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

\# **CNR No. DLHC010442912026**

\+ RFA(COMM) 629/2026, CM APPL. 63718/2026, CM APPL. 63719/2026, CM APPL. 63720/2026, CM APPL. 63721/2026, CM APPL. 63722/2026 & CM APPL. 63723/2026

MS SENATOR WOOD PVT LTD THROUGH ITS AR JITENDER KEJRIWAL & ANR. .....APPELLANTS

Through: Mr. Anshul Sharma and Mr. Abhishek, Advs.

versus

BABU LAL PATEL & ORS. .....RESPONDENTS

Through: Mr. Pranay Trivedi, Adv.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT (ORAL)

% **17.09.2026**

VINOD KUMAR, J.

1. The present appeal has been preferred against a judgment dated 12.08.2026 passed by learned District Judge (Commercial Court)-02, West District, Tis Hazari Courts, Delhi, vide which she partly decreed the CS (COMM) No. 511/2024.

2. In the impugned judgment, learned District Judge passed a decree of possession in favour of plaintiffs (respondents herein) and against the defendant (appellant herein) in respect of basement and ground floor of the suit property bearing no.1/113, Block-1, Ware Housing Scheme, Village Basai Darapur, Kirti Nagar, New Delhi-110015. This order was passed by learned District Judge on an application of the

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respondents-plaintiffs under Order XIII A, which was treated as an application under Order XII Rule 6 of Code of Civil Procedure, 1908 (in short 'CPC').

3. Briefly stated the facts are that the plaintiffs let out the suit property to the defendant-appellant company for commercial purpose. A registered lease deed dated 17.02.2021 was executed between the parties for a fixed period commencing from 01.02.2021 to 31.01.2025. As per the terms of the lease deed, the defendant was liable to pay monthly rent in advance on or before 10th day of every rental month. As per clause 12 of the registered lease deed, if there was default in payment of rent for consecutive two months, lessor would be entitled to terminate the tenancy. As per plaint, the defendant company made defaults in payment of rent for the months of January 2024 and February 2024. Consequently, the plaintiff issued a legal notice dated 19.02.2024 terminating the lease and calling upon the defendant to vacate and handover peaceful vacant possession of the suit premises.

4. The appellant-defendant contested the suit by filing a written statement, in which the defendant admitted the execution of registered lease deed, relationship of landlord-tenant between the parties and agreed rate of rent. However, he stated that there was no default in payment of rent for two consecutive months and that post dated cheques of the rent have already been handed over to the plaintiffs at their own request.

5. After completion of the pleadings, the defence of the appellant was struck off by the Trial Court in exercise of powers under Order XV A CPC (Delhi Amendment) vide order dated

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01.04.2025 and the matter was directed to be listed for plaintiff's evidence.

6. It was at this stage that the respondents-plaintiffs filed an application under Order XIII A of the Code of Civil Procedure, 1908 as made applicable to the commercial disputes through the amendments brought by virtue of Section 16 of the Commercial Courts Act, 2015. The Trial Court, after hearing the rival submissions, held that an application for summary judgment under Rule 2 of Order XIII A can be moved only before framing of issues. In the present case, as no issues were framed on account of defence having been struck off, it was held that there cannot be any bar merely on the ground that case was fixed for recording of evidence.

7. The Trial Court, however, treated the application under Order XII Rule 6 CPC on the request of the respondents-plaintiffs and conceding the said request, passed the impugned judgment on the basis of admissions made in written statement and passed a decree of possession of the premises in question in favour of plaintiffs directing the defendant to handover the possession of the suit premises to the plaintiffs.

8. The appellant company (defendant before the Trial Court) has come in appeal against the said judgment and argued that the nature of application under Order XIII A and the application under Order XII Rule 6 CPC are not only different but also operate in different spheres. It is argued that he had addressed arguments on the application under Order XIII A and not on the application under Order XII Rule 6 CPC.

