2026:DHC:9301

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

% ***Judgment pronounced on: 16.10.2026***

\# **CNR No. DLHC010153752003**

\+ **CS(OS) 666/2003**

ARUN KUMAR JAIN & ANR. .....Plaintiffs

Through: Mr. Ankit Jain, Sr. Adv. alongwith Mr. S.P. Mehta, Advocates.

versus

RAGHUBIR SARAN CHARITABLE TRUST & ORS.....Defendants

Through: Ms. Maneesha Dhir, Sr. Adv. alongwith Ms. Varsha Banerjee and Mr. Shubham Gupta, Advocates.

\# **CNR No. DLHC013708962018**

\+ **CS(OS) 574/2018**

SHRI RAGHBIR
SARAN CHARITABLE TRUST & ORS. .....Plaintiffs

Through: Ms. Maneesha Dhir, Sr. Adv. alongwith Ms. Varsha Banerjee and Mr. Shubham Gupta, Advocates.

versus

SHRI ARUN KUMAR JAIN & ANR. .....Defendants

Through: Mr. Ankit Jain, Sr. Adv. alongwith Mr. S.P. Mehta, Advocates.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

IA No. 10647/2026 – *(seeking to place on record certified copies of orders in Suit No. 1013/2008)* in CS (OS) 574/2018

1. This is an application filed on behalf of the defendants seeking to

place on record the certified copies of the orders passed in Suit No. 1013/2008 from 07.03.2011 to 28.05.2018 and the application under Section 151 CPC filed by the plaintiff dated 05.03.2016 before the learned Trial Court.

2. Considering the averments made in the application, the same is allowed. Let the certified copies of the orders in Suit No. 1013/2008 from 07.03.2011 to 28.05.2018 and the application under Section 151 CPC filed by the plaintiff dated 05.03.2016 before the learned Trial Court, be taken on record.

3. Application stands disposed of.

IA No. 16434/2025 – *(On behalf of plaintiff no.1, seeking a summary judgment under Order XIII-A CPC)* in CS (OS) 574/2018

4. The present application has been filed under Order XIII-A read with Section 151 CPC by the plaintiff no.1, Shri Raghubir Saran Charitable Trust, seeking a summary judgment, i.e. a decree for possession and mesne profits in its favour and against the defendants in respect of the suit premises (property bearing no. E-9, Inner Circle, Connaught Place, New Delhi, comprising the basement, ground floor and mezzanine floor, admeasuring approximately 3,780 sq. ft.). For convenience, plaintiff no.1, Shri Raghubir Saran Charitable Trust, is hereinafter also referred to as 'the Trust'. Plaintiff no.2, Shri Harsh Kumar Agarwal, and plaintiff no.3, Mrs. Kiran Agarwal, are its trustees. Defendant no.1 is Shri Arun Kumar Jain and defendant no.2 is Shri Tarun Kumar Jain. The application is supported by an affidavit of Shri O.P. Bhandula, who claims to be the Secretary of the Trust.

FACTUAL AND PROCEDURAL BACKGROUND

5. The suit premises are stated to have been let out by the Trust in the year 1954 at an initial monthly rent of Rs.585.50. It is submitted that the rent was subsequently enhanced and by the year 2000, stood at Rs.3,660.25/- per month. Since the rent exceeded Rs.3,500/- per month, the tenancy ceased to enjoy the protection of the Delhi Rent Control Act, 1958, and the Trust was at liberty to determine the tenancy under the Transfer of Property Act, 1882.

6. By a communication dated 07.06.2000, the plaintiff no.1/Trust sought to terminate what it characterised as a month to month tenancy and thereafter instituted the present suit for possession and *mesne* profits. The suit was initially instituted in this Court on 31.07.2000 and registered as CS(OS) 1691/2000. On a change in pecuniary jurisdiction, the suit was transferred to the District Court by order dated 04.11.2003, where it came to be numbered as Suit No. 1013/2008 and, later, as Suit No. 663/2014. The defendants contested the said suit. Paragraph 2 of the 'preliminary objections' in the written statement avers as under:

> *"2. That before filing of the present suit in August 2000 for possession and mesne profits, the Plaintiff had made an agreement to sell the property in suit to the Defendants for a consideration of Rs. 45 lacs and had also accepted an amount of Rs.5 lacs vide cheque no. 615480 dated 8.5.2000 drawn on city bank by way of earnest money. The cheque was uncashed [sic] on 10.05.2000. In May, 2001 the plaintiff further desired to have Rs. 20 lacs in cash. The Defendant withdrew Rs. 20 lacs from the bank on 12.5.2001 and gave another sum of Rs. 10 lacs in cash to the Plaintiff by way of part payment. The Defendants kept back the remaining amount of Rs. 10 lacs as the Plaintiff had not completed the necessary documents. Because of the aforesaid events the suit of the Plaintiff is misconceived and is liable to be dismissed as such."*

7. It is also the case of the defendant/s that a letter dated 04.05.2000 was received by them from M/s Bagolia Associates Pvt. Ltd., the brokers allegedly engaged by the plaintiff no.1/Trust, recording that at a joint meeting held on that date, the Trustee, Mr. Harsh Kumar Agarwal (plaintiff no.2 herein), had agreed to sell the property. A further letter dated 14.05.2001 was sent by the same brokers to defendant no.2, stating as under:

> *"This has reference to our joint meeting on 12th May, 2001 with Mr. Harsh Aggarwal, Shri Raghubir Saran charitable Trust, at 42, Janpath, New Delhi. As Mr. Harsh Aggarwal had to proceed urgently for medical treatment it was agreed that the formalities for sale of the above property in your favour and / or in favour of your nominee would be completed as soon as he returns from abroad after medical treatment by 31st December, 2001. The Balance consideration of Rs. 40 lacs will have to be paid by you through demand draft/pay order in favour of the trust at the time of registration of sale deed. You will be given one week notice upon arrival of Mr. Harsh Aggarwal to make the payment and complete the formalities as required."*

8. It is averred in the written statement that the notice dated 07.06.2000, terminating the lease, stood waived, the Trust having agreed to sell the premises for Rs.45,00,000/-, out of which Rs.15,00,000/- had already been paid, namely, Rs.5,00,000/- by cheque no. 615480 dated 08.05.2000 drawn on Citi Bank (encashed on 10.05.2000) and a further sum of Rs.10,00,000/- in cash in May 2001. In its replication, the Trust did not dispute the receipt of the cheque of Rs.5,00,000/-, but explained the same as an amount tendered by way of deposit in the course of negotiations for an enhancement of rent commensurate with the prevailing market rent, which, according to the Trust, was in excess of Rs.5,00,000/- per month. The relevant averments in the replication are as under:

> *"2….It is worth taking note of the fact that the suit property is an area admeasuring 3780 sq. ft. situated on the ground floor in the most*

prime commercial location in New Delhi i.e. Connaught Place, New Delhi and the defendants are running a premium showroom under the name and style of M/s Jain Sons in the suit property. The market value of the suit property even in May 2000 was not less than Rs.5 Crores, therefore, how it can even be presumed that it could be agreed to be sold for a consideration of Rs.45 Lacs as falsely projected by defendants. It is further important to take note of the fact that the defendants have not filed any Agreement to sell between the parties as alleged or otherwise before this Hon'ble Court, which itself entirely demolishes the false and fabricated stand of the defendants.

