Nagar, District Raipur (C.G.) in Commercial Suit No. 04B/2019, whereby the suit filed by the plaintiff/respondent No. 1 has been decreed

and defendants No. 1 to 5 have been held jointly and severally liable to pay a sum of Rs. 99 lakhs along with interest. The parties to this appeal shall be referred herein as per their description before the learned Family Court.

2. Pleadings of the plaintiff are that the plaintiff is a small-scale industry registered with MSME, Govt. of India, which, among other things, is engaged in the business of manufacturing of basic refractory products. The defendant no. 1 is a company engaged in the business of manufacture of basic iron and steel. The defendant nos. 2 & 3 are former Directors of the defendant no. 1. The defendant no. 4 & 5 are current Directors of the defendant no.1. The defendant no.6 is also a company engaged in the business of manufacture of steel.

The plaintiff has pleaded that it has been supplying refractory materials to the defendant no. 6 since last several years. In line with the plaintiff's verbal agreement with the defendant no 6, the defendant no. 6 makes the payment for receiving the refractory material to the plaintiff within 3 months. However, in the year 2016, the defendant no. 6 communicated its inability to make payment against supply of refractory material and in lieu thereof offered DRI Lumps (Pellet) (hereinafter referred to as "the material") worth Rs. 1,04,45,591/- (Rupees One Crore, Four Lakhs, Forty-Five Thousand, Five Hundred, Ninety-One Only) in exchange in order to clear its debt. Owing to the fact that

the plaintiff did not need the said material offered by defendant no. 6, it approached the defendant no. 1 company through one of its directors, defendant no. 2 on 17/09/2016 requesting to lift the said material from defendant no. 6 and pay the amount on account thereof to the plaintiff. The defendant no 1 agreed to lift the material from the defendant no. 6 and to pay the amount in respect thereof to the plaintiff within 1 month of lifting. The defendant no. 6 also agreed to permit the defendant no. 1 to lift the material on behalf of the plaintiff in order to clear its debts owed to the plaintiff.

Subsequently, the plaintiff placed a formal order dated 17/09/2016 on the defendant no. 6 requesting it to supply 700 MT of the material to the defendant no. 1 at Rs. 13,000/- per Metric Ton (exclusive of Excise, CST & Freight). The defendant no. 6 confirmed the receipt of said order from the plaintiff vide its letter dated 19/09/2016 and agreed to supply the material amounting to a total of Rs. 1,04,45,591/- (Rupees One Crore, Four Lakhs, Forty-Five Thousand, Five Hundred, Ninety-One Only) to the defendant no. 1.

It is further pleaded that the defendant no. 1 started lifting the material from the defendant no. 6 and thus lifted a total quantity of 699.780 MT of the same from defendant no. 6 starting vide bills dated 20.09.2016 to 18.10.2016 amounting to a total of Rs. 1,04,38,970/- (Rupees One Crore, Four Lakhs, Thirty-Eight

Thousand, Nine Hundred, Seventy Only). As per the agreement, the defendant no. 1 was supposed to pay the said amount to the plaintiff within 1 month from 18/10/2016 i.e. within 18/11/2016. However, the defendant no. 1 paid only a sum of Rs. 5,00,000/- (Rupees Five Lakhs) to the plaintiff on account of lifting of material worth Rs. 1,04,38,970/- (Rupees One Crore, Four Lakhs, Thirty-Eight Thousand, Nine Hundred, Seventy). The plaintiff repeatedly requested the defendant no. 1 to pay the balance amount of Rs. 99,45,591/- to the plaintiff, however, defendant no. 1 kept dilly dallying the same on one pretext or the other. Since the defendant no. 1 had lifted material worth Rs. 1,04,38,970/- from the defendant no. 6, the balance amount of Rs. 6,621/- was paid by the defendant no. 6 to the plaintiff on 12/05/2017 and as such the defendant no. 6's debt to the plaintiff stood clear. Further the defendant no. 1 paid an amount of Rs. 38,970/- to the plaintiff on 16/06/2017 and thus a balance of Rs. 99,00,000/- still remains to be paid by the defendant no. 1 to the plaintiff on account of material lifted from defendant no. 6.

It is further pleaded that the defendant no. 1 has specifically admitted its liability to the plaintiff to pay a sum of Rs. 99,00,000/- as on 13/06/2017 by executing a mortgage deed dated 25/07/2017 mortgaging property worth Rs. 1,65,00,000/- The defendant no. 2 the then Director of defendant no. 1 had executed the said mortgage deed on behalf of the defendant no. 1. On 31/12/2017 the defendant no. 2 and 3 resigned from Directorship

of the defendant no. 1 company and defendant no. 4 and 5 became the new Directors of the defendant no. 1 company. Apart from the said mortgage, the defendant no. 1 had issued 20 post-dated cheques in total of Rs. 99,00,000/- in favour of the plaintiff in discharge of its liability. The cheques were signed by the defendant no. 2 on behalf of defendant no. 1 company. Upon presentation of a few cheques the plaintiff came to know that the defendant no. 1 was not maintaining sufficient balance in its account for payment of its debts. In this regard, the plaintiff has already initiated appropriate criminal proceedings against the defendant no. 1.

It is further case of plaintiff that defendant no. 1 has illegally, malafidely, arbitrarily and unreasonably refused to pay its admitted liability of Rs. 90,00,000/- to the plaintiff against the cost of material lifted from the defendant no. 6. When a legal notice dated 24/04/2019 was sent to defendant no. 1 raising the demand of Rs. 90,00,000/-, the defendant no. 5 responded to the same vide letter dated 05/05/2019 denying the liability of defendant no. 1 company stating that after reorganization of management of the defendant no. 1 company, there remains no liability upon the defendant nos. 4 & 5 to pay the dues of the defendant no. 1 company Defendant nos. 4 & 5 have instructed defendant no. 1's bank to not honour any cheques drawn by the defendant no. 2 and therefore some post-dated cheques drawn by the defendant no. 1 through defendant no. 2 are now being dishonored for the reason of

difference in signature. Thus, defendant nos. 4 & 5 are acting in collusion with the defendant no. 2 & 3 in order to defraud the plaintiff.