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9. We have perused the impugned judgment. Para 13 of the impugned judgment makes a specific reference that the plaintiffs themselves had requested that the application should be treated under Order XII Rule 6 CPC. It is not the case of the appellant-defendant that this submission was wrongly recorded by the Trial Court and that they filed any application for the correction of the aforesaid portion of the impugned judgment before the Trial Court. Notably, the Trial Court held that the court can exercise its powers to deliver a judgment on admissions *suo motu* also.

10. Of course, we find substance in the submission of learned Counsel for the appellant but only to the extent that an application under Order XIII A for summary judgment in the disputes covered under the Commercial Courts Act, 2015 cannot be filed when the case has been fixed for recording of evidence. Here, it would be apposite to have a look at Rule 2 of Order XIII A, which is reproduced 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."*

11. Thus, as per Rule 2 of Order XIII A, the application for summary judgment can be filed before framing of issues. However, there may be situations where issues are not framed by the Trial Court because of the reason that the defendant has been proceeded ex-parte or defence has been struck off. Now it is to be seen as to at which stage the issues are to be framed. This takes us to Order XV A which prescribes the functions of

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the Commercial Court, which it has to discharge during Case Management Hearing (in short 'CMH'), relevant portion of which is reproduced as under:

> *"1.* First Case Management Hearing.—*The Court shall hold the first Case Management Hearing, not later than four weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit.*
>
> *2.* Orders to be passed in a Case Management Hearing.—*In a Case Management Hearing, after hearing the parties, and once it finds that there are issues of fact and law which require to be tried, the Court may pass an order—*
>
> *(a) framing the issues between the parties in accordance with Order XIV of the Code of Civil Procedure, 1908 (5 of 1908), after examining pleadings, documents and documents produced before it, and on examination conducted by the Court under Rule 2 of Order X, if required;*
> *(b) listing witnesses to be examined by the parties;*
> *(c) fixing the date by which affidavit of evidence to be filed by parties;*
> *(d) fixing the date on which evidence of the witnesses of the parties to be recorded;*
> *(e) fixing the date by which written arguments are to be filed before the Court by the parties;*
> *(f) fixing the date on which oral arguments are to be heard by the Court; and*
> *(g) setting time limits for parties and their advocates to address oral arguments.*
>
> *3.* Time limit for the completion of a trial.—*In fixing dates or setting time limits for the purposes of Rule 2 of this Order, the Court shall ensure that the arguments are closed not later than six months from the date of the first Case Management Hearing.*
>
> *4.* Recording of oral evidence on a day-to-day basis.—*The Court shall, as far as possible, ensure that the recording of evidence shall be carried on, on a day-to-day basis until the cross-examination of all the witnesses is complete.*
>
> *5.* Case Management Hearings during a trial.—*The Court may, if necessary, also hold Case Management Hearings anytime during the trial to issue appropriate orders so as to ensure adherence by the parties to the dates fixed under Rule 2 and facilitate speedy disposal of the suit.*

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6. Powers of the Court in a Case Management Hearing.—
(1) In any Case Management Hearing held under this Order, the Court shall have the power to—