True and correct facts have been stated in the plaint. However, in so far as the payment of Rs.5 lacs vide cheque No.615480 dated 8.5.2000 by the defendants to the plaintiff is concerned, receipt of the said cheque is not denied. The true and correct facts relating to payment of said amount of Rs.5 Lacs are that ever since the rent of the suit property had crossed the figure of Rs.3,500/- per month, the plaintiff had been telling the defendants that since the tenancy of the suit property was no longer covered under the Delhi Rent Control Act, therefore, the plaintiff was fully entitled to terminate the monthly tenancy of the defendants and recover the possession thereof under the transfer of property Act. The defendants were also quite conscious of this legal position that their monthly tenancy was no longer protected under the Delhi Rent Control Act and the plaintiff can recover vacant possession of the suit property. Keeping these facts in mind the defendants themselves assured the plaintiff that they would negotiate with the plaintiff to increase the rent of the suit property commensurate to the market rental, which is more then [sic] Rs.5 Lacs per month as market rental of the similar properties in Connaught Place is not less than Rs.150/- per sq ft per month and in order to show their bonafide regarding increasing rent of the suit property to the market rent, the defendants gave a sum of Rs.5 lacs vide cheque No.615480 dated 08.05.2000 to the plaintiff and requested the plaintiff to keep the said amount in deposit till the actual amount of market rent of suit property is negotiated and finalized between the parties. However after making deposit of the said amount of Rs.5 Lacs the defendants did not come forward to negotiate the market rent of the suit property despite repeated oral requests on behalf of the plaintiff to the defendants. Consequently, the plaintiff was left with no other option except to exercise its legal rights under the Transfer of Properties Act and by way a legal notice dated 07.06.2000, the plaintiff terminated the monthly tenancy of the defendants and called upon the defendants to vacate the suit premises and hand over its peaceful physical possession to the plaintiff on expiry of the notice period. Thus the concocted and fabricated story

created by the defendants regarding alleged Agreement to sell between the parties is absolutely false, bogus and baseless and without any merits whatsoever. The plaintiff has always been ready and willing to refund the said amount of Rs.5 Lacs to the defendants which was kept by the defendants as a deposit with the plaintiff as stated above. However, since the defendants themselves are now liable to pay damages and mesne profits relating to the suit property which are much more than Rs.5 Lacs, accordingly, the said amount of Rs.5 Lacs of the defendants would be adjusted towards the damages/ mesne profits subject to orders of this Hon'ble Court. The allegations of the defendants that the plaintiff had received a cash payment of Rs.10 Lacs is absolutely baseless, false and emphatically denied, no such payment was ever received by the plaintiff."

9. It has been submitted by the plaintiff no.1/Trust, in their written synopsis, that the Trust filed an application under Order XII Rule 6, CPC whereupon the learned Additional District Judge passed a decree for possession on 11.05.2004. However, the record, as borne out by the Division Bench of this Court in RFA No. 299/2004 *vide* judgement dated 21.09.2007 (in the appeal preferred by the defendants), does not bear this out. The said decree was set aside by the Division Bench and the suit was remanded for *de novo* consideration, with liberty to the Trust to file a fresh application under Order XII Rule 6, CPC. It may be noticed that the Division Bench recorded that no application under Order XII Rule 6 CPC was in fact on the record of the Trial Court at the time the said decree came to be passed. The Division Bench noticed that the decree had been passed purportedly upon an application under Order VIII Rule 10 read with Order XII Rule 6 CPC, and that the learned Additional District Judge had neither any such application before her nor had she exercised *suo motu* jurisdiction.

10. During the pendency of the said appeal, the Trust challenged an interim order dated 28.05.2004 passed in the aforementioned RFA No. 299/2004, by way of SLP (C) Nos. 15363-15364/2004. The said petitions

were dismissed by the Supreme Court on 16.11.2004. The said order reads as under:

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SLP(C)No. 15363-15364 OF 2004
ITEM No.57 Court No. 2 SECTION XIV
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.15363-15364/2004

(From the judgement and order dated 28/05/2004 in RFA 299/04 and C.M. 7204/2004 of The HIGH COURT OF DELHI AT N. DELHI)

RAGHUBIR SARAN CHARIATABLE TRUST & ANR. Petitioner (s)

VERSUS

ARUN KUMAR JAIN & ORS. Respondent (s)

(With prayer for interim relief)

Date : 16/11/2004 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE S.B. SINHA

For Petitioner (s)Mr. A.M. Singvi, Sr.Adv.
Mr. Nidhesh Gupta, Adv.
Mr. Simran Mehta, Adv.
Ms. Indra Sawhney,Adv.

For Respondent (s)Mr. Mukul Rohtagi, Sr.Adv.
Mr. Swaraj Kaushal, Sr.Adv.
Mr. R.C. Kaushik, Adv.
Mr. Dinesh Kumar Garg,Adv.
Mr. B.S. Bilowria, Adv.
Mr. Rohit Pandey, Adv.
Mr. D.K. Gupta, Adv.

UPON hearing counsel the Court made the following O R D E R

Heard learned counsel for the parties.
The impugned order being an interlocutory order we are not inclined to interfere with the same . However, taking into consideration the facts of this case we think it appropriate to reques t the High Court to dispose of the matter at the earliest possible not later than six months f rom today. The special leave petitions are dismissed.

(PAWAN KUMAR) (PREM PRAKASH)
COURT MASTER COURT MASTER

11. Pursuant to the liberty granted by the Division Bench in RFA No. 299/2004, the Trust filed a fresh application under Order XII Rule 6, CPC

on 25.01.2008, once again praying for a decree of possession. The said application was dismissed by the learned Additional District Judge (Central-03), Delhi, by order dated 30.03.2012, on the ground that the respondents had raised triable issues (in particular, the alleged agreement to sell) which required examination by evidence, whereupon the suit was directed to be listed for framing of issues on 17.05.2012. The relevant portion of the said order reads as under:

appeal with the following observations:

> **"For the reasons, we think that the appropriate order that should be passed is only to set aside the impugned judgment and decree and remit the matter back to the Trial court for proceeding further in the matter in accordance with law. Of course, the Ld. Trial Judge will proceed from where the matter got diverted into unchartered territory. We also make it clear that our decision will not preclude the respondents from moving an application Order XII Rule 6 of the CPC or any other application that they may choose to nor will it preclude the Ld. Additional District Judge from taking up the matter for passing a judgment on admissions should it feel inclined to do so and should the parameters of law permit such a course of action to be taken."**

The counsel for the plaintiff has relied upon the following three aspects which he submits are *Sine qua non* for passing a decree on admissions against the defendant:

a) The existence of relationship of landlord and tenant between the parties.

b) The existence of month to month tenancy between the parties

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c) The rate of rent being in excess of Rs. 3500/- per month.

d) The receipt of notice terminating the lease and requiring the lessee to handover the possession of the premises.

Counsel for plaintiff has argued that all these ingredients are totally fulfilled in the present case, as in the Written Statement the defendant has neither denied the relationship of landlord and tenant between the parties, nor rate of rent has been disputed to be Rs. 3660.25/-, nor receipt of legal demand notice dated 07.06.00 has been disputed, nor it has been disputed in the absence of lease agreement the tenancy was on month to month basis terminable U/s 106 of Transfer of Property Act by 15 days notice ending with the tenancy month.

No doubt the defendants had admitted all the aforesaid ingredients in their Written Statement, however at the same time in para 2 of the Written Statement in preliminary objections the defendants have stated that the plaintiff had entered into an agreement to sell with respect to the suit property with the defendants for consideration of Rs. 45 lacs and had also accepted an amount of Rs. 5 lacs vide cheque No. 615480 dated 08.05.00, drawn on Citi Bank by way of earnest

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money. The said cheque was duly encashed on 10.05.00. In May, 2001, the plaintiff further desired to have Rs. 20 lacs in cash, the defendants withdrew Rs. 20 lacs from the bank on 12.05.2001 and gave another sum of Rs. 10 lacs in cash to the plaintiff by way of part payment and kept back the remaining amount of Rs. 10 lacs as the plaintiff had not completed the necessary documents. It is further stated that even the agreement was drafted on 11.05.2001 and the defendants received the letter dated 04.05.00 from M/s Bagolia Associates Pvt. Ltd., the brokers engaged by the plaintiff, intimating that in the joint meeting held on 04.05.2000, Mr. Harsh Aggarwal, trustee had agreed to sell the property and similarly the aforesaid M/s Bhagolia Associates Pvt. Ltd., had addressed another letter dated 14.05.01 to defendant No. 2 with regard to the same matter. In these circumstances, it is stated that the notice dated 07.06.00 stood waived on Sh. Harsh Aggarwal having agreed to sell the property for a consideration of Rs. 45 lacs, out of which Rs. 15 lacs had been paid to him.

In the replication, the plaintiff has not denied the receipt of Rs. 5 lacs vide cheque No. 615480 dated 08.05.2000 by the defendants, but it is stated that infact the true facts are that ever since the rent of the tenanted premises had crossed the figure of Rs. 3500/- per month, the plaintiff had been telling

the defendants that since the tenancy of the suit property was no longer covered under the Delhi Rent Control Act, therefore the plaintiff was fully entitled to terminate the monthly tenancy of the defendants and recover the possession thereof under the Transfer of Property Act, the defendants were also quite conscious of this legal proposition that their monthly tenancy was no longer protected under Delhi Rent Control Act and the plaintiff could recover the vacant possession of the premises at any time, keeping these facts in mind that they would negotiate with the plaintiff to increase the rent of the suit premises commensurate with the market rent which was more than Rs. 5 lacs per month at that time for similarly situated properties in cannaught place and in order to show their bonafides regarding the increase of rent the defendants gave a cheque of Rs. 5 lacs and requested the plaintiff to keep the said amount in deposit till the actual amount of market rent of the suit property is negotiated and finalized between the parties.

