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

% ***Reserved on: 20th July, 2026***
Pronounced on: 30th October, 2026
Uploaded on: 30th October, 2026

CNR No : DLHC010249402022

\+ **RFA 277/2022, CM APPL. 46845/2022**

LTU LUFTTRANSPORT UNTERNEHMEN GMBH
(NOW MERGED INTO AIR BERLIN PLC AND CO LUFTVERKEHRS KG)
Saatwinkler Damm 42-43
Berlin 13627
Germany

C/o Remfry & Sagar
Remfry House
At the Millennium Plaza
Sector-27, Gurgaon-122009. .....Appellant

Through: Appearance not given.

versus

AIRPORTS AUTHORITY OF INDIA
Rajiv Gandhi Bhawan, Safdarjung Airport,
New Delhi-110003 .....Respondent

Through: Mr. Vaibhav Kalra, Ms. Neha Bhatnagar and Mr. Deepankar Singh, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

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1. The present Regular First Appeal under Section 96 read with Order XLI of the Code of Civil Procedure, 1908 *(hereinafter referred to as "CPC")* has been preferred by the Appellant/Plaintiff, *LTU Lufttransport Unternehmen GmbH, now merged into Air Berlin PLC & Co. Luftverkehrs KG*, against the Judgment and Decree dated 20.12.2021 passed by the learned Additional District Judge, whereby its *Suit for Recovery* ***was dismissed as barred by limitation****, even though the Plaintiff had established its claim to ₹68,24,653.71/-.*

2. The Plaintiff had instituted a ***Summary Suit CS(OS) No. 2123/2010 under Order XXXVII CPC*** against Airports Authority of India and the Ministry of Civil Aviation, defendants for recovery of ₹94,94,682.61/-, comprising the principal amount of ₹68,24,653.71/- and pre-suit interest of ₹26,70,028.90/-, together with *pendente lite* and future interest @ 12% per annum and costs.

3. ***The facts in brief, as stated in the Plaint***instituted through its duly constituted attorney, *Sh. Shivam Vikram Singh*, holder Power of Attorney dated 06.10.2010**,** are that the Plaintiff, a Company incorporated under the laws of Germany and forming part of the Air Berlin Group, was engaged in operating scheduled air transport services on medium and long-haul routes, as well as charter services.

4. Defendant No.1, Airports Authority of India *(hereinafter referred to as "AAI"),*constituted by an Act of Parliament,was responsible for maintaining and managing civil aviation infrastructure and providing air navigation services.Defendant No. 1, AAI, charges a fee for grant of *"air traffic rights"* from foreign airlines, each time their aircraft enter or cross Indian airspace.The Plaintiff's aircraft crossed Indian airspace on several

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occasions, for which charges were raised by AAI and payments were made by the Plaintiff.

5. On 22.02.2006, an *"Overfly Bill"* bearing No. AAI/NAD/DP/TR/2005-06/LTU/22/25079 was raised by Defendant No. 1, AAI upon the Plaintiff for an amount of 4,35,540, without specifying the currency. The Plaintiff, in good faith, remitted **USD 4,35,540,***vide* bank transfer on 04.04.2006, to Defendant No.1, AAI, instead of **₹4,35,540/-.**

6. Upon subsequently realising that the amount payable was in fact, Rs. 4,35,540/- and not USD 4,35,540, the Plaintiff, *vide*Letter dated 12.06.2007, requested for a refund of the excess payment.

7. By e-mail dated **05.07.2007,** AAI informed the Plaintiff that, after adjustment of certain outstanding amounts and credits, a sum of ₹1,46,33,653.71/-, remained available to its credit. ***The Plaintiff relied upon this communication, as an acknowledgment of AAI's liability to refund the said amount.***

8. Pursuant thereto, AAI remitted a *"part payment"* of **Rs. 78,09,000/-on 08.10.2007,** which the Plaintiff acknowledged,*vide*Letter dated 21.08.2009, while requesting payment of the **balance amount of Rs. 68,24,653.71/-.**The Plaintiff maintained that the Suit was within limitation, relying, *inter alia*, upon the **part payment dated 08.10.2007.**

9. A reminder was sent on 21.10.2009, in response to which the concerned official of AAI informed the Plaintiff on 22.10.2009 that its request had been forwarded to the DGM (Finance), Northern Region. Further Reminders were sent on 23.10.2009, 09.11.2009, 20.11.2009, 27.11.2009, 04.12.2009, 21.12.2009, 18.06.2010 and 16.07.2010, but the balance was not refunded.

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10. The Plaintiff thereafter, issued a **Demand Notice dated 30.09.2010** to both *Defendant No. 1, Airports Authority of India and Defendant No. 2, Ministry of Civil Aviation, Government of India*, calling upon them to pay the sum of Rs. 68,24,653.71/- along with interest accrued thereon @ 12% per annum from 05.07.2007. Despite the Notice, the Defendants failed to pay the outstanding amount.

11. Aggrieved, the **Plaintiff instituted the present** Summary Suit under **Order XXXVII CPC**seeking recovery of a **total sum of Rs. 94,94,682.61/-**, *(comprising of the principal amount of Rs. 68,24,653.71/- and interest of Rs. 26,70,028.90/-,)*, along with future and *pendente lite* interest @ 12% per annum, till realisation, as Defendant No. 1, *Airports Authority of India*, admitted its liability to pay **Rs. 1,46,33,653.71/-** to the Plaintiff, of which only **Rs. 78,09,000/-** was remitted on **08.10.2007**, leaving the balance of **Rs. 68,24,653.71/-** unpaid.

12. Summons for appearance were issued, under Order XXXVII CPC. AAI entered appearance on 27.10.2010, whereafter, the Plaintiff moved an *Application dated 02.11.2010 under Order XXXVII Rule 3(4) CPC, for issuance of summons for judgment.*

13. Subsequently, *vide* Order dated 28.09.2012, Defendant No. 2, Ministry of Civil Aviation, was deleted from the array of parties at the request of the Plaintiff.

14. *AAI, filed its Leave to Defend Application on 28.01.2011*. Along with its Application, it filed the **Reply dated 04.11.2010** to the Demand Notice, explaining that the communication dated 05.07.2007, had been issued by its Northern Region. Subsequently, outstanding dues of ₹68,24,653/-, were found in the books of its Western Region and adjusted against the excess

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payment. According to AAI, after this adjustment and refund of ₹78,09,000/-, no further amount remained refundable. A Ledger extract showing the Bill-wise adjustment, was enclosed with the Reply.

15. The leave to Defend was allowed in favour of the AAI, *Vide* Order dated 24.09.2013, by observing that the rival computations required examination upon evidence and that the Suit could not be decreed merely on the basis of the communication dated 05.07.2007, issued by one of AAI's regional offices.

16. ***The Defendant, AAI filed its Written Statement*** raising the *preliminary objections,* that the Suit was liable to be dismissed as not having been signed, verified and filed by a duly authorised person, inasmuch as the **Power of Attorney dated 06.10.2010**, on the basis of which *Mr. Shivam Vikram Singh* had signed and filed the Suit, did not disclose or describe who was delegating the power, or in what capacity, on behalf of the Plaintiff Company, nor was any Board Resolution placed on record.

17. AAI also claimed that the *Suit was barred by limitation*, since the cause of action had arisen on 05.07.2007 or, at the latest, upon the refund of the excess amount on 21.09.2007, whereas the Suit came to be filed only on 06.10.2010, i.e., after expiry of the period of three years, as prescribed by law.

18. ***On merits,*** AAI explained that for administrative purposes, the air space had been divided into five regions,namely *Northern, Southern, Western, Eastern and North-Eastern Regions,* and that route navigation facility charges were levied and recovered from aircrafts entering/crossing Indian air space, under Section 22(1)(b) of the Airports Authority of India Act, 1994, read with periodic Circulars and Notifications approved by the

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Central Government. The Plaintiff, having used *the airspace falling within the Northern, Western and Southern Regions since February 1996, was* liable to pay the applicable Route Navigation Facility Charges *(hereinafter referred to as "RNFC")*.

19. AAI disputed the explanation that the Plaintiff was unaware of the currency in which the Bill was payable, since it had previously made payments in Indian currency. According to AAI, the amount received was USD 4,35,525/-, equivalent to ₹1,96,55,110/-, and a further credit of ₹1,74,713/-, was available in the Plaintiff's account.

20. Against these amounts, AAI claimed to have adjusted **₹37,73,953.29/-** and **₹14,22,216/-** towards *Northern Region dues*, followed by **₹68,24,653.71/-** towards *Western Region* dues, leaving a balance of ₹78,09,000/-, which was refunded to the Plaintiff, on 21.09.2007.

21. It maintained that its Communication dated **05.07.2007**, concerned the Northern Region and did not account for all outstanding dues of the other regions.

22. AAI further stated that the adjustments were made towards the outstanding principal amounts and that interest remained recoverable from the Plaintiff. According to AAI, the Bills provided for interest at 1.5% per month, where payment was delayed beyond 15 days. As on 21.09.2007, interest of ₹23,84,256.91 for the Northern Region, ₹1,17,16,740.42 for the Western Region and ₹45,93,746 for the Southern Region, was stated to be outstanding. A further principal amount of ₹25,49,359.27 was also stated to be due, for the Southern Region.

23. AAI consequently denied its liability to refund ₹68,24,653.71 or to pay the interest claimed by the Plaintiff. It maintained that the refund of

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₹78,09,000 was made on 21.09.2007, and not on 08.10.2007, as claimed by the Plaintiff.

