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

% ***Judgment reserved on: 6th August, 2026***
***Judgment pronounced on: 3rd September, 2026***

\# **CNR No. DLHC016755742015**

\+ **RFA 36/2016**

M/S JINDAL PHOTO LTD .....Appellant
Through: Mr. Nitin Soni and Mr. Deepjyot Singh, Advocates.

versus

M/S RAYS MEDICAL SERVICES (P) LTD .....Respondent
Through: Mr. Madhu Sudan Bhayana, Mr. Naveen and Ms. Ishita Bhayana, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE AMIT BANSAL**

**JUDGMENT**

**AMIT BANSAL, J.**

1. The present appeal has been filed under Section 96 of the Code of Civil Procedure, 1908 ('CPC') against the judgment and decree dated 28th September, 2015 ('impugned judgment'), passed by the Additional District and Sessions (Central) 03, Tis Hazari Courts, ('Trial Court') in Suit No. 144/2007 titled '*M/s Rays Medical Services (P) Ltd. v. M/s Jindal Photo Film Ltd.*'. *Vide* the impugned judgment, the Trial Court has decreed the suit for

recovery in favour of the plaintiff company, and directed the defendant company to pay a sum of Rs. 8,40,982, along with interest at 12% per annum.

2. The parties shall hereinafter be referred to by their original nomenclature before the Trial Court.

3. Brief facts necessary for the adjudication of the present appeal are as follows.

4. The defendant company is engaged in the manufacture of photo films, including X-Ray films.

5. In terms of the letter dated 22nd May, 2003, the defendant company appointed the plaintiff company as its agent for supplying X-Ray films to government departments/institutions in Delhi on a commission basis.

6. On 26th March, 2004, the agency of the plaintiff company was withheld by the defendant company. The agency was subsequently restored *vide* letter dated 27th September, 2004.

7. On 2nd May, 2007, the plaintiff company issued a legal notice to the defendant company seeking the recovery of Rs. 8,40,982 towards its commission and refund of security deposit.

8. It is the plaintiff company's case that pursuant to the receipt of the said notice, a meeting was held between the officials of the parties, however, no amicable settlement could be arrived at. Accordingly, the plaintiff company instituted a suit seeking recovery to the tune of Rs. 12,20,000/- comprising of the commission amount, security deposit, and interest at 18% per annum.

9. The defendant company filed its written statement, raising preliminary objections that the plaint was not properly signed and verified, and that the suit was bad for non-joinder/misjoinder of parties. On merits, the plaintiff company's claim was denied on the ground that the plaintiff company had committed fraud by procuring goods from the defendant company in the name of government departments/institutions and disposing of the same in the open market at higher rates for personal gain.

10. *Vide* order dated 7th July, 2008, the Trial Court framed the following issues:

i. Whether the plaint has been signed and verified by a duly competent person? OPP.

ii. Whether the suit is bad for non-joinder of necessary/proper parties? OPD.

iii. Whether the plaintiff is entitled to the suit amount? OPP.

iv. Whether the plaintiff is guilty of any malpractice that would disentitle him to the suit amount? OPD.

v. Whether the plaintiff is entitled to any interest?

vi. Relief.

11. Evidence was led on behalf of the plaintiff company as well as the defendant company.

12. In the original plaint, Sh. R.B. Paul, the ex-Managing Director of the defendant company was arrayed as the sole defendant. At the stage of final arguments, the plaintiff company moved an application under Order VI Rule

17 CPC, seeking amendment of the memo of parties to substitute the defendant company in place of Sh. R.B. Paul. *Vide* order dated 4th January, 2014, the Trial Court allowed the said application holding that no prejudice would be caused to the defendant company, as it was fully aware of the case set up against it and had contested the suit on merits.

13. *Vide* the impugned judgment, the Trial Court decreed the suit of the plaintiff company for a sum of Rs. 8,40,982 together with interest at 12% per annum till realization.

14. Aggrieved by the impugned judgment, the defendant company preferred the present appeal.

**PROCEEDINGS BEFORE THIS COURT**

15. *Vide* order dated 19th January, 2016, this Court admitted the appeal. The impugned judgment was stayed subject to the defendant company depositing the entire decretal amount together with interest till the date of deposit.