This plea of the defendant in the replication regarding the receipt of an amount of Rs. 5 lacs towards the increased rent of the premises does not appeal to reason, as it is next to impossible that any tenant would agree to such a astronomical increase in the rent of the premises from 3660.50 to Rs. 5 lacs per month at one go, which is almost around 150

times the existing rent of the premises. Counsel for defendant has also relied upon one letter dated 04.05.2000, written by one M/s Bagolia Associates Pvt. Ltd., Real Estate Agents to one of the defendants which reads as under:

> **"This has in reference of our joint meeting with Mr. Harsh Aggarwal, trustee Sh. Raghubir Saran Charitable Trust at 42, Janpath, New Delhi today. In the joint meeting the trust has agreed to sale and you and/or your nominee has agreed to purchase the above said property on ownership basis from the trust. You have handed over a cheque of Rs. 5 lacs against the same to the trust. The entire agreed consideration has to be paid at the time of execution of the sale deed. Our brokerage would be Rs. 5 lacs(Rupees Five Lacs only) as agreed."**

There is another letter dated 14.05.01 from the same Real Estate Agent which reads as under:

> **"This has reference to our joint meeting on 12th May, 2001 with Mr. Harsh Aggarwal Trustee Sh. Raghubir Saran Charitable Trust, at 42, Janpath, New Delhi-110001. As Mr. Harsh Aggarwal had to proceed urgently for medical treatment it was agreed that the formalities for sale of the above property in your favour**

> **and/or in favour of your nominee would be completed as soon as he returns from abroad after medical treatment latest by 31st December, 2001. The balance consideration of Rs. 40 lacs will have to be paid you through demand draft/pay order in favour of the trust at the time of registration of sale deed. You will be given one week notice upon arrival of Mr. Harsh Aggarwal to make the payment and complete the formalities as required."**

These documents coupled with the fact that the plaintiff has admitted the receipt of Rs. 5 lacs by way of cheque from the defendant on 08.05.00 give rise to a triable issue whether the plaintiff had entered into an agreement to sell with the defendants with regard to the sale of the tenanted premises and whether after the payment of said alleged amount of Rs. 5 lacs and thereafter further alleged amount of Rs. 10 lacs in cash the relationship of landlord and tenant between the parties came to an end and whether in view of these events the notice dated 07.06.00 stood waived. Admittedly the defendants have already filed a suit for specific performance of the contract which is pending in the Hon'ble High Court bearing suit No. 666/03, therefore number of triable issues have been raised by the defendants, which cannot be decided without leading of

evidence and trial and if the defendants succeed in proving such issues the same will disentitle the plaintiff to obtain a decree of possession in the present case and in these circumstances it cannot be said that the plaintiff has been able to make out a case on the basis of admissions for the purposes of Order 12 Rule 6 CPC, that is to say that it cannot be said that in the present case there are clear cut unequivocal and unambiguous admissions made by the defendants which warrants passing of decree of possession against the defendants.

The aforesaid issues which have been raised by the defendant as stated above cannot be decided without leading of evidence and trial. If the plea of the plaintiff is allowed as propounded by Ld. counsel for plaintiff the same would amount to depriving the defendants of a fair chance to put their case on the aforesaid triable issues on the basis of above aspects and the same would seriously prejudice the rights of the defendants.

In these circumstances, the application U/o 12 Rule 6 CPC is not maintainable. Same is dismissed.

Since the Admission/denial has already been done, now to come up on 17.05.12 for framing of issues.

ANNOUNCED IN THE OPEN COURT ON 30.03.2012

(Sanjeev Aggarwal)
ADJ(Central-03)
Delhi/30.03.2012

12. In the said order, on the Trust's explanation for the Rs.5,00,000/- payment, the learned Additional District Judge categorically observed that

the plea does not appeal to reason *"as it is next to impossible that any tenant would agree to such an astronomical increase in the rent of the premises from 3660.50 to Rs. 5 lacs per month at one go, which is almost around 150 times the existing rent of the premises"*.

13. The Trust assailed the said order by way of a petition under Article 227 of the Constitution, being C.M.(M) No. 514/2012, which was dismissed by this Court (M.L. Mehta, J.) by judgment dated 27.09.2012, holding that there was no infirmity or illegality in the impugned order and that the respondents were entitled to an opportunity to prove their case. The relevant observations in the said order are as under:

> 8. The Ld. ADJ dismissed the application, and rightly so, on the ground that the respondents have raised triable issue. It is true that, in the written statement filed by the respondents, there has been an unambiguous and unequivocal admission of the relationship of landlord tenant, the rent being in excess of Rs. 3500/- and receipt of the notice of termination of tenancy. Be that as it may, the respondents have raised the issue that there was an agreement to sell the suit premises between the petitioner and the respondents. It is important that the written statement should be read as a whole. In ***"Syed Dastagir vs. T.R Gopalakrishnasetty, AIR1999SC3029"***, the Hon'ble Supreme Court has held that:-
>
> > *"9……. In construing a plea in any pleading, Courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression*

may be pointed, precise, sometimes vague but still could be gathered what he wants to convey through only by reading the whole pleading, depends on the person drafting a plea. In India most of the pleas are drafted by counsels hence aforesaid difference of pleas which inevitably differ from one to other. Thus, to gather true spirit behind a plea it should be read as a whole."

9. Further, the power of the court under Order 12 Rule 6 is discretionary. The provisions of Order 12 Rule 6 (1) amended by the 54th Law Commission Report reads as follows:-

"6. Judgment on admissions: - (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions."

Prior to the amendment the Rule read as under:-

"6. Judgment on admissions: - Any party may, at any stage of a suit, where admissions of facts have been made, either on pleadings or otherwise, apply to the Court for such judgment or order as upon such admission he may be entitled to, without waiting for the determination of any other question between the parties and the Court may upon such application make such order or give such judgment, as the Court may think just."

The Supreme Court in the case of ***"Karam Kapahi and Ors Vs Lal Chand Public Charitable Trust and Anr, (2010)4SCC753"*** explained the reason for this amendment stating that:-

> *"48. In the 54th Law Commission Report, an amendment was suggested to enable the Court to give a judgment not only on the application of a party but on its own motion. It is thus clear that the amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering judges to use it 'ex debito justitial', a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the Court always retains its discretion in the matter of pronouncing judgment."*

Thus, it is clear that the Court can exercise its discretion while deciding an application under Order 12 Rule 6. It is not mandatory for the court to pass a judgment against a party based on the alleged admissions.

10. In light of the above discussion, it is clear that the respondents should be given an opportunity to prove their case, since they have raised a triable issue. I do not see any infirmity or illegality in the impugned order. The petition is hereby dismissed.

14. Thereafter, the Trust preferred SLP (C) No. 5311/2013 against the above judgment and order dated 27.09.2012 passed by this Court in C.M.(M) No. 514/2012, and the same was dismissed by the Supreme Court on 16.12.2013. The order of the Supreme Court reads as under:

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).5311/2013

(From the judgement and order dated 27/09/2012 in CM No.514/2012 of The HIGH COURT OF DELHI AT N. DELHI)

RAGHUBIR SARAN CHARITABLE TRUST Petitioner(s)

VERSUS

ARUN KUMAR JAIN & ANR. Respondent(s)

(With prayer for interim relief and office report)

Date: 16/12/2013 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD
HON'BLE MR. JUSTICE KURIAN JOSEPH

For Petitioner(s) Ms. Indra Sawhney,Adv.
Mr. Simran Mehta, Adv.

For Respondent(s) Mr. Ranjit Kumar, Sr. Adv.
Mr. Pramod Dayal,Adv.
Mr. Nikunj Dayal, Adv.
Ms. Payal Dayal, Adv.
Mr. S.P. Mehta, Adv.

UPON hearing counsel the Court made the following
O R D E R

The special leave petition is dismissed.

15. Thereafter, on 30.04.2014, the learned Additional District Judge, Central-14, Tis Hazari Courts, Delhi framed the following issues on the basis of the pleadings in Suit No. 663/2014, which read as under:

(1) Whether suit of the plaintiff is misconceived in view of the plaintiff entering into an agreement to sell with the defendant as pleaded in para No 2 of the preliminary objection to the written statement, if so, its effect ? OPD

(2) Whether the notice terminating the tenancy stood vacated on the plaintiff accepting earnest money towards sale of the property by entering into agreement to sell of the property in suit, if so, its effect ? OPD

(3) Whether plaintiff is entitled to possession of the property in suit ? OPP

(4) Whether plaintiff is entitled to mesne profits, if so, at what rate and for which period ? OPP

(5) Relief.

