



2025:DHC:3990-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **FAO(OS) (COMM) 36/2025**  
**SH. VINAY JAIN** .....Appellant  
Through:

versus

**SH. RAKESH JAIN & ORS.** .....Respondents  
Through: **Mr. Rajesh Raina, Adv.**

**CORAM:**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**  
**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**JUDGMENT (ORAL)**

% **16.05.2025**

**C. HARI SHANKAR, J.**

**REVIEW PET. 305/2025 & CM APPL. 29971/2025 (Stay)**

1. By this review petition, the respondents in FAO (OS) (Comm) 36/2025 seek review of judgment dated 16 April 2025 passed by this Court in the said appeal.

2. We have heard Mr. Rajesh Raina, learned Counsel for the review petitioners.

3. Mr. Raina has advanced various submissions before us. Despite the fact that a detailed reply was filed to the appeal, running into eighteen pages, not one of the contentions that Mr. Raina has sought to advance today finds place therein. Though Mr. Raina sought to



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contend that these submissions were advanced before the Court during arguments, we have also checked our notes and find that no such submissions were advanced.

4. We do not see why we should even entertain these submissions in a review petition when they were never advanced either in the pleadings or during the arguments when the matter was argued.

5. We may also note that no written submissions were filed by the respondents either, before arguing the matter.

6. Nonetheless, we have, in the interests of substantial justice, heard Mr. Raina on the submissions that he has advanced. We find no substance in any of them, at least as would merit a review of the judgment passed by us.

7. Mr. Raina's first submission was that the order passed by the learned Single Judge, though ostensibly passed under Order XVIII Rule 1<sup>1</sup> of the Code of Civil Procedure, 1908<sup>2</sup>, had actually to be treated as an order passed under Order XV-A Rule 6(i) and 6(r)<sup>3</sup> of the

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<sup>1</sup> **1. Right to begin.** – The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

<sup>2</sup> “the CPC”, hereinafter

<sup>3</sup> **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—

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(i) decide the order in which issues are to be tried;

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(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.



CPC as amended by the Commercial Courts Act, 2015.

8. In order to ascertain his exact stand, we repeatedly queried of Mr. Raina as to whether, according to him, the order was one passed under Order XVIII of the CPC or under Order XV-A of the CPC as amended by the Commercial Courts Act.

9. His categorical response is that the order has to be treated as one passed under Order XV-A of the CPC as amended by the Commercial Courts Act, though it purports to have been issued under Order XVIII Rule 1. He also invokes, in this regard, the well-settled principle that the mere citing of a wrong provision would not vitiate the decision.

10. Mr. Raina then went on to contend that the appeal filed by the appellant was not maintainable in view of Section 8<sup>4</sup> read with the proviso to Section 13 (1-A)<sup>5</sup> of the Commercial Courts Act and Order XLIII of the CPC.

11. In furtherance of the submission, Mr. Raina argues that Section

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<sup>4</sup> 8. **Bar against revision application or petition against an interlocutory order.** – Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of Section 13, shall be raised only in an appeal against the decree of the Commercial Court.

<sup>5</sup> (1-A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).



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8 does not permit any civil revision application or petition against an interlocutory order passed by the Commercial Court, and any such challenge, subject to the provision of Section 13, can be raised only in an appeal against the decree of the Commercial Court.

**12.** Clearly, in our view, the appeal which stands decided by the judgment under review is not a civil revision application or a petition and, therefore, Section 8 of the Commercial Courts Act would not apply.

**13.** Insofar as Section 13 is concerned, Mr. Raina's contention is that the proviso to Section 13(1)(A) envisages an appeal to the commercial appellate division of this Court only against one of the orders enumerated in Order XLIII of the CPC. Inasmuch as Order XLIII of the CPC does not include an order passed under Order XVIII of the CPC, he submits that the appeal would not be maintainable.

**14.** We do not see how Mr. Raina can argue this point, once he himself has said that the order passed by the learned Single Judge is to be treated as an appeal filed under Order XV-A of the CPC as amended by the Commercial Courts Act and not as an order passed under Order XVIII and that the mere mentioning of a wrong provision by the learned Single Judge would not invalidate the order. Mr. Raina can hardly seek, simultaneously, to question the maintainability of the appeal by treating the impugned order as one having been passed under Order XVIII.