In the aforesaid backdrop, it is the case of plaintiff that its claim of Rs. 99,00,000/- is genuine and it is entitled to get the same with simple interest @ 12% per annum from the date the amount became due i.e. 13/06/2017 till actual realization of the amount.

3. In their written statement, the defendant Nos. 1, 4 & 5 have admitted the fact that defendant Nos. 2 & 3 are former Directors of defendant No. 1 company and defendant nos. 4 & 5 are current Directors thereof. It has been denied that the defendant No.1, or in alternative, defendant Nos. 1 to 5, jointly and severally, are to pay an amount of Rs. 99,00,000/- to the plaintiff. It is pleaded that 699.78 MT of DRI Lumps (Pellet) was procured by defendant Nos. 2 & 3 in their personal capacity and not on behalf of defendant No. 1 company. The defendant No. 2 has accepted his liability in his personal capacity and as things stand now the defendant Nos. 4 & 5 have become Directors of defendant No.1 company on 10/07/2017 and thus if any transactions were made by the defendant Nos. 1, 2 and 3 therefore, the same has nothing to do with defendant Nos. 4 & 5.

It is further pleaded that the defendant No.2 and plaintiff, who are close relatives, have conspired against the defendant

Nos. 4 & 5 with an intent to harm them. The pleadings of plaintiff are fabricated. The mortgage deed was executed by defendant No. 2 when he was no longer the Director of defendant No. 1 company. The execution of the mortgage given effect to by defendant No. 2 is in respect of his personal property and not of defendant No. 1 company. It is pleaded that since no transaction has taken place between the plaintiff and defendant Nos. 1, 4 & 5, the present suit is not maintainable.

In their written statement, the defendant Nos. 2 & 3 have admitted that they were Directors of defendant No. 1 company and have resigned from Directorship of the same and subsequent thereto the defendant Nos. 4 & 5 have become new Directors of defendant No. 1 company. All works related to the running of the company are now being done by the new Directors. It is pleaded that defendant Nos. 2 & 3 having resigned from Directorship of defendant No. 1 company, are not liable to pay dues of defendant No. 1 company. Pertinently, the defendant Nos. 2 & 3 have not specifically, either expressly or by necessary implication, denied the assertions of the plaintiff.

4. In its written statement, the defendant No. 6 has admitted the fact that in the year 2016 it was unable to make payments against supply of some of the refractory material it had received from the plaintiff and therefore in exchange it offered to supply DRI Lumps (Pellet) worth Rs. 1,04,45,591/- to the plaintiff. Subsequent

thereto, the plaintiff had approached the defendant No. 6 to permit the defendant No. 1 to lift the material on behalf of the plaintiff in discharge of the liability of defendant No. 6 and the same was agreed upon by the defendant No. 6. As per defendant No. 6, vide various bills dated 20/09/2016 to 18/10/2016 the defendant No. 1 lifted a total quantity of 699.780 MT of said material worth Rs. 1,04,38,970/- from defendant No. 6's facility and thus a balance amount Rs. 6,621/- was required to be paid to the plaintiff by the defendant No. 6. The defendant No. 6 made the said payment of Rs. 6,621 to the plaintiff on Rs. 6,621/- in discharge of its debt.

5. On the basis of pleadings made by the parties, learned Commercial Court framed the issues and after appreciating oral and documentary evidence, by its judgment and decree dated 26.09.2024 allowed the suit filed by the plaintiff/respondent No.1. Hence, this appeal.
6. Learned counsel for the appellants submits that the impugned judgment and decree passed by the learned Trial Court are wholly illegal, erroneous and contrary to the settled principles of law and evidence. It is contended that Defendant No. 2 had ceased to be a Director of Defendant No. 1—Company prior to the execution of the alleged mortgage deed; hence, any purported admission of liability by him, in his personal capacity, cannot bind or fasten liability upon the Company. It is further argued that Defendant No. 2 in collusion with the plaintiff, who is his relative, has fabricated a

false and inflated claim against Defendant No. 1–Company. It is further submitted that the plaintiff has failed to discharge the burden of proof, as no reliable or cogent documentary evidence has been produced to establish the actual transportation or delivery of the alleged materials. Apart from the invoices (Exhibit P/2), no independent evidence has been adduced. It is also contended that the ledger accounts (Ex. P/3 and P/4) have not been proved in accordance with the provisions of the Indian Evidence Act, as no competent witness, such as a Chartered Accountant or the author of the accounts, was examined to substantiate the same. Mere issuance of cheques by Defendant No. 2 cannot be construed as an admission of liability on behalf of Defendant No. 1–Company.

7. Learned counsel for the appellants strongly objected that the suit has been instituted by the plaintiff company through Mr. Sajjan Agrawal without a valid and proved Board Resolution. This is a fundamental defect. As per guidelines of Hon'ble Apex Court in Kingston Computers case that a company, being a juristic person, must prove the authority of the individual representing it through a formal Board Resolution and in the present case, the Plaintiff (Respondent No. 1) is a private limited company. The cause title and Paragraph 1 of the plaint merely state that the company is being represented by Mr. Sajjan Agrawal in his capacity as a Director. However, there is a total absence of any specific Board Resolution being pleaded or produced alongside the plaint to

establish that Mr. Sajjan Agrawal was specifically empowered by the Board of Directors to institute this specific legal proceeding, sign the pleadings, or verify the contents of the suit. Further, the written statement of Defendant No. 6, who was proceeded ex parte, cannot be treated as substantive evidence to establish the alleged supply of materials. It is also submitted that Defendant Nos. 4 and 5, being the present Directors, cannot be held vicariously liable for the alleged acts or omissions of Defendant No. 2 or any erstwhile Directors of the Company. The appellants additionally contend that in the absence of any credible documentary proof supporting the alleged supply of materials worth Rs. 1,04,45,591/-, no liability could have been imposed upon Defendant No. 1—Company. The suit is further stated to be not maintainable for non-compliance with the mandatory provisions of Section 12A of the Commercial Courts Act, 2015 and is also barred by limitation. It is thus urged that the learned Trial Court has recorded perverse findings on Issues No. 1, 2, 3, and 6 by misappreciating both oral and documentary evidence, rendering the impugned judgment and decree unsustainable in law and liable to be set aside.