16. *Vide* order dated 18th April, 2016, this Court directed the Registry of this Court to release of the amount deposited in Court along with interest accrued thereon to the plaintiff company, subject to the plaintiff company furnishing a security.

17. *Vide* order dated 25th March, 2025, the matter was referred to the Delhi High Court Mediation and Conciliation Centre. Upon the mediation proving unsuccessful, the parties were, *vide* order dated 14th July, 2025, directed to file

their written submissions. Accordingly, written submissions on behalf of both parties were filed and taken on record.

18. Oral submissions on the defendant company were heard on 17th July, 2026. Oral submissions on behalf of the plaintiff company were heard on 6th August, 2026, on which date additional written submissions filed by both parties were taken on record and the judgment was reserved.

**SUBMISSIONS ON BEHALF OF THE APPELLANT (DEFENDANT COMPANY)**

19. The suit, insofar as it pertains to the sum of Rs. 4,06,229, is *ex-facie* barred by limitation. The plaintiff company, in paragraph 9 of the plaint, admitted that the said amount was due as on 26th March, 2004, whereas the suit was filed only on 3rd August, 2007, beyond the prescribed period of three years under Article 113 of the Limitation Act, 1963. Being a pure question of law, apparent on the face of the pleadings, the plea of limitation may be raised in the appeal. Reliance in this regard is placed on ***Nikhila Divyang Mehta and Anr.*** **v.** ***Hitesh P. Sanghvi and Ors.***[1]

20. The suit was liable to be dismissed for misjoinder of parties, inasmuch as the suit was originally instituted against Sh. R.B. Paul, the earlier Managing Director of the defendant company, in his individual capacity, and not the defendant company itself. In fact, Sh. R.B. Paul was not even the Managing Director of the defendant company on the date of filing the suit. It is well settled that an officer of a company is not personally liable for the

[1] 2025 SCC OnLine 779.

debts of the company unless statutory or contractual liability is established. Reliance in this regard is placed on ***Praveen Bethapudi* v. *Savithramma***[2].

21. The application under Order VI Rule 17 CPC for amendment of the memo of parties was filed belatedly, after the completion of trial, at the stage of final arguments. As per the proviso to Order VI Rule 17 CPC, no amendment can be allowed after commencement of trial unless the party could not, despite due diligence, have raised the matter earlier. In the present case, no such due diligence was undertaken despite the framing of a specific preliminary issue with respect to misjoinder.

22. The costs of Rs. 5,000 imposed as a condition by the Trial Court for the amendment of memo of parties to take effect were never paid by the plaintiff company. Hence, the order dated 4th January, 2014 is inoperative and consequently the suit remains a suit against the individual and not against the company.

23. Without prejudice to the above submission, in terms of Section 21 of the Limitation Act, 1963, the suit against the newly substituted defendant company would be deemed to be instituted against the defendant company on 4th January, 2014. Accordingly, the suit, being founded on events of 2003-2004, was barred by limitation. Reliance in this regard is placed on ***Golesh Kumar* v. *Ganesh Dass Chawla Charitable Trust (Regd.)***[3].

24. The Trial Court erroneously placed reliance upon the statement of account produced by the plaintiff company (Ex.PW1/D1), inasmuch as the

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[2] 2010 SCC OnLine Kar 2294.

[3] 2006 (89) DRJ 417 (DB).

said document was introduced only during cross-examination of the witness of the defendant, DW-1, and not filed with the plaint as mandated by Order VII Rule 14 CPC. The Trial Court erred in relying upon another statement of account filed by the plaintiff company at the stage of final arguments, despite there being no order allowing the filing of the same. However, the defendant's statement of account (Ex.DW1/4), filed along with the written statement, was not considered by the Trial Court for want of certification under the Bankers' Books Evidence Act and Section 65-B of the Indian Evidence Act, 1872.

25. The Trial Court erred in rejecting the defence of malpractice despite clear admissions of the witness of the plaintiff, PW-1 in the cross-examination dated 1st December, 2009, that he had no proof of supply of goods to any government department in respect of which commission was claimed, and could not produce any document to substantiate that the material for which commission was claimed was ever supplied. The said admissions establish that the plaintiff company did not perform its obligations under the appointment letters and was not entitled to any commission.