16. By order dated 16.09.2014, the learned Additional District Judge recorded that the affidavits of evidence of the Trust were not ready despite five months' time having been granted, imposed costs of Rs.3,000/- upon the Trust, and directed that if the entire evidence was not led on the next date the evidence of the Trust shall be deemed to be closed. The suit was thereafter adjourned *sine die* with liberty granted to the Trust to seek revival as and when it is in a position to pursue the same.

17. After the suit was adjourned *sine die*, the Trust applied for its revival by an application under Section 151 CPC dated 05.03.2016, and the suit was revived by order dated 30.07.2016 subject to payment of costs of Rs.5,000/-. Crucially, in the said application seeking revival of the suit, it was averred as under:

2. Issues in the suit were framed on 30.04.2014.

11.Issues were accordingly framed thereafter by this Hon'ble Court on 30.04.2014, in the presence of proxy counsel, with the matter being adjourned to 16.09.2014.

18. It bears emphasis that the said application was affirmed by Shri O.P. Bhandula, the very deponent who has affirmed the affidavit in support of the present application, and that it stated in terms that 'Issues in the suit were

framed on 30.04.2014', that the issues were so framed 'in the presence of proxy counsel', and that 'the matter is at pre-trial stage'.

19. It is also relevant to notice that, whilst both suits were pending before the District Courts, they came to be consolidated by an order dated 07.10.2016.

20. On the application of the Trust for amendment under Order VI Rule 17 read with Section 151 CPC, enhancing the valuation of the relief of possession to Rs.2,40,00,000/- and the valuation of the suit as a whole to Rs.2,45,67,000/-, the plaint was, *vide* order dated 28.05.2018 passed by the learned Additional District Judge-05, New Delhi District, Patiala House Courts, New Delhi, returned for presentation before the Court of competent pecuniary jurisdiction. The said order, *inter alia*, directs as under:

> 8. In these circumstances and for the abovesaid reasons, the application under Order VI Rule 17 CPC r/w S.151 CPC filed on behalf of the plaintiff is allowed. After the amendment, the plaintiff has valued the suit for the purpose of court fee and jurisdiction at Rs.2,40,000.00/- which is beyond the pecuniary jurisdiction of this Court. Though not referred to or relied upon, in judgment – Vogel Media International vs. Jasu Shah, 115 (2004) DLT 679, it has been held that after the amendment is allowed, the plaint is to be returned to the plaintiff for its representation before the court of competent jurisdiction and such a suit will be tried *de novo* in accordance with the provisions of CPC. Hence, the plaint be returned to the plaintiff to represent it to the court in which the suit should have been instituted.
>
> The application stands disposed of.

21. It is relevant to notice that the learned Additional District Judge, while returning the plaint, placed reliance upon the judgment of this Court in ***Vogel Media International GmbH v. Jasu Shah***, 115 (2004) DLT 679, and observed that upon such return the plaint is to be represented before the Court of competent jurisdiction and "such a suit will be tried *de novo* in accordance with the provisions of CPC". It bears notice that the said judgment was invoked *suo motu*, the learned Additional District Judge having recorded that it was not referred to or relied upon by either side. The consequences which the plaintiff no.1 seeks to draw from the aforesaid direction are considered hereinafter.

22. Consequent upon the said return, the plaint was re-presented before this Court and came to be registered as CS(OS) 574/2018. Fresh summons were issued on 14.11.2018 and the suit thereafter passed afresh through the stages of pleadings, culminating in the order dated 21.05.2019 of the learned Joint Registrar (Judicial) recording that the pleadings in the suit were complete. These proceedings are adverted to in greater detail in paragraphs 54 to 57 hereinafter.

23. In the meanwhile, on the transfer petition filed by the Trust being TR.P.(C.) No. 225/2018, CS(OS) 666/2003 (which had by then stood transferred to the District Court and been renumbered as CS No. 57679/2016) was also brought to this Court *vide* order dated 03.12.2018 passed by this Court, whereby it was further directed that CS(OS) 574/2018 shall be treated as the lead suit. The two suits have been listed together since then.

24. On 03.09.2019, this Court (presided over by Hon'ble Mr. Justice V. Kameswar Rao) in the presence of counsel for the respective parties

recorded as under:

> Issues have been framed in both the suites on February 04, 2010 and April 13, 2014 respectively. No further developments have taken place in both the suits. Appropriate shall be for the plaintiffs in CS(OS) 574/2018 to file evidence by way of an affidavit within four weeks.
>
> Learned counsel for the parties states that Local Commissioner be appointed for recording of the evidence. Noting the said submission, Ms. Kanwal Inder, (Retd.) District Judge is appointed as Local Commissioner for recording of evidence. The Local Commissioner shall be paid an amount of Rs.50,000/- to be shared equally by both the parties herein. Any out of pocket expenses shall be paid as per actuals by both the parties.
>
> The Local Commissioner shall intimate the date for recording of evidence to counsel for the parties which date shall be after four weeks as in the meantime the plaintiff in CS(OS) 574/2018 shall file evidence by way of an affidavit. The communication shall be made on the following mobile Nos.9997679116 and 9811242656.
>
> After the evidence of the plaintiffs is complete, the Local Commissioner shall place the matter before Court.

25. The said order dated 03.09.2019 was not challenged and has attained finality.

26. The Trust, however, neither filed its affidavit of evidence nor paid its share of the Local Commissioner's fee. On account of the said default, and upon the erstwhile counsel for the Trust ceasing to appear without seeking a discharge, notice was issued by this Court on 11.11.2024 to the Trust as well as to its counsel. On 27.02.2025, fresh counsel for the Trust entered appearance and was granted liberty in the following terms:

> *"Counsel for the trust seeks to place on record, an appropriate application for a summary judgment to be passed against the*

defendant, Arun Kumar Jain, based on documents. She is at liberty to do so. The same will be considered as and when it is placed on record."

The present application was filed thereafter.

27. In the meantime, CS(OS) 666/2003 was dismissed for non-prosecution on 15.07.2025 and was restored to its original number *vide* order dated 17.10.2025, subject to payment of costs of Rs.25,000/-. The said order reads as under:

I.A.24104/2025 (Delay) in CS(OS) 666/2003

1. This application has been filed by the plaintiffs for condoning the delay of 33 days in filing the application under Order IX Rule 9 of the Code of Civil Procedure, 1908 (CPC).

2. The reasons recorded in the application are that inadvertently the dates of hearing of the suit on 27.02.2025 and 15.07.2025 was not properly noted which has caused the delay in filing the said application.

3. For the reasons stated in the application, the same stands allowed.

I.A.24103/2025 (u/O IX R 9 CPC) in CS(OS) 666/2003

4. Mr. Ankit Jain, learned senior counsel appearing for the plaintiffs submits that the dates of 27.02.2025 and 15.07.2025, inadvertently, were skipped by the advocate on record as he had noted some incorrect dates. He has brought on record the diary of the concerned advocate to explain that the non-appearance on 27.02.2025 and 15.07.2025 was *bona fide and* not deliberate. He also explained that the date of 10.07.2025 was fixed before the Joint Registrar and none of the parties appeared before the learned Joint Registrar.

5. *Per contra*, Ms. Varsha Banerjee, learned counsel appearing for the defendants opposes the application and draws the attention of the Court to the decision of the Supreme Court in the case of ***Basawaraj v. Special Land Acquisition Officer***[1]. She contends that though the condonation of delay application has to be considered liberally, however, the party must establish sufficient cause. She submits that under the facts of the present case, the applicant has been unable to establish sufficient cause as the applicant is also deliberately delaying the proceedings of the civil suit which has been

filed by the defendants herein. She explains that civil suit bearing no. CS(OS) 574/2018 is also pending at the instance of the defendants. She also submits that the applicants herein are enjoying the *status quo* order passed in the CS(OS) 574/2018 and are prolonging the disposal of both the civil suits.

6. I have heard learned counsel appearing for the parties and have perused the record.

7. At this stage, the Court only needs to consider as to whether the absence of the plaintiffs/applicants on 27.02.2025 and 15.07.2025, when the suit was called out for hearing, was *bona fide* or otherwise. All other aspects will have to be looked into as and when the main matter is taken up for consideration.