8. Along with the present appeal, the appellants have preferred I.A. No. 04/2025 under Order VI Rule 17 of the Code of Civil Procedure seeking amendment of the written statement. It is submitted that the proposed amendment is necessary to bring on record material facts pertaining to the nature of the transaction

between the parties. The appellants contend that the plaintiff had initially dealt with Defendant No. 6, who offered material in lieu of payment, which was declined. Thereafter, Defendant No. 1–Company, through its then Director (Defendant No. 2), allegedly purchased the goods pursuant to a purchase order issued by the plaintiff upon Defendant No. 6, wherein the materials were to be lifted by Defendant No. 1 and payment was to be made by it to the plaintiff. In terms of this arrangement, Defendant No. 1 is stated to have taken over the liability of Defendant No. 6. It is further submitted that subsequently, control and majority shareholding of Defendant No. 1–Company were transferred by Defendant No. 2 to Defendant Nos. 4 and 5 vide agreement dated 08.05.2017. The proposed amendment seeks to clarify that the primary liability, if any, lies upon Defendant Nos. 2 and 3 and not upon Defendant Nos. 1, 4, and 5, who stand discharged. The amendment also addresses the admissibility of the mortgage deed and the change in directorship. It is contended that the proposed amendment does not alter the nature of the defence, is bona fide, and is necessary for effective adjudication of the dispute and to avoid miscarriage of justice. Accordingly, it is prayed that the application for amendment be allowed, and if necessary, the matter be remanded to the learned Trial Court for proper adjudication.

9. The appellants have also filed I.A. No. 05/2025 under Order XLI Rule 27 of the Code of Civil Procedure seeking permission to place additional documents on record. It is submitted that certain

subsequent developments came to the knowledge of the appellants only at the stage of filing the present appeal, and the certified copies of the relevant documents were obtained on 06.08.2025. It is contended that during the pendency of the suit and the present appeal, Defendant Nos. 2 and 3, in collusion, unlawfully sold properties belonging to Defendant No. 1—Company, despite having no authority to do so. It is submitted that pursuant to the agreement dated 08.05.2017, Defendant Nos. 2 and 3 had already transferred their entire shareholding in Defendant No. 1—Company and, therefore, ceased to have any right, title, or interest in its assets. However, in violation of the said agreement, Defendant Nos. 2 and 3 allegedly executed sale transactions in respect of immovable property situated at Village Punjipathra (approximately 10 acres), formerly held in the name of Mahindra Ispat (erstwhile name of Defendant No. 1), in favour of M/s Raigarh Ispat and Power Private Limited through its Directors. It is submitted that the said acts of misfeasance are directly relevant for adjudication of the dispute, particularly in light of the counterclaim already filed by the appellants against Defendant Nos. 2 and 3. The additional documents, including certified copies of the sale deeds, are necessary for proper and effective adjudication and to avoid multiplicity of proceedings. Accordingly, it is prayed that the application be allowed and the additional documents be taken on record.

Reliance has been placed upon the decisions of the Hon'ble

Supreme Court in ***Yamini Manohar vs. T.K.D. Keerthi*, (2024) 5 SCC 815**; ***Patil Automation Private Limited & Ors. vs. Rakheja Engineers Private Limited*, (2022) 10 SCC 1**; ***State Bank of Travancore vs. Kingstone Computers India Private Limited*, (2011) 11 SCC 524**; ***Rajul Manoj Shah @ Rajeshwari Rasiklal Sheth vs. Kiranbhai Shakrabhai Patel & Anr.*, 2025 LiveLaw (SC) 912** and ***G.M. Shahul Hameed vs. Jayanthi R. Hegde*, (2024) 7 SCC 719**. Reliance is further placed upon the recent judgment dated **06.02.2026** passed in ***Tharammel Peethambaran & Anr. vs. T. Ushakrishnan & Anr.*** in Civil Appeal arising out of **SLP (C) No. 11868 of 2024** as well as the judgment of this Court dated **23.01.2026** passed in **FA No. 201/2019 (*Chhedan Prasad Sharma vs. Vinod Agrawal & Anr.*)**.

10. Learned counsel for Respondent No. 1 vehemently opposes the submissions advanced on behalf of the appellants and submits that the issue sought to be raised has already been adjudicated by the learned Trial Court while dismissing the appellants' application under Order VII Rule 11 CPC vide order dated 21.02.2022. It is further contended that the appellants' reliance on ***Patil Automation Pvt. Ltd. vs. Raheja Engineers Pvt. Ltd.*, (2022) 10 SCC 1**, is misconceived, as the Hon'ble Supreme Court has categorically held that the requirement of mandatory pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 shall operate prospectively with effect from 20.08.2022. It is submitted that the learned Trial Court has duly considered this

aspect and taken note of the said judgment in its order dated 12.12.2022. Since the application seeking exemption from pre-institution mediation had already been allowed on 09.07.2019, and the application under Order VII Rule 11 CPC was rejected on 21.02.2022, i.e., prior to 20.08.2022, the said judgment has no applicability to the present case. Accordingly, it is urged that the objection raised by the appellants is misconceived, untenable, and devoid of merit.

Learned counsel for Respondent No. 1 submits that the application under Order XLI Rule 27 CPC (I.A. No. 05/2025) is misconceived, as the additional documents sought to be produced are beyond the scope of the original pleadings of Defendant Nos. 1, 4, and 5. It is contended that the said application has been filed only to support the proposed counterclaim sought to be introduced by way of amendment. Hence, both applications deserve rejection, as the present recovery suit cannot be converted into adjudication of inter se disputes among the defendants.

With regard to the application under Order VI Rule 17 CPC (I.A. No. 04/2025), it is submitted that the same is belated and devoid of merit. The proposed amendment is essentially an attempt to introduce a counterclaim at the appellate stage without any justification for not raising it before the Trial Court. It is argued that such an amendment is impermissible in law, particularly at a belated stage. A perusal of the proposed amendment indicates

that the claim is substantially directed against Defendant Nos. 2 and 3, and the relief against the plaintiff is merely illusory and intended to circumvent the legal bar against maintaining a counterclaim solely against co-defendants. It is further contended that by filing the aforesaid applications, the appellants have, in effect, admitted the liability of Defendant No. 1—Company towards the plaintiff, and are now only attempting to shift the liability onto Defendant Nos. 2 and 3, while seeking to absolve Defendant Nos. 4 and 5 of personal liability.

