

Legal Issues in ‘Summary Judgment in Civil Proceedings’

Issue: Can Commercial Courts *suo moto* pass Summary Judgment without an Application by Either Party?

Relevant Legal Provisions

❖ Order XIII-A, Code of Civil Procedure, 1908 (as amended by Commercial Courts Act, 2015) –

“Summary Judgment

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.”

“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... ” (Emphasis supplied)

Relevant Legal Provisions (Contd.)

❖ Order XV-A, Code of Civil Procedure, 1908 (as amended by Commercial Courts Act, 2015) –

“Case Management Hearing

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;**” (Emphasis supplied)*

Relevant Legal Provisions (Contd.)

❖ Chapter X-A, Delhi High Court (Original Side) Rules, 2018 –

“CASE MANAGEMENT

1. Summary Judgment.—

At the time of Case Management hearing, a Court, may of its own, decide a claim pertaining to any dispute, by a summary judgment, without recording oral evidence.

3. Grounds for summary judgment.—

The Court may, of its own, give a summary judgment against a plaintiff or defendant on a claim if it considers that... ” (Emphasis supplied)

Relevant Legal Provisions (Contd.)

❖ Annexure E, Delhi High Court (Original Side) Rules, 2018 –

“PRACTICE DIRECTIONS UNDER SECTION 18 OF THE COMMERCIAL COURTS, ...2015

9. In the case of commercial disputes, the Court may, inter-alia, pass orders as it may think fit for the speedy disposal of the suit or narrowing the controversy between the parties, including:-

h) conduct a case management hearing under Order XV-A of the Court and as part of the said case management hearing –

*ii. explore the possibility of deciding the dispute **by a summary judgment, without a specific application for the said purpose**, on the basis of pleadings dispensing with the trial of the suit on the questions of law or of facts on which the parties are not at issue;” (Emphasis supplied)*

Relevant Legal Provisions (Contd.)

❖ Rule 27, Delhi High Court Intellectual Property Rights Division Rules, 2022 –

“Summary Adjudication

*In cases before the IPD, the Court may pass summary judgment, **without the requirement of filing a specific application seeking summary judgment** on principles akin to those contained in Order XIII A, Code of Civil Procedure, 1908 as applicable to commercial suits under the Commercial Courts Act, 2015.” (Emphasis supplied)*

Relevant Legal Provisions (Contd.)

❖ Section 16, Commercial Courts Act, 2015 –

“Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.—.

*(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, **the provisions of the Code of Civil Procedure as amended by this Act shall prevail.**” (Emphasis supplied)*

Relevant Judicial Decisions

- ❖ ***Bright Enterprises Pvt. Ltd. & Anr. v. MJ Bizcraft LLP & Anr. [RFA(OS)(COMM) 8/2016, Order dated January 4, 2017, Delhi High Court]***
 - “...in our view, *a summary judgment under Order XIII A CPC is not permissible without there being an appropriate application for summary judgment. The contents of an application for summary judgment are also stipulated in Rule 4 of Order XIII A.....From the provisions laid out in Order XIII A, it is evident that the proceedings before Court are adversarial in nature and not inquisitorial. It follows, therefore, that summary judgment under Order XIII A cannot be rendered in the absence of an adversary and merely upon the inquisition by the Court. The Court is never an adversary in a dispute between parties....*” (Emphasis supplied)

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Relevant Judicial Decisions (Contd.)

- ❖ ***DHL International GMBH v. DLH Express Services Private Ltd.*** [CS (COMM) 563/2020, Order dated April 22, 2022, Delhi High Court]
 - “...*In so far as the prayer for summary judgment is concerned, as per the Commercial Courts Act, 2015 read with the Delhi High Court (Original Side) Rules, 2018...and Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022..., summary judgment can be passed under Order XIII A, if the Defendant has no real prospect of succeeding in the matter. **In fact, even the filing of application for the same would not be required in terms of Rule 27.***” (Emphasis supplied)

Relevant Judicial Decisions (Contd.)