24. On the contrary, AAI stated that an aggregate amount of ₹2,12,44,102.60 remained recoverable from the Plaintiff ,towards principal and interest.

25. ***In the Replication***, the Plaintiff contended that the Written Statement was misconceived, having given no explanation or justification for withholding the admitted amount, and that the Defendant's conduct was duplicitous; all Invoices issued and delivered to the Plaintiff, having in fact, been honoured and paid by it.

26. The Plaintiff disputed the alleged outstanding dues and adjustments. The Plaintiff maintained that *AAI's defence had changed, over time.* The **Ledger extract enclosedwith AAI's letter dated 04.11.2010,** was stated to be different from **Annexure D-3, subsequently filed with its Application for leave to defend,** while the amounts reflected in those documents, were also stated to be inconsistent with the Invoices actually issued.

27. The Plaintiff stated that, out of the 21 Western Region Invoices aggregating to ₹68,24,653/-, it had produced documents evidencing payment of 18 Invoices amounting to ₹61,44,545/-. It maintained that all Invoices raised and delivered to it had been paid and, therefore, no Western Region dues remained, against which ₹68,24,653.71 could have been adjusted.

28. The adjustment of **₹37,73,953.29 and ₹14,22,216 towards the Northern Region dues, was accepted by the Plaintiff.** However, *it denied the alleged Western and Southern Region dues, as well as AAI's claim for interest*. According to the Plaintiff, AAI's communication dated **05.07.2007** had already reflected a credit of ₹1,46,33,653.71 in its favour, after making

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all permissible adjustments. Thus, it was asserted that all Invoices raised and delivered to it had been paid and no amount remained outstanding, against which the disputed adjustment could have been made.

29. The challenge to its attorney's authority and the objection of limitation, were also denied.It maintained that the Suit had been validly instituted by *Mr. Shivam Vikram Singh*, by virtue of the Power of Attorney dated 06.10.2010.

30. It further stated that the cause of action had arisen again on **08.10.2007,** when AAI refunded ₹78,09,000 as part payment, and that the Suit instituted on 06.10.2010, was within limitation.

31. From the pleadings of the parties, the following ***Issues*** **were framed for adjudication, on** 11.08.2014:

> *" 1. Whether the Plaint is not signed and verified by the authorized person on behalf of the Plaintiff? OPD*
> *2. Whether the suit is time barred? OPD*
> *3. Whether the Plaintiff is entitled to decree in the sum of Rs.68,24,653.71/- as claimed in the plaint? OPP*
> *4. If issue no. 3 is answered in affirmative, whether the Plaintiff is entitled to interest, if any, on the decretal amount and at what rate? OPP*
> *5. Relief?"*

32. During the pendency of the proceedings, the Application of the Plaintiff for bringing on record its merger with Air Berlin PLC & Co. Luftverkehrs KG and for filing an Amended Memo of parties, was disposed of, vide Order dated 07.11.2015.

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33. The Suit was thereafter, transferred to the District Court and renumbered as *CS No. 9195/2016*. The documents concerning the merger were taken on record, *vide* Order dated 21.03.2018.

34. The Plaintiff examined **PW-1,Sh. Friedrich Floto, Senior Vice President (Finance) at Air Berlin PLC & Co. Luftverkehrs KG,** who tendered his evidence by way of affidavit Ex. PW-1/A and proved the following documents:

Exhibit	Document
Ex. PW-1/1	Power of Attorney dated 06.10.2010
Ex. PW-1/2	Power of Attorney dated 23.09.2014
Ex. PW-1/3	Overfly bill raised by AAI
Ex. PW-1/4	LTU's refund request dated 12.06.2007
Ex. P-1	AAI's communication dated 05.07.2007
Ex. PW-1/5	Record of refund of ₹78,09,000
Ex. PW-1/6	LTU's letter dated 21.08.2009 seeking the balance
Ex. PW-1/7	Reminder correspondence
Ex. PW-1/8 (Colly.)	Further reminder e-mails
Ex. PW-1/9	Demand notice dated 30.09.2010 and postal receipt

35. He was cross-examined on behalf of the Defendant, in the course of which the Resolution dated 09.08.2018 issued on behalf of the Insolvency Administrator of Air Berlin was exhibited as Ex. PW-1/R.

36. **PW-2, Sh. Shivam Vikram Singh,** the constituted attorney of the plaintiff, tendered his evidence by way of Affidavit Ex. PW-2/P and proved the Plaint as Ex. PW-2/A. The Power of Attorney dated 09.08.2018 executed in his favour by the Insolvency Administrator, was Ex. PW-2/B.

37. The Defendant examined **DW-1 Sh. Vijay Kumar**, **Joint GM *(Finance),* Airports Authority of India,** who tendered his evidence by way

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of affidavit Ex. DW-1/A, andrelied upon the region-wise account tabulations as Ex. DW-1/1 and the statement reflecting an alleged outstanding amount of ₹4,33,178.87 as Ex. DW-1/2. In the course of his cross-examination on behalf of the Plaintiff, he produced the bills pertaining to the Northern, Western and Southern Regions as Ex. DW-1/Z*(colly)*.

38. In cross-examination, ***DW-1 admitted that the figures in the documents pertaining to the Southern and Western Regions differed in the Written Statement and the affidavit of evidence***; that the charts Ex. DW-1/1,did not reflect any principal amount due; that no document had been placed on record showing the basis on which the Charts were prepared, that there existed no formal Agreement between the parties, for charging of interest on RNFC amounts, and that the Statements relied upon, did not reflect the actual dates on which payments were received from the Plaintiff.

39. ***The Ld. Trial Court***, on **Issue No. 1**, held that the Power of Attorney dated 06.10.2010 in favour of *Mr. Shivam Vikram Singh*, had not been discredited during trial; that there was no requirement in law that a Company's attorney be its employee, and that the Plaint could not be said to be unsigned or unverified by a duly authorised person, relying on *United Bank of India v. Naresh Kumar*, (1996) 6 SCC 660, wherein it was held that once the Suit is validly instituted, it cannot be dismissed on technical grounds. *The issue was accordingly, decided against the Defendant.*

40. On **Issue No. 2**, the Ld. Trial Court held that the period of limitation of three years commenced from **08.10.2007**, *being the admitted date on which the Defendant remitted the part payment of Rs. 78,09,000/-*.The Plaint was initially presented on 06.10.2010 and was returned on the same date, for removal of objections relating to the *vakalatnama*, duplicate set, caveat, etc.,

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to be re-filed within a week. Upon re-filing on 08.10.2010, six objections were marked, including non-payment of court fee on the jurisdictional value, improper filing of the *vakalatnama* and non-filing of the duplicate set, which remained unremoved till 11.10.2010. The objections were removed on 16.10.2010, whereupon the Suit was registered and listed before the learned Joint Registrar, on 19.10.2010.

41. Relying on *Oil and Natural Gas Corporation Ltd. v. Joint Venture of Sai Rama Engineering Enterprises*, 2019 SCC OnLine Del 10456, *Sharma Kalypso Pvt. Ltd. v. Engineers India Ltd.*, decided on 17.06.2020, and *M/s Gautam Associates v. Food Corporation of India*, decided on 29.07.2009, the Ld. Trial Court held that the defects were fundamental in nature, rendering the initial presentation of the plaint *non est* in law, and that the date of registration of the Suit, *i.e.*, 16.10.2010, being beyond the period of limitation expiring on 08.10.2010, held the Suit to be time-barred. ***Issue No. 2 was accordingly, decided against the Plaintiff.***

42. On **Issues No. 3 and 4**, taken up together, the Ld. Trial Court held that the **Defendant's admission dated 05.07.2007** acknowledging a sum of Rs. 1,46,33,653.71/- as payable to the Plaintiff, remained neither denied nor satisfactorily explained, and that the Account tabulations relied upon by the Defendant,*did not reflect any principal amount due, nor was any document produced, to substantiate the basis of the alleged adjustments*.

43. It was further observed that no Agreement existed between the parties, for charging of interest on RNFC amounts; such interest being incapable of unilateral imposition, relying on *Vijay Mittal v. M/s Bajaj Products &Anr.*, 2015 SCC OnLine Del 12210. *It was accordingly*, ***held that the Plaintiff had proved its entitlement to the sum of Rs.***

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68,24,653.71/- from the Defendant.However, in view of the finding on Issue No. 2 that the Suit was barred by limitation, it was held that the Plaintiff was not entitled to recovery of the said amount or any interest thereon in the present Suit.

44. ***Accordingly***, **the Ld. Trial Court, *vide* Judgment dated 20.12.2021, while holding the Plaintiff entitled on merits to the sum claimed, dismissed the Suit as being barred by limitation, with no order as to costs.**

45. *Aggrieved thereby, the Appellant has filed the* ***present Regular First Appeal.***

46. ***The grounds of challenge are***that the finding on limitation is erroneous both on facts and in law, and has been rendered in disregard of Section 26 and Order IV Rule 1 CPC. A Suit is instituted upon presentation of the Plaint, and where a Plaint is presented within limitation, the bar does not apply, merely because it is registered on a later date after removal of the objections.

47. Reliance in this regard is placed upon *Vidyawati Gupta & Ors. v. Bhakti Hari Nayak & Ors.*, JT 2006 (2) SC 278; *Alka Kasana v. Indian Institute of Technology*, 222 (2015) DLT 473; *D.C. Sankhla v. Ashok Kumar Parmar & Ors.*, 1995 I AD (Delhi) 753 for the proposition that procedural defects in a Plaint, being curable, relate back to the date of original presentation for purposes of limitation, and that a Suit must be deemed to have been instituted on the date the plaint was filed in Court and not the date on which it was ordered to be registered.