Learned counsel for Respondent No. 1 submits that the objection regarding non-filing of a Board Resolution is untenable and cannot be entertained at this belated stage, as no such plea was raised in the written statement before the learned Commercial Court. It is contended that under Order XXIX Rule 1 CPC, a suit on behalf of a company can validly be instituted and verified by its Director or principal officer competent to depose to the facts. In the present case, the plaint has been duly verified by a Director of the Company and bears the company seal, thus satisfying the legal requirement. It is further submitted that the learned Trial Court has rightly held the defendants jointly and severally liable, in consonance with the principles laid down by the Hon'ble Supreme Court in *Balwant Rai Saluja vs. Air India Ltd.*, (2014) 9 SCC 407. It is argued that the impugned judgment is well-reasoned, based on proper appreciation of oral and documentary evidence, and does not suffer from any illegality,

infirmity, or perversity. Accordingly, the appeal, as well as the applications filed by the appellants, being devoid of merit, deserve to be dismissed.

Reliance has been placed on the decisions of Hon'ble Supreme Court in the matter of **Iqbal Ahmed (Dead) by LRs vs. Abdul Shukoor; 2025 SCC OnLine SC 1787, Ashok Kumar Kalra v/s Wing CDR Surendra Agnihoti & Ors. (2020) 2 SCC 394, Rajul Manoj Shah @ Rajeshwari v/s Kiranbhai Shakrabhai Patel & Ors 2025 SCC OnLine SC 1958, United Bank of India v/s Naresh Kumar & Ors.; (1996) 6 SCC 660 and Kuldeep Kumar Dubey And Ors v/s Ramesh Chandra Goyal. (2015) 3 SCC 525.**

11. Learned counsel for respondents No. 2 and 3 submits that the present appeal challenges the judgment and decree dated 24.09.2024 passed by the learned Commercial Court, Raipur, whereby all defendants were held jointly and severally liable for Rs.99,00,000/- with interest, without determining individual liability. It is contended that respondents No. 2 and 3, being former directors of Defendant No. 1 company, cannot be held personally liable, as the company is a separate legal entity under the Companies Act and no personal guarantee was given by them. The alleged transactions were conducted in their official capacity and not personally. Further, the suit is based on an unenforceable and illegal arrangement, lacking any valid written

tripartite agreement and relies upon an unregistered mortgage deed, which is inadmissible in evidence. The claim is thus not maintainable and is hit by provisions of law. Accordingly, it is prayed that the suit/appeal may be dismissed against respondents No. 2 and 3.

12. Learned counsel appearing for respondent No. 4 has supported the submissions advanced on behalf of respondent No. 1 and contended that the learned Trial Court has duly and meticulously appreciated the oral as well as documentary evidence on record, and has rightly fastened joint and several liability upon defendants No. 1 to 5.
13. Heard counsel for the parties and perused the material available on record.
14. First, it is appropriate to decide I.A. No. 4/2025 filed under Order VI Rule 17 CPC for amendment of the written statement and I.A. No. 5/2025 filed under Order XLI Rule 27 CPC for taking additional evidence on record.
15. The appellants have filed I.A. No. 4/2025 under Order VI Rule 17 CPC seeking amendment of the written statement and have also proposed to add a new paragraph 28.2 as a counterclaim.
16. Order VIII Rule 6A of CPC provides as under:-

“6A. Counter-claim by defendant.”-(1) A defendant in a suit may, in addition his right of pleading a set-off under rule 6, set up, by way of counter-claim against claim of the plaintiff, any right or claim in

respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.”

17. It is clear from the aforesaid provision that a defendant is entitled to file a counterclaim against the plaintiff. Rule 6A(1) specifically provides that such counterclaim may be filed either before or after the institution of the suit, but it must be filed before the defendant has delivered his defence or before the time prescribed for delivering the defence has expired. In the present case, the plaintiff instituted the suit on 05.07.2019 against the defendants/appellants and the defendants first appeared before the learned Trial Court through their counsel on 27.08.2019. Defendants No. 1, 4 and 5 filed their written statements on

02.01.2020. Thereafter, they filed an application for amendment, which was allowed, and the amended written statement was filed on 17.03.2022. The learned Trial Court passed the impugned judgment on 26.09.2024. Subsequently, the appellants/defendants No. 1, 4 and 5 have filed the present application on 29.08.2025, whereby they have sought to introduce a counterclaim by way of amendment. The reliefs sought in the proposed counterclaim are as follows:-

i. यह की प्रतिवादी क्र. 1,4 & 5 के पक्ष में तथा वादी के विरुद्ध इस आशय की उद्घोषणात्मक डिक्री पारित की जाए की अनुबंध के पक्षकारगण, दस्तावेज दिनांक 25.07.2017 का मूल पंजीयक रायगढ़ के समक्ष प्रस्तुत करें एवं इसका विधिवत पंजीयन कराये ।

ii. यह की इस आशय से आशापक आदेश प्रतिवादी क्र. 2 के विरुद्ध जारी किया जाए की वह अनुबंध दिनांक 25.07.2017 के परिपालन में अपने दायित्व की पूर्ति करें, चूंकि वादी सदैव अपने दायित्व की पूर्ति हेतु तत्पर रहे हैं एवं इस में पंजीयन की कार्यवाही पूर्ण करें अन्यथा माननीय न्यायालय विधि-अनुरूप दस्तावेज निष्पादन एवं पंजीयन उभय पक्षकारों के अधिकार एवं कर का निर्धारण किया जावे ।

iii. इस प्रतिवादी क्र. 1,4, एवं 5 के विरुद्ध वादी किसी प्रकार के अनुतोष प्राप्त करने में अधिकारी नहीं है।

iv. यह की प्रकरण के दृष्टिकोण में माननीय न्यायालय जो उचित समझे इस प्रतिवादी क्र. 1,4 एवं 5 के पक्ष में अनुतोष प्रदान की जावे ।

V. यह की वादी से इस प्रतिवादी क्र. 1,4 एवं 5 को वाद व्यय दिलाया जावे ।”

18. It is evident from the application itself that the proposed counterclaim has been filed by the appellants seeking execution

of the agreement dated 25.07.2017. Thus, after a lapse of about eight years from the date of the agreement, the appellants have sought its enforcement. It is further clear that no counterclaim was filed at the time of submission of the written statement, nor at any stage during the pendency of the suit. After the passing of the decree by the learned Trial Court, the appellants have now filed the present amendment application seeking to introduce the counterclaim not only against the plaintiff but also against defendant No. 2. By way of the proposed counterclaim, they seek a decree directing defendant No. 2 to perform his obligations in terms of the agreement dated 25.07.2017, asserting their readiness and willingness to perform their part of the contract and to complete the registration process. In the alternative, the appellants have prayed that the Court may itself execute and register the document in accordance with law and determine the respective rights and liabilities, including taxes of the parties.

