



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

% Judgment reserved on: 22.07.2025
Judgment delivered on: 04.08.2025

+ CM(M) 2874/2024 & CM APPL. 37888/2024 & CM APPL. 61525/2024

M/S ACCE GLOBAL SOFTWARE PVT LTDPetitioner

VERSUS

M/S AVANT CAREER PVT LTDRespondent

Memo of Appearance

For the Petitioner: Mr. Abinash Kumar Mishra, Mr. Gaurav Kumar Pandey, Mr. Amaresh Singh, Mr. Brijesh Singh and Ms. Savita Tehlan Advocates

For the Respondents: Mr. Saurabh Dev Karan Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Petitioner is defending a commercial suit.
2. Challenge in the present petition is to the order dated 01.04.2024 whereby the learned Trial Court has passed a summary judgment under Order XIII-A CPC and has directed the defendant (petitioner herein) to deposit an amount of Rs. 19.50 lacs in the Court in the form of a Fixed Deposit Receipt (FDR).
3. The question posed, herein, is pure legal in nature.
4. According to defendant, since the suit was '*originally filed*' under summary procedure, there was legal embargo in seeking any judgment under Order XIII-A CPC.



5. Before coming to the aforesaid legal proposition, it will be appropriate to narrate background facts, *albeit*, in very brief.

6. Plaintiff has sought recovery of Rs. 53,77,197/- from the defendant for the services rendered by the plaintiff under one agreement dated 01.08.2020 executed between the parties. In terms of such agreement, plaintiff made payment with respect to the salary of workmen deployed at the defendant's organization. Since after such disbursal, plaintiff was entitled to reimbursement from the defendant and since such demand was not cleared by the defendant, plaintiff was compelled to file the aforesaid suit.

7. Suit is being resisted by the defendant and though the execution of agreement is not in dispute, according to defendant, plaintiff was in breach of the agreement and was under obligation to provide certain details which they never furnished and, therefore, there was no possibility of reconciliation of the accounts either. It also claimed that no 'service charge' could have been claimed by the plaintiff from the month of March, 2021 as the services were put to halt after February, 2021. It also claimed that one blank-cheque was fraudulently misused and presented by the plaintiff, whereby, plaintiff has committed breach of trust in a planned manner and cheated the defendant.

8. The suit in question was earlier listed for consideration before a regular Court of District Judge and since it was brought to the notice of the aforesaid Court that the suit was commercial in nature and related to a commercial dispute, as per Section 2 (1)(c)(xviii) of Commercial Courts



Act, 2015, the matter was placed before the learned Principal District & Sessions Judge for allocating the same to a Commercial Court.

9. This is how the the matter landed before a Commercial Court.

10. It also needs to be highlighted that the suit, in the first instance, had been filed under summary procedure i.e. under Order XXXVII CPC and remained so when it was first taken up by Commercial Court.

11. Learned District Judge (Commercial Court), however, after going through the averments made in the suit, while striking out the names of defendants nos. 2 to 4 from such suit, *raised queries regarding the maintainability of such suit under summary procedure and pursuant to such query, learned counsel for the plaintiff made a statement that the suit be converted into an ordinary suit.*

12. Statement to said effect was recorded by the learned Trial Court and, resultantly, suit was converted into an ordinary suit and summons for *settlement of issues* were directed to be sent.

13. During further pendency of the aforesaid suit, plaintiff moved an application seeking summary judgment under Order XIII-A CPC.

14. Such application was resisted and replied by the defendant and while taking other contentions, defendant took preliminary objection to the effect that invocation of Order XIII-A CPC was not permissible and sustainable as the suit in question had earlier been filed under summary procedure and, therefore, there was a legal bar as contained in Rule 1(3) of Order XIII-A CPC.



15. Such objection has, however, been disregarded by the learned Trial Court while observing that though the suit had been initially filed as summary suit, it was converted into an ordinary suit and since ‘ordinary summons’ had been issued and there was never any occasion for the defendant to have filed any ‘*leave to defend application*’, the aforesaid bar was not attracted.

16. Such order is under challenge.

17. The prime consideration, in the present petition, is also to the aforesaid aspect related to maintainability of such application seeking summary judgment.