**SUBMISSIONS ON BEHALF OF THE RESPONDENT/PLAINTIFF COMPANY**

26. The issue of limitation was never raised before the Trial Court, and no issue in that regard was framed. Accordingly, the defendant company cannot this raise the new ground of limitation at this appellate stage. Reliance in this regard is placed on ***Brakewel Automotive Components (India) Pvt. Ltd.* v. *P.R. Selvam Alagappan***[4] and ***Chitturi Subbanna* v. *Kudapa Subbanna and***

[4] (2017) 5 SCC 371.

***Ors***[5]. In any event, the suit was well within limitation as the agency of the plaintiff company was restored on 27th September, 2004 upon deposit of a further security of Rs. 75,000, which was paid on 27th October, 2004. Further, correspondence regarding release of commission continued through 2005-2006, and DW-1, in cross-examination, admitted that no payment was made to the plaintiff company after 2nd May, 2007, establishing that dealings between the parties subsisted until shortly before institution of the suit.

27. On the issue of misjoinder, the Trial Court correctly held that the onus lay on the defendant company, which failed to discharge the same. The amendment allowed *vide* order dated 4th January, 2014 was a mere correction of misdescription of parties. Further, the costs directed to be paid under the said order have duly been paid by the defendant company. Without prejudice to the above, no objection regarding non-payment of costs was raised by the defendant company over the subsequent hearings, and any such objection must be deemed to have been waived. Reliance in this regard is placed on ***Chitturi Subbanna* v. *Kudapa Subbanna and Ors*** (supra).

28. The plea of fresh limitation consequent upon the amendment is misconceived. The impleadment of the defendant company was a mere correction of misdescription and not the institution of a fresh suit and no new relief or cause of action was introduced against the defendant company.

[5] 1964 SCC OnLine SC 322.

Reliance is placed on ***Pradeep Khanna* v. *Ashok Electric Company and Ors*.**[6] and ***Ashbee Systems P. Ltd.* v. *Agauta Sugar & Chemicals and Ors*.**[7].

29. The defendant company's own statement of account (Ex.DW1/4) was an unsigned, unstamped computer printout, unsupported by any certificate under the Bankers' Books Evidence Act or Section 65-B of the Evidence Act, 1872, and was rightly ignored by the Trial Court. The plaintiff company's statement of account (Ex.PW1/D1) cannot be stated to belatedly produced as the same was produced pursuant to a specific direction of the Trial Court seeking clarification regarding the claim.

30. The three letters dated 24th December, 2007 relied upon by the defendant company to establish malpractice were procured over four months after institution of the suit and after filing of the written statement, and pertained to supplies of a period (2003-2004) prior to withholding of the agency. Any such conduct stood condoned when the agency was restored on an enhanced security deposit. In any event, the plaintiff company was appointed as a liaisoning/collection agent, entitled to commission of 0.5% upon realisation of payments (Ex.PW1/4), and was under no independent obligation to itself supply goods, rendering the defence of malpractice misconceived.

31. The defendant company never disputed that the business/supplies referred to by the plaintiff company were, in fact, made, or that payments

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[6] 2011 SCC OnLine Del 2038.
[7] 2013:DHC:5446.

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were received by it in that regard, which amounts to an implied admission in support of the plaintiff company's claim.

**ANALYSIS AND FINDINGS**

32. I have heard the counsel for the parties and examined the record of the case.

33. Though various grounds of challenge have been taken in the appeal by the defendant company, I propose to deal with the challenge with regard to the merits of the case at first, i.e., challenge to the findings with regard to Issues No. iii and iv. For ease of reference, Issues No. iii and iv are set out below:

> *"iii. Whether the plaintiff is entitled to the suit amount? OPP.*
>
> *iv. Whether the plaintiff is guilty of any malpractice that would disentitle him to the suit amount? OPD."*

34. Both the aforesaid issues are connected and hence are being taken up for adjudication together.

35. The plaintiff company filed a suit for recovery of Rs. 8,40,982/-. Clearly, the onus to prove the same was on the plaintiff company. The plaint makes reference to a statement of account maintained by the plaintiff company in paragraph 9 of the plaint. However, inexplicably, the plaintiff company did not file any statement of account along with the plaint or along with its evidence by way of affidavit.

36. An application was filed on behalf of the plaintiff company for producing documents, including a summary statement of account, which was allowed *vide* order dated 16th April, 2009. The witness of the defendant

company, DW-1, was confronted with the summary statement of account during cross examination and he denied having seen the said document. Nevertheless, the same was exhibited as Exhibit PW-1/D1 on 2nd December, 2011.