48. The objections raised by the Registry were technical, the Plaint presented on 06.10.2010 was complete in all respects, and the defects were

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removed on 16.10.2010, without any amendment, at the first opportunity upon the reopening of this Court, after the intervening vacation. The defect sheet itself permitted the papers to be re-filed within a week, which was overlooked by the learned Trial Court.

49. It is contended that the Ld. Trial Court failed to appreciate that the objections raised in filing, first pointed out only by 11.10.2010, could not have been removed, or even raised, at an earlier point in time, since this Court was closed for the *intervening vacation from 09.10.2010 to 16.10.2010,* and that the Appellant, at the first available opportunity upon reopening of the Court, removed all technical defects on 16.10.2010, ***without any amendment whatsoever***, pursuant to which the Suit was passed for hearing, on 19.10.2010.

50. It is further contended that the Ld. Trial Court failed to appreciate that no tenable objection of limitation was raised by the Respondent, either in its pleadings or during the course of arguments, and that the onus of proving the plea of limitation, which lay upon the Respondent, was never discharged; whether in the pleadings or in evidence.

51. It is contended that the judgments relied upon by the Ld. Trial Court, being rendered in the context of petitions under Section 34 of the Arbitration and Conciliation Act, 1996, were inapplicable to the facts and circumstances of a civil Suit governed by Section 26 and Order IV CPC.

C.M. APPL. 46845/2022, under Order XLI Rule 22 CPC, Cross-Objections by the Respondent:

52. The ***Respondent filed Cross-Objections***, **under Order XLI Rule 22 CPC,** assailing the findings returned in the impugned Judgment, on ***Issue Nos. 1, 3 and 4.***

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53. It was submitted that although the Suit had ultimately been dismissed as barred by limitation, the findings concerning the Authority to institute the Suit and the Appellant's entitlement to recover ₹68,24,653.71 with interest,were erroneous and liable to be set aside.The Respondent, therefore, sought reversal of those findings,*notwithstanding the dismissal of the Suit on the ground of limitation.*

54. The ***principal challenge*** to the findings on Issue Nos. 3 and 4 was that the learned Trial Court had failed to consider the Appellant's admission regarding receipt of the Western Region bills. The Appellant, in its Reply dated 11.05.2011 to the Application for Leave to Defend and in paragraph 4 of its Replication, had acknowledged receipt of 18 out of the 21 bills relied upon by the Respondent, aggregating to ₹61,44,545, while asserting that payment against those bills, had already been made. According to the Respondent, Receipt and identification of these bills, having been admitted, did not require further proof.

55. Reliance was placed upon the Order dated 24.09.2013 granting leave to defend, wherein this Court had noticed the competing computations filed by the parties, and observed that the dispute required evidence and could not be decided merely on the basis of the communication dated 05.07.2007, issued by the Northern Region. The Respondent maintained that Annexure D-3 and the corresponding bills formed part of the judicial record and, having been admitted by the Appellant, were not required to be separately proved during trial.

56. The Respondent further submitted that Issue No. 3 expressly placed the onus upon the Appellant to establish its entitlement to ₹68,24,653.71. Since the Appellant admitted Receipt of 18 bills but asserted that they had

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already been paid, the burden of proving such payment rested upon it. However, the documents filed with its Reply to the Application for leave to defend in support of payment, were not exhibited during evidence. The Account tabulation, **Ex. DW-1/1,** was stated to contain the corresponding bill numbers, dates and amounts. The learned Trial Court, therefore, erred in requiring the Respondent to establish afresh that the admitted bills remained outstanding, despite the Appellant having failed to prove its plea of payment.

57. The Respondent relied upon its Written Statement, the ledger entries and the account tabulations, to submit that ₹68,24,653.71 had already been adjusted against the principal dues of the *Western Region*. The relevant records were stated to reflect that the adjustment had been made, as on 21.09.2007.

58. The Respondent maintained that the adjustment of ₹68,24,653.71was against the principal dues of the *Western Region* and was distinct from its separate assertion regarding interest. Since the adjustment had already been made before the institution of the Suit, no counterclaim was required in respect thereof.

59. The Respondent also supported the finding that *the Suit was barred by limitation.* It was submitted that the Appellant's own pleadings established the absence of any running account between the parties, and that the Suit, in terms of Order IV CPC, had not been validly instituted until 16.10.2010, beyond the period of three years, computed from 08.10.2007.

60. It was additionally contended that the documents filed by the Respondent, indicated that the Appellant had merged into Air Berlin PLC & Co. Luftverkehrs KG in 2001, such that no entity by the name of the

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Plaintiff was in existence, on the date of institution of the Suit. It was further submitted that the Resolution dated 09.08.2018 authorised only PW-1 and not PW-2, thereby, raising a further objection to the authority of PW-2 to represent the Appellant.

61. In ***reply to the Cross-Objections,*** **the Appellant** maintained that the findings on Issue Nos. 1, 3 and 4, had been correctly returned. The Respondent had neither filed a Counter-Claim nor produced reliable documentary evidence establishing the alleged outstanding dues or the adjustment of Rs. 68,24,653.71.

62. The Appellant relied upon the communication dated **05.07.2007**, Ex. P-1, whereby the Respondent had quantified the net excess amount refundable to it, at Rs.1,46,33,653.71 after adjustment of the outstanding dues. Upon refund of Rs.78,09,000 on 08.10.2007, a balance of Rs.68,24,653.71 remained payable. *Despite repeated reminders issued between October, 2009 and July, 2010, the Respondent did not communicate that this balance had been adjusted against any Western Region dues.*

63. ***The plea of adjustment was raised only in the Respondent's Reply dated 04.11.2010 to the demand Notice, after institution of the Suit.***

64. Furthermore, the Ledger extract ***enclosed with that communication, differed from Annexure D-3*** subsequently filed with the Application for Leave to Defend. The amounts appearing in the successive computations also varied, demonstrating that the Respondent's explanation, had changed during the proceedings.

65. The Appellant clarified that its acknowledgment of receipt of 18 Western Region bills, did not constitute an admission that those bills remained unpaid. Its consistent case was that the said bills, aggregating to

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Rs.61,44,545, had already been paid and that all Invoices raised and delivered to it, stood discharged. The *Northern Region* dues of Rs.37,73,953.29 had, even according to the Respondent, already been adjusted, while the alleged *Southern Region*Invoices, pre-dated the communication dated 05.07.2007.

66. It was submitted that the Respondent, having relied upon a completed adjustment against alleged Western Region dues, was required to prove that *those dues were subsisting on the date of adjustment.*The documents annexed to the Application for Leave to Defend, but not produced and proved during trial, could not be treated as substantive evidence merely because the Appellant had referred to them, while disputing their correctness.

67. Reliance was placed upon the *cross-examination of DW-1,* who admitted that he had never personally dealt with the Appellant's accounts; that Ex. DW-1/2 had not been filed with the Written Statement; that the Charts did not disclose any principal amount due; and that no Ledger or Bank Statement showing the payments received from the Appellant, had been produced. He also admitted that the statements relating to the Northern, Western and Southern Regions *did not reflect the actual dates, on which payments were received.*

68. The Appellant further relied upon DW-1's admission that there was no *agreement between the parties for charging interest on delayed payment of RNFC* and that the amount of interest allegedly due as on 04.04.2006, could not be discerned from the Statements produced by the Respondent. The varying figures and absence of their supporting records, were stated to justify the rejection of the Respondent's defence, by the learned Trial Court.

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69. The objection concerning Authority, was also denied. The original notarised and stamped Powers of Attorney dated 06.10.2010 and 23.09.2014, together with the subsequent authorisations issued on behalf of the Insolvency Administrator on 09.08.2018, had been produced during the evidence of PW-1 and PW-2. *The Suit had, therefore, been instituted and continued through duly authorised persons.*

70. On limitation, the Appellant, in the Appeal reiterated that the Suit had been presented on 06.10.2010, before expiry of limitation on 08.10.2010. The objections raised by the Registry were procedural, the defect sheet permitted their removal within one week, and the High Court remained closed for vacation from 09.10.2010 to 15.10.2010. The defects were removed on 16.10.2010, immediately upon reopening of the Court. Their removal, therefore, related back to the original presentation of the Plaint.

71. The Appellant accordingly, sought dismissal of the Cross-Objections and reversal of the finding on limitation in its Appeal, with a consequential Decree for Rs.68,24,653.71 along with interest.

72. In ***Rejoinder,*** the Respondent reiterated its Cross-Objections and submitted that, although the plaint had been presented on 06.10.2010, the Suit was duly instituted under Order IV read with Orders VI and VII CPC only on 16.10.2010 and was, therefore, barred by limitation.

73. It denied having taken inconsistent stands and maintained that the Appellant was aware of its objections throughout the proceedings. It was further submitted that the admissions elicited from DW-1, had to be read with the documentary evidence on record and that its case had been fully addressed in the Written Submissions filed before the learned Trial Court.

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74. In its ***Written Submissions, the Appellant*** reiterated the grounds of Appeal and its opposition to the Cross-Objections. Additionally, reliance was placed upon the Full Bench decision of this Court in *Pragati Construction Consultants v. Union of India*, 2025:DHC:717-FB, to submit that defects relating to a *vakalatnama,* signature or verification and deficient court fee do not, individually, render a filing *non-est*. It was argued that such defects may have that consequence only where their cumulative effect demonstrates that the initial filing was not intended to be final and was made merely to arrest limitation; whereas the plaint presented on 06.10.2010 was complete in its material particulars and disclosed an unequivocal intention to prosecute the Suit.