8. On perusal of the pleadings made in the application which is supported by way of affidavit and also on perusal of the case diary maintained by learned counsel who had been appearing for the plaintiff, the Court is satisfied that sufficient cause has been established. It be also noted that the plaintiffs were diligently pursuing the civil suit and were regularly appearing in all earlier dates. This would further establish plaintiffs' *bona fide*.

9. Accordingly, I.A.24103/2025 is allowed.

10. The civil suit bearing no. CS(OS) 666/2003 is restored to its original number. However, restoration shall be subject to the payment of costs of ₹25,000/- to the other-side. The same shall be paid within a period of four weeks from today.

28. On 12.02.2026, the following order was passed, whereby this Court itself posed a query as to whether an application under Order XIII-A CPC is maintainable in a suit which is not a commercial suit:

1. Ms. Maneesha Dhir, learned counsel appearing on behalf of plaintiff/applicant on a specific query posed by the Court as to whether the application under Order XIIIA CPC is maintainable in the present suit inasmuch as it is not a commercial suit, she submits that she will address the Court on that aspect on the next date of hearing.

2. Mr. Ankit Jain, learned senior counsel appearing on behalf of the non-

applicant invites attention of the Court to the order dated 03.09.2019 to contend that the application under Order XIIIA CPC is not maintainable even for the reason that issues have already been framed in the present matter.

3. He submits that in the order dated 03.09.2019 it has been specifically recorded that issues have been framed in both the suits on 04.02.2010 and 13.04.2014. However, he fairly concedes that the order dated 13.04.2014 which pertains to the present suit is not on record for the reason that the matter was transferred to the District Court on account of change in pecuniary jurisdiction where the issues were framed and the entire record of the District Court has not come back to this Court. He undertakes to place the relevant orders on record.

4. On the other hand Ms. Dhir contends that the issues were never framed in the present matter, therefore, the application under Order XIIIA is maintainable.

5. Referring to the order dated 04.02.2010 in connected suit i.e. CS (OS) 666/2003, she contends that *vide* said order the issues were framed only in the said suit and not in the present suit.

6. Let non-applicant place on record the orders of the learned District Judge whereby the issues were framed in the present suit.

7. List this application for consideration on 20.04.2026.

29. In the above backdrop, the matter was listed on 20.04.2026 and adjourned at the request of the plaintiffs. Thereafter, the arguments in the instant application were advanced in considerable detail on 08.09.2026.

SUBMISSIONS ON BEHALF OF THE PARTIES

30. Ms. Maneesha Dhir, learned senior counsel for the applicant/plaintiff no.1 has submitted that the relationship of landlord and tenant, the rate of rent and the receipt of the notice dated 07.06.2000, stand admitted. It is further submitted that the two documents on which the defence rests *viz.* the

Agreement to Sell and the alleged letters of the brokers, are both unsigned and that on this basis, it is, *ex-facie*, apparent that there is no concluded contract capable of resisting a decree for possession.

31. As regards the receipt of the cheque of Rs.5,00,000/- by the Trust, it was submitted that the amount was received in the course of negotiating an increase in rent, about a year before the date borne on the Agreement to Sell. It was further submitted that, taking the defence at its highest, a consideration of Rs.45,00,000/- was far below the property's value in the year 2000-01, which, as pleaded in the application, was not less than Rs.5,00,00,000/-. She submits that the defence lacks credibility and there is no real prospect of the defendants successfully defending the claim at trial. She further submits that the defence amounts to an inherently glaring abuse of process warranting summary judgment for possession and *mesne* profits without trial.

32. It was further submitted that the suit ought to be treated as a commercial suit in substance. It is further submitted that the issues were never framed in the present suit and as such, the bar in the proviso to Rule 2 of Order XIII-A does not apply. She submits that after the original plaint was returned and represented, the same must be treated as a fresh, *de novo* suit requiring pleadings to be filed afresh followed by framing of issues. It is, thus, contended that the order dated 30.04.2014 cannot be relied upon by the defendants to contend that the issues already stand framed inasmuch as the said exercise is required to be carried out afresh after the plaint was returned.

33. Mr. Ankit Jain, learned senior counsel for the defendants has submitted that Order XIII-A is not applicable to the present suit inasmuch as

the instant suit was never instituted/registered or treated as a commercial suit at any point of time. It is further submitted that the application is barred by the proviso to Rule 2 of Order XIII-A inasmuch as issues were framed on 30.04.2014. He submits that the Trust's own application dated 05.03.2016 admits as much. He also relies upon the order dated 03.09.2019 passed in the present suit by the predecessor Bench (presided over by Hon'ble Mr. Justice V. Kameswar Rao) which records that issues stand framed.

34. On merits, he submits that the present application is the third attempt on the part of the Trust to obtain a decree without trial on pleas already found to raise triable issues. It is further submitted that the receipt and encashment of the cheque of Rs.5,00,000/- is admitted and that the Trial Court's findings while disposing of the earlier application under Order XII Rule 6, to the effect that the explanation offered by the Trust in this regard "does not appeal to reason", undermine the present application as well. Reliance has been placed by the learned senior counsel for the defendants on ***Hari Steel and General Industries Limited v. Daljit Singh***, (2019) 20 SCC 425.The relevant observations therein are as under:

> *"26. In the judgment in S.M. Asif v. Virender Kumar Bajaj, this Court has held that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a right. It is further held in the aforesaid case that where the defendants have raised objections, which go to the root of the case, it would not be appropriate to exercise discretion under Order 12 Rule 6 CPC.*
>
> …..
>
> *29. By applying the ratio laid down by this Court in the aforesaid judgments, it is to be held that there are no categorical and unconditional admissions, as claimed by the respondent-plaintiffs. In view of the stand of the appellants that, pp. 3 and 4 of the*

agreement dated 3-5-2005 are tampered and their signatures are fabricated, when specific issue is already framed, it cannot be said that there are categorical and unconditional admissions by the appellants. Mere admission of entering into arrangement/contract on 7-4-2005 and 3-5-2005 itself cannot be considered in isolation, without considering the further objections of the appellants that certain pages in the agreement are fabricated. In case the appellants prove that the agreement is fabricated as claimed, post-trial it goes to the root of the case on the claim of the respondent-plaintiffs."

THE STATUTORY SCHEME

35. Order XIII-A was introduced by the Schedule to the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (now the Commercial Courts Act, 2015). Its scope is fixed by Section 16 of that Act, which reads as under:

"16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.—(1) The provisions of the Code of Civil Procedure, 1908 shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908, as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.

(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908, by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908, as amended by this Act, the provisions of the Code of Civil Procedure, 1908, as amended by this Act shall prevail."

36. Rule 1(1) of Order XIII-A confines the said Order to the very same field, inasmuch as it provides that "This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence". Rule 2 fixes the stage at which an

application may be made, and reads as under:

> *"2. Stage for application for summary judgment.—An applicant may apply for summary judgment at any time after summons has been served on the defendant:*
>
> *Provided that no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit."*

37. Rule 3 sets out the grounds upon which such a judgment may be rendered, and reads as under:

> *"3. Grounds for summary judgment.—The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that—*
>
> *(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and*
>
> *(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence."*

38. In ***Reliance Eminent Trading & Commercial Private Limited v. Delhi Development Authority***, 2026 SCC OnLine SC 744, the Supreme Court has observed as under:

> *"42. Rule 2 of Order XIII-A of the CPC observes that application for summary judgment is time bound and can be made any time after the summons has been served on the defendant and before the issues are framed.*
>
> ***
>
> *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 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."

39. A Division Bench of this Court in ***Bright Enterprises Private Limited v. MJ Bizcraft LLP &Anr.***, 2017 SCC OnLine Del 6394, has held as under:

> *"20. We may also point out that there is a clear distinction between 'return of a plaint', 'rejection of a plaint' and 'dismissal of a suit'. These three concepts have different consequences. A dismissal of a suit would necessarily result in a subsequent suit being barred by the principles of res judicata, whereas this would not be the case involving 'return of a plaint' or 'rejection of a plaint'. What the learned Single Judge has done is to have dismissed the suit of the appellants/plaintiffs at the admission stage itself without issuance of summons and this, we are afraid, is contrary to the provisions of the statute.*
>
> *21. Apart from this, we are of the view that the learned Single Judge has gone wrong in invoking the provisions of Order XIIIA CPC for rendering a summary judgment. It is true that Rule 3 of Order XIIIA CPC empowers the Court to give a summary judgment against a plaintiff or defendant on a claim if it considers that - (a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and (b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. But, in our view, this power can only be exercised upon an application at any date only after summons have been served on the defendant and not after the Court has framed issues in the suit. In other words, Order XIIIA Rule 2 makes a clear stipulation with regard to the stage for application for summary judgment. The window for summary judgment is after the service of summons on the defendant and prior to the Court framing issues in the suit."*

REASONING AND CONCLUSION

Order XIII-A Cannot Be Invoked In The Present Suit

40. Admittedly, Order XIII-A does not form part of the Code of Civil Procedure, 1908 as ordinarily applicable. It was inserted by the Schedule to the Commercial Courts Act, 2015; and by virtue of Section 16(1) of that Act, the provisions of the CPC stand amended in the manner specified in the Schedule only "in their application to any suit in respect of a commercial dispute of a Specified Value". In relation to a suit of any other description, the CPC applies unamended, and the unamended CPC does not contain

Order XIII-A at all. Rule 1(1) of Order XIII-A is to precisely the same effect, providing in terms that the said Order "*sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence*".

