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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of decision:10th August, 2026*

\# **CNR No. DLHC010365392026**

\+ RFA 815/2026, CM APPL. 52583/2026, CM APPL. 52584/2026

M/S RITA PLASTIC PVT LTD .....Appellant
Through: Appearance not given.

versus

KISHAN SINGH .....Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T *(oral)*

CM APPL. 52582/2026 (Exemption)

1. Exemption allowed, subject to all just exceptions.

2. The Application is disposed of.

C.M. APPL. 52585/2026 seeking condonation of delay of 6 days in filing & C.M. APPL. 52586/2026 seeking condonation of delay of 89 days in re-filing the Appeal.

3. For the reasons stated in the Applications, the same are allowed.

4. The Applications stand disposed of.

RFA No. 815/2026:

5. Regular First Appeal under Section 96(1) of the Code of Civil Procedure, 1908 *(hereinafter referred to as "CPC")* has been filed against the **Judgment and Decree dated 19.01.2026 in CS DJ ADJ No. 515312/2016**, whereby the Suit of the Plaintiff has been ***partly decreed*** for recovery of Rs. 1,00,000/- along with simple interest @ 6% per annum from the date of institution of the Suit till realisation.

6. The Plaintiff had filed the Suit against the Defendant, M/s Rita Plastic Industries, through its Proprietor Smt. Rita Batra, W/o Sh. Ashok Kumar Batra, A-53, Vishal Enclave, New Delhi-110027, for recovery of Rs. 5,80,910/- along with *pendente lite* and future interest @ 18% per annum and costs.

7. ***The facts in brief are*** that the Plaintiff is the owner/landlord of **279 sq. yards *(partly covered)* out of Khasra No. 189, Lal Dora of 1908-1909, Village Kakrola, New Delhi-110043,** having inherited the same from his late father, Sh. Hari Singh, by virtue of a **registered Will dated 13.08.2013 Ex.PW1/2**. It was averred that although the Will bequeathed the suit property jointly to the Plaintiff and his brother, an oral partition had taken place between the two, pursuant to which the suit premises fell to the Plaintiff's share.

8. The Plaintiff's father, late Sh. Hari Singh, let out the suit premises to the Defendant at a monthly rent of Rs. 6,500/- on 01.01.1997, exclusive of electricity, water and other charges, on a month-to-month tenancy as per the Gregorian calendar, in terms of the **Rent Agreement Ex.PW1/3.** It was the Plaintiff's case that he had been collecting rent from the Defendant since inception, as per the directions of his father, and continued to do so even during his father's lifetime.

9. It was asserted that the Defendant habitually defaulted in payment of rent, and despite repeated demands and condonation of delay by the Plaintiff, **vacated the suit premises on 24.02.2015** without notice, while owing rent from January, 2011 onwards.

10. Further, on 20.09.2012, the Defendant issued **Cheque No. 750626**, drawn on State Bank of India, Rajouri Garden, for **a sum of Rs. 1,00,000/- Ex.PW1/4,** towards rent for the period January, 2011 to March, 2012 *(computed at Rs. 97,500/-, plus Rs. 2,500/- adjustment)*. However, on presentation, the cheque was dishonoured on 20.09.2012.

11. It was further stated that in July 2014, an **electricity bill amounting to Rs. 2,81,910/- Ex.PW1/5**, subsequently escalating to **Rs. 2,84,512/- Ex.PW1/6**, was raised for the period 01.07.2012 to 23.08.2014, qua the electricity connection installed at the suit premises, which continued to be in the possession of the Defendant, and remained unpaid despite assurances of payment.

12. The Plaintiff accordingly served **a Legal Demand notice dated 08.04.2015 Ex.PW1/7,** asking the Defendant to pay:

(i) Rs. 1,00,000/- cheque amount + 18% p.a. interest from dishonor;

(ii) April, 2012 rent @ Rs. 4,000/- (post-adjustment) + 18% p.a.;

(iii) May, 2012 to February, 2015 rent at Rs. 6,500/- p.m. + 18% p.a. interest.