37. At this stage, reference may be made to Order VII Rule 14 CPC, which is set out below:

> *"14. Production of document on which plaintiff sues or relies.—(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*
>
> *(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.*
>
> ***(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.***
>
> *(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiffs witnesses, or handed over to a witness merely to refresh his memory."*
>
> (emphasis supplied)

38. With regard to proof of a document produced for the first time during cross-examination, reference may be made to the observations made by a coordinate bench of this Court in ***Subash Chander v. Bhagwan Yadav***[8] set out below:

[8] 2009 SCC OnLine Del 3818.

*“**10.** The next question which arises is that if the document is so placed on the court file, whether it becomes/is to be treated as the document of the party producing the same and is that party entitled to prove the said document notwithstanding having not filed the same earlier, as required by law, or the use of the said document is to be confined only to confront the witness to whom it was put and it cannot be permitted to be proved by that party in its own evidence.*

***11.** The legislative intent behind order 7 Rule 14(4) and Order 8 Rule 1A(4) and Order 13 Rule 1(3) appears to be to permit an element of surprise, which is very important in the cross examination of witnesses. A litigant may well be of the opinion that if the document on the basis whereof he seeks to demolish the case of the adversary is filed on the court record along with pleadings or before framing of issues, with resultant knowledge to the adversary, the adversary may come prepared with his replies thereto. On the contrary, if permitted to show/produce the document owing to element of surprise, the adversary or witness, may blurt out the truth. Once it is held that a litigant is entitled to such right, in my view it would be too harsh to make the same subject to the condition that the litigant would thereafter be deprived of the right to prove the said documents himself. **Thus, if the witness to whom the document is put in cross examination fails to admit the document, the party so putting the document, in its own evidence would be entitled to prove the same**. However, the same should not be understood as laying down that such party for the said reason and to prove the said document would be entitled to lead evidence which otherwise it is not entitled to as per scheme of CPC and evidence law. For instance, if the document is shown by the defendant to the plaintiffs witness and the plaintiffs witness denies the same, the defendant can prove the document in his own evidence. **Conversely, if the plaintiff puts the document to the defendant's witness and the defendant's witness denies the same, the plaintiff if entitled to lead rebuttal evidence would in his rebuttal evidence be entitled to prove the same. However, if the plaintiff has no right of rebuttal evidence in a particular case, the plaintiff would not be entitled to another chance to prove the document**. In such a case, the plaintiff has to make a choice of either relying upon the surprise element in showing the document or to file the document along with its pleadings and/or before the settlement of* *issues and to prove the same. Similarly, if the defendant chooses to confront the document to the plaintiff's witness in rebuttal, merely because the witness denies the document would not entitle the defendant to a chance to prove the document subsequently.*

***12.** I may however put a line of caution over here. **It is often found that a party which has otherwise failed to file documents at the appropriate stage, attempts to smuggle in the documents in the evidence of the witness of the adversary by putting the documents to the witness whether relevant to that witness or not. The court should be cautious in this regard. Only those documents with which the witness is concerned and/or expected to know or answer ought to be permitted to be put to the witness in the cross examination. If other documents with which the witness is not concerned are confronted only in an attempt to have the same filed and to thereafter prove the same, the court would be justified in clarifying that the document is taken on record only for the purpose of cross examination and the producing party would not be entitled to otherwise prove the same, having not filed it at the appropriate stage.**"*

(emphasis supplied)

39. The aforesaid statement of account was an internal document of the plaintiff company and if the plaintiff company was seeking to place reliance on the same, the same should have been filed along with the plaint or at the very least along with the evidence of the plaintiff company. Even if the aforesaid statement of account was taken on record, the same had to be proved in accordance with law, and the plaintiff company failed to prove the same. It could not have been exhibited during the defendant company's evidence by confronting the witness of the defendant company with the same during cross examination, as the said document was not relevant for the said witness. Therefore, the Trial Court erred in exhibiting the aforesaid statement of account and relying on the same.