19. It is a well-settled principle of law that a counterclaim can be filed by a defendant only against the plaintiff and not against co-defendants. It is further well settled that a counterclaim must be filed along with the written statement or within the time prescribed for filing the defence.
20. In the matter of **Ashok Kumar Kalra** (supra), Hon'ble Apex Court held in paras 18 and 57 as under:-

“18. As discussed by us in the preceding paragraphs, the

whole purpose of the procedural law is to ensure that the legal process is made more effective in the process of delivering substantial justice. Particularly, the purpose of introducing Rule 6-A in Order 8 CPC is to avoid multiplicity of proceedings by driving the parties to file separate suit and see that the dispute between the parties is decided finally. If the provision is interpreted in such a way, to allow delayed filing of the counterclaim, the provision itself becomes redundant and if the purpose for which the amendment is made will be defeated and ultimately it leads to flagrant miscarriage of justice. At the same time, there cannot be a rigid and hyper-technical approach that the provision stipulates that the counterclaim has to be filed along with the written statement and beyond that, the court has no power. The courts, taking into consideration the reasons stated in support of the counterclaim, should adopt a balanced approach keeping in mind the object behind the amendment and to subserve the ends of justice. There cannot be any hard and fast rule to say that in a particular time the counterclaim has to be filed, by curtailing the discretion conferred on the courts. The trial court that to exercise the discretion judiciously and come to a definite conclusion process is not unduly delayed and the same is in the best interest of justice and that by allowing the counterclaim, no prejudice is caused to the opposite party, as per the objects sought to be achieved through the amendment. But however, we are of the considered opinion that the

defendant cannot be permitted to file counterclaim after the issues are framed and after the suit has proceeded substantially. It would defeat the cause of justice and be detrimental to the principle of speedy justice as enshrined in the objects and reasons for the particular amendment to CPC.

57. At the same time, in exceptional circumstances, to prevent multiplicity a of proceedings and a situation of effective re-trial, the court may entertain a counterclaim even after the framing of issues, so long as the court has not started recording the evidence. This is because there is no significant development in the legal proceedings during the intervening period between framing of issues and commencement of recording of evidence. If a counterclaim is brought during such period, a new issue can still be framed by the court, if needed, and evidence can be recorded accordingly, without seriously prejudicing the rights of either party to the suit.”

21. In the matter of **Rajul Manoj Shah Alias Rajeshwari Rasiklal Sheth** (supra), Hon’ble Apex Court held in paras 20 to 25 as under:-

“20. Rule 6A provides that counter-claim shall be against the claim of the plaintiff and such right or claim shall be in respect of cause of action accruing to defendant against the plaintiff. This Court in Rohit Singh (supra) held;

“21. Normally, a counterclaim, though based on a different cause of action than the one put in suit by the plaintiff could

be made. But, it appears to us that a counterclaim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against the codefendants in the suit. But a counterclaim directed solely against the co-defendants cannot be maintained. By filing a counterclaim the litigation cannot be converted into some sort of an interpleader suit....”

21. The above observations have been reiterated with approval in subsequent pronouncement in Damodhar Narayan Sawale v. Tejrao Bajirao Mhaske, by observing as under;

“39. The decision of this Court in Rohit Singh v. State of Bihar also assumes relevance in the above context. This Court held that a defendant could not be permitted to raise counterclaim against co-defendant because by virtue of Order 8 Rule 6-A CPC, it could be raised by the defendant against the claim of the plaintiff.”

22. In the present case, defendant no. 2 sought to raise a counter-claim primarily for the relief of specific performance of agreement dated 21.10.2011 executed in his favour by deceased original defendant no. 1 with respect to her undivided share in the suit property, by a direction to the Nazir, the substituted representative of defendant no. 1 to execute a sale deed in pursuance of the agreement to sell. The relief of specific performance as sought to be raised by defendant no. 2

cannot be set up by way of a counter-claim since the same is not directed against the appellant/plaintiff, but is instead directed solely against the co-defendant. In view of this, defendant no. 2 is held to be disentitled to raise prayer of specific performance by way of counter-claim. This is simply not permissible, and this position is no more res-integra in view of the decision of this Court in Rohit Singh (supra).

23. Defendant no. 2 however submits that he has not only claimed the relief of specific performance, but has also sought partition of suit property to separate the share he is entitled to under the agreement. Defendant must first establish a right of claim over the property, which is absent till he succeeds against the estate of defendant no. 1 and only thereafter that the question of setting up a counter claim against plaintiff may arise. Thus, the submission that there is also a claim for partition must fail for the same reason.

24. Re: Defendant no. 2 filed the counter-claim after issues were framed: It is true that issues were framed on 12.02.2019 and the application for counter claim was filed almost two years thereafter i.e., on 26.07.2021. For our purpose, it is sufficient to refer to the guiding principle for determining the time-frame for filing a counter claim, succinctly articulated in the judgment of this Court in Ashok Kumar Kalra (supra). The relevant portion of the decision is as under;

17. x x x

18. x x x

19. x x x

20. x x x

21. *We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:*

(i) Period of delay

(ii) Prescribed limitation period for the cause of action pleaded.

(iii) Reason for the delay.

(iv) Defendant's assertion of his right.

(v) Similarity of cause of action between the main suit and the counterclaim.

(vi) Cost of fresh litigation.

(vii) Injustice and abuse of process.

(vii) Prejudice to the opposite party.

(ix) And facts and circumstances of each case.

(x) In any case, not after framing of the issues."