(iv) Electricity dues Rs. 2,81,910/- + 18% p.a. interest.

13. It was averred that the notice was duly served on 13.04.2015, through Speed Post as well as Registered Post**.** Since the Defendant failed to make the payment, *the Plaintiff instituted the Suit on 26.08.2015, for recovery of Rs. 5,80,910/-, being* the aggregate of the cheque amount, arrears of rent and electricity dues etc.

14. The Defendant contested the Suit by filing its **Written Statement, wherein it was** asserted that the Suit was not maintainable. The suit was bad for misjoinder/non-joinder of parties as the proprietorship firm has no legal personality distinct from its proprietor, M/s Rita Plastic Industries, which had ceased to exist as a proprietary concern with effect from 31.03.1999, upon its conversion into M/s Rita Plastics Private Limited, incorporated under the Companies Act, 1956 vide **Certificate of Incorporation No. 55-99079 of 1998-99**; a fact communicated to late Sh. Hari Singh. Subsequently, on 08.10.1999, with the permission and assistance of late Sh. Hari Singh, the electricity load at the suit premises was increased from 20 HP to 49 KW, and a sum of Rs. 70,160/- was deposited with the electricity department, in that regard.

15. On account of continuing losses, the Defendant, on **22.10.2010**, discontinued its business operations and surrendered its Central Excise Registration, and that thereafter, in May-June 2012, it informed late Sh. Hari Singh of its intention to vacate the suit premises; there having been no business activity since 2008. Consequently, ***the Defendant vacated the suit premises in June 2012, and paid the final electricity bill of Rs. 57,960/- on 20.06.2012.***

16. It was further stated that late Sh. Hari Singh had claimed a sum of Rs. 1,00,000/- towards "maintenance", pursuant to which Cheque No. 750626 was issued on 15.07.2012 as a ***security cheque***, with the payee's name and date left blank, on the instruction that it was not to be presented for encashment.

17. The defendant **paid the said amount of Rs. 1,00,000/- in cash** to late Sh. Hari Singh on 19.08.2012, in the presence of one Sh. Ram Niwas, towards full and final settlement, and that the cheque was to be returned to the Defendant; instead, the cheque was presented for encashment and was dishonoured on 25.09.2012. It was denied that any amount was due and payable by the Defendant to the Plaintiff, and it was averred that the Suit had been instituted with *malafide* intent, after the demise of late Sh. Hari Singh

18. ***On merits***, the Defendant admitted the factum of the Will only to the extent that it bequeathed the suit property jointly to the Plaintiff and his brother, and prayed that the Suit be dismissed with heavy costs.

19. From the pleadings of the parties, *vide* Order dated 13.11.2017, the following issues were framed for adjudication:

> *(i) "Whether the Suit of the Plaintiff was not maintainable for want of cause of action (OPD);*
>
> *(ii) Whether the Plaintiff was entitled to a decree in the sum of Rs. 5,80,910/- along with interest @ 18% per annum, as prayed in the plaint (OPP); and*
>
> *(iii) Relief."*

20. In support of his case, the **Plaintiff, Sh. Kishan Singh examined himself being as PW-1.** He tendered in evidence his affidavit dated 09.01.2018 **Ex.PW1/A**, and proved documents **Ex.PW1/1 to Ex.PW1/8**, being, respectively, the death certificate of Sh. Hari Singh, the registered Will dated 13.08.2013, the Rent Agreement, the original cheque issued by the Defendant, two electricity bills, the office copy of the legal notice dated 08.04.2015, and the postal receipts of service thereof.

21. The Defendant examined **DW-1 Sh. Ashok Kumar Batra, husband of Smt. Rita Batra, who** tendered his evidence by way of affidavit **Ex.DW1/1** on 07.11.2023, and relied upon the Memorandum of Article of Rita Plastics Private Limited **Ex.DW1/A** and an electricity receipt bearing

No. 300788 **Ex.DW1/B**; on being recalled on 16.07.2024, he further relied upon a letter dated 22.10.2010 along with Form ER-3 **Ex.DW1/C**.