75. In its ***Written Submissions, the Respondent*** reiterated the Cross-Objections and further relied upon Sections 101 to 103 of the Indian Evidence Act, 1872. It was submitted that, once the Appellant admitted receipt of 18 Western Region bills, but pleaded that they had already been paid, the burden of proving such payment rested upon the Appellant.

76. Conversely, the Respondent also relied upon the Full Bench decision in *Pragati Construction Consultants* (supra), to support the finding on limitation. It was argued that the defects in the filing dated 06.10.2010, when considered cumulatively, showed that the Suit had not been duly instituted under Order IV read with Orders VI and VII CPC, until 16.10.2010.

77. The Respondent additionally objected to the admissibility of the electronic communications relied upon by the Appellant, particularly Ex. PW-1/7 and Ex. PW-1/8 (Colly.), on the ground that they were not

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accompanied by a valid Certificate under Section 65B of the Indian Evidence Act, 1872.

Submissions heard and record perused

78. Admittedly, Defendant No. 1, AAI, charges a fee for grant of *"air traffic rights"* from foreign airlines, each time their aircraft enter or cross Indian airspace.The Plaintiff's aircrafts crossed Indian airspace *falling within the Northern, Western and Southern Regions since February 1996, wa*s liable to pay the applicable Route Navigation Facility Charges *(hereinafter referred to as "RNFC")* on several occasions, for which charges were raised by AAI and payments were made by the Plaintiff.

79. It is also not disputed that the Appellant had remitted 4,35,540 in US. Dollars to the Respondent, against a bill of Rs. 4,35,540/-. The Respondent, by its e-mail dated 05.07.2007, acknowledged a sum of Rs. 1,46,33,653.71/- as lying to the credit of the Appellant, but refunded only Rs. 78,09,000/- on 08.10.2007. The Appellant claimed the balance of admitted amount of Rs. 68,24,653.71/-, while the Respondent, when asked to refund the admitted excess amount, asserted that it stood adjusted against the dues of its Northern and Western Region.

80. The Appellant/Plaintiff in the Appeal, raised the question of *whether the Suit was instituted within limitation.*

81. The **Cross-Objections** raise *two questions for consideration:* ***firstly,*** whether the Suit was instituted and pursued by duly authorised persons; and ***secondly,*** whether the Respondent was entitled to retain Rs. 68,24,653.71/- by way of adjustment, against its alleged outstanding dues.

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I. *Whether the Suit was instituted by a duly authorised persons:*

82. The learned Trial Court held that the Plaint was duly signed and verified by *Sh. Shivam Vikram Singh*, duly authorised vide Power of Attorney dated 06.10.2010 in his favour.

83. The Respondent has challenged this finding on the grounds that the Power of Attorney does not disclose by whom it was executed and no Board Resolution was produced; that the original Plaintiff had merged into Air Berlin in 2001 and was not in existence when the Suit was instituted; and that the authority to continue the proceedings after the appointment of the Insolvency Administrator, particularly of **PW-2**, *Sh. Shivam Vikram Singh*, was not established.

84. The Plaint was signed and verified by *Sh. Shivam Vikram Singh* under the Power of Attorney dated 06.10.2010, **Ex. PW-1/1**.

85. PW-2, *Sh. Shivam Vikram Singh*, in his affidavit, Ex. PW-2/P, and in his cross-examination dated 28.11.2018, affirmed that he had signed the Plaint and the Replication under this Power of Attorney. *Nothing was elicited in cross-examination to discredit its execution or his authority under it*, and no evidence in rebuttal was led by the Respondent.

86. In *United Bank of India v. Naresh Kumar*, (1996) 6 SCC 660, the Supreme Court observed as under:

> *"10. ... as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf ... 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***

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> ***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."*

87. A Company which has authorised a person to sign its pleadings by a power of attorney, without a separate Board Resolution, can duly ratify it expressly or impliedly. Moreover, PW-1, *Sh. Friedrich Floto*, deposed in his affidavit, Ex. PW-1/P, that this Power of Attorney was executed before a notary by *Sh. Helmut Weixler*, Managing Director of the original Plaintiff, in favour of *Sh. Shivam Vikram Singh* and others.

88. Moreover, as discussed hereinafter, the Suit has been consistently pursued by the original Plaintiff, its successor and the Insolvency Administrator, which in any event amounts to ratification of its institution.

89. The plea that the original Plaintiff had ceased to exist in 2001, is contrary to the record. PW-1 *Sh. Friedrich Floto*explained, with reference to the Commercial Register, Ex. PW-1/CR *(Colly.)*, that in 2001 the original Plaintiff took over another Company, and thus, continued in existence. Its own merger into Air Berlin PLC & Co. Luftverkehrs KG, took place only in 2011, as admitted by DW-1 himself in his affidavit, Ex. DW-1/A, and as recorded in the Order dated 21.03.2018.

90. The original Plaintiff was, therefore, in existence when the Suit was instituted on 06.10.2010. The omission to mention the merger in the Replication dated 06.05.2014 is of no consequence, since the documents

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regarding the merger was subsequently brought on record *vide* Order dated 17.11.2015. More importantly, these facts were admitted by the Defendant, as well.

91. After the merger, a further Power of Attorney dated 23.09.2014, **Ex. PW-1/2**, was executed on behalf of Air Berlin in favour of *Sh. Shivam Vikram Singh* and others. After the appointment of the Insolvency Administrator, PW-1 was authorised by the Resolution dated 09.08.2018, Ex. PW-1/R, and a separate Power of Attorney of the same dateEx. PW-2/B, was executed in favour of PW-2, Sh. Shivam Vikram Singh. *The objection that the Resolution authorised only PW-1, overlooks this separate authorisation.*

92. As regards the *vakalatnama,* PW-2 deposed that it was executed under the Power of Attorney dated 06.10.2010 and continues unless withdrawn, and it has not been shown to have been withdrawn at any stage. The Suit has, thus, been pursued throughout with the authority of the original Plaintiff, its successor and the Insolvency Administrator.

93. There is, therefore, no infirmity in the finding of the learned Trial Court on Issue No. 1, and the challenge thereto in the Cross-Objections, is without merit.

II. Whether the Respondent/Defendant was entitled to retain Rs. 68,24,653.71/- by way of adjustment, against its alleged outstanding dues:

94. *On Issues No. 3 and 4,* the learned Trial Court held that the communication dated 05.07.2007, acknowledging Rs. 1,46,33,653.71/- as payable to the Plaintiff, had neither been denied nor satisfactorily explained; that the account statements relied upon by the Defendant did not reflect any

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principal amount due, and no document was produced to substantiate the alleged adjustments; that the documents annexed to the Application for Leave to Defend had not been proved during trial; and that there was no agreement for charging interest on RNFC. **It, accordingly, held that the Plaintiff had proved its entitlement to recovery of Rs. 68,24,653.71/-,** *but declined relief in view of its finding on limitation.*

95. The Respondent/Defendant has assailed this finding, in its Cross-Objections. It contends that the Appellant, in its Reply Affidavit filed in answer to the Application for leave to defend and in its Replication, *admitted the receipt of 18 of the 21 bills of the Western Region against which the balance was adjusted*; that the receipt of these bills, *being admitted, required no proof; that the burden of proving the alleged payment lay upon the Appellant*, which it failed to discharge; and that the absence of a separate issue on payment, did not relieve the Appellant/Plaintiff of this burden.

96. Admittedly, on account of currency confusion, a sum of 4,35,540 got paid to the Respondent in US Dollars,instead of Rupees, resulting in acredit of a sum of Rs. 1,46,33,653.71/- which was acknowledged by the Respondent/Defendant, by its e-mail dated 05.07.2007, ***Ex. P-1***. However, it refunded only Rs. 78,09,000/-, on 08.10.2007. It is admitted that, out of the remittance received from the Appellant on 04.04.2006, the Respondent adjusted Rs. 37,73,953.29/- and Rs. 14,22,216/- towards the dues of its Northern Region, which adjustment was accepted by the Plaintiff.

97. The Plaintiff claimedthe balance of admitted amount of Rs. 68,24,653.71/-, while the Defendant declined to refund the excess amount,

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on the ground that it stood adjusted against the dues of its Western Region, ***which is the subject matter of the Suit.***

98. The Respondent, AAI, contends that Ex. P-1 related only to its Northern Region. DW-1, *Sh. Vijay Kumar*, deposed in his cross-examination on 11.09.2019 as under:

> *"Q. Whether the letter dated 05.07.2007 Ex.P1 mentions figure of Rs. 1,46,330,657.71/- after adjusting all the bills pertaining to Plaintiff of all the Regions?*
>
> *Ans. The witness states that this figure is only in respect of Northern Region.*
>
> *Earlier all the five Regions of Airport Authority of India used to do billing with regard to usage of airspace independent of each other and from the year 2014-15 (approximately), the billing has been centralized and it is carried out at Delhi."*

99. The bare perusal of e-mail dated 05.07. 07 *Ex. P-1, reflects that it was issued by "**Data Ram, for General Manager (F&A) NR".** On its face, it is evident that the e-mail pertained only to Northern Region as has been explained by DW-1, in his cross-examination, as stated above.*

100. It does not, therefore, preclude the Respondent from establishing that dues of its Western Region were also outstanding against the Appellant and stood adjusted.

