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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 28th April, 2025**
+ CM(M) 767/2025, CM APPL. 24955/2025, CM APPL. 24956/2025 &
CM APPL. 24957/2025
BIMLA KAPOOR AND ORSPetitioners
Through: Mr. Vidit Gupta with Mr. Trivesh
Sharma, Advocates.

versus

SANGITA BHUTANI AND ANRRespondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN
J U D G M E N T (oral)

1. Respondents herein have filed a suit for possession, arrears of rent and damages with consequential relief of injunction.
2. When the abovesaid suit was taken up by the learned Trial Court on 30.09.2024, it directed defendants to pay arrears of rent @ Rs.26, 000/- per month to such plaintiffs w.e.f. January, 2021 till date of such order and thereafter, to continue to pay said amount, on monthly basis for future months, till the disposal of the abovesaid suit.
3. Such order was passed by learned Trial Court on the basis of application moved by plaintiffs under Order XV-A CPC.
4. When asked, learned counsel for the petitioners/defendants informed that they have not challenged the abvoesaid order, till date.
5. Thereafter, when the matter was taken up by the learned Trial Court on 18.03.2025, noticing that there was no compliance of the abovesaid order, it struck off the defence of the defendants.



6. Such order is under challenge.
7. This Court has perused impugned order dated 18.03.2025 and it is manifestly clear that the defence has been struck off on account of non-compliance of the abovesaid order.
8. There is no doubt that the Court is empowered to strike off the defence but before taking recourse to such extreme step, the Court is mandated to serve a notice upon the defendant or his counsel as to why defence should not be struck off.
9. The grievance in the present petition is limited to the effect that without giving any opportunity of hearing to the defendants/their counsel, the defence has been struck off.
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 vs. Smriti and Ors: 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 Emperor*⁷ and *State of Uttar Pradesh v. Singhara Singh*⁸ 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 vs Divyank Bose & Ors. & Ors.*, 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.

13. None appears on behalf of respondents/plaintiffs despite advance notice.

14. Learned counsel for the petitioners/defendants reiterates at the Bar that the defence was struck off instantly, without there being issuance of any *Show Cause Notice*.

15. In view of the above, the present petition is allowed as it suffers from



patent illegality as procedural and mandatory requirement has not been adhered to. The order dated 18.03.2025 to the abovesaid extent is, accordingly, set aside with direction to the learned Trial Court to consider the abovesaid aspect afresh while giving due adherence to the statutory provision i.e. Order XV-A CPC and the abovesaid judgments and then to pass appropriate order with respect to striking off the defence.

16. Petition stands disposed of in aforesaid terms.
17. Pending application, if any, stands disposed of.

(MANOJ JAIN)
JUDGE

APRIL 28, 2025/sw/SS