



\$~27

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

% *Date of Decision: 03rd July, 2025*

+ CM(M) 1121/2025 & CM APPL. 37944/2025 & CM APPL. 37945/2025

RAJEEV JAIN & ANR.

.....Petitioners

Through: Mr. Vishvanath Kumar, Mr. Siddhant Rai Sethi, Mr. Mayank Gupta, Ms. Srishti Jain & Mr. Sahib Gurdeep Singh, Advs. Alongwith petitioners in person.

versus

GULSHAN KUMAR JAIN (SINCE DECEASED) THROUGH LR. DEEPAK JAIN

.....Respondent

Through: Mr. Ravi Dev Sharma, Advocate (through VC).

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The point raised in the present petition is very short and precise.
2. The petitioners herein are defending a suit for permanent injunction, occupational charges/damages.
3. The suit is regular in nature and not a commercial one.
4. During pendency of the abovesaid suit, plaintiff moved an application under Order XV-A CPC and such application was allowed by the learned Trial Court on 24.07.2024.
5. Since there was no compliance of the abovesaid order, learned Trial Court has struck off the defence of the defendants (petitioners herein) *vide*



order dated 11.09.2024.

6. Such order is under challenge.

7. The prime-most contention coming from the side of the petitioners is to the effect that as per the specific mandate of Order XV-A (2) CPC, it is incumbent upon the learned Trial Court to issue Show Cause Notice. However, instead of issuing any Show Cause Notice, on the same day itself i.e. 11.09.2024, the learned Trial Court has struck off the defence of the petitioners.

8. Learned counsel for the respondent/plaintiff joins the proceeding through *video conferencing* on advance notice and submits that there was no other option left to the learned Trial Court, as despite there being a specific direction, there was no compliance. He also submits that the petition, which the defendant had filed earlier, challenging the abovesaid order passed on 24.07.2024, has already been dismissed. Learned counsel for respondent also supplements that since no cause was shown by the defendants on 11.09.2024, learned Trial Court was justified in striking off the defence.

9. However, the position is already settled one and show cause is mandatory. The questioning in this regard by learned Trial Court is of 11.09.2024 and same day and by virtue of same very order, the learned Trial Court has struck off the defence of the petitioners herein. Even if, there was no justified reason with the petitioners, in not complying with the order dated 24.07.2024 or, even if, their earlier petition had been dismissed by this Court, the abovesaid specific provision should have been adhered to in *letter and spirit*.

10. Reference be made to *Bimla Kapoor & Ors. v. Sangita Bhutani & Another: 2025 SCC OnLine Del 3165* wherein also, this Court, in no uncertain



terms, has reiterated the position that the issuance of Show Cause Notice is imperative and mandatory. Relevant paras of the said judgment read as under:

“10. The position is no longer res integra and service of such Show Cause Notice is imperative and mandatory, before taking recourse to extreme steps of striking off the defence.

11. Reference, in this regard, be made to Madho Singh Chauhan v. Smriti, 2022 SCC OnLine Del 1059. Paras 26 to 35 of said judgment read as under:—

“26. This order, dated 24th September, 2021, passed by the learned ADJ under Order XV-A(2) of the CPC, is in essence to a sequel to the earlier order dated 20th March, 2021, which forms subject matter of challenge in CM(M) 602/2021 and which stands upheld by me hereinabove.

27. Order XV-A(2), plainly read, requires the court, in a case where there is no compliance, by the defendant, with the order passed under Order XV-A(1), after granting an opportunity to the defendants to explain the lapse in compliance, strike off the defence of the defendants in case the lapse is not properly explained.

28. Order XV-A(1) clearly ordains that “in the event of any default in making the deposit as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.”

29. “Sub-rule (2)” of Order XV-A requires the court, before passing an order striking off the defence, to serve notice on the defendant to show cause as to why the defence not be struck off, and thereafter by considering the cause shown, if any, decide as to whether the defendant should be relieved from the order striking off the defence.

30. The provision is worded in clear and unexceptionable terms. It starts with the word “before passing an order striking off the defence”. The statutory scheme is, therefore, unequivocal. The court, confronted with a situation in which the defendant has apparently not complied with the directions under Order XV-A(1), is required, in the first instance, to serve notice on the defendant calling for his explanation as to why there has been non-compliance with Order XV-A(1). The defendant has an opportunity, thereafter, to show cause as required by the court. The court has to consider the explanation given by the defendant and, only on such consideration, arrive at a conclusion as to whether the defence should be struck off or not. Needless to say, this entire exercise has to abide by the well-settled principles of natural justice.



31. *It is trite, from the times of Nazir Ahmed v. The King Emperor⁷ and State of Uttar Pradesh v. Singhara Singh⁸ that, where the law requires an act to be done in a particular manner, it has to be done in that manner or not at all.*

32. *In the present case, there is clear non-compliance with the procedure outlined in Order XV-A(2) by the learned ADJ while passing the order dated 24th September, 2021.*

33. *Mr. Jain, learned Counsel for Madho, has very fairly acknowledged that no formal notice to show cause was issued by the learned ADJ to Smriti etc. before passing of the impugned order dated 24th September, 2021. He submits that, on 24th September, 2021, he had informed the learned ADJ that there had been no compliance, by Smriti etc., of the earlier order dated 20th March, 2021 and that the learned ADJ had, thereupon, called upon Smriti etc. to explain the default. It is only after being satisfied that no explanation was forthcoming that the learned ADJ proceeded to strike off the defence of Smriti etc. This, according to Mr. Jain, is sufficient compliance with the mandate of Order XV-A of the CPC.*

34. *I am unable to agree. What is clearly envisaged by Order XVA(2) read with the concluding sentence in Order XV-A(1) is the issuance of a formal notice by the court, to the allegedly defaulting defendant, to show cause as to why, on the ground of default in compliance with the Order XV-A(1), the defence of the defendant should not be struck off. The defendant would be entitled to show cause. The court would thereafter have to consider the explanation given by the defendant and satisfy itself that there is no justifiable cause shown for the default in compliance with the Order XV-A(1) before proceeding to strike off the defence of the defendant under Order XV-A(2).*

35. *This procedure is, in my view, completely non-negotiable, as it has been enacted ex debito justitiae and to comply with the hallowed principles of natural justice and fair play.”*

12. *This Court had also, in one another petition i.e. CM (M) No. 617/2025 titled as Sunmeet Singh v. Divyank Bose, has reiterated the same position by observing that the Trial Court can strike off defence of any such party who does not comply with the directions issued under Order XV-A CPC, but not without adhering to the specific provision in this regard. In that case also, since no Show Cause Notice has been issued, prior to passing such order of striking off defence, the impugned order was set aside, being not sustainable in the eyes of law.”*

11. In view of the above, the present petition is allowed and order dated 11.09.2024, to the extent it strikes off defence, is set aside.



12. Needless to say, it will be open to the learned Trial Court to consider the abovesaid aspect afresh while giving due adherence to the abovesaid statutory provision and then to pass the appropriate order, in accordance with law.

13. The petition stands disposed of in aforesaid terms.

14. Pending applications, if any, also stand disposed of.

(MANOJ JAIN)
JUDGE

JULY 3, 2025/ck/SS