41. In the above backdrop, it is evident that the provisions of Order XIII-A are not applicable at all and that it is, thus, impermissible for plaintiff no.1/Trust to invoke the same. The present suit was instituted on 31.07.2000, i.e. more than fifteen years before the Commercial Courts Act, 2015 came into force, and it has never been instituted, registered, numbered or treated as a commercial suit at any stage. No application under Section 15 of the Commercial Courts Act, 2015 seeking transfer of the suit to the Commercial Division of this Court has ever been made. Even the application does not plead that the suit is in respect of any commercial dispute of a specified value within the meaning of Sections 2(1)(c) read with 2(1)(i) of the said Act.

42. In the written submissions filed on behalf of plaintiff no.1/Trust, it is contended that the provisions of the Commercial Courts Act, 2015 apply "from the date of transfer of the suit to the Commercial Division", and that "the suit was transferred pursuant to order dated 03.02.2018".

43. The aforesaid submission of the plaintiff proceeds upon a misunderstanding. The only order of transfer on the record of either suit is the order dated 03.12.2018 passed in TR.P.(C.) 225/2018, upon a petition presented by plaintiff no.1/Trust itself. By that order, this Court transferred Civil Suit No. 57679/2016 (that is to say, the connected suit for specific performance) from the Court of the learned Additional District Judge-05, Patiala House Courts, New Delhi to this Court to be tried along with CS(OS)

No.574/2018, further directing that the latter suit shall be treated as the lead suit. The transfer so effected was to the ordinary original civil jurisdiction of this Court. The order makes no reference to the Commercial Division, nor was Section 15 of the Commercial Courts Act, 2015 invoked before or applied by this Court. It may be noticed that the relief sought by plaintiff no.1/Trust in the said transfer petition was itself in those very terms, namely that the suit be transferred to this Court and be tried in this Court with CS(OS) No.574/2018. Learned counsel for both sides thereupon informed the Court that one suit was for specific performance and the other for possession; neither suggested that either suit be treated as a commercial dispute.

44. Reliance placed in the said written submissions upon the Notification dated 24.11.2015 is equally misconceived. It is contended that the said notification directs that all suits valued above the prescribed threshold, whether pending or instituted on the Original Side of this Court, shall stand transferred to and be adjudicated by the Commercial Division. Notification No. 27187/DHC/Orgl. dated 24.11.2015 does nothing of the kind. It was issued under Section 4 of the Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015), and concerns the ordinary original civil pecuniary jurisdiction of this Court. It does not direct the transfer of any suit to the Commercial Division. It was, *inter alia*, pursuant to that very notification that CS(OS) 666/2003 came to be transferred out of this Court to the District Court by order dated 09.12.2015.

45. Whatever be the character of the underlying dispute, the amendments effected to the CPC by the Schedule to the Commercial Courts Act, 2015 have never been attracted to this suit. A suit does not become subject to the

amended CPC by reason only of the nature of the dispute it raises; it becomes so subject when it is instituted in, or transferred to and registered in, the Commercial Division. Until that occurs, the suit continues as an ordinary civil suit governed by the unamended Code, and no remedy created by the Schedule, including the remedy of summary judgment under Order XIII-A, is available in it.

46. It is unnecessary, in this view of the matter, to enter upon the question whether the dispute raised in the present suit answers the description contained in Section 2(1)(c)(vii) of the Commercial Courts Act, 2015, which brings within the definition only disputes arising out of *"agreements relating to immovable property used exclusively in trade or commerce"*. That question does not arise for determination, and nothing stated herein shall be construed as an expression of opinion upon it.

47. It is, in any event, not open to the Trust to shift its position at this distance of time. Paragraph 12 of the plaint in CS(OS) 574/2018, as verified by Shri O.P. Bhandula (the very deponent who has affirmed the affidavit in support of the present application) states in terms: *"This is not a commercial matter"*. The Trust having itself pleaded, on affidavit, that the suit is not a commercial matter, and the suit having been entertained, registered and prosecuted on that footing for close to eight years, it is not open to the Trust to now contend that the suit ought to be treated as a commercial suit in substance for the limited purpose of attracting Order XIII-A. The law does not permit a person to both approbate and reprobate; a party cannot say at one time that a matter is of one description in order to obtain an advantage available only on that footing, and at another time say that it is of a different description for the purpose of securing some further advantage.

48. In the above circumstances, it is evident that the present application under Order XIII-A CPC is not maintainable and is liable to be dismissed on this ground alone.

Application is even otherwise impermissible in terms of Rule 2 of Order XIII-A

49. Rule 2 of Order XIII-A confines an application for summary judgment to the period after the service of summons and before the framing of issues. The Division Bench in ***Bright Enterprises*** (supra) held that this window is a clear stipulation which must be followed scrupulously. The relevant observations are as under:

> *"20. We may also point out that there is a clear distinction between 'return of a plaint', 'rejection of a plaint' and 'dismissal of a suit'. These three concepts have different consequences. A dismissal of a suit would necessarily result in a subsequent suit being barred by the principles of res judicata, whereas this would not be the case involving 'return of a plaint' or 'rejection of a plaint'. What the learned Single Judge has done is to have dismissed the suit of the appellants/plaintiffs at the admission stage itself without issuance of summons and this, we are afraid, is contrary to the provisions of the statute.*
>
> *21. Apart from this, we are of the view that the learned Single Judge has gone wrong in invoking the provisions of Order XIIIA CPC for rendering a summary judgment. It is true that Rule 3 of Order XIIIA CPC empowers the Court to give a summary judgment against a plaintiff or defendant on a claim if it considers that - (a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and (b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. But, in our view, this power can only be exercised upon an application at any date only after summons have been served on the defendant and not after the Court has framed issues in the suit. In other words, Order XIIIA Rule 2 makes a clear stipulation with regard to the stage for application for summary judgment. The window for summary judgment is after the service of summons on the defendant and prior to the Court framing issues in the suit."*

50. In ***Reliance Eminent*** (supra), the Supreme Court has clearly held that an application under Order XIII-A is "time bound" and has directed that the procedural mandate of the said Order is required to be strictly complied with. The proviso to Rule 2 is thus a condition upon the very maintainability of such an application, and not a matter of discretion.

51. In the present case, issues were framed on 30.04.2014, as is evident from a perusal of the said order, a certified copy whereof has been placed on record by the defendants along with IA No. 10647/2026. The same is also evident from the averments made in the Trust's own application dated 05.03.2016 seeking revival of the suit after it had been adjourned *sine die*, wherein it was stated in terms that 'Issues in the suit were framed on 30.04.2014' and that 'the matter is at pre-trial stage'.

52. The significance of that averment can hardly be overemphasized. In the very application by which it sought, (and on 30.07.2016 obtained), the revival of its suit, the Trust stated in terms, and as the opening averments of that application, that *"Issues in the suit were framed on 30.04.2014"*, that *"affidavits of evidence are yet to be filed in the matter and examination of witnesses has not yet commenced"*, and that *"the matter is at pre-trial stage"*. It now seeks a decree without trial upon the diametrically opposite plea that issues were never framed at all. Having placed one position before a Court in categorical terms, the Trust cannot be heard to assert the contrary.