25. It is also important to note that defendant no. 2 is seeking specific performance of an agreement dated 21.10.2011, which provided execution of the sale deed within twelve months. Defendant no. 2 did not take any action. In any event, the next course of action to seek execution of the sale deed arose immediately after January 2012 when the appellant/plaintiff instituted a suit seeking annulment of so-called agreement to sell. The defendant no. 2 did nothing. Only after the death of his vendor in October 2013 and after framing of the issues in February 2019 that the defendant no. 2 decided to file the application- only after nine years of the filing of the suit, which is again two years after framing of the issues."

22. It is evident that the appellant, by way of the proposed counterclaim, is seeking specific performance of the agreement dated 08.05.2017. The relief has been claimed not only against the plaintiff but also against a co-defendant. The said counterclaim has been sought to be introduced by way of amendment on 29.08.2025, i.e., after a lapse of about eight years from the date of execution of the agreement.

In view of the above, the proposed counterclaim is clearly barred by limitation and is also not maintainable insofar as it is

directed against a co-defendant.

23. The appellants have also filed an application under Order XLI Rule 27 CPC for taking additional documents on record. In the said application, it is submitted that the documents are relevant and necessary for proper adjudication of the present appeal and that the appellants had no knowledge of the said transactions and developments during the pendency of the suit before the learned Commercial Court. Along with the application, the appellants have filed a sale deed dated 08.08.2025 executed between Mahindra Ispat Pvt. Ltd. (through its proprietor Subhash Chandra Agrawal) and Brijmohan Agrawal, along with certain other documents. However, it is evident that the other documents pertain to the agreement dated 08.05.2017, whereas the said sale deed has been executed subsequently in the year 2025.

24. Order XLI Rule 27 provides as under:-

“27. Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or ²[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was

passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

25. In **Iqbal Ahmed (Dead) by LRs** (supra), Hon’ble Apex Court held in paras 8, 9 and 10 as under:-

“8. In our opinion, before undertaking the exercise of considering whether a party is entitled to lead additional evidence under Order XLI Rule 27(1) of the Code, It would be first necessary to examine the pleadings of such party to gather if the case sought to be set up is pleaded so as to support the additional evidence that is proposed to be brought on record. In absence of necessary pleadings in that regard, permitting a party to lead additional evidence would result in an unnecessary exercise and such evidence, if led, would be of no consequence as it may not be permissible to take such evidence into consideration. Useful reference in this regard can be made to the decisions in *Bachhaj Nahar v. Nilima Mandal*, (2008) 17 SCC 491: AIR 2009 SC 1103 and *Union of India v. Ibrahim Uddin*, (2012) 8 SCC 148. Thus, besides the requirements prescribed by Order XLI Rule

27(1) of the Code being fulfilled. It would also be necessary for the Appellate Court to consider the pleadings of the party seeking to lead such additional evidence. It is only thereafter on being satisfied that a case as contemplated by the provisions of Order XLI Rule 27(1) of the Code has been made out that such permission can be granted. In absence of such exercise being undertaken by the High Court in the present case, we are of the view that it committed an error in allowing the application moved by the defendant for leading additional evidence.

9. As we have found that the application for leading additional evidence has been considered by the Appellate Court without examining the aspect as to whether the additional evidence proposed to be led was in consonance with the pleadings of the defendant and whether such case had been set up by him coupled with the fact that the additional evidence taken on record has weighed with it while reversing the decree, the matter requires reconsideration by the High Court. Since we find that the matter requires re-consideration at the hands of the High Court afresh, we have not gone into the aspect of delay in deciding the appeal by the High Court as was urged on behalf of the appellants.

10. For the aforesaid reasons, we find the Judgment under

challenge to be unsustainable in law. The appeal requires to be re-considered along with the application filed by the defendant under provisions of Order XLI Rule 27(1) of the Code afresh. Accordingly, the Judgment and order dated 30.12.2008 passed In RFA No. 440 of 2000 is set aside. The proceedings are remanded to the High Court to reconsider the same afresh In accordance with law. Since the suit was filed In 1997, we request the High Court to expedite the consideration of RFA No. 440 of 2000. It is clarified that we have not expressed any opinion on the merits of the matter.”

26. It is evident that during the pendency of the suit, the defendants never filed any counterclaim. The agreements in question pertain to the year 2017 and were within the knowledge of the defendants. The appellants have produced these documents only after the decree was passed against them, and the same do not fall within the scope of Order XLI Rule 27 CPC.
27. In view of the principles laid down by the Hon’ble Supreme Court and the provisions of the Code of Civil Procedure, both the applications i.e. I.A. No. 4/2025 under Order VI Rule 17 CPC and I.A. No. 5/2025 under Order XLI Rule 27 CPC, filed by the appellants, are not maintainable. Accordingly, this Court is not inclined to allow the said applications at this stage.
28. As regards the other grounds of appeal, it is observed that the plaintiff instituted the suit on 05.07.2019 along with an application

seeking exemption from pre-institution mediation and settlement. The learned Trial Court, after hearing the plaintiff, passed an order dated 09.07.2019. The relevant portion of the said order is reproduced hereinbelow:-

“.....Along with the suit the plaintiff has filed an application under Order 38 Rule 5 of the Code of Civil Procedure, 1908 for furnishing security for production of property.

Documents as per list. Vakalatnama, registered address of plaintiff is also filed.

The plaintiff has also filed an application for exemption from undergoing pre-institution mediation and settlement submitting that the application under Order 38 Rule 5 of the Code of Civil Procedure, 1908 for furnishing security for production of property filed with the suit is urgent nature, therefore, exemption from undergoing pre-institution mediation and settlement may be given.

Looking into the prima facie urgent nature of case, the application for exemption from undergoing pre-institution mediation and settlement is allowed at this stage.

Prima Facie the suit appears to be within the jurisdiction of this Court, of above the specified value of Rs. 1 crore, filed within limitation and with proper e-court fees.

Case be registered as 'B' class suit.

Notice be issued to the defendants by registered post, along-with copy of plaint and all the documents filed by the plaintiff, for

their appearance and filing of written statement.

The case is fixed for appearance and filing of written statement by defendants, on 02.08.2019.”