- ❖ ***DS Confectionery Products Limited v. Nirmala Gupta & Anr.* [CS(COMM) 176/2020, Order dated November 22, 2022, Delhi High Court]**
- *“Though the matter had been listed before the learned Joint Registrar (Judicial) for recording of plaintiff’s evidence, the learned counsel for the **plaintiff submitted that the present case is fit for passing of a Summary Judgment** in terms of Order XIII-A of the Code Of Civil Procedure, 1908, as applicable to commercial disputes of a specified value, read with Rule 27 of The Delhi High Court Intellectual Property Division Rules, 2022..., against the defendants..... In my opinion, therefore, this is a fit case where a **Summary Judgment in terms of Order XIII-A of the Code Of Civil Procedure, 1908, as applicable to commercial disputes of a specified value, read with Rule 27 of the IPD Rules deserves to be passed in favour of the plaintiff and against the defendants**” (Emphasis supplied)*

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Relevant Judicial Decisions (Contd.)

- ❖ ***Sporta Technologies Pvt. Ltd. & Anr. v. Virat Saxena* [CS(COMM) 59/2020, Order dated November 25, 2022, Delhi High Court]**
 - *The learned counsel for the plaintiffs,...submits that this is a fit case where a Summary Judgment in terms of Order XIII-A of the CPC, as applicable to commercial disputes of a specified value, read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022...deserves to be passed in favour of the plaintiffs and against the defendant...In my opinion, therefore, this is a fit case where a Summary Judgment in terms of Order XIII-A of the CPC, as applicable to commercial disputes of a specified value, read with Rule 27 of the IPD Rules deserves to be passed in favour of the plaintiffs and against the defendant.” (Emphasis supplied)*

Relevant Judicial Decisions (Contd.)

❖ *Surya Food and Agro Limited v. Om Traders & Anr.* [RFA(OS)(COMM) 28/2019, Order dated January 20, 2023, Delhi High Court]

- “Although the grounds on which the summary judgment can be rendered in terms of the 2018 Rules and Order XIII-A of the CPC are identical, ...**there is a conflict between the provisions...Order XIII-A of the CPC enables a party to a suit to apply for summary judgment and sets out a detailed procedure for doing so. A plain reading of the procedure as stipulated under Rules 4 and 5 of Order XIII-A of the CPC indicates that the said Rules stipulate a procedure, which entails full opportunity to the respondent to agitate or resist the claim as the case may be. Under Order XIII-A of the CPC, the procedure to secure a summary judgement cannot be triggered without an application filed by any party. The provisions of Chapter X-A of the 2018 Rules do not provide for any such procedure and there is no scope for following the procedure as set out in Rule 4 of Order XIII-A of the CPC in case of a suo motu summary judgment by the Court.**” (Emphasis supplied)

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Relevant Judicial Decisions (Contd.)

- ❖ ***Surya Food and Agro Limited v. Om Traders & Anr.* [RFA(OS)(COMM) 28/2019, Order dated January 20, 2023, Delhi High Court] (Contd.)**
 - *“The Delhi High Court had also issued Practice Directions...The said Practice Directions clearly do not enable the court to adjudicate the disputes between the parties where the parties are at variance on matters of law or on facts....Sub-section (3) of Section 16 of the Commercial Courts Act expressly provides that the provisions of the CPC, as amended by the Commercial Courts Act, would prevail in case there is any conflict between the provisions of any Rule of the jurisdictional High Court or any amendment to the CPC by the State Government. **The Commercial Courts Act is a special enactment and the same would prevail in case of any conflict with the 2018 Rules.**” (Emphasis supplied)*

Conclusion

- ❖ The Code of Civil Procedure (as amended by the Commercial Courts Act) under Order XIII-A sets out the procedure of summary judgment by which courts may decide a claim pertaining to any commercial dispute without recording oral evidence. Order XIII-A of the CPC does not empower the court to *suo moto* render a summary judgement.
- ❖ However, Chapter X-A and Practice Directions under Annexure E of the Delhi High Court (Original Side) Rules, 2018 as well as Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022 expressly empower the court to render a summary judgment on its own.
- ❖ Single Judges of the Delhi High Court, on the basis of such rules, have *suo moto* passed summary judgments in various cases.
- ❖ However, the Division Bench of the Delhi High Court recently held that the Delhi High Court (Original Side) Rules, 2018 are in conflict with Order XIII-A of CPC and the latter would prevail. Thereby, Courts cannot render a *suo moto* summary judgment.

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THANK YOU!
Questions?

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