53. In any event, the question is as to whether the issues stand framed or not. The law on the effect of return of a plaint under Order VII Rule 10 CPC was settled by a Three-Judge Bench in ***M/s. EXL Careers v. Frankfinn Aviation Services Private Limited***, (2020) 12 SCC 667, which approved ***Oil and Natural Gas Corporation Ltd. v. M/s. Modern Construction and Co.***,

(2014) 1 SCC 648. The relevant observations therein are as under:

> *"15. Modern Construction (supra), referred to the consistent position in law by reference to Ramdutt Ramkissen Dass v. E.D. Sassoon & Co., Amar Chand Inani v. Union of India, Hanamanthappa v. Chandrashekharappa, (1997) 9 SCC 688, Harshad Chimanlal Modi (II) (supra) and after also noticing Joginder Tuli (supra), arrived at the conclusion as follows:*
>
> > *"17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order 7 Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. … However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same."*
>
> *20. The statutory scheme now becomes clear. In cases dealing with transfer of proceedings from a Court having jurisdiction to another Court, the discretion vested in the Court by Sections 24(2) and 25(3) either to retry the proceedings or proceed from the point at which such proceeding was transferred or withdrawn, is in marked contrast to the scheme under Order VII Rule 10 read with Rule 10-A where no such discretion is given and the proceeding has to commence de novo."*

54. However, the conclusion that the Trust seeks to draw from the dicta laid down in the aforesaid judgment, to the effect that no issues have ever been framed in the present suit, does not follow, because the record shows that this Court has taken the present suit through every stage that a fresh suit passes through, up to and including the framing of issues. On 14.11.2018, fresh summons were issued to the defendants. The said order, *inter alia*, reads as under:

CS(OS) 574/2018

Heard.

It is submitted by learned counsel for plaintiff that the suit filed by plaintiff was earlier pending in the District Court and the plaint was returned vide order dated 28.05.2018 due to enhancement of the valuation of the suit.

Record perused.

Let summons of the suit be sent to defendants through all permissible modes vide PF for 20.12.2018.

55. On 20.12.2018, the defendants were granted time to file their written statement, which was filed on 05.01.2019; the Trust filed its replication and on 11.04.2019, the written statement and the defendants' affidavit of admission/denial were taken on record. On 21.05.2019, the learned Joint Registrar recorded that pleadings in the suit were complete, and, upon the joint submission of the parties, directed that the matter be placed before the Court for framing of issues/further directions. The said order reads as under:

Case is fixed for completion of pleadings and admission/denial of documents.

Pleadings to this suit are complete, but no affidavit of admission/denial of documents filed by the plaintiffs to this case on the ground that defendants have not filed any document. Though plaintiffs have filed certain documents, yet learned counsel for

defendants has submitted that the connected matter bearing CS (OS) 666/2003 is clubbed with this case and evidence is going on in that matter and exhibiting of documents in admission/denial of this case would create confusion in reading and referring of documents in future due to admission/denial of documents may be skipped in this case with liberty to both the parties to lead their respective evidence.

Not opposed.

In view of joint submissions, let the matter be placed before the Hon'ble Court for framing of issues/further directions on 16.07.2019.

56. Thus, the matter was placed before the Court for framing of issues/further directions on 16.07.2019. The matter was adjourned on 16.07.2019 at the request of the Trust and taken up on 03.09.2019. The order dated 03.09.2019 records, in terms, that "Issues have been framed in both the suits on February 04, 2010 and April 13, 2014 respectively" (that is to say, in CS(OS) 666/2003 by this Court by order dated 04.02.2010, and in the present suit by the learned Trial Court by order dated 30.04.2014 upon pleadings which are, in substance, identical). It was further recorded that "no further developments have taken place". The Trust was directed to file its evidence by way of an affidavit within a period of 4 weeks and a Local Commissioner was appointed, by consent, for recording of evidence.

57. Thus, the Court adopted the issues which had already been framed on identical pleadings and paved the way for the recording of evidence. It may be noted that Order XIV Rule 1(5) of the CPC requires the Court, upon reading the plaint and the written statement, to ascertain the material propositions of fact or of law on which the parties are at variance, and thereupon to frame and record the issues. Order XIV prescribes no particular form or manner in which that exercise is to be performed; and by virtue of Order XIV Rule 5, the Court retains the power to amend, frame additional, or strike out issues at any time before passing a decree. The order dated 03.09.2019 effectively did so. The Trust was duly represented at the hearing on 03.09.2019 and also consented to the appointment of a Local Commissioner. It neither objected that issues had not been framed, nor took recourse to filing of any review/appeal in respect of the order dated 03.09.2019.

58. That the framing of issues on 03.09.2019 took the form of an adoption of the issues already settled on identical pleadings, rather than a fresh verbatim recital of them, is of no consequence. It is well settled that the form in which issues are framed is not decisive; what matters is whether the parties went to trial knowing the rival case which each had to meet. In ***Nedunuri Kameswaramma v. Sampati Subba Rao***,1962 SCC OnLine SC 41, the Supreme Court observed that where the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. The relevant portion is reproduced hereunder:

"5. ….Though the appellant had not mentioned a Karnikam service

> *inam, parties well understood that the two cases opposed to each other were of Dharmila Sarvadumbalainam as against a Karnikam service inam. The evidence which has been led in the case clearly showed that the respondent attempted to prove that this was a Dharmila inam and to refute that this was a Karnikam service inam. No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings."*

If the complete absence of an issue is not fatal where the parties are alive to the controversy, it must follow *a fortiori* that the adoption, by a judicial order passed in the presence of both sides, of issues already framed on identical pleadings in the connected suit is a valid discharge of the obligation cast by Order XIV. The submission to the contrary would elevate form over substance in a manner which the Code does not countenance.

59. The rule in ***EXL Careers*** (supra) is that upon return of a plaint the proceeding must commence *de novo*. That is precisely what occurred here. Fresh summons issued on 14.11.2018; a fresh written statement was filed on 05.01.2019; a replication followed; admission/denial was completed on 11.04.2019; pleadings were declared complete on 21.05.2019; and the matter was thereupon placed before the Court for framing of issues. The *de novo* mandate was therefore fully worked out, and it culminated in the order dated 03.09.2019. The Trust cannot invoke the *de novo* rule in order to obtain the benefit of a fresh trial and simultaneously contend that the stage which that fresh trial had reached by 03.09.2019 never arrived at all. Every antecedent stage was gone through afresh, and it was only upon reaching, in the fresh proceeding, the stage contemplated by Order XIV that the Court

settled the issues arising upon the pleadings then before it. That those issues were identical in substance to the ones earlier framed is a consequence of the pleadings being identical, and not of any stage having been carried over.

60. The judgment in ***Vogel Media International GmbH*** (supra), upon which the learned Additional District Judge founded the direction contained in the order dated 28.05.2018 (whereby, as noticed in paragraph 20 above, the plaint then pending as Suit No. 1013/2008 was returned for presentation before the Court of competent pecuniary jurisdiction, consequent upon the Trust's own application enhancing the valuation of the suit) does not carry the case of the plaintiff no.1/Trust any further. That judgment was invoked for the limited proposition that upon such return the plaint is to be re-presented before the Court of competent jurisdiction and the suit thereafter tried *de novo*. It is not concerned with, and says nothing as to, the stage which the re-presented suit may legitimately reach before the Court of competent jurisdiction. In the present case, the suit traversed the stage of pleadings, admission/denial and the framing of issues before this Court. The order dated 03.09.2019 also appoints a Local Commissioner for recording of evidence.

61. A party which has conducted itself for nearly seven years on the footing that the suit stands at the stage of evidence, cannot, at the same time, for the purpose of this application, assert that the suit stands at the stage of pleadings.

62. The window under Rule 2 therefore closed at the latest on 03.09.2019 *viz.* nearly six years before the instant application was filed on 11.07.2025. Thus, even if Order XIII-A were otherwise available, the application is outside the stage at which it can be made.

Dismissal of the earlier Applications under Order-XII Rule 6 and the findings rendered therein

63. Quite apart from the threshold non-maintainability on account of the aforementioned circumstances, even otherwise, the application under Order XIII-A is completely devoid of merits. In this regard, two distinct aspects arise for consideration. The first is whether the dismissal of the Trust's application under Order XII Rule 6 CPC itself bars a later application under Order XIII-A. The second is as to what bearing the findings recorded in that dismissal have on the present application.

64. On the first aspect, it is well settled that an application under Order-XII Rule 6 is required to be founded on an admission which is *"clear, unambiguous and unconditional"*. On the other hand, Rule 3 of Order XIII-A is predicated on whether the defendant has any *"real prospect"* of success and whether there is any *"compelling reason"* for trial. As held by this Court in ***Su-Kam Power Systems Ltd. v. Kunwer Sachdev & Anr.***, 2019 SCC OnLine Del 10764, the remedy under Order XIII-A is a remedy independent, separate and distinct from a judgment on admissions.[1]

65. Necessarily, the nature of the inquiry for the purpose of an application under Order-XII Rule 6 is different from the inquiry for the purpose of an application under Order XIII-A. To that extent, the earlier dismissal of the plaintiff no.1/Trust's application under Order XII-Rule 6, does not necessarily preclude a subsequent application under Order XIII-A. However, in the factual conspectus of the present case, what is relevant is the import of

[1] ***Su-Kam Power Systems Ltd. v. Kunwer Sachdev &Anr.***, 2019 SCC OnLine Del 10764, paragraph 50. *"In fact, the legislative intent behind introducing summary judgment under Order XIIIA of CPC is to provide a remedy independent, separate and distinct from judgment on admissions and summary judgment under Order XXXVII of CPC."*

the findings recorded while dismissing the plaintiff no.1/Trust's earlier application under Order-XII Rule 6.