29. Defendants No. 1, 4 and 5 filed an application under Order I Rule 10(2) of the Code of Civil Procedure before the learned Trial Court on 16.03.2020. The learned Trial Court, after hearing both the parties, dismissed the said application. The defendants also filed an application under Order VII Rule 11 CPC.
30. In the matter of **Kuldeep Kumar Dubey** (supra), Hon'ble Apex Court held in paras 9 and 10 as under:-

“9. The learned counsel for the appellants submitted that it is undisputed that Appellants 1 and 2 are the sole owners of the property in question. It is not disputed that they were substituted as plaintiffs on the death of Shiv Kumar before the trial court itself. It is also not disputed that they could maintain the suit for eviction. Thus on admitted facts, only defect pointed out is of formal nature in description without, in any manner, affecting the merits or the jurisdiction of the court. Such irregularity could have been corrected by the court under Order 1 Rule 10 and can be corrected even at this stage unless the defendant is in any manner prejudiced. No principle or authority has been brought to our notice which could affect the maintainability of the suit merely on account of wrong description which did not in any manner cause prejudice to the defendant, particularly when no such objection is shown to

have been raised before the trial court.

10. In our view, the District Judge is, thus, not justified in reversing the decree of the trial court on such a technicality which did not in any manner affect the merits of the case. Section 99 of the Code of Civil Procedure, 1908 provides as under:

“99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction - No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the court:

Provided that nothing in this section shall apply to non-joinder of a necessary party.”

31. Section 12A of The Commercial Courts Act, 2015 provides as under:-

“12A. Pre-litigation Mediation and Settlement.- (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) For the purposes of pre-litigation mediation, the Central Government may, by notification, authorise-

(i) the Authority, constituted under the Legal Services Authorities Act, 1987 (39 of 1987); or

(ii) a mediation service provider as defined under clause (m) of section 3 of the Mediation Act, 2023.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority or mediation service provider authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of one hundred and twenty days from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of sixty days with the consent of the parties:

Provided further that, the period during which the parties spent for pre-litigation mediation shall not be computed for the purposes of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties and the mediator.

(5) The mediated settlement agreement arrived at under this section shall be dealt with in accordance with the provisions of sections 27 and 28 of the Mediation Act, 2023.]”

32. In ***Patil Automation*** (*supra*), the Hon’ble Supreme Court held that the declaration shall operate prospectively with effect from 20.08.2022. In the present case, the learned Trial Court allowed the application seeking exemption from pre-institution mediation

on 09.07.2019 and the application under Order VII Rule 11 CPC was rejected on 21.02.2020, i.e., prior to 20.08.2022. Therefore, the rigour of the said judgment is not applicable to the present case.

33. It is evident from the written statement that no objection in this regard was raised by the defendants before the learned Commercial Court. Even in the memorandum of appeal, no such ground has been taken by the appellants.

34. Order XXIX Rule 1 of CPC provides as under:-

“1. Subscription and verification of pleading.- In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.”

35. In the matter of **United Bank of India** (supra), Hon'ble Apex Court held in paras 10, 11, 12 and 13 as under:-

“10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by or against a corporation the Secretary or any Director or other

Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and dehors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.

11. The courts below could have held that Shri L.K. Rohatgi

must have been empowered to sign the plaint on behalf of the appellant. In the alternative it would have been legitimate to hold that the manner in which the suit was conducted showed that the appellant-Bank must have ratified the action of Shri L.K. Rohatgi in signing the plaint. If, for any reason whatsoever, the courts below were still unable to come to this conclusion, then either of the appellate courts ought to have exercised their jurisdiction under Order 41 Rule 27(1)(b) of the Code of Civil Procedure and should have directed a proper power of attorney to be produced or they could have ordered Shri L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Shri L.K. Rohatgi to sign the plaint. Such a power should be exercised by a court in order to ensure that injustice is not done by rejection of a genuine claim.

12. The courts below having come to a conclusion that money had been taken by Respondent 1 and that Respondent 2 and the husband of Respondent 3 had stood as guarantors and that the claim of the appellant was justified it will be a travesty of justice if the appellant is to be non-suited for a technical reason which does not go to the root of the matter. The suit did not suffer from any jurisdictional infirmity and the only defect which was alleged on behalf of the respondents was one which was curable.

13. The court had to be satisfied that Shri L.K. Rohatgi could

sign the plaint on behalf of the appellant. The suit had been filed in the name of the appellant company, full amount of court fee had been paid by the appellant-Bank, documentary as well as oral evidence had been led on behalf of the appellant and the trial of the suit before the Sub-Judge, Ambala, had continued for about two years. It is difficult, in these circumstances, even to presume that the suit had been filed and tried without the appellant having authorised the institution of the same. The only reasonable conclusion which we can come to is that Shri L.K. Rohatgi must have been authorised to sign the plaint and, in any case, it must be held that the appellant had ratified the action of Shri L.K. Rohatgi in signing the plaint and thereafter it continued with the suit.”

36. The appellants have vehemently contended that the learned Trial Court has failed to properly appreciate the oral and documentary evidence on record. It is submitted that the ledger accounts (Ex. P/3 and Ex. P/4) were not proved in accordance with the provisions of the Indian Evidence Act and the learned Trial Court has erroneously decreed the suit merely on the basis of issuance of cheques by defendant No. 2.
37. We have perused the statements of the witnesses and the documents available on record before the learned Trial Court. It is noted that Shankar Lal Agrawal (defendant No. 4/appellant No. 2) filed an affidavit dated 06.03.2020, which contains a list indicating acceptance and denial of documents. For ready reference, the

same is reproduced hereinbelow:-

क्र.	विवरण	पृष्ठ स.	स्वीकृति / अस्वीकृति
1.	फार्म न. डी.आई.आर. 12 प्रस्तुत द्वारा वादी	28	आंशिक रूप से स्वीकृत
2.	फार्म न. डी.आई.आर. 12 प्रस्तुत द्वारा वादी	34	स्वीकृत
3.	मास्टर डाटा प्रस्तुत द्वारा वादी	40	स्वीकृत
4.	पत्र दिनांक 17.09.2016 प्रस्तुत प्रतिवादी क्र. 6 द्वारा वादी को लिखा गया।	41	अस्वीकृत
5.	ई-मेल दिनांक 17.09.2016 वादी द्वारा प्रतिवादी क्र. 6, 1 एवं 2	42	अस्वीकृत
6.	टैक्स कम एक्साईज इनवाईस प्रतिवादी क्र. 2 द्वारा प्रतिवादी क्र. 6 को लिखा गया पत्र दिनांक 17.09.2016	43	अस्वीकृत
7.	टैक्स कम एक्साईज इनवाईस जारीकर्ता प्रतिवादी क्र. 6 के द्वारा प्रतिवादी क्र. 1	46-65	अस्वीकृत
8.	खाता वादी द्वारा संधारण किया गया है।	66	अस्वीकृत
9.	पत्र दिनांक 12.05.2017 जो	67	अस्वीकृत