101. The Defendant has explained that there were outstanding dues of its Western Region, against which the balance was adjusted. It was first set out in its letter dated 04.11.2010, written in reply to the Demand Notice, which reads as under:

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Shri Vikram Grover,
Advocate for M/s LTU GMBH, Germany
Remfry & Sagar,
Remfry House at the Millennium Plaza,
Sector-27, Gurgoan-1122002.

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Sub: Adjustment of excess payment by M/s Luftransport Unternehmen GMBH(LTU) – Rs 68,24,653/- reg.

Sir,

Reference is made to your letter no. VGR/AHD/SHL/A142-1105 dated 30th September, 2010 on the above subject.

It is informed that though our Northern Region vide letter no. AAI/NR/REV/0708 dated 05.07.2007 had intimated to M/s LTU about unadjusted net excess amount of Rs. 1,46,33,653.71/- on account of receipt of USD 435525/- on 04.04.2006 from M/s LTU; however subsequently it was found that an outstanding dues amounting to INR 68,24,653/- were also lying unpaid in our Western Region books.

As such with the refund of INR 78,09,000/- on 8th October, 2007 to LTU and after adjustment of INR 68,24,653/- by our Western Region in September 2007 there is no balance amount to be paid to M/s LTU. A copy of ledger extract showing bill-wise adjustment of Rs. 68,24,653/- by Western Region is attached vide annexure 'A'.

In fact, AAI invoices dating back to 1996 were adjusted only in April, 2006 by Western Region and interest due to AAI on account of delayed settlement of invoices pertaining to Western Region alone amount to Rs. 55 lakhs approx.

Your client i.e. M/s LTU may be informed as above.

Yours Sincerely,

(M. Ravi Varma)
General Manager(F&A)

102. The Ledger extract annexed thereto, purports to record that on 21.09.2007, the Western Region applied a credit of Rs. 68,24,653/- received from the Northern Region against 21 bills dated between 05.02.1996 and 30.03.2003, with the narration: *"Being the amount adjusted against the credit note received from northern region vide letter No. AAI/NAD/NR/REV/2007-08/1859-60 dated 10.09.07 i.r.o. M/s Luft Transport".*The Defendant maintained that this adjustment was made against the principal dues of the Western Region. The Ledger extract is reproduced as under:

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AAI - RAU (MUMBAI) - (From 1-Apr-2007 TO 31 MAR 08)
Western Region
Santacruz Airport
Mumbai
400 099

613.04 LTU INTERNATIONAL AIRLINES
Ledger Account

For 21-Sep-2007

Date	Particulars			Vch Type	Vch No	Debit	Credit
21-9-2007	Cr Opening Balance					81,61,123.00	
21-9-2007	Dr 688.03 INTER UNIT ACCOUNT DELHI			Journal	ChQ/KR/REV		68,24,653.00 Cr
	Agst Ref O/60/95/6187	5-Feb-1996	3,11,175.00 Cr				
	Agst Ref F/60/95/3778	5-Feb-1996	4,00,315.00 Cr				
	Agst Ref F/60/95/3874	5-Apr-1996	4,69,062.00 Cr				
	Agst Ref F/60/96/3024	20-Apr-1996	4,90,383.00 Cr				
	Agst Ref F/60/96/3111	21-May-1996	4,06,099.00 Cr				
	Agst Ref O/60/95/5455	5-Apr-1996	3,63,252.00 Cr				
	Agst Ref O/60/95/5039	22-Apr-1996	3,02,384.00 Cr				
	Agst Ref O/60/96/5096	8-May-1996	2,66,184.00 Cr				
	Agst Ref O/60/97/6343	19-Feb-1998	3,34,017.00 Cr				
	Agst Ref O/60/98/8215	9-Mar-1999	2,47,718.00 Cr				
	Agst Ref O/60/01/8083	16-May-2001	1,25,514.00 Cr				
	Agst Ref O/60/00/977	16-Feb-2001	96,003.00 Cr				
	Agst Ref O/60/02/5033	15-Apr-2002	92,656.00 Cr				
	Agst Ref F/60/02/3065	9-May-2002	5,55,930.00 Cr				
	Agst Ref O/60/02/5089	9-May-2002	61,770.00 Cr				
	Agst Ref O/60/02/5489	21-Aug-2002	30,685.00 Cr				
	Agst Ref F/60/02/3293	9-Aug-2002	4,94,160.00 Cr				
	Agst Ref F/60/02/3337	21-Aug-2002	4,01,505.00 Cr				
	Agst Ref F/60/02/3937	6-Mar-2003	4,74,042.00 Cr				
	Agst Ref F/60/02/3992	22-Mar-2003	5,09,112.00 Cr				
	Agst Ref F/60/02/4051	30-Mar-2003	3,88,500.00 Cr				
	60 Mumbai						
	01/60 Aero		68,24,653.00 Cr				
	Being the amount adjusted against the credit note received from northern region vide letter No. AAI /NAD/NR/REV/2007-08/1859-60 dated 10.09.07 r.o. M/s. Luft Transport						
	Cr 613.04 LTU INTERNATIONAL AIRLINES			Journal	RAU/REV/	15,63,751.00	15,63,751.00
	Agst Ref I/O/60/06/4381	15 Days	4,77,505.00 Dr				
	On Account		11,06,246.00 Dr				
	60 Mumbai						
	01/60 Aero		15,63,751.00 Dr				
	BEING THE CREDIT AMOUNT ADJUSTED AGAINST THE PROPER BILL WRONGLY CREDIT TO OTHER BILLS NOW RECTIFIED.						
	Dr Closing Balance					97,44,874.00	84,08,404.00 15,36,470.00
						97,44,874.00	97,44,874.00

103. The Plaintiff, however, disputed the adjustment of Rs. 68,24,653/-, against these 21 bills.

104. The Plaintiff, in *paragraphs 4 and 6* of the preliminary submissions in its **Replication** to the Written Statement, stated as under:

> ***"4****…It is further respectfully submitted that the ledger extract, details of bills with respect to the Western Region and Annexure D-3 are not correct; the amounts of certain invoices mentioned therein are not consistent with the actual invoices issued to the Plaintiff.* ***It is submitted that out of the 21 invoices sought to be adjusted amounting to ₹ 68,24,653/- (Rupees Sixty Eight Lakh Twenty Four***

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> ***Thousand Six Hundred and Fifty Three), the Plaintiff has furnished documents evidencing settlement of an amount of ₹ 61,44,545/- (Rupees Sixty One Lakh Forty Four Thousand Five Hundred and Forty Five). In fact, the Plaintiff has made payment towards all invoices raised and delivered to it, there is no pending invoice for which any adjustment was to be made.*** *The letter of the Defendant No. 1 dated November 4, 2010 along with the ledger extract annexed therewith, reconciliation of the ledger extract and the documents reflecting the payments made by the Plaintiff are already a part of this Hon'ble Court's record and the Plaintiff craves leave to refer to and rely upon the same.*
>
> ***6****…The Defendant is merely trying to muddle the facts and seeking to demonstrate that it has held back payment of an admitted amount (which is the subject matter of the instant Suit) on the basis of certain allegedly outstanding invoices raised on the Plaintiff in 1996, 1998, 1999, 2001, 2002 and 2003. The duplicitous conduct of the Defendant is apparent* ***as all the invoices issued and delivered to the Plaintiff have been honoured and paid by it."***

105. The reconciliation referred to above was annexed to the Reply Affidavit dated 11.05.2011, as part of Annexure P-1 *(Colly.)*. Therein, the Appellant set out, against each of 18 of these bills, the date on which it claimed to have paid it, between 1996 and 2003; for instance, Bill No. O/60/95/6187 dated 05.02.1996 for Rs. 3,11,175/- is shown as paid on 08.03.1996.

106. Against the remaining three bills, namely Bill No. O/60/98/6215 dated 09.03.1999 for Rs. 2,47,718/-, Bill No. O/60/02/5489 dated 21.08.2002 for Rs. 30,885/- and Bill No. F/60/02/3337 dated 21.08.2002 for

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Rs. 4,01,505/-, aggregating to Rs. 6,80,108/-, the Appellant recorded *"Invoice not provided".* The reconciliation is reproduced as under:

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RECONCILIATION TABLE

S. NO.	INVOICE REF. NO.	DATE OF INVOICE	AMOUNT AS PER AAI'S RECONCI-LIATION (In Rs.) OF NOV 4, 2010	AMOUNT AS PER LTU'S RECORDS (In Rs.)	AMOUNT PAID (In Rs.)	DATE OF PAYMENT	DIFFERENCE BETWEEN AMOUNT PAID AND INVOICE AMOUNT AS PER AAI'S RECONCILIA-TION (In Rs.)
1	O/60/95/6187	05-02-96	3,11,175	3,11,175	3,11,175	08-03-96	-
2	F/60/95/3778	05-02-96	4,00,315	4,00,315	4,00.315	08-03-96	-
3	F/60/95/3974	05-04-96	4,69,062	4,69,062	4,69,062	06-05-96	-
4	F/60/96/3024	20-04-96	4,90,383	4,90,383	4.90,383	20-05-96	-
5	F/60/96/3111	21-05-96	4,05,099	4,05.099	4,05,099	25-06-96	-
6	O/60/95/6459	05-04-96	3,68,262	3,68,262	3,68,262	06-05-96	-
7	O/60/96/5039	22-04-96	3,02,364	3,02,364	3,02,364	29-05-96	-
8	O/60/96/5096	08-05-96	2,66,184	2,66,184	2,66,184	11-06-96	-
9	O/60/97/6343	19-02-98	3,34,017	3,34,017	3,34,017	31-03-98	-
10	O/60/98/6215	09-03-99	2,47,718	Invoice not provided	-	-	(-2,47,718)
11	O/60/01/5083	18-05-01	1,26,514	1,68,462	1,68,462	01-06-01	+ 41,948
12	O/60/00/977	16-01-01	96,003	2,52,693	2,52,693	01-03-01	+ 1,56,690
13	O/60/02/5033	19-04-02	92,655	92,655	92,655	01-06-02	-
14	F/60/02/3065	09-05-02	5,55,930	5,55,930	5,55,930	01-05-02	-
15	O/60/02/5089	09-05-02	61,770	61,770	61,770	01-05-02	-
16	O/60/02/5489	21-08-02	30,885	Invoice not provided	-	-	(-30,885)
17	F/60/02/3293	08-08-02	4,94,160	4,94,160	4,94,160	01-10-02	-
18	F/60/02/3337	21-08-02	4,01,505	Invoice not provided	-	-	(-4,01,505)
19	F/60/02/3937	06-03-03	4,74,042	4,74,042	4,74,042	01-04-03	-
20	F/60/02/3992	22-03-03	5,08,110	5,08,110	5,08,110	01-06-03	-
21	F/60/02/4051	30-03-03	3,88,500	4,50,264	4,50,264	01-06-03	+ 61,764
TOTAL			68,24,653	64,04,947	64,04,947		(-4,19,706)

107. According to the Defendant, AAI, the payment made by the Plaintiff on 04.04.2006, pertained to the Northern Region. Thereafter, the Western and Southern Regions were asked whether anything was due from the Plaintiff, and on being informed of the dues of the Western Region, the same were also adjusted from the amount received from the Plaintiff, whereafter nothing remained due from the Plaintiff.

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108. However, DW-1, when confronted with the statements pertaining to the Northern, Western and Southern Regions, collectively Ex. DW-1/Z, consistently stated that the amount of interest due and payable by the Plaintiff on 04.04.2006 could not be discerned from these statements. He further stated that there were no documents on record from which the principal amount due for the different regions could be seen. DW-1 admitted that the Defendant used to issue letters to the airlines when payments were not received, but was unable to state what steps had been taken by the Defendant for recovery of the amount allegedly due since 1995. He further admitted that had the Plaintiff not made the payment of 4,35,540 in US Dollars instead of Rupees, the Defendant would have had no excess amount to adjust. He also admitted that he had no personal knowledge of the case and was deposing only on the basis of the record.

109. DW-1 placed on record the region-wise tabulations, Ex. DW-1/1, and the statement, Ex. DW-1/2, reflecting an alleged outstanding amount of Rs. 4,33,178.87/-. In his cross-examination, he admitted that he had remained posted in the Northern Region from 1996 to 2006 and that the accounts of all the five regions were consolidated at the Headquarters, Rajiv Gandhi Bhawan, Delhi. The flight movements over Indian airspace were monitored and recorded by the Air Traffic Controller of the Defendant at the airport where the airspace was used, and the billing was done by the ATC, which alone forwarded the bills to the airline operator. He had never personally dealt with the accounts of the Plaintiff; the Statement Ex. DW-1/1 was not printed by him but was received from the different regions, while Ex. DW-1/2 was printed by him from the system.

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110. DW-1 admitted that Ex. DW-1/2 did not form part of the list of documents filed with the Written Statement, and that the figures in the documents pertaining to the Southern and Western Regions differed between the set filed with the Written Statement and the set filed with his affidavit, the difference appearing in the interest column. He explained that Chart Ex. DW-1/1 had been filed to show the interest due and payable by the Plaintiff, and did not pertain to the principal amount. He admitted that the bills shown in the charts did not reflect any principal amount due; that no document had been placed on record on the basis of which Ex. DW-1/1 was prepared; that the data received from the regions was believed to be true. He had not personally verified from any region whether Ex. DW-1/1 had been correctly prepared.

111. DW-1 further admitted that he was not aware whether any of the Invoices in the records of the Defendant, bore the signatures of the Plaintiff in acknowledgement of their receipt, and that the Invoices, Ex. DW-1/Z *(Colly.)*, pertained to the interest component of RNFC.

112. He also admitted that no interest could have been charged after 04.04.2006, when the payment of USD 4,35,540 was received by the Defendant. Significantly, there was no agreement between the parties for charging interest on RNFC for delayed payment. Not only this, DW-1 further admitted that no ledger showing the payments received from the Plaintiff towards the invoices raised, nor any bank statement, had been placed on record by the Defendant.

113. *Admittedly, no counter-claim was filed by the Defendant seeking recovery either of the alleged outstanding amount or of the alleged interest.*

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114. From the cross-examination of DW-1, it thus emerges that no principal amount was shown to be due and payable by the Plaintiff for any region,and the claim of the Defendant was, in substance, confined to interest on delayed payments since 1996, in respect of which no Notice is shown to have been sent to the Plaintiff. Also, there existed any agreement for payment of interest @ 12% or 18% per annum, on delayed payments.

115. It was for the Defendant, which asserted that the excess acknowledged in Ex.P-1 stood adjusted, to prove that an amount of Rs. 68,24,653/- was outstanding towards its Western Region, which it was entitled to adjust from the excess received from the Plaintiff. The contention that the Plaintiff admitted the receipt of 18 of the bills does not advance the case of the Defendant. The Plaintiff, while acknowledging these bills, consistently asserted that they had been paid, and did not admit that any amount remained due under them.

116. Though certain ledger accounts and statements of account have been relied upon by the Defendant, none of them has been proved in accordance with the rules of evidence, and no Certificate has been annexed to any of the statements. DW-1 was the sole witness of the Defendant and he himself had no personal knowledge of these documents and was unable to explain the entries made therein. Moreover, he categorically admitted that there was no principal amount due against the invoices.

117. The learned Trial Court, therefore, rightly held that the Plaintiff had proved its entitlement to recover Rs. 68,24,653.71/-. The challenge to this finding in the Cross-Objections is not tenable.

118. The Plaintiff has claimed interest @ 12% per annum from 05.07.2007, together with pendente lite and future interest at the same rate. No

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agreement for payment of interest on the refundable excess has been shown. The Demand Notice dated 30.09.2010, Ex. PW-1/9 *(Colly.)*, sent to the Respondent along with the postal receipt, however, expressly claimed interest from 05.07.2007.

119. In the present case, the Respondent had acknowledged the excess lying with it on 05.07.2007, and its retention of the balance of Rs. 68,24,653.71/- has been found unjustified. Having regard to these circumstances, simple interest @ 6% per annum, which does not exceed the current rate of interest, on Rs. 68,24,653.71/- from 05.07.2007 until the institution of the Suit is considered reasonable.

120. The Appellant is, accordingly, entitled to *pendente lite* and future interest @ 6% per annum on Rs. 68,24,653.71/- from the date of institution of the Suit till realisation.

121. The Appellant is, thus, entitled to simple interest @ 6% per annum on Rs. 68,24,653.71/- from 05.07.2007 till realisation. Issue No. 4 is decided accordingly.

III.*Whether the Suit was instituted within limitation:*

122. ***The most significant question is*:** whether the Suit is barred by Limitation. It is not in dispute that an amount of 4,35,540 was claimed in Rupees but was inadvertently, paid by the Plaintiff/Appellant in Dollars, leading to an admitted excess payment of Rs. 1,46,33,653.71/-, as reflected in e-mail dated 05.07.2007Ex.P-1,of the Defendant/Respondent. The Defendant has remitted Rs. 78,09,000/- on 08.10.2007, but asserted that Rs. 68,24,653.71/- was adjusted towards the dues for Northern Region.

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123. The Limitation for filing of the Suit was to be calculated from the date of part payment, i.e. 08.10.2007, in terms of S.19 Limitation Act, which reads as under:

> *"19. Effect of payment on account of debt or of interest on legacy.—Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:*
>
> *Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment. ...."*

124. The period of three years, therefore, expired on 08.10.2010.

125. Though the Plaint was first presented on 06.10.2010, i.e. within the period of limitation, the defects relating to the *vakalatnama, court fee and duplicate* set, were pointed out, which were finally removed and the Suit was registered on 16.10.2010. The Ld. District Judge held these defects *as making the filing non-est and treated the Suit as having been instituted only on 16.10.2010,* and the Suit *was dismissed as barred by limitation.*

126. The short question, therefore, is whether the defects in the Plaint presented on 06.10.2010, were *so fundamental that the presentation of plaint must be treated as non-est*, or whether *they were curable procedural defects, upon removal of which, the Suit must be taken to have been instituted on the*

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*date of its original presentation.**It is the nature of the defects and their effect upon the initial filing, which needs consideration.***

127. Pertinently, the Respondent, in its Written Statement, did not dispute that the Suit was filed on 06.10.2010. Its plea of limitation was confined to the date on which the cause of action arose, namely 05.07.2007. No plea was taken in the Written Statement that the initial presentation was *non est* on account of the objections raised by the Registry; and this contention was raised for the first time, during the final arguments.