40. Yet another detailed statement of account was produced on behalf of the plaintiff company at the stage of final hearing of the case. It has been submitted on behalf of the plaintiff company that it was only on account of a clarification sought from the Trial Court with regard to the amount due that the plaintiff company brought on record the statement of account, which detailed the amount of commission due to the plaintiff company. Even though the said statement of account was filed on 21st November, 2014, a perusal of the record shows that there was no order passed by the Trial Court, seeking such a clarification from the plaintiff company or permitting the plaintiff company to file a statement of account, or taking the aforesaid statement of account on record. In this regard, reference may be made to paragraph 31 of the impugned judgment, which is set out below:

> *"31. **Further, during the course of arguments, the, plaintiff has produced a set of documents (run in 13 pages) i.e. the statement of accounts maintained by the defendant in the name of the plaintiff at its end in normal course of its business** and such statement of accounts was issued by the defendant to the plaintiff, that mentions the complete details of the name of the customers, the account code, the invoices numbers with date and amount, amount received and date of receipt of such amount to establish the total quantity of supplies made by the plaintiff as the agent of the defendant to do its business."*
>
> (emphasis supplied)

41. In terms of Order VII Rule 14(3), any document to be produced with the plaint as per Order VII Rule 14(1), but not filed along with the plaint, can only be produced with the leave of the court. In the present case, the plaintiff company did not file any application seeking the leave of the Trial Court to

produce the said document. Therefore, the aforesaid detailed statement of account could not have been received in evidence by the Trial Court.

42. Pertinently, the aforesaid statement of account has not even been exhibited by the Trial Court. Clearly, the Trial Court could not have taken the detailed statement of account on record at the stage of final hearing of the case without giving any opportunity to the defendant company to respond to the same. Therefore, the reliance on the aforesaid statement of account by the Trial Court is completely erroneous.

43. The Trial Court did not accept the statement of account of the defendant company (Exhibit DW-1/4), which was filed along with the written statement. In terms of the said statement, a sum of Rs. 1,914/- was payable towards commission. However, the Trial Court failed to appreciate, even if, the defendant company could not prove its statement of account, the onus was on the plaintiff company to prove that the amount claimed was due. The plaintiff company could not have succeeded merely on account of the inability of the defendant company to prove its statement of account.

44. The case of the defendant company was that, in terms of the arrangement between the plaintiff company and the defendant company, the plaintiff company was authorized to sell goods supplied by the defendant company to government departments. However, instead of supplying the goods to the government departments, the plaintiff company sold the goods in the open market at higher prices. In this regard, the witness of the plaintiff,

PW-1, in his cross-examination conducted on 1st December, 2009, clearly admitted that:

i. He could not produce any document regarding payment made by any government department to the defendant company pursuant to orders procured by the plaintiff company.

ii. He could not produce the delivery proof of supply of the goods to any government department.

iii. He had no proof of payment made to the plaintiff company towards supply of goods to any government department.

45. The relevant extracts from the cross-examination are set out below:

> *"...It is correct that in Government departments, which I have referred in my claims, all work is done in writing only. It is correct that the Government department or Body will make payment only to that firm or person on whom it has placed order for the supply or the work.* ***I cannot produce copy of any payment proof to the defendant by the parties/ Govt. departments to whom the goods were supplied by the defendant****. I cannot produce either a covering letter with which the cheque/Draft/ Pay order was sent to the defendant by the Receiver of goods or a copy thereof....*
>
> *....I have not taken delivery of the goods ie x ray films from the defendant against payment by me through my own cheques or drafts/pay orders organized by me from my account, or otherwise.*
>
> *...****I do not have any proof of supply of any of the material/goods to any of the Government's departments in respect to which I have claimed commission nor I can produce the same in the court.*** *It is wrong to suggest that I used to take goods / X ray films from the Company or documents relating thereto against payment from my own accounts and then supplying the same to Government departments.*
>
> *...****I cannot say whether I can produce any document to substantiate that the material in respect to which I am claiming commission has been***

***supplied to any Government department.*** *Further stated that I do not have any such document..."*

(emphasis supplied)

46. A perusal of the appointment letter of the plaintiff company dated 22nd May, 2003 (Exhibit PW-1/3) clearly shows that the plaintiff company was appointed as an authorized agent of the defendant company for medical X-ray films business to government/state institutions in Delhi. A perusal of the document dated 27th May, 2003 (Ex. PW1/5) also clearly suggests that the appointment of the plaintiff was only in respect of supply government departments. For ease of reference, the relevant extract from the document dated 27th May, 2003 is set out below:

*"A. Our company will now be executing all govt. depts. Orders received under our DGS&D Rate Contract dated 18.12.2002 on prescribed from-131 i.e. Payment of which can be collected through pay & accounts office, New Delhi on 98% and 2% basis.*

*B. All other govt. depts. Orders under DGS&D rate contract & direct tender/quotation can also be executed provided we receive 100% advance payments by D.D. from the Govt departments or agent concerned.*

*I. Our company will be paying dealer commission @5% on invoice value for category B mentioned above.*

*II. For category A business our company will be allowing a total commission of 3.5% on invoice value (instead of 3% earlier) as per following details.*

*i) To the dealers concern on their procurement of order on form-131 under DGS&D Rate Contract and clearance of formalities for balance 2% payment from the Pay & Accounts department. 2.25%.*

*ii) To our Mumbai liasoning agent for taking care of DGS&D Inspection Formalities 0.75%*

*iii) To our Delhi liasoning agent for realisation of 98%/2% payment From Pay & Accounts office Delhi 0.50%. "*

47. In light of the above, the Trial Court has erroneously held that because the defendant company had condoned the acts of the plaintiff company as its agent and had restored its agency after enhancing the security amount, the defendant company could not have withheld the commission due for the business done by the plaintiff. The Trial Court has completely overlooked the arrangement between the parties that the commission was only payable for and in respect of goods supplied to the government bodies. Therefore, if the plaintiff company did not supply goods to the government bodies, no commission was payable to the plaintiff company.

48. Next, I shall consider the findings of the Trial Court with respect to Issue No. 2, i.e., non-joinder of necessary/proper parties in the suit.

49. The aforesaid issue was framed on account of an objection raised by the defendant company in its written statement that the plaintiff company had filed the present suit against Shri R.B. Paul, who was the former Managing Director of the defendant company. The proper party to be impleaded in the suit was the defendant company, which was not done.

50. The plaintiff company filed an application under Order VI Rule 17 CPC to amend the plaint in order to implead the defendant company only at the stage of final hearing. The said amendment application was allowed by the Trial Court *vide* order dated 14th January, 2014 subject to payment of costs of Rs. 5,000/-.

51. It is contended on behalf of the defendant company that the costs of Rs. 5,000/- imposed by the Trial Court were never paid by the plaintiff company,

hence, the amendment never came into effect. This has been countered by the counsel for the plaintiff company, stating that the costs of Rs. 5,000/- were duly paid.

52. Once the Trial Court had chosen to permit the amendment of the plaint impleading the defendant company in place of the original defendant subject to payment of costs, even though belatedly, I am not inclined to interfere with the findings of the Trial Court on this account. It is a matter of record that the defendant has not challenged the aforesaid order of the Trial Court.

53. It is further contended on behalf of the defendant company that since the impleadment of the defendant company happened only on 4th January, 2014, the period of limitation has to be counted from the said date.

54. I am unable to agree with the aforesaid submission as the Trial Court in its order dated 4th January, 2014, has held that there was only a misdescription of parties and that the parties were aware of the case and had also gone to trial with full knowledge. Mere correction of a misdescription of the parties, in my opinion, cannot be construed as the addition of a new defendant. Therefore, Section 21 of the Limitation Act would not apply.

55. As regards the issue of limitation, it is an admitted position that the defendant company did not raise the issue of limitation in its written statement and there was no issue framed with regard to limitation. In view thereof, this Court is not inclined to get into the issue of limitation at this appellate stage.

56. Insofar as the judgment in ***Nikhila Divyang Mehta*** (supra), relied upon by the defendant company, in the said case, the defendant had moved an

application under Order VII Rule 11 of the CPC before the Trial Court therein raising the issue of limitation. In the present case, the issue of limitation was neither raised in the written statement nor in any application under Order VII Rule 11.

57. In view of my findings in respect of Issues Nos. (iii) and (iv), the impugned judgment passed by the Trial Court decreeing the suit in favour of the plaintiff is erroneous and is accordingly set aside. The Registry of this Court is directed to refund the decretal amount deposited by the appellant/plaintiff company to the appellant/plaintiff company, together with accrued interest.

**AMIT BANSAL**
**(JUDGE)**

**SEPTEMBER 3, 2026**
*Rzu*