66. While dismissing the application under Order-XII Rule 6 *vide* order dated 30.03.2012, the Court did not stop at holding that the admissions were not unequivocal; the Court went on to observe affirmatively that the defendants' pleas gave rise to triable issues: (i) as to whether the plaintiff had entered into an agreement to sell; (ii) as to whether, upon part payment, the relationship of landlord and tenant between the parties came to an end; and (iii) whether the notice of termination survived. It was categorically observed that these were issues which could not be decided without the leading of evidence and trial. It was further observed that if the defendants succeed in proving such issues, the same would disentitle the plaintiff to obtain a decree of possession. The Court also dealt with the explanation offered by the Trust for the Rs.5,00,000/- it admittedly received and observed that the same "does not appeal to reason".

67. This Court in subsequent proceedings under Article 227 of the Constitution of India (in CM(M) 514/2012), vide order dated 27.09.2012, approved the findings rendered by learned ADJ while disposing of the application under Order-XII Rule 6, holding that the defendants had raised a triable issue and that no infirmity or illegality attached to the order under challenge. The Supreme Court, by its order dated 16.12.2013 in SLP (C) No. 5311/2013, also declined to interfere.

68. The above findings result in an irresistible inference that in the present case, the defence is real and not illusory, and that the case requires evidence. A determination by a competent court, between the same parties and in the same suit, affirmed by this Court and left undisturbed by the

Supreme Court, that the defence raises issues, which cannot be decided without evidence, clearly negates the very premise of the present application.

69. In view of the said findings, it is untenable to hold that the defendants do not have any real prospect of succeeding. It is impermissible for the Trust to escape the consequences of the findings rendered while adjudicating the application under Order-XII Rule 6 (affirmed by this Court and left undisturbed by the Supreme Court), by attaching a different label to the very same pleas.

70. The decision of the Supreme Court relied upon by the defendants lends further support to this conclusion. In ***Hari Steel*** (supra), on facts materially similar, it was observed that even an admission, in order to sustain a judgment without trial, must be clear and categorical, and that where issues have been framed and the suit has reached the stage of trial, it is desirable that the contentious issues be adjudicated on merits upon an appreciation of evidence rather than summarily. The relevant portion reads as under:

> *"29. By applying the ratio laid down by this Court in the aforesaid judgments, it is to be held that there are no categorical and unconditional admissions, as claimed by the respondent-plaintiffs. In view of the stand of the appellants that, pp. 3 and 4 of the agreement dated 3-5-2005 are tampered and their signatures are fabricated, when specific issue is already framed, it cannot be said that there are categorical and unconditional admissions by the appellants. Mere admission of entering into arrangement/contract on 7-4-2005 and 3-5-2005 itself cannot be considered in isolation, without considering the further objections of the appellants that certain pages in the agreement are fabricated. In case the appellants prove that the agreement is fabricated as claimed, post-trial it goes to the root of the case on the claim of the respondent-plaintiffs. Hence, we are of the view that the aforesaid judgments*

fully support the case of the appellants."

XXX XXX XXX

33. In this case it is to be noted that the suit was filed on 1-11-2006 and written statement was filed on 25-1-2007 and the application under Order 12 Rule 6 was filed on 9-2-2007. In the year 2010 issues and additional issues were framed and trial is also commenced. In that view of the matter, there is no reason to pass the impugned order now for decreeing the suit on claimed admissions, in exercise of power under Order 12 Rule 6 CPC at this stage. In view of the serious factual disputes and the defence of the appellants in the suit, it is not permissible for making roving inquiry for disposal of the application filed under Order 12 Rule 6 CPC. When the trial is already commenced, it is desirable to record findings on various contentious issues and disputes in the suit on merits by appreciating evidence but at the same time there is no reason or justification to decree the suit at this stage. For the aforesaid reasons, we are of the view that the impugned judgment of the High Court cannot be sustained and is liable to be set aside on this ground alone."

These observations apply with full force here.

71. The decision in ***S.M. Asif v. Virender Kumar Bajaj***, (2015) 9 SCC 287, was rendered upon facts which are almost indistinguishable from the present. There too, the tenant admitted the relationship of landlord and tenant and the terms of the lease, but set up an agreement of sale of the tenanted premises coupled with the payment of a substantial part of the sale consideration, and had instituted a separate suit for specific performance. The Supreme Court, while rejecting the application under Order-XII Rule 6 CPC, observed as under:

"8. The words in Order 12 Rule 6 CPC "may" and "make such order …" show that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order 12 Rule

> *6 CPC. The said rule is an enabling provision which confers discretion on the court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim.*
> *9. In the suit for eviction filed by the respondent landlord, the appellant tenant has admitted the relationship of tenancy and the period of lease agreement; but resisted the respondent-plaintiff's claim by setting up a defence plea of agreement for sale and that he paid an advance of Rs 82.50 lakhs, which of course is stoutly denied by the respondent landlord. The appellant-defendant also filed the suit for specific performance, which of course is contested by the respondent landlord. When such issues arising between the parties ought to be decided, mere admission of relationship of landlord and tenant cannot be said to be an unequivocal admission to decree the suit under Order 12 Rule 6 CPC."*

Thus, in an almost identical context, the Supreme Court observed that a 'defence plea of agreement for sale' was required to be duly considered.

It is noted that the threshold under Order XIII-A is also quite exacting ("no real prospect of successfully defending the claim"). In view of the factual conspectus, it cannot be said that there is absence of "any other compelling reason" for trial.

72. The matter may also be tested against the guidelines laid down in ***Reliance Eminent*** (supra). Guideline (ix) requires the Court to consider whether, in the interest of justice, the matter is better suited to trial in order to weigh the evidence, evaluate the credibility of the deponents and draw reasonable inferences from the evidence. The relevant portion is reproduced as under:

> *"(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."*

Guideline (viii) further cautions that the power under Order XIII-A is exceptional, to be exercised where oral evidence and a full trial are not

required. This is not such a case.

In the present case, the defence set up by the defendants rests on a pleaded course of dealing. Whether that course of dealing resulted in a concluded contract is a question of fact which can only be answered on evidence to be adduced by the parties.

73. In the facts and circumstances, this Court is unable to reach a conclusion that the suit be disposed of without recording oral evidence and/or that there is no compelling reason for a trial. It is also relevant that same/similar questions are the subject matter of CS(OS) 666/2003, in which the defendants herein, as plaintiffs, have already filed their affidavit of evidence, and in which PW-1 has been listed for cross-examination on several occasions. To decree the instant suit summarily while that suit proceeds to trial on identical facts could invite inconsistent findings between the same parties on the same transaction, and would defeat the very object for which the two suits were consolidated by order dated 03.12.2018 and were thereafter directed to be tried together, with CS(OS) 574/2018 as the lead suit.

CONCLUSION

74. For the reasons recorded above, it is held that:

(a) The application under Order XIII-A, CPC in CS (OS) 574/2018 is not maintainable and is also outside the relevant stage prescribed by Rule 2 of Order XIII-A;

(b) the findings rendered by the Court while disposing of the earlier applications under Order XII Rule 6, as affirmed by this Court and left undisturbed by the Supreme Court, negate the very premise of the

present application;

(c) even otherwise, it cannot be said that the defendants have no real prospect of successfully defending the claim, and it also cannot be concluded that there is no other compelling reason for a trial.

75. Accordingly, the present application i.e. I.A. 16434/2025, stands dismissed.

76. CS(OS) 574/2018 shall proceed to trial along with CS(OS) 666/2003, in terms of the order dated 03.09.2019. The plaintiffs in CS(OS) 574/2018 are directed to file their affidavits of evidence and pay their share of the Local Commissioner's fee, within a period of 4 weeks from today.

77. List both the suits before the Joint Registrar (Judicial) for further directions on 20.11.2026.

SACHIN DATTA, J

OCTOBER 16, 2026*/at/sd*