128. Nevertheless, Section 3 of the Limitation Act, 1963 mandates that a Suit instituted after the prescribed period of limitation shall be dismissed, although limitation has not been set up as a defence. *The question must, therefore, be examined on its own merits.*

129. The sequence of the filing,as recorded in the impugned Judgment, is that the Plaint was presented on 06.10.2010 and returned on the same date for removal of objections relating to the *dim/vakalatnama/, duplicate set/caveat,* with the direction, that it be re-filed within a week. It was re-filed on 08.10.2010, whereupon six objections were marked, which are:

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HIGH COURT OF DELHI

Subject1 :22062 - ' ' SUMMARY SUITS UDER ORDER 37
Subject2 :0 - ' ' NOT ENTERED

DIARY NO 153186/2010 CASE TYPE CS(OS) Filing Date :08/10/10 12:05:11

LTU LUFTTRANSPORT UNTERNEHMEN GMBH
Vs.
AIRPORTS AUTHORITY OF INDIA & ANR

DEFECTS DETAIL

S.NO.	Defects	Marked On	Removed
1.	Suit format be filed alongwith all original documents or exemption IA be filed(1)	11-OCT-10	NO
2.	Duplicate set of the Plaint be filed(3)	11-OCT-10	NO
3.	jurisdict on value should be fixed and court fee should be paid accordingly(4)	11-OCT-10	NO
4.	Caveat report be obtained or at the time of each subsequent filing and proof of service be filed.(101)	11-OCT-10	NO
5.	Petition/Appeal be properly filed for scrutiny.(134)	06-OCT-10	NO
6	Vakalatnama be filed and signed/dated. Each Advocate must mention their name/address/enrolment number & phone number in Vakalatnama. Title on the Vakalatnama be checked. Welfare stamp be affixed. Signature of the client be identified.(137)	11-OCT-10	NO

The above unremoved objections be removed hence same may be returned to be refile within a week.
SCRU ASSISTANT: SH.SUNIL DUTT

130. The defect sheet records objections concerning the Suit format and the filing of original documents or an application for exemption; the duplicate set of the Plaint; the jurisdictional value and court fee; the *caveat* report and proof of service; the presentation of the Plaint for scrutiny; and the *vakalatnama*.

131. **Section 26(1) CPC** provides that every Suit shall be instituted by the presentation of a Plaint or in such other manner as may be prescribed. **Order IV Rule 1 CPC** reads as under:

> ***"1. Suit to be commenced by plaint.***
> *(1) Every suit shall be instituted by presenting a plaint in duplicate to the Court or such officer as it appoints in this behalf.*

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(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.
(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2)."

132. Order VI Rule 2 CPC provides that every pleading shall contain only a statement, in a concise form, of the material facts on which the party pleading relies for its claim or defence, as the case may be, but not the evidence by which they are to be proved. Order VI Rule 14 CPC further provides that every pleading shall be signed by the party and its pleader, if any. Order VII Rule 1 CPC provides that, in addition to the name of the Court and the names and places of residence of the parties, the Plaint shall state the facts constituting the cause of action and when it arose; the facts showing that the Court has jurisdiction; the relief claimed by the Plaintiff; and a statement of the value of the subject matter of the Suit for the purposes of jurisdiction and court fee, so far as the case admits.

133. From a reading of the aforesaid provisions, it emerges that, in order to constitute a valid Plaint, apart from the names and addresses of the parties, what must essentially be decipherable from it are the facts which, taken together, constitute the cause of action, in addition to the statements regarding jurisdiction, court fee and limitation. In the present case, the objections taken do not pertain to any of these essential ingredients.

134. From a reading of the aforesaid provisions, it emerges that a valid Plaint must, apart from the names and addresses of the parties, disclose the facts which, taken together, constitute the cause of action, the facts showing that the Court has jurisdiction, the relief claimed, and a statement of the

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value of the subject matter for the purposes of jurisdiction and court fee. The objections taken in the present case do not pertain to any of these essential particulars.

135. It may be observed that, traditionally, suits were filed manually; they were registered, and could thereafter be returned or rejected, if found deficient. The rules of filing, including e-filing, have evolved subsequently, and have to be read in conjunction with the procedure provided in the CPC. The objections taken by the Registry in respect of the caveat, the dim copies, the *vakalatnama* and the duplicate set, cannot be said to render the filing of the Suit on 06.10.2010 *non est*. These were procedural requirements, intended to ensure expeditious disposal and to prevent such objections being taken at a later stage.

136. It also cannot be overlooked that the present was an ordinary suit for recovery, filed in the year 2010. It was not a commercial suit under the Commercial Courts Act, 2015, which introduced stringent procedural provisions, with corresponding amendments to the CPC, solely to ensure the expeditious disposal of commercial suits. Those amended provisions cannot be imported while considering the question of limitation in an ordinary money recovery suit instituted in the year 2010. In the present case, there was no objection.

137. In *Vidyawati Gupta & Ors. v. Bhakti Hari Nayak & Ors*., (2006) 2 SCC 777the Supreme Court considered an Appeal against the decision of the Division Bench of the Calcutta High Court, which had held a suit to be *non est*, since the plaint was not accompanied by an affidavit in support of the pleadings under Order VI Rule 15(4) CPC. Allowing the appeal, it was observed as under:

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*"**49.** In this regard we are inclined to agree with the consistent view of the three Chartered High Courts in the different decisions cited by Mr. Mitra* ***that the requirements of Order VI and Order VII of the Code, being procedural in nature, any omission in respect thereof will not render the plaint invalid and that such defect or omission will not only be curable but will also date back to the presentation of the plaint.***

…

In our view, as has been repeatedly expressed by this Court in various decisions, ***rules of procedure are made to further the cause of justice and not to prove a hindrance thereto.*** *Both in the case of Khayumsab and Kailash, although dealing with the amended provisions of Order VIII Rule 1 of the Code****, this Court gave expression to the salubriousprinciple that procedural enactments ought not to be construed in a manner which would prevent the Court from meeting the ends of justice in different situations****.*

50. *The intention of the legislature in bringing about the various amendments in the Code with effect from 1-7-2002 were aimed at eliminating the procedural delays in the disposal of civil matters. The amendments effected to Section 26, Order 4 and Order 6 Rule 15, are also geared to achieve such object, but being procedural in nature****, they are directory in nature*** *and* ***non-compliance therewith would not automatically render the Plaint non est, as has been held by the Division Bench of the Calcutta High Court.***

…In our view, such a stand would be too pedantic and would be contrary to the accepted principles involving interpretation of statutes…"

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138. The Supreme Court thus, held that the requirements of Section 26, Order IV and Order VI CPC,***are procedural and directory***. *Their non-compliance is a curable irregularity, and does not result in the plaint being treated as never having been presented and, upon being cured, dates back to the presentation of the plaint.*

139. Following this principle, this Court in *Alka Kasana v. Indian Institute of Technology*, 222 (2015) DLT 473, held that, upon removal of the procedural defects, the relevant date was the date of original presentation and not the subsequent date of re-filing. Likewise, in *D.C. Sankhla v. Ashok Kumar Parmar & Ors.*, 1995 I AD (Delhi) 753, the Division Bench declined to treat re-filing after removal of the defects, as the date of institution for computing limitation.

140. The learned Trial Court relied upon sub-rule (3) to hold **that a Plaint not accompanied by the *vakalatnama*, *the requisite court fee and a duplicate set,* was not duly instituted.** The question is not whether the Plaint presented on 06.10.2010 complied with every procedural requirement, on the date of its presentation. ***It is whether the omissions were of a nature capable of being cured, so that upon their cure, the original presentation would stand.***

141. The first objection was the **non-filing of the *vakalatnama* with the Suit.** The Supreme Court in *Uday Shankar Triyar v. Ram Kalewar Prasad Singh &Anr.*, (2006) 1 SCC 75, considered the effect of a defect in the *vakalatnama* filed along with a Memorandum of Appeal, and held that an omission to file the *vakalatnama*, or a defect in the authority of the person

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signing the memorandum of Appeal, ***is procedural and can subsequently be rectified***. It observed as under:

> *"**17.** Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice**. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use.**"*

142. The significant aspect is that a *vakalatnama* concerns the authority of the counsel to appear and act for a party. It does not determine whether the party has presented its claim before the Court. The Plaint was signed and verified on behalf of the Plaintiff, by its constituted attorney, *Sh. Shivam Vikram Singh*, on the strength of the Power of Attorney dated 06.10.2010, Ex. PW-1/1. A deficiency in the *vakalatnama* did not, therefore, take away the character of the Plaint presented on 06.10.2010, by the Plaintiff.

143. The second objection concerning *court fee*, is expressly governed by Section 149 CPC, which reads as under:

> ***"149. Power to make up deficiency of court-fees**.—Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, **the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable,** to pay the whole or part, as the case may be, of such court-fee**; and upon such payment the document,** in respect of which such fee is payable, **shall have the same***

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> ***force and effect as if such fee had been paid in the first instance.”***

144. The deficiency in court fee on the jurisdictional value is thus, curable, with retrospective effect, *by the express mandate of the statute.*The requisite court fee was paid upon removal of the objections, whereafter the Suit was registered on 16.10.2010. Upon such payment, in terms of Section 149 CPC, the Plaint would have the same force and effect as if the fee had been paid at its original presentation. A deficiency which the law itself permits to be made good *“at any stage”* cannot, by itself, render the original presentation *non est.*

145. In *Mannan Lal v. Mst. Chhotaka Bibi*, (1970) 1 SCC 769, the Supreme Court held that where the deficiency in court fee on a Memorandum of Appeal was permitted to bemade good under Section 149 CPC, the Memorandum was to be treated as validly presented on the date on which it was originally filed, and the Appeal could not be regarded as barred by limitation on account of the subsequent payment.