22. ***The Ld. Trial Court,*** on Issue No. 1 held that and that the continuity of management under Smt. Rita Batra, together with its finding that the cheque in question had been issued to discharge her liability, rendered the objection non-fatal, relying on **Order I Rule 9 CPC** and *Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and Others*, AIR 2010 SC 3109.

23. It further held that the Plaintiff, as a co-owner under the Will, was entitled to maintain the Suit in respect of his share, in the absence of any objection from his brother; and rejected the plea that the dispute was a *"commercial dispute"* requiring transfer to the Commercial Court, holding that the tenancy pre-dated the Commercial Courts Act, 2015.

24. On Issue No. 2, the Ld. Trial Court held that the Plaintiff had failed to prove his claim for rent from April 2012 onwards and for electricity dues of Rs. 2,81,910/-, having regard to the absence of any contemporaneous written demand during the lifetime of late Sh. Hari Singh, the improbability of the tenancy having continued for over four years despite chronic default without any step towards recovery or eviction; the absence of any change in the electricity meter reading after June 2012, and the delay of two-and-a-half years in issuance of the Legal Notice, which was issued only after the death of the original landlord.

25. However, holding that the issuance of Cheque Ex.PW1/4 stood admitted, the Ld. Trial Court held that the presumption under Section 139 of the Negotiable Instruments Act, 1881 stood attracted, relying on *Basalingappa v. Mudibasappa*, (2019) 5 SCC 418, and that the Defendant's version of a blank security cheque and prior cash settlement remained uncorroborated, in the absence of any receipt or examination of the witness cited, Sh. Ram Niwas. The Ld. Trial Court also observed that the sum of Rs. 5,80,910/- as claimed by the Plaintiff did not, in fact, tally with the aggregate of the individual heads of claim set out in the plaint, which totalled Rs. 6,06,910/-.

26. *Accordingly, the* ***Ld. Trial Court partly decreed the Suit for recovery of Rs. 1,00,000/- along with simple interest @ 6% per annum from the date of institution of the Suit till realisation, together with costs, and dismissed the claims towards rent and electricity dues***.

27. ***Aggrieved thereby***, **the Defendant has filed the present Regular First Appeal.**

28. ***The grounds of challenge are*** that the *Suit was barred from its inception for misjoinder and non-joinder of parties*, inasmuch as the cheque relied upon by the Plaintiff is that of M/s Rita Plastics Private Limited, a Private Limited Company, and not of any partnership or proprietary concern. It is further contended that late Sh. Hari Singh was well aware that since 1999, that the Defendant was no longer a proprietary concern and ought to have proceeded against the correct legal entity.

29. Reliance is placed upon *Rohit Thapa v. Roghit Dora*, Civil Appeal No.4507/2019, decided on 08.07.2019, for the proposition that the endeavour of a Court must be to decide disputes on merits and not on the defaults of parties, and that litigation ought not to be terminated by default of either the Plaintiff or the Defendant.

30. The documents placed on record evidencing discontinuation of the Defendant's business activities, including the letter dated 22.10.2010 and

Form ER-3 **(Ex.DW1/C)**, were not considered which fortified its defence and demonstrated that no condition precedent existed for institution of the Suit.

31. An application under Order **VII Rule 11 CPC**, seeking dismissal of the Suit for non-joinder and misjoinder of parties, had earlier been filed on behalf of the Defendant and was dismissed on the ground that the documents relied upon were not part of the original plaint, with the contention left open to be urged at trial. It is contended that Issue No.1 in regard to maintainability of the Suit, ought accordingly to have been answered in favour of the Defendant.

32. The Ld. Trial Court has placed undue reliance upon the suggestions put to the witnesses in the course of cross-examination, rather than upon their substantive answers, thereby disregarding the true object of cross-examination.