(a) prior to the framing of issues, hear and decide any pending application filed by the parties under Order XIII-A;
(b) direct parties to file compilations of documents or pleadings relevant and necessary for framing issues;
(c) extend or shorten the time for compliance with any practice, direction or Court order if it finds sufficient reason to do so;
(d) adjourn or bring forward a hearing if it finds sufficient reason to do so;
(e) direct a party to attend the Court for the purposes of examination under Rule 2 of Order X;
(f) consolidate proceedings;
(g) strike off the name of any witness or evidence that it deems irrelevant to the issues framed;
(h) direct a separate trial of any issue;
(i) decide the order in which issues are to be tried;
(j) exclude an issue from consideration;
(k) dismiss or give judgment on a claim after a decision on a preliminary issue;
(l) direct that evidence be recorded by a Commission where necessary in accordance with Order XXVI;
(m) reject any affidavit of evidence filed by the parties for containing irrelevant, inadmissible or argumentative material;
(n) strike off any parts of the affidavit of evidence filed by the parties containing irrelevant, inadmissible or argumentative material;
(o) delegate the recording of evidence to such authority appointed by the Court for this purpose;
(p) pass any order relating to the monitoring of recording the evidence by a commission or any other authority;
(q) order any party to file and exchange a costs budget;
(r) issue directions or pass any order for the purpose of managing the case and furthering the overriding objective of ensuring the efficient disposal of the suit.
(2) When the Court passes an order in exercise of its powers under this Order, it may—
(a) make it subject to conditions, including a condition to pay a sum of money into Court; and
(b) specify the consequence of failure to comply with the order or a condition.
(3) While fixing the date for a Case Management Hearing, the Court may direct that the parties also be present for

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such Case Management Hearing, if it is of the view that there is a possibility of settlement between the parties."

12. It shows that an application for summary judgment has to be disposed of during CMH. As soon as the case is put for recording of evidence, it goes beyond the stage of CMH and thereafter, the application under Order XIII A would not be maintainable. In the present case, even though issues have not been framed, still as the case had reached the stage of recording of evidence, it means that the case has crossed the stage of framing of issues during CMH. Therefore in the present case, the application for summary judgment under Order XIII was not maintainable.

13. However, the plaintiffs had themselves requested the Trial Court that the application should be treated under Order XII Rule 6 CPC. Even if the plaintiffs had not made such submission, there was no hindrance upon the Trial Court to consider the admissions and pass a decree as per Order XII Rule 6 CPC. The impugned judgment, therefore, is nothing but a judgment on admissions. Accordingly, we do not find any substance in the arguments of learned Counsel for the appellant that the appellant had addressed arguments on an application under Order XIII A CPC and not on an application under Order XII Rule 6 CPC. Learned Counsel for the appellant fairly admitted that a court can pass a judgment on admission under Order XII Rule 6 CPC *suo motu* at any stage of the suit.

14. In order to answer the argument by learned Counsel for the appellant-defendant appropriately and sufficiently, we take this opportunity to discuss the stage, sphere, scope and sweep of

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Order XIII A and Order XII Rule 6 CPC.

15. Rule 2 of Order XIII A of CPC provides that an application for summary judgment can be filed and decided before framing of issues, which takes place during CMH. On the other hand, decree can be passed on the basis of admissions at any stage of the suit. Therefore, stage of filing an application for summary judgment is quite restricted.

16. Moreover, these provisions operate in different spheres. An application for summary judgment under Order XIII A, which is a complete Code in itself, can be made exclusively in commercial disputes under the Commercial Courts Act, 2015. On the other hand, Order XII Rule 6 CPC applies to all the civil suits including commercial disputes. Further, under Order XIII A, the initiative is with the parties exclusively to move application for summary judgment and the court cannot *suo motu* pass a summary judgment. See Division Bench judgment of Delhi High Court cited as ***Surya Food and Agro Limited vs. Om Traders and Another,*** *(2023) 7 High Court Cases (Del) 350.* However, under Order XII Rule 6 CPC not only the parties but also the court can pass judgment on admission under Order XII Rule 6 CPC *suo motu*.

17. The scope of these provisions is also different. Order XIII A is bigger in scope than Order XII Rule 6 CPC, which is limited to the admissions only. To be more precise, a judgment under Order XII Rule 6 CPC can be passed only when the admissions are absolutely clear, categorical and unconditional. We refer to the latest judgment of the Supreme Court in ***Pushpa & Ors. vs Dayawati & Ors,*** *2026 INSC 603*. If there are no clear cut

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admissions, the powers of the court under Order XII Rule 6 CPC cannot be exercised. On the other hand, the scope of Order XIII A is wider. Even if there are no admissions, the court can give a summary judgment if it considers that the plaintiff has no real prospect of succeeding or the defendant had no real prospect of successfully defending the claim.