146. The Full Bench of this Court in *Pragati Construction Consultants v. Union of India & Anr.,* 2025:DHC:717-FB, examined amongst others, the **defects relating to the *vakalatnama* and deficient court fee**, *though rendered in the context of Section 34 of the Arbitration and Conciliation Act, 1996, observed as under:*

> ***“95.*** *In this regard, it needs no emphasis that procedural defects cannot be allowed to triumph the substantive rights of a party, particularly since in view of our aforesaid observations, Section 34 of the A&C Act is the only remedy for a party aggrieved by an Arbitral Award. The said right,*

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therefore, should not be negated on procedural technicalities and hence, for describing an application under Section 34 of the A&C Act as non-est, a more liberal view in favour of the party filing the same should be taken. ***Mere procedural errors or defects, thus, would not render the filing of an application under the Section 34 of the A&C Act to be treated as a non-est filing. Even in general law, objections like the pleadings not being properly signed on each and every page, or there being a defect in the affidavit, or verification, are treated as procedural and curable defects. Stand alone, therefore, they cannot be treated as defects which would make an application filed under Section 34 of the A&C Act to be declared as non-est. It is only cumulatively, and that too only after the Court finds that the above defects have been left by the petitioner while filing the application under Section 34 of the A&C Act with a mala fide intent of only stopping the period of limitation from running, without there being an actual initial intention of having the application listed before the Court for hearing, the Court may still find the application so filed to be non-est. Needless to state, it would surely depend on the facts and circumstances in each case; and there cannot be a straight jacket formula to determine whether any of the above-mentioned defects or combination thereof or how many such defects would render an application filed under Section 34 of the A&C Act to be declared as non-est.***

96. *Similar are our observations as far as the changes in the contents of the application under Section 34 of the A&C Act are concerned. It is only where the Court finds that the application originally filed by the petitioner has been substantially changed at the time of removal of defects, that the Court may form an opinion that the original application,*

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> *as filed, was never intended to be the final application or one which should be listed before the Court. Hence, making of minor changes, or even addition or deletion of few facts or grounds, or adding documents, would not ipso facto make the application originally filed to be declared as non-est. Eventually, it would be the intent of the party that would have to be deciphered by the Court from its conduct. Be that as it may, if the Court finds that the intent was only to stall the limitation from running, and, as some Courts have held that only a 'bunch of papers' had been filed, that the Court would be free to declare such filing to be non-est.***"**

147. The Full Bench explained that such defects are procedural and must be considered cumulatively in the circumstances of the particular case. A filing may be declared *non est,* only where the defects show that it was made merely to stop the period of limitation, without any real intention of having the matter placed before the Court for adjudication. *The inquiry is into the character of the filing and the intention behind it, as discernible from the conduct of the party, and not a mere count of the objections raised by the Registry.*

148. In *Pragati Construction Consultants*, (supra) the reference was answeredas under:

> ***"97.We summarise our answer to the Reference**, as under:*
>
> *a) Non-filing of the Arbitral Award alongwith an application under the Section 34 of the A&C Act would make the said application liable to be treated and declared as non-est, and the limitation prescribed under Section 34(3) of the A&C Act shall continue to run in spite of such filing;*

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> *b)* ***Mere non-filing of the Statement of Truth or a defect in Statement of Truth being filed, that is, including with blanks or without attestation, would not ipso facto, make the filing to be non-est****. However, if accompanied with other defects, the Court may form an opinion, based on a cumulative list of such defects, that the filing was non-est;*
>
> *c)* ***Similarly, non-filing or filing of a defective Vakalatnama; the petition not being signed or properly verified; changes in the content of petition being made in form of addition/deletion of facts, grounds, or filing of additional documents from arbitral record, or filing with deficient court fee, each of these defects, individually would not render to filing of an application under Section 34 of the A&C Act to be treated and declared as non-est.*** *However, presence of more than one of such defects may, in the given set of facts involved in a case, justify the conclusion of the Court that filing of the application was never intended to be final and therefore, is liable to be declared non-est."*

149. In arriving at its conclusions, the Full Bench drew upon *Vidyawati Gupta* (supra) and observed, in paragraph 92, that *even a Plaint filed without a Statement of Truth, suffers only from a curable defect and* ***is not non est.*** The principles so explained, apply with equal force to the Plaint in the present Suit.

150. The other Objections **concerning the duplicate set, the *caveat* report and proof of service, the Suit format and the filing of original documents, are matters of procedure**. These defects are capable of compliance, without any alteration in the Plaint. The objection regarding original documents expressly contemplated the alternative of an Application

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for exemption. ***None of these Objections touched the substance of the Plaint.***

151. The learned Trial Court relied upon *Oil and Natural Gas Corporation Ltd.* (supra), *Sharma Kalypso Pvt. Ltd*. (supra) and *M/s Gautam Associates* (supra), ***rendered in the context of arbitration proceedings,*** to hold that the absence of the *vakalatnama and court fee, rendered the Plaint non est*. These decisions, however, distinguish between defects which are fundamental to the institution of the proceedings and those which are merely formal, and require the filing to be assessed as a whole.

152. The learned Trial Court did not consider that these were only procedural requirements, intended to curtail delays in effecting service and do not in any manner, touch on the validity of the Plaint, which was complete in all aspects; was duly signed and supported with the affidavit. The time taken to remove a defect, was merely for conformity with the procedural requirements and not the Plaint itself. In any case, the question whether such defects render a filing non est, has since been settled by the Full Bench of this Court.

153. In the present case, the learned Trial Court did not find that the Plaint presented on 06.10.2010, lacked the material facts constituting the cause of action, failed to disclose the parties or the relief claimed, or was otherwise incomplete or unintelligible. Nothing on record suggests that the Plaint registered on 16.10.2010, differed in substance from the Plaint presented on 06.10.2010. *No amendment to the averments, the cause of action or the relief has been shown to have been made upon re-filing.*

154. Nor does the record suggest that the Plaint was presented merely to arrest limitation, without any intention to prosecute the Suit. The Plaint was

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re-filed on 08.10.2010, within two days of its return and itself within limitation. The objections then marked, were removed on 16.10.2010, and the Suit was listed before the learned Joint Registrar on 19.10.2010.

155. In this context, it is also pertinent to note that the Suit was filed on 06.10.2010, while the period of limitation was to expire on 08.10.2010, *i.e.* well within the period of limitation. As already observed, none of the objections taken at the stage of registration can render the filing *non est*, a concept which has evolved through judicial pronouncements, essentially in the context of commercial litigation, and more so in regard to petitions under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996. Such principles cannot be *ipso facto* imported into a civil suit filed much prior to the enactment of the Commercial Courts Act, 2015.

156. Section 4 of the Limitation Act, 1963 provides that where the prescribed period expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day the Court reopens. The introduction of e-filing cannot, by itself, dilute the statutory protection where its conditions are satisfied.

157. In the present case, however, limitation expired on 08.10.2010, before the stated closure from 09.10.2010 to 15.10.2010. The intervening vacation is, therefore, relevant to the explanation for the time taken to remove the objections. The Appellant has explained that the objections were removed on the first day of reopening, i.e., 16.10.2010, whereafter the Suit was registered and directed to be placed before the learned Joint Registrar on 19.10.2010. The Plaint had already been presented on 06.10.2010, within limitation, and the objections, being curable procedural defects, did not

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render that presentation *non est.* Their subsequent removal related back to the original presentation.

158. The explanation of the Appellant that the intervening period from 09.10.2010 to 15.10.2010, was the Court vacation, should have been given due weightage. The time taken for removal of the objections *was neither inordinate nor unexplained, and this conduct is not suggestive of a filing never intended to be final*.

159. Consequently, the bar under Section 3 of the Limitation Act was not attracted, and the learned District Judge erred in dismissing the Suit as barred by limitation.

160. The observation of the learned Trial Court that the Plaintiff, despite knowing that limitation was expiring on 08.10.2010, did not file a proper plaint, are thus, not sustainable. A party is entitled to institute its Suit on any day, within the period of limitation.

161. In view of the foregoing discussion, the objections raised by the Registry, whether considered individually or cumulatively, were curable procedural defects. They did not deprive the Plaint presented on 06.10.2010, of its character as a plaint. Their removal did not amount to the institution of a fresh Suit on 16.10.2010, and the Suit must be taken to have been instituted on 06.10.2010.

162. The Suit, having been instituted on 06.10.2010, before the expiry of limitation on 08.10.2010, was within limitation. **The finding of the learned Trial Court on Issue No. 2 cannot be sustained, and are hereby, set aside.**

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Conclusion:

163. In view of the foregoing discussion, the Suit, having been instituted on 06.10.2010, was within limitation. The finding of the learned Trial Court on Issue No. 2 that the Suit was barred by limitation is, accordingly, set aside. The finding on Issue No. 1 that the Suit was instituted and pursued through duly authorised persons is upheld.

164. The finding of the learned Trial Court on Issue No. 3, that the Plaintiff had established its entitlement to recover Rs. 68,24,653.71/-, is upheld. On Issue No. 4, the Plaintiff is entitled to simple interest @ 6% per annum on the said amount from 05.07.2007 till realisation, as determined above.

165. Accordingly, the Appeal is allowed. The impugned Judgment and Decree dated 20.12.2021, **insofar as it dismissed the Suit as barred by limitation, is set aside. The Suit is decreed in favour of the Appellant/Plaintiff and against the Respondent/Defendant for Rs. 68,24,653.71/-, along with simple interest @ 6% per annum from 05.07.2007 till realisation.**

166. The Cross-Objections, C.M. APPL. 46845/2022, are dismissed.

167. The pending Application(s), if any, also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 30, 2026/R

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