	प्रतिवादी क्र. 2 द्वारा प्रतिवादी क्र. 6 को भेजा गया।		
10.	पत्र दिनांक 19.09.2016 प्रतिवादी क्र. 6 द्वारा लिखित	68	अस्वीकृत
11.	खाता वादी द्वारा संधारित	69	अस्वीकृत
12.	अनुबंध पत्र दिनांक 25.07.2017 जो वादी एवं प्रतिवादी क्र. 2 से संबंधित है।	71	स्वीकृत
13.	अधिवक्ता नोटिस दिनांक 24.04.2019 वादी द्वारा प्रतिवादी क्र. 1,4 व 5 को प्रेषित।	92	स्वीकृत
14.	प्रतिवादी क्र. 1, 4 व 5 द्वारा प्रेषित जवाब	93	स्वीकृत
15.	खाता वादी का प्रतिवादी क्र. 6 से लेनदेन सम्बन्धी	94-113	अस्वीकृत / असंबंधित

38. It is evident from the said affidavit that the documents relied upon by the plaintiff were admitted by defendant No. 4/appellant No. 2, and the plaintiff has duly proved the same. The learned Trial Court has meticulously appreciated the oral as well as documentary evidence on record and, from paragraph 36 onwards, has held that Ex. P/22, P/23 and P/24 are admitted documents. The learned Trial Court further held that the issuance of post-dated cheques, i.e., Ex. P/6 to P/17 and Ex. P/28 to P/35, amounting in total to Rs. 99,00,000/-, clearly establishes the liability of

defendant No. 1 towards the plaintiff. It has also been found that all these cheques were issued by defendant No. 2 in his capacity as Director of defendant No. 1 Company. The learned Trial Court has rightly observed that the said cheques were admitted by defendant No. 2 in his affidavit of admission and denial. Moreover, during the cross-examination of the plaintiff's witness, Sajjan Agrawal (P.W.1), suggestions were put on behalf of defendant No. 2 as well as other defendants admitting that the cheques were issued to the plaintiff by defendant No. 2 while acting as Director of defendant No. 1 Company.

39. The learned Trial Court has rightly fastened joint and several liability upon the defendants in accordance with the principles laid down by the Hon'ble Supreme Court in ***Balwant Rai Saluja*** (*supra*). In the said judgment, the Hon'ble Supreme Court has held in paragraphs 70, 71 and 74 as under:-

"70. The doctrine of "piercing the corporate veil" stands as an exception to the principle that a company is a legal entity separate and distinct from its shareholders with its own legal rights and obligations. It seeks to disregard the separate personality of the company and attribute the acts of the company to those who are allegedly in direct control of its operation. The starting point of this doctrine was discussed in the celebrated case of *Salomon v. Salomon & Co. Ltd.* Lord Halsbury LC, negating the applicability of this doctrine to the facts of the case, stated that: (AC pp. 30 & 31)

"[a company] must be treated like any other independent person with its rights and liabilities [legally] appropriate to itself... whatever may have been the ideas or schemes of those who brought it into existence."

Most of the cases subsequent to Salomon case, attributed the doctrine of piercing the veil to the fact that the company was a "sham" or a "façade" However, there was yet to be any clarity on applicability of the said doctrine.

71. In recent times, the law has been crystallised around the six principles formulated by Munby, J. in *Ben Hashem v. Ali Shayif*. The six principles, as found at paras 159-64 of the case are as follows:

- (i) Ownership and control of a company were not enough to justify piercing the corporate veil;
- (ii) The court cannot pierce the corporate veil, even in the absence of third-party interests in the company, merely because it is thought to be necessary in the interests of justice;
- (iii) The corporate veil can be pierced only if there is some impropriety;
- (iv) The impropriety in question must be linked to the use of the company structure to avoid or conceal liability:
- (v) To justify piercing the corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is use or misuse of the company by them as a device or facade to conceal their wrongdoing; and

(vi) The company may be a "façade" even though it was not originally incorporated with any deceptive intent, provided that it is being used for the purpose of deception at the time of the relevant transactions. The court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong which those controlling the company had done.

74. Thus, on relying upon the aforesaid decisions, the doctrine of piercing the veil allows the court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company. However, this principle has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case."

40. While dealing with Issue No. 7(A) in paragraphs 59 and 60, the learned Trial Court has duly appreciated the matter and rightly held that no document was filed by defendants No. 1, 4 and 5 regarding any prior proceedings before the National Company Law Tribunal. The learned Trial Court also rejected a similar contention by order dated 21.02.2022, holding that the insolvency petition disposed of by the NCLT, Kolkata vide order dated

04.01.2022 does not constitute a “suit” and, therefore, has no bearing on the present proceedings. It was further rightly held that the suit was filed within the prescribed period of limitation, i.e., within three years from the date of accrual of the first cause of action on 18.11.2016.

41. It is evident from the impugned judgment that the learned Trial Court has meticulously appreciated the oral as well as documentary evidence led by both the parties and has recorded findings on each issue. In view of the same, no sufficient ground is made out to interfere with the well-reasoned judgment passed by the learned Trial Court.
42. In view of the foregoing discussion, both the applications i.e. I.A. No. 04/2025 and I.A. No. 05/2025 as well as the present appeal, are devoid of merit. Accordingly, the said applications and the appeal are hereby **dismissed**.
43. Let a decree be drawn up accordingly.

Sd/-
(Rajani Dubey)
JUDGE

Sd/-
(Radhakishan Agrawal)
JUDGE