18. The sweep of Order XII Rule 6 CPC is very limited. The parties and the Court have to identify the clear and unequivocal admissions. However, while addressing arguments on application for summary judgment under Order XIII A, the parties can draw the attention of the Court to every pleading and every document on record. Nothing is beyond boundaries for the court provided it forms part of judicial record. Therefore, the sweep of Order XIII A is expansive as compared to Order XII Rule 6 CPC.

19. The next issue argued by learned Counsel for the appellant is that once the defence of the appellant was struck off, it meant that written statement filed before the Trial Court was taken off the record and it was no longer a part of the judicial record. Therefore, it is argued that the Trial Court erred in taking admissions from the written statement.

20. We are of the opinion that the aforesaid submission is devoid of any basis. The defence is struck off when the defendant does not comply with an order or direction of the Court. Learned Counsel for the respondents-plaintiffs has drawn our attention to para 34 of the impugned judgment, which is reproduced as under:

"The Court also cannot lose sight of the subsequent

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developments during the pendency of the suit. Vide order dated 21.12.2024, this Court directed the defendant to pay the admitted monthly rent in accordance with the lease deed. Thereafter, on 01.04.2025, it was recorded that no arrears of rent had been paid despite the show cause notice dated 31.01.2025 and the defence of the defendant was struck off. Subsequently, vide order dated 02.08.2025, the application of the defendant seeking review of the order dated 21.12.2024 was dismissed and the earlier order was modified to the extent that the defendant was granted three months' time from that date to clear the arrears of rent with effect from 01.03.2024 and was directed to pay monthly rent as per the registered lease deed. However, the defendant is admittedly not paying the rent since long resulting in persistent default in payment of rent."

21. Thus it is clear that the defence was struck off under Order XV A (Delhi Amendment) on 01.04.2025 because the defendant had not cleared the arrears of admitted rent despite repeated directions of the court. Nothing has been shown by learned Counsel for the appellant-defendant (i.e. lessee) that he had made payment of rent for the months of January and February, 2024 and thereafter. We are of the opinion that effect of striking off the defence starts onwards and it does not have any retrospective effect. Therefore, the pleadings and documents filed before striking off the defence cannot be taken off the record as argued by learned Counsel for the appellant.

22. The Trial Court passed the impugned judgment taking note of the admissions in the written statement by the defendant admitting the relationship of landlord and tenant, execution of registered lease deed dated 17.02.2021, the agreed rate of rent and prolonged non-payment of rent. Therefore, we are of the considered opinion that on the basis of such admissions, the court was fully justified in passing the impugned judgment. We

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accordingly, find absolutely no substance in the appeal, which we dismiss in *limine* and at threshold.

23. For removal of the confusion, it is necessary to observe that there are two different Chapters under the heading "Order XVA". Vide High Court of Delhi Notification No. 324/Rules/DHC, dated 12th November, 2008, published in Delhi Gazette, Extra., Pt. IV, No. 179 dated 14th November, 2008, an Order XV A was inserted in the year 2008. Under this Order XV A, a court can direct a lessee to deposit the arrears of rent and in default of making the deposit, the court is empowered to strike off the defence. It is necessary to mention here that in the present case defence of the appellant was struck off under this Order XV A. Thereafter, through Commercial Courts Act, 2015, an Order XV A was inserted in CPC, which provides the procedure of Case Management Hearing. This Order XV A brought through amendment in CPC is a general provision but in force within local limits of jurisdiction of the High Court of Delhi. On the other hand, Order XV A inserted through Commercial Courts Act, 2015 is applicable to the whole of India but only to commercial disputes under the Commercial Disputes Act, 2015.

24. Pending applications are also dismissed.

VINOD KUMAR, J

C.HARI SHANKAR, J

SEPTEMBER 17, 2026
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