



2026:DHC:826-DB



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

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Judgment reserved on: 16.01.2026
Judgment pronounced on: 03.02.2026
Judgment uploaded on: 03.02.2026

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RFA(COMM) 56/2025

COTTAGE INDUSTRIES EXPOSITION LTD.Appellant

Through: Mr. Anunaya Mehta, Mr. Inder
S. Adhikari and Mr. Vidhan
Malik, Advocates.

versus

DINESH DAYAL & ORS.

.....Respondents

Through: Mr. Sunil Mittal, Senior
Advocate with Ms. Seema Seth,
Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal, the Appellant [Defendant before the Commercial Court] assails the judgment and decree dated 23.10.2024 [hereinafter referred to as 'Impugned Judgment'] passed by the learned District Judge (Commercial), Patiala House Courts, New Delhi [hereinafter referred to as 'Commercial Court'], in CS (COMM.) No. 167/2023 captioned *Dinesh Dayal and Ors. v. Cottage Industries Exposition Ltd.*, whereby the suit filed by the Respondents [Plaintiffs before the Commercial Court] was decreed under Order XIII-A of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'] as applicable to commercial disputes, in favour of the



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Respondents, for a sum of ₹12,97,540/- along with pendente lite and future interest @ 12% per annum from the filing of the suit till realization of amount along with costs.

2. At the outset, it would be apposite to notice the factual background giving rise to the present appeal.

3. The Appellant is a company engaged in the business of tourism and handicrafts and was inducted as a tenant in respect of a commercial premises situated at Flat No. 1-E, First Floor, DCM Building, 16, Barakhamba Road, New Delhi, along with parking space No. LB-20. The tenancy was governed by a registered lease deed dated 29.06.2011 executed between the Appellant and Respondent No.1 for a period of nine years.

4. Following previous litigation between the parties regarding arrears of rent and service tax, a civil suit was instituted in the year 2014, which was subsequently resolved through mediation. Pursuant thereto, a Supplementary Lease Deed dated 08.07.2015 was executed, reducing the monthly rent payable by the Appellant. On the same date, a separate Consultancy Agreement was executed between the Appellant and Respondent No.2, whereunder monthly consultancy charges were agreed to be paid. By way of a letter dated 22.06.2015, the parties expressly agreed that the Supplementary Lease Deed and the Consultancy Agreement would be co-terminus. Effective from January 2017, the Appellant began remitting rent to Respondent No. 3 (HUF) upon the request of Respondent No. 1, while consultancy charges continued to be paid to Respondent No. 2.



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5. It is not in dispute that the stipulated term under the Supplementary Lease Deed and the Consultancy Agreement expired on 30.06.2018. According to the Respondents, the Appellant nevertheless continued in possession of the premises of the Respondents and continued to discharge its obligations to pay rent and the consultancy charges. The Appellant, on the other hand, disputes the subsistence of the agreements beyond their stipulated term. It is admitted that rent was paid till 31.03.2020 and consultancy charges till 29.02.2020.

6. Upon the outbreak of the COVID-19 pandemic, the Appellant, by letter dated 23.04.2020, sought waiver of rent with effect from 01.04.2020, contending that the premises had become unusable. This request was declined by Respondent No.1 by reply dated 26.05.2020, calling upon the Appellant to continue payment of rent. Thereafter, by letter dated 09.06.2020, the Appellant expressed its intention to vacate the premises and offered to hand over possession, while seeking refund of the security deposit. The Respondents, however, insisted that possession would be accepted only upon restoration of the premises to its original condition, giving rise to a dispute as to the Appellant's continuing liability to pay rent.

7. The Appellant thereafter issued a notice dated 25.01.2021 under Section 106 of the Transfer of Property Act, 1882, seeking termination of tenancy. Possession of the premises was ultimately handed over on 09.02.2021, and a possession letter was executed between the parties, recording adjustment of the security deposit towards alleged arrears, while disputes with respect to rent and



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consultancy charges were expressly kept open. The Respondents thereafter instituted the commercial suit seeking recovery of ₹12,97,540/- along with interest.

8. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the Commercial Court.

9. The Plaintiffs had instituted the commercial suit seeking recovery of the aforesaid amount, contending that the same was payable by the Defendant towards rent arrears and consultancy fees. During the pendency of the suit, the Plaintiffs moved an application under Order XIII-A of the CPC, seeking a summary judgment on the premise of admission by the Defendant of the contractual agreements, documents and communication through email between them, thereby warranting summary judgment without the necessity of trial.

10. The Defendant opposed the said application through its reply, asserting that the claims raised by the Plaintiffs were founded on seriously disputed questions of fact and law, arising from more than one agreement, and the existence of triable issues, the adjudication thereof necessarily required recording of evidence.

11. By the Impugned Judgment, the Commercial Court allowed the application under Order XIII-A of the CPC, essentially on the reasoning that the material documents relied upon by the Plaintiffs stood admitted by the Defendant and that no triable issues arose for consideration. The suit was accordingly decreed by summary judgment without trial.



ISSUE FOR DETERMINATION

12. The principal question which arises for consideration in the present Appeal is whether the Commercial Court was justified in exercising jurisdiction under Order XIII-A of the CPC (Summary Judgment), and in holding that the Appellant had no real prospect of successfully defending the suit and that no compelling reason existed for the matter to proceed to trial.

CONTENTIONS OF THE PARTIES

13. Learned counsel appearing for the Appellant has assailed the Impugned Judgment primarily on the ground that the learned Commercial Court had misapplied the jurisdiction under Order XIII-A of the CPC, despite the existence of substantial and *bona fide* disputes which could not have been adjudicated without trial.

14. It was submitted that the suit comprised claims arising out of distinct agreements, involving disputed questions relating to termination of contractual obligations, offer and refusal of possession of the property under occupation, liability to pay rent during the intervening period between March 2020 and February 2021, the interest claimed in the suit by the Respondent, and alleged entitlement to consultancy fees, all of which required evidence.

15. It was further urged that the Commercial Court proceeded on the erroneous assumption that admission of documents was sufficient to warrant a summary decree, without examining whether the liability flowing from those documents was itself admitted. According to the



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Appellant, the defence raised by the Defendant in the written Statement, as well as its reply to the application of the Plaintiffs under Order XIII-A of the CPC, was substantive and disclosed triable issues, thereby constituting a compelling reason for the matter to proceed to trial.

16. *Per contra*, learned counsel for the Respondents supported the Impugned Judgment and submitted that the contractual documents relied upon by the Respondents stood admitted by the Defendant and clearly established the liability sought to be enforced. It was contended that the Defendant had failed to raise any credible defence and that the Commercial Court had correctly exercised jurisdiction under Order XIII-A of the CPC decreeing the suit of the Respondents.

ANALYSIS AND FINDINGS

17. We have considered the rival submissions advanced by learned counsel for the parties, including the written submissions placed on record on behalf of the Appellant and the Respondents, and have examined the Impugned Judgment in the context of the statutory framework governing summary judgments in commercial disputes under Order XIII-A of the CPC.

18. Order XIII-A of the CPC, introduced by the Commercial Courts Act, empowers a Commercial Court to decide a claim without recording oral evidence. The exercise of such power, however, is expressly conditioned by Rule 3 thereof. The relevant provision is extracted as under:



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“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.”

19. A perusal of the Written Statement filed by the Defendant in the suit demonstrates that the defence was neither evasive nor a bare denial.

20. The Defendant specifically pleaded in its Written Statement that the lease deed dated 29.06.2011, the supplementary lease deed dated 08.07.2015 and the consultancy agreement dated 08.07.2015 had expired by efflux of time on 30.06.2018. It was further pleaded by the Defendant that, in view of the prevailing circumstances following the onset of the COVID-19 pandemic, the Defendant had, by its communication dated 09.06.2020, unequivocally expressed its intention to vacate the leased premises, offered vacant possession, and called upon the Respondent No. 1 to refund the security deposit.

21. According to the Defendant, despite such offer, the Plaintiff No.1 avoided taking back possession of the leased premises. The Written Statement of the Defendant in the suit and its reply to the application of the Plaintiffs Under Order XIII-A of the CPC also disputed the continued liability to pay rent after the Appellant's communication for vacation of the leased premises and offer of possession, and denied any subsisting liability under the consultancy agreement on the ground that no consultancy services were availed



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since March 2020 and that the agreement itself had expired by efflux of time. These pleas raised substantial disputes that could not have been adjudicated without recording evidence.

22. It is in the aforesaid legal backdrop that the Impugned Judgment falls for examination.

23. The jurisdiction under Order XIII-A of the CPC is exceptional in nature and must be exercised with circumspection. The provision does not contemplate dispensation of trial merely because documents are admitted; rather, it requires the Court to examine whether, even on the defence pleaded, the Defendant stands completely shut out from defending the claim. Where the defence raises disputes which go to the root of liability and require adjudication upon evidence, the matter would plainly fall outside the scope of the permissible ambit of summary judgment under Order XIII-A of the CPC.

24. The Commercial Court proceeded on an assumption of continuing possession and corresponding liability, without examining whether, in law, the Defendant's obligation to pay rent subsisted once possession was stated to have been offered but not accepted. These issues are inherently evidentiary in nature and could not have been conclusively determined by a summary judgment.

25. Equally, the claim towards consultancy fees payable to Plaintiff No.2 arose from a separate agreement, the performance of which was specifically disputed by the Defendant. Whether consultancy services were rendered, whether such services were availed during the relevant period in dispute, and whether the lease deed and the consultancy



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agreement were co-terminus with each other, whether any amount was at all payable under the consultancy agreement, particularly beyond its stated term, were matters requiring evidence.

26. The Commercial Court, in effect, treated the existence of agreements as determinative of liability, without undertaking the enquiry mandated by Order XIII-A of the CPC as to whether the defence raised had no real prospect of successfully defending the claim. The mere fact that contractual documents exist does not, by itself, justify a summary decree when the liability flowing therefrom is seriously contested.

27. Admittedly, physical possession of the tenanted premises was handed over by the Defendant to the Plaintiff No.1 on 09.02.2021, and a possession letter acknowledging such handover was signed between the parties on that date. The controversy between the parties, therefore, relates to the question of liability, if any, for the period preceding such handover.

28. The Commercial Court, while rejecting the defence raised by the Appellant by holding that the plea of *force majeure* was misconceived, placed reliance on the decision of this Court in ***Ramanand and Ors. v. Dr. Girish Soni and Anr***¹. While the legal principle enunciated in ***Ramanand*** (*Supra*) is well settled, the manner of its application to the facts of the present case discloses a material error.

¹ 2020:DHC:1963



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29. The Defendant, by its communication dated 23.04.2020, initially sought waiver of rent during the period of disruption caused by the COVID-19 pandemic, invoking principles of *force majeure* and impossibility. That request was expressly rejected by the Respondent No.1 through their reply dated 26.05.2020, wherein payment of rent was insisted upon, and the Appellant was called upon to comply with its contractual obligations.

30. Thereafter, the Defendant, by its letter dated 09.06.2020, unequivocally communicated its decision to vacate the leased premises and called upon the Respondent No. 1 to refund the security deposit to enable them to handover possession of the leased premises. The defence raised in the written statement by the Appellant and urged before the Court was, therefore, not one seeking suspension of rent while retaining possession, but one asserting cessation of liability upon offer of vacating, termination of the relationship and surrender of possession, which was ultimately effected on 09.02.2021.

31. ***Ramanand*** (*Supra*) dealt with cases where tenants continued in possession and sought waiver or suspension of rent on account of lockdown-related hardship. The decision reiterates that mere non-use of premises does not absolve a tenant of rent liability so long as possession continues. The present case stands on a different footing, where the Defendant, after rejection of its request for waiver, elected to vacate and offered possession of the leased premises to the Respondents.



32. The Commercial Court, in placing reliance on **Ramanand (Supra)**, failed to notice this material shift in the Defendant's position and proceeded to address the plea of *force majeure* divorced from the defence pressed. Whether rent or other charges could be fastened for the period after offer and before acceptance of possession raised mixed questions of fact and law, which could not have been summarily determined and required adjudication after recording evidence.

33. The learned Commercial Court has also relied upon the decision of this Court in **SU-KAM Power Systems Ltd. v. Kunwer Sachdev and Anr.**² to justify the exercise of jurisdiction under Order XIII-A of the CPC, placing reliance on the observations that summary judgment may be rendered where the Court is able to find the necessary facts and resolve the dispute without trial.

34. The reliance, however, is misplaced. The passage relied upon by the learned Commercial Court from **SU-KAM (Supra)** does not dilute the statutory preconditions prescribed under Order XIII-A of the CPC. The decision reiterates that summary judgment is permissible only where the material on record enables the Court to confidently find the necessary facts and apply the relevant legal principles so as to finally resolve the dispute. It does not authorise summary adjudication in cases where the foundational facts themselves are disputed and require evidentiary determination.

² 2019 SCC OnLine Del 10764



35. In the present case, the disputes raised by the Defendants pertained to termination of contractual arrangements by efflux of time, offer of vacation and refusal of possession of the leased premises, cessation of rent liability, and subsistence of consultancy obligations. These issues go to the root of the parties' rights and obligations and could not have been conclusively determined merely on the basis of admitted documents. The test laid down in **SU-KAM** (*Supra*), far from supporting the impugned decree, underscores the necessity of a trial where the Court cannot adjudicate the dispute without recording evidence.

36. The Commercial Court, therefore, erred in extending the observations in **SU-KAM** (*Supra*) beyond their intended context, without first satisfying the statutory requirements for summary judgment.

37. Similarly, the reliance placed by the Respondents on the decision of this Court in **Best Choice Enterprises v. M/s J. Sons Agencies**³ is wholly misplaced. The said decision arose out of a second appeal after the suit had been tried and concurrent findings on liability had attained finality. The only question which survived for consideration was with regard to the rate of interest to be awarded under Section 34 of the CPC and the Interest Act, 1978.

38. In the present case, the grant of interest on the recovery amount, as made by the Commercial Court, also underscores the unsuitability of the matter for summary judgment.

³ 2011:DHC:919



39. The Plaintiffs had included pre-suit interest as part of the aggregate claim, and the Commercial Court thereafter awarded pendente lite and future interest on the entire amount claimed @12% per annum from the filing of the suit till realisation of the amount. Whether such a course is permissible, having regard to the concept of the “*principal sum adjudged*” under Section 34 of the CPC, and whether it results in impermissible compounding, are issues which this Court expressly leaves open.

40. Suffice it to observe that the existence of such legal questions itself constituted a compelling reason for the suit to proceed to trial, rendering the exercise of jurisdiction under Order XIII-A of the CPC unsustainable.

CONCLUSION

41. In the considered opinion of this Court, the Commercial Court exceeded the permissible limits of jurisdiction under Order XIII-A of the CPC. The Impugned Judgment and decree cannot be sustained, as the disputes raised between the parties clearly warrant a trial.

42. In these circumstances, the Impugned Judgment and decree are liable to be set aside.

43. Accordingly, the Appeal is allowed. The Impugned Judgment is hereby, set aside and the suit is restored to its original number.

44. The Parties along with their respective counsel are directed to appear before the learned Commercial Court on 17.02.2026.



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45. It is clarified that this Court has not expressed any opinion on the merits of the claims or defences raised by either party. All rights and contentions of the parties are left open to be urged before the learned Commercial Court.

46. The learned Commercial Court shall proceed to frame issues, permitting the parties to lead evidence, and decide the suit on its own merits.

47. The present Appeal, in the above terms, stands disposed of.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

FEBRUARY 03, 2026

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