33. The Ld. Trial Court, while recording at paragraph 18 of the impugned judgment that the evidence *"conclusively establishes the existence of the tenancy relationship between the parties, defendants habitual defaults in payment of rent starting from January 2011"*, is alleged to have overlooked the categorical admission of PW-1 in his cross-examination, that the Rent Agreement had been executed between the Defendant and his late father, and not with him.

34. The finding at paragraph 19 of the impugned judgment, attributing the delay of over two-and-a-half years in issuance of Legal Notice to the Defendant's *"repeated assurances of payment",* is challenged on the ground that no such assurance is supported by any pleading or evidence on record.

35. The finding that the cheque was issued from the account of the Private

Limited Company *"to discharge the liability of Rita Batra only"*, is not borne out by, or discussed with reference to, any material on the record.

36. The Ld. Trial Court is further alleged to have relied upon Order I Rule 10 CPC and *Mumbai International Airport Pvt. Ltd* (supra), without indicating how the said principle applied to the facts of the present case. It is contended that, having itself found that the cheque in question was not that of the Defendant as impleaded in the Suit, the Ld. Trial Court ought not to have proceeded to decree the cheque amount, while simultaneously dismissing the remaining claims for want of proof.

37. The Ld. Trial Court, having accepted the Defendant's contention that the Plaintiff is not the sole owner of the suit property but a joint owner along with his brother, and having recorded that a co-owner is entitled to sue only in respect of his share of the dues, has nevertheless decreed the Suit for the amount claimed, without any finding as to the extent of the Plaintiff's share.

38. The Ld. Trial Court is further alleged to have erred in invoking the presumption under Section 139 of the Negotiable Instruments Act, 1881, as having remained unrebutted, while simultaneously holding that the Plaintiff had failed to prove any liability towards rent from April, 2012 onwards, thereby resulting in mutually inconsistent findings without any reconciling reasoning.

39. It is therefore, submitted that the impugned judgement and Decree be set aside.

Submissions heard and record perused.

40. At the outset, it may be observed that the present appeal assails a limited decree whereby, the Ld. Trial Court has awarded a sum of Rs.1,00,000/- to the Plaintiff along with simple interest @ 6% per annum from the date of institution of the Suit till realization and costs, while the substantive claims towards rent from April 2012 onwards and electricity dues have been declined for want of proof.

41. It is an admitted case that Sh. Hari Singh, father of the plaintiff had inducted M/s. Rita Plastic Industries, the proprietary Firm of Smt. Rita Batra, as a tenant @ Rs. 6,500/- per month, *vide* Rent Agreement Ex. PW1/3. The ***first objection*** taken is that the Suit was bad for misjoinder and non-joinder of parties, as the Suit was instituted against the proprietary concern, M/s Rita Plastic Industries, whereas the cheque in question was issued by the incorporated entity, M/s Rita Plastics Private Limited.

42. Indisputably, the Proprietorship firm of Smt. Rita Batra was converted to the Company. However, the tenant was admittedly the proprietary concern, M/s Rita Plastic Industries, who gave the cheque from the Company account, in discharge of the rent liability. The Cheque may have come from the Company Account, but was given by Smt. Rita Batra, with whom there was a privity of contract. It is well settled that the Indian Contract Act does not recognize doctrine of privity of consideration; therefore, even if Smt. Rita Batra gave the cheque of the Company, in discharge of her liability, it was a valid discharge. This also answers the objection that the Company was not a necessary party, since there was no privity of contract with it.