18. There is no dispute with respect to the fact that suit was earlier filed under summary procedure i.e. under Order XXXVII CPC. Such summary procedure is applicable to the following classes of suit: -

“(a) *suits upon bills of exchange, hundies and promissory notes;*
(b) *suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising,—*
(i) *on a written contract, or*
(ii) *on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or*
(iii) *on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.*”

19. While considering any suit, filed under summary procedure, the defendant, after putting in appearance, is also required to respond to *summons for judgment* served upon him by the plaintiff and if the Court



is of the view that the facts disclosed by such defendant do not indicate that it has substantial defence to raise or that the defence intended to be put up by the defendant is frivolous and vexatious, such leave can be refused. Admittedly, on existence of certain conditions and on appreciation of overall facts of the case, leave can be granted with some conditions as well.

20. The Commercial Courts Act, 2015 introduces a specific provision related to “summary judgment” and such Chapter is known as Order XIII-A CPC.

21. Right here, it needs to be noted that while Section XXXVII CPC talks about the *summary procedure*, Order XIII-A CPC talks about *summary judgment*.

22. There is also no doubt with respect to the fact that if a Commercial Suit is filed under ordinary procedure i.e. not under summary procedure, the plaintiff can invoke Order XIII-A CPC and can seek summary judgment.

23. To that extent, there is no dispute or debate from either side.

24. The question is, however, what if such suit, which was originally filed as a summary suit but is subsequently converted into an ordinary suit.

25. Whether in such a situation, any such plaintiff is justified in seeking summary judgment or not?

26. Let me note Order XIII-A which reads as under: -

“ORDER XIII-A

“SUMMARY JUDGMENT



1. Scope of and classes of suits to which this Order applies.—(1) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.

(2) For the purposes of this Order, the word “claim shall include—

(a) part of a claim;

(b) any particular question on which the claim (whether in whole or in part) depends; or

(c) a counterclaim, as the case may be.

(3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

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.

3. Grounds for summary judgment.— The Court may give as 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.

4. Procedure. - (1) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-clauses (a) to (f) mentioned hereunder:—

(a) the application must contain a statement that it is an application for summary judgment made under this Order;

(b) the application must precisely disclose all material facts and identify the point of law, if any;

(c) in the event the applicant seeks to rely upon any documentary evidence, the applicant must,—



- (i) include such documentary evidence in its application, and*
- (ii) identify the relevant content of such documentary evidence on which the applicant relies;*
- (d) the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be;*
- (e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.*
- (2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of:—*
 - (a) the date fixed for the hearing; and*
 - (b) the claim that is proposed to be decided by the Court at such hearing.*
- (3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (f) mentioned hereunder in addition to any other matters that the respondent may deem relevant:—*
 - (a) the reply must precisely—*
 - (i) disclose all material facts;*
 - (ii) identify the point of law, if any; and*
 - (iii) state the reasons why the relief sought by the applicant should not be granted;*
 - (b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must—*
 - (i) include such documentary evidence in its reply; and*
 - (ii) identify the relevant content of such documentary evidence on which the respondent relies;*
 - (c) the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be;*
 - (d) the reply must concisely state the issues that should be framed for trial;*
 - (e) the reply must identify what further evidence shall be brought on record at trial that could not be brought on record at the stage of summary judgment; and*



(f) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.

5. Evidence for hearing of summary judgment. - (1) *Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must:—*

(a) file such documentary evidence; and

(b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing.

(2) *Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must:—*

(a) file such documentary evidence in reply; and

(b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing.

(3) *Notwithstanding anything to the contrary, sub-rules (1) and (2) shall not require documentary evidence to be:—*

(a) filed if such documentary evidence has already been filed; or

(b) served on a party on whom it has already been served.

6. Orders that may be made by Court.- (1) *On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:—*

(a) judgment on the claim;

(b) conditional order in accordance with Rule 7 mentioned hereunder;

(c) dismissing the application;

(d) dismissing part of the claim and a judgment on part of the claim that is not dismissed;

(e) striking out the pleadings (whether in whole or in part); or

(f) further directions to proceed for case management under Order XV-A.

(2) *Where the Court makes any of the orders as set forth in sub-rule (1)*

(a) to (f), the Court shall record its reasons for making such order.