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**15.** As such, Mr Raina's contention, that the appeal of the appellant was not maintainable, is rejected.

**16.** Mr. Raina thereafter drew our attention to Order XV-A of the Commercial Courts Act.

**17.** Though the impugned order has, facially, not been passed under Order XV-A of the Commercial Courts Act, we have nonetheless heard Mr. Raina on this aspect.

**18.** Mr. Raina has drawn our attention to Order XV-A Rule 6(1)(i) and Order XV-A Rule 6(1)(r) of the CPC as amended by the Commercial Courts Act and submits that the order passed by the learned Single Judge should be treated as one passed either under Order XV-A Rule 6(1)(i) or under Order XV-A Rule 6(1)(r).

**19.** We are unable to accept this contention either.

**20.** Order XV-A Rule 6(1)(i) empowers the Commercial Court to decide the order in which issues are to be tried. The order passed by the learned Single Judge does not decide the order in which the issues are to be tried, but decides the order in which evidence has to be led by the parties. Clearly, therefore, it is not relatable to Order XV-A Rule 6(1)(i).

**21.** Order XV-A Rule 6(1)(r) empowers the Commercial Court to issue directions or pass orders for the purpose of managing the case



and furthering the overriding objective of ensuring efficient disposal of the suit. The order passed by the learned Single Judge does not even purport to be one passed under Order XV-A Rule 6(1)(r).

**22.** We may, for the sake of clarity, reproduce para 3 of the order passed by the learned Single Judge, which form essentially the substratum of challenge before us, thus:

“3. The substratum of the defence of the defendant for denying the claims of the plaintiff is the documents, which find mention in issue no. (iv) and (vii). The plaintiff denies the execution and the validity of the said documents. In the facts of this case, in case the defendant is unable to prove the valid execution of the said documents, the plaintiffs would become entitled to seek rendition of the accounts of the partnership firm – M/s. V. Shah and Company as well as mesne profits of the suit property, subject to the plea of limitation. Therefore, in the opinion of this Court it would be appropriate as contemplated under Order XVIII Rule 1 of the Code of Civil Procedure, 1908 (CPC) the defendant begins with the evidence on the issues where the onus lies on the defendant.”

Clearly, the learned Single Judge has directed the defendant to begin with the evidence on the issues in view of the observations which precede the said direction in para 3 reproduced *supra*.

**23.** We, in our judgment, have held that these observations cannot constitute a basis for directing the defendant to lead evidence first. In arriving at the said decision, we have gone into the ingredients of Order XVIII, which govern the circumstances in which a Court can direct a defendant to lead evidence first. In this context, we may reproduce paras 16 to 18 and 21 to 23 of our judgment which is subject matter of the present review petition, thus:



“16. The general rule is that the plaintiff is to lead the evidence and thereafter the defendant will have a chance to lead his evidence. In such a situation where the Court can direct the defendant to lead evidence before the plaintiff is only when there is an admission by the defendant to the facts as alleged by the plaintiff and contends that either in point of law or on some additional facts, the plaintiff is not entitled to any part of the relief which he seeks. Thus, it is the admission, by the defendant, which is the trigger point for deciding as to whether the defendant would lead evidence before the plaintiff.

17. When we go through the impugned order under challenge, we do not find that the learned Single Judge has made any observation as regard to the admission by the defendant to the case of the plaintiff. On the contrary, the present appeal which has been filed by the defendant clearly shows that there is no admission by him to the case of the plaintiff.

18. In terms of the procedure stipulated in CPC, it is clear that a general rule is that it is the plaintiff who will lead the evidence until and unless there is an admission by the defendant to the case of the plaintiff and contention either in point of law or some additional facts alleged by the defendant. The defendant cannot be asked to lead the evidence before the plaintiff.

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21. Therefore, we hold that the general rule is that it is the plaintiff who has a right to begin, unless the defendant admits all the “material allegations” in the plaint, and contends that either in point of law or some