43. Furthermore, the record reflects an unbroken continuity of management under Smt. Rita Batra and Sh. Ashok Kumar Batra. Significantly, the Memorandum of Association of M/s Rita Plastics Private Limited itself records, amongst its objects, *the taking over of the running business of M/s Rita Plastic Industries together with all its assets and* *liabilities.*

44. The Appellant's own evidence thus, establishes the continuity of the underlying business and tenancy. **DW-1, Sh. Ashok Kumar Batra** admitted during cross-examination, that the cheque **Ex.PW1/4** was issued by the Private Limited Company, in connection with the transaction concerning the suit premises. The Appellant cannot, therefore, be permitted to rely upon the change in the constitution of the business in isolation, while ignoring its own case regarding the continuity of business and tenancy. Nor can it evade liability by interposing a hyper-technical distinction when the substantive transaction and the management at the helm remained identical.

45. The Appellant further argued that the Ld. Trial Court rendered contradictory findings by decreeing the cheque amount, while simultaneously dismissing the claims for arrears of rent and electricity dues. The specific defence raised by the Appellant was that Cheque No. 750626 was issued on 15.07.2012 as a blank security cheque, and that the sum of Rs. 1,00,000/- was subsequently *paid in cash* to late Sh. Hari Singh on 19.08.2012 in the presence of one Sh. Ram Niwas. However, the Appellant utterly failed to corroborate this assertion.

46. This contention is fundamentally misconceived. The Ld. Trial Court correctly noted that the issuance of the cheque for Rs. 1,00,000/- was admitted by the Defendant. The explanation of the defendant was that the amount of Rs. 1,00,000/- had been paid in cash, but has not led any cogent evidence to prove such payment. Rather, his defence establishes that he had a liability to pay this amount, which the defendant has failed to discharge.

47. Once the issuance of the cheque and the signature thereon are admitted, the statutory presumption under Section 139 of the Negotiable

Instruments Act, 1881 comes into play, shifting the burden upon the Defendant to prove that it was not issued for a legally enforceable debt. As established in *Basalingappa v Mudibasappa* (2019) 5 SCC 418, while the standard of proof for rebutting the presumption is that of preponderance of probabilities, a mere bald assertion without evidentiary backing is insufficient.

48. In this regard, the principle laid down by the Supreme Court in Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197 is directly applicable, wherein it was authoritatively held that even if a blank signed cheque is voluntarily handed over to a payee, it does not invalidate the instrument, and the statutory presumption under Section 139 of the Negotiable Instruments Act continues to operate against the drawer. The Apex Court clarified that a person who signs a cheque and makes it over to the payee, remains liable unless cogent evidence is adduced to demonstrate the absence of a debt or liability; merely labelling the instrument as a "*blank security cheque*" cannot absolve the drawer of liability.

49. In the present case, no receipt of the alleged cash payment was placed on record, nor did the Appellant examine any witness to prove the transaction. In the absence of any cogent evidence, the Ld. Trial Court correctly concluded that the statutory presumption remained unrebutted.

50. A plea has also been taken by the Appellant that the Plaintiff, being merely a co-owner of the suit property along with his brother by virtue of the registered Will, could not have maintained the Suit for the entire claimed amount.

51. Firstly, the plaintiff has specifically stated that him and his brother divided the property in question, amongst themselves and the suit property came to his share. Even otherwise, it is a settled principle of law that a co-owner is as much an owner of the entire property as any sole owner.

52. In *Mohinder Prasad Jain vs. Manohar Lal Jain*, (2006) 2 SCC 724, the Apex Court held that a suit filed by a co-owner is perfectly maintainable, and the consent of other co-owners is assumed, unless it is shown that they have actively objected. The Ld. Trial Court correctly noted that there was no objection from the Plaintiff's brother, thus validating the Plaintiff's right to maintain the Suit.

53. The Ld. Trial Court has meticulously appreciated the facts, the evidence led by both PW-1 and DW-1, and the applicable law. The findings do not suffer from any infirmity or illegality that would warrant the interference of this Court.

54. In the light of the aforesaid discussion, it is held that the Appeal is without merit, and is hereby dismissed.

55. The pending Application(s), if any, are accordingly disposed of.

NEENA BANSAL KRISHNA, J.

AUGUST 10, 2026/VA