7. Conditional order. - (1) *Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it shall do so, the Court may make a conditional order as set forth in Rule 6(1)(b).*



(2) *Where the Court makes a conditional order, it may:—*

(a) *make it subject to all or any of the following conditions:—*

(i) *require a party to deposit a sum of money in the Court;*

(ii) *require a party to take a specified step in relation to the claim or defence, as the case may be;*

(iii) *require a party, as the case may be, to give such security or provide such surety for restitution of costs as the Court deems fit and proper;*

(iv) *impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion; and*

(b) *specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.*

8. Power to impose costs. - *The Court may make an order for payment of costs in an application for summary judgment in accordance with the provisions of sections 35 and 35A of the Code.”*

(emphasis supplied)

27. Of course, the procedure under XXXVII CPC and under Order XIII-A CPC may be little dissimilar in its applicability but the objective seems to be common.

28. A summary judgment under Order XIII-A CPC can be passed when there are no real prospects of defending the claim and under Order XXXVII CPC also, *leave to defend* can be refused if the Court comes to the conclusion that the defendant has no substantial defence to raise or that his defence is frivolous or vexatious.

29. Thus, the core assessment norms remain the same.

30. However, there is one additional feature which is though present under Order XIII-A CPC, but not there under Order XXXVII CPC.



31. Order XIII-A CPC can be invoked by either of the parties as a summary judgment can even be given against the plaintiff if the Court finds that the plaintiff has no real prospect of succeeding on its claim. No such situation exists under Order XXXVII CPC.

32. Coming to impugned order, the sole reasoning given by the learned Trial Court is to the effect that since the suit was converted into an ordinary suit in the beginning and there was never any occasion for the Court to have issued “summons in a summary suit” {as per the Form No. 4 of Appendix B of CPC}, it could not be taken that it was an ‘originally filed summary suit’ and, therefore, the aforesaid bar does not come into play.

33. However, the aforesaid inference is completely misplaced as it renders the legislative intention absolutely redundant.

34. The legislative intention is very clear and as per the aforesaid provision, no application for summary judgment under Order XIII-A would lie in respect of a suit of any commercial dispute which is “originally filed” under Order XXXVII CPC.

35. The suit in question was, definitely, originally filed under summary procedure.

36. It really does not matter whether, thereafter, the suit was converted into a regular suit, either on the basis of statement made by the plaintiff or in terms of direction given by the learned Trial Court or for that matter on the basis of grant of unconditional *leave to defend*.

37. The key words are “originally filed” suit.



38. Therefore, once the suit is, originally, filed as a suit under summary procedure and later, even if, such suit is converted into an ordinary suit, that would not give any right or handle to any plaintiff to again seek a summary judgment, *albeit*, under a different procedure.

39. If the contention of the plaintiff is accepted and the aforesaid provision is interpreted in the above manner, the bar would be attracted only if summons had been issued in the prescribed format meant for a summary suit only, the underlying purpose of the aforesaid key words “originally filed” would stand negated and frustrated.

40. Moreover, interpretation can be supplied only when there is any kind of ambiguity in the provision. The provision is amply clear and there is no scope of any confusion or vagueness and, therefore, it is not appropriate to interpret, modify, add or subtract the provision in a manner which was never contemplated by the Legislature.

41. It is also obvious that both the above provisions are resorted to in the beginning.

42. As far as a summary suit filed under XXXVII CPC is concerned, at the very threshold itself, summons are sent in a prescribed manner and once the appearance is put in by the defendant and *summons for judgment* are taken out, defendant is required to seek *leave to defend* the aforesaid suit. If leave is granted, obviously, the suit becomes an ordinary suit and then its fresh journey begins with filing of written statement. Under Order XIII-A CPC, there is no question of defendant seeking *leave to*



defend as the suit is ordinary suit. However, fact remains that any such application can be moved before framing of issues only.

43. The ambit and scope of consideration in both the situation is virtually same and similar and the Court is merely required to see whether the defendant has any real prospect of successfully defending the claim or not. Though the wordings may be little different but they convey the same message that plaintiff would be entitled to judgment where there is no real prospect of defendant, successfully defending its claim.

44. Plaintiff herein is trying to sail in two boats.

45. Plaintiff itself filed a summary suit and when certain queries were put to the defendant by the learned Commercial Court, it was left with no option but to make a statement before the Court and, resultantly, the suit was converted into an ordinary suit. Merely because, plaintiff made a statement or for that matter it was done as he had no answer to the queries put by the Court would not mean that at a later stage of the same suit, plaintiff can make a similar kind of request, *albeit*, under a different Chapter.

