Case Citation: (2026) ibclaw.in 5718 HC

Order QR

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
30.06.2026	.09.2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A No. 2165 of 2024
in C.S.(COMM.DIV.)No.71 of 2022

Intellect Design Arena Limited,
Represented by its Authorised Signatory,
K.Satish Kumar
Having its registered office at:
'Carex', 244 Anna Salai,
Chennai 600006

..Applicant(s)

Vs

Mindgate Solutions Pvt Ltd.,
Represented by its authorised Signatory,
14th Floor, Damji Shamji Business Galleria,
LBS Marg, Kanjurmarg (West),
Mumbai – 400 078,
Maharashtra, India.

Also at
Smartworks, Kochar Globe,
Plot No.Sp 26,
Thiru-vi-ka-Industrial Estate,
Guindy, Chennai – 600 032.

..Respondent(s)

PRAYER:- Application is filed to pass a summary judgment as prayed for in the plaint.

For Applicant(s): Mr.M.S.Bharath

For Respondent(s): Mr.V.Raghavachari
Senior Counsel
for Mr.Karthik Sundaram

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When these Applications were taken up, an objection as to the maintainability of the present application for summary judgment had been vociferously raised by the learned Senior Counsel appearing for the respondent/ defendant and hence, this Court had directed the respective counsels to primarily address on the issue of maintainability of the application.

2. Heard Mr.M.S.Bharath, learned counsel appearing on behalf of the applicant and Mr.V.Raghavachari, learned Senior Counsel for Mr.Karthik Sundaram, learned counsel appearing on behalf of the respondent.

3. The learned counsel appearing for the applicant/ plaintiff would submit that pending the framing of issues, an Expert Commissioner was appointed who had filed a Report on 12.02.2024. The respondent/ defendant had filed objections to the Expert Commissioner's Report. He would submit that by order dated 02.02.2023, an Expert was appointed by this Court along with an Advocate Commissioner to ensure easy transmission of information between the parties and the Expert Vis-a-vis the Court. A detailed terms of reference was also made. A Report was filed by the learned Advocate Commissioner along with the Report of the Expert Commissioner and was taken on record by this Court on 15.02.2024. Time was granted to the respective parties to peruse the same and file their objections, if any. The respondent/ defendant had filed a

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detailed objections over the Expert Commissioner's Report and had also taken out an application for cross-examination of the Expert Commissioner in A.No.1887 of 2024. Based on the Expert Commissioner's Report, the applicant had also taken out the instant application seeking for a summary judgment. Thereafter, by order dated 06.06.2024, this Court in A.No.1887 of 2024, directed examination of the Expert Commissioner to be recorded by the Additional Master-IV and pursuant to the said order only the Expert Commissioner had been examined and her evidence had been recorded. He would submit that the evidence of the Expert Commissioner was only to aid the Court in coming to a conclusion and that the Expert Commissioner's evidence cannot be an evidence as led by the parties in respect of their claim or defence to the claim. At any stretch an evidence of an Expert is to only aid the Court to come to a just conclusion of the *lis* between the parties and cannot be the sole criteria to decide the *lis* between the parties. The Court may either take up the Expert evidence or reject the same.

4. In that context, he would submit that recording of evidence of an Expert evidence cannot envisage commencement of the trial which begins with the framing of issues. Since, the issues have not been framed, an application for summary judgment as envisaged under Order XIII-A of the Code of Civil Procedure, 1908 as amended by the Commercial Courts Act is maintainable. In that regard, he had relied upon various judgments.

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5. Relying upon the judgment of the Hon'ble Delhi High Court dated 23.05.2018, he would submit that a Commissioner appointed by this Court is an Officer of the Court and that the examination of the Commissioner was neither compulsory nor required and in that regard, he would submit that the examination of the Expert Commissioner in this case cannot be claimed that the trial had begun in a suit for the application to be not maintainable.

6. For the very same ratio, he had relied upon another judgment of the Hon'ble Delhi High Court reported in ***2018 SCC Online Delhi 6421*** and also the judgment of the Hon'ble Delhi High Court made in *TM.No.78 of 2021* dated 11.04.2023. Therefore, he would submit that the present application cannot be dismissed as not being maintainable.

7. Countering his arguments, learned Senior Counsel appearing for the respondent would submit that there is no quarrel as regards to the issue that the Expert witness evidence is not final and binding and it is only merely to assist the Court. Drawing attention to the order of this Court dated 02.02.2023, whereunder, the Expert was appointed, would submit that the Court in the aforesaid order had in fact also recorded that the Expert could be cross-examined by any of the parties and that the Report of the Expert would be subject to scrutiny during trial and final arguments. In that regard, when the Expert was cross-examined by orders of the Court on the application filed by

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the respondent/ defendant, it could only be deemed that the trial in the suit had commenced and in that regard, the application under Order XIII-A, even though filed prior to the recording of evidence by the Advocate Commissioner cannot be maintainable.

8. In that regard, he would draw attention of this Court to Paragraph 38(c)(i) and 39 and submit that the conjoined reading of the above referred paragraphs would indicated that the Expert witness appointment would give a quietus to the *lis* between the parties.

9. The learned Senior Counsel in support of his submission had relied upon the judgment of the Hon'ble Apex Court in (***2009) 9 SCC 709*** pointing out that the Expert is not a witness of fact and his evidence is advisory in character. In that context, he had also relied upon the further judgment of the Hon'ble Apex Court reported in (***2019) 14 SCC 220*** and also ***2025 SCC Online SC 780***. He had further relied upon the judgment of the Hon'ble Apex Court made in Civil Appeal arising out of the SLP(C).No.22100 of 2025 dated 29.04.2026 to contend that firstly under Order XIII-A what is to be ascertained is as to whether the applicant would be having a real prospect of success. The evidence of the Expert witness which had been recorded could only be tested after the final arguments in the trial and a summary judgment cannot be made on the strength of such Expert witness.

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10. Drawing attention of the Expert witness admission in the cross-examination that the technology and platforms used are different, he would submit that the present application which had been filed prior to the cross-examination of the Expert witness would have to be dismissed as there are very many triable issues. According to him, recording the evidence of the Expert witness had been recorded tantamounting to recording of oral evidence in a suit signaling the commencement of the trial

11. In the context he has heavily relied upon the ratio laid down by the Hon'ble Apex Court at paragraph No.59 of the aforesaid judgment.

> *"59. Therefore, while considering an application for summary judgment under Order XIII-A of the CPC, the following non-exhaustive guidelines have to be complied –*
>
> *(i) That the procedural mandate under Order XIII-A, CPC be strictly complied.*
>
> *(ii) The Court should consider,*
>
> *(a) Whether Plaintiff has no real prospect of succeeding on the claim or issue; or*
>
> *(b) Whether the defendant has no real prospect of successfully defending the claim or issue; and*
>
> *(iii) The Court should also consider whether there is no other reason why the case or issue(s) should be allowed to go to trial.*
>
> *(iv) While ascertaining above, the Court does not have to take everything on the face value, but it must also not conduct a mini trial at the same time.*
>
> *(v) That the Court has to differentiate between a cause of*

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action/defence respectively, which is real as opposed to fanciful prospect.

(vi) That the Court ought to grasp the nettle, when dealing with the summary judgment applications to decide short points of law and interpretations.

(vii) The Court must take into account not only the evidence before it but also the evidence that can reasonably be expected to be led/available at the trial.

(viii) That the Court's usage of power under Order XIII-A, CPC is exceptional as it cuts short the process of trial and ought to be exercised where oral evidence and full trial is not required.

(ix) In order to ascertain the need for full trial over summary judgment, the Court has to see whether, in the interest of justice, it is more suited to conduct trial to –

(a) Weigh the evidence,

(b) Evaluate the credibility of a deponents,

(c) Draw reasonable inferences from the evidence."

12. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record before this Court.

13. A primordial objection had been raised by the respondent/ defendant that as the trial had began in a suit by examination of the Expert witness and hence an application under Order XIII-A is not maintainable. According to the respondent/ defendant, even before the issues are framed evidences are recorded

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to aid the trial in the suit. It should be deemed that the trial in the suit had already begun and in that regard, an application for summary judgment could not be entertained.

14. In respect of the judgments relied upon by the respective counsels with regard to the status of an Expert witness there can be no quarrel that the report and evidence of such Expert witness is to only assist the Court in coming to a decision on the *lis* between the parties.

15. Order XIII-A had been inserted by way of amendment to the CPC by the Commercial Courts Act, 2015. This Provision is in consonance with the object and reasonings of the Commercial Courts Act which was primarily for a quick disposal of commercial litigation. A summary judgment could be given at the instance of either the plaintiff or the defendant when it is substantiated that neither of the parties has a real prospect of succeeding the claim and in that regard, the suit could also be disposed of even before recording of oral evidence. This has been envisaged both under Sub-Rule (1) & (3) of the said Provision. This Provision is sought to be heavily relied upon by the respondent/ defendant to contest that when evidence had been recorded in a suit, there is no question of a summary judgment being passed at the behest of either of the parties.

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16. Sub-Rule (2) and the Proviso to it envisages that an application for a summary judgment cannot be made when the Court had framed issues in respect of the suit. Admittedly, the issues have not been framed in the suit.

17. Now the question that looms upon this Court is as to whether the recording of evidence prior to the framing of issues could mean that the trial had began so as not to exercise the power under Order XIII-A. Ordinarily, the trial would mean recreating the events that had earlier occurred through oral and documentary evidences to appraise the Court to come to a just conclusion. It has been generally understood to be examination by the Court of the issues of fact and law for rendering the judgment relating to it. On that principle, a trial in a civil proceedings begins with the framing of issues upon which the parties had to lead in evidence in support of their *lis*.

18. It is true that an Expert witness could be examined during the course of a trial and the question now to be answered is whether recording of evidence of an Expert witness would trigger the commencement of the trial. From the various judgments that had been relied upon by the respective parties it can be of no dispute that evidence of an Expert witness is to assist the Court. It has been categorically held that an Expert witness evidence cannot be a sole criteria for a decision to be arrived at by the Court. An Expert evidence is only in the nature of an opinion of an Expert for the Court to analyse the *lis* between the

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parties for rendering a just decision.

19. Analysing the issue in this regard, the observations made by the Court in its order dated 02.02.2023 can only be read to mean that the evidence of an Expert witness could be analysed during the Trial and final decision to be made by this Court of a *lis* between the parties. Hence, it cannot be said that based upon the observations made by this Court in its order dated 02.02.2023 that the trial had begun in the suit. As held by the Hon'ble Apex Court in the Civil Appeal arising out of the SLP(C).No.22100 of 2025, trial in civil proceedings only commences from the date when the issues were framed and the parties would have to lead in oral and documentary evidences in support of the events that happened earlier for the Court to come to a just conclusion. Hence, the term '*oral evidence*' occurring in sub-Rule (1) & (3) cannot mean an oral evidence that had been recorded before framing of issues as envisaged under Sub-Rule 2 Proviso to hold that when an evidence had been recorded in a suit, an application under Order XIII-A cannot be maintainable. If that interpretation is extended then it would also impinge upon a right on the party to file an application in a summary judgment where *de bene esse* evidence is recorded to prevent loss of evidence on a particular facts of the case.

20. In such view of the matter, this Court finds no merits in the arguments made by the respondents and this Court is of the clear view that an application

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under Order XIII-A would be maintainable in the present facts of the case.

30-06-2026
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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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K.KUMARESH BABU, J.

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A Pre-delivery order made in
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.09.2026
(1/2)

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