46. Learned counsel for defendant (petitioner herein) relies upon judgment of Division Bench of this Court delivered in *Brijesh Kumar Agarwal and Others Vs. IFCI Factors Limited and Another: 2023 SCC OnLine Del 1502*. Therein also, the suit was filed under Order XXXVII CPC. *Leave to defend* was sought as matter was showing existence of several triable issues. In that case also, on the basis of concession made by the plaintiff, the Court directed that the suit be treated as an ordinary



suit and, accordingly, defendant was directed to file written statement and thereafter, case was fixed for admission/denial of documents and framing of issues. It was at the aforesaid stage that learned Single Judge passed judgment while proceeding *suo moto*, in terms of Order XIII-A CPC. Such summary judgment was set aside by learned Division Bench while observing that suit could not have been disposed of by summary judgment in view of the express provision of Sub Rule (3) of Rule 1 of Order XIII-A CPC.

47. Para-18 to Para-21 read as under: -

“18. Sub-rule (3) of Rule 1 of Order XIII-A of the CPC contains a non-obstante clause, which expressly provides that the provisions of Order XIII-A of the CPC would not be applicable in respect of any commercial dispute that was originally filed as a summary suit under Order XXXVII. Thus, in the present case, the suit could not have been disposed of by a summary judgment under Order XIII-A of the CPC.

19. Order XIV of the CPC expressly requires the court to, at the first hearing of the suit, after completion of the pleadings and after examination under Order X Rule 2 of the CPC, ascertain material propositions of fact and law in respect of which parties are at variance. The court is thereafter required to strike the issues in respect of the matters in which the parties are at variance. However, prior to striking of the issues, any of the parties can apply to the court for a summary judgment if the conditions as stipulated under Order XIII-A of the CPC are met.

20. In terms of Order XV-A of the CPC, the court is required to hold a Case Management Hearing and the court can, at the said hearing, hear and decide any application filed by the parties for a summary judgment.

21. As stated above, in the present case, the suit could not be disposed of by a summary judgment in view of the express provisions of Sub-rule (3) of Rule 1 of Order XIII-A of the CPC.”



48. Though aforesaid case was also dealing with Chapter 10A of *Delhi High Court (Original Side) Rules, 2018* which empowers the Court to render the judgment *suo moto*, fact remains that it was categorically held therein that the suit could not have been disposed of by a summary judgment in view of aforesaid bar given under Rule 3 (1) of Order XIII-A CPC.

49. The above judgment is on all fours.

50. Learned counsel for plaintiff (respondent herein) relies on *Ashok Commercial Enterprises and Another Vs. Rajesh Jugraj Madhani: 2023 SCC OnLine Bom 248* but in view of the judgment of Division Bench of this Court, which is squarely on the same issue, no real advantage can be dug out from the aforesaid judgment. Moreover, in said case, there was no resistance coming from the side of the defendant on the aforesaid aspect and reference in this regard be made to Para-15 of said judgment. Additionally, in said case, there was, clearly, some kind of uncertainty whether suit had been filed under summary procedure or regular procedure as, in the aforesaid judgment, it is mentioned that plaintiff had filed *summons for judgment*, possibly, under the impression that the suit was treated as a summary suit under Order XXXVII CPC. Therein, though the suit had been presented, as a summary suit but since it was registered as a regular commercial suit only, it was observed that the bar under Sub Rule Rule 3 (1) of Order XIII-A CPC was not attracted. Clearly, the situation in the present case is distinguishable.



51. Thus, evidently, since the suit herein has originally been filed as a summary suit, the aforesaid bar stands attracted and such bar does not get lifted merely because later on, the suit is converted into an ordinary suit for any reason whatsoever. It is hardly of any consequence whether such conversion is on the basis of grant of conditional or unconditional leave to defend to defendant or on the basis of statement made by the plaintiff or a *suo moto* exercise of power. It also, really, does not matter much as to what kind of summons were issued by the Court as the sole deciding and governing factor is the description of the nature of the suit when it was originally filed.

52. Any other interpretation would make the words “originally filed” totally superfluous and illusory.

53. Viewed thus, learned District Judge (Commercial Court) could not have entertained any application seeking summary judgment.

54. As an upshot of my foregoing discussion, the present petition is allowed and the impugned order is set aside.

(MANOJ JAIN)
JUDGE

AUGUST 4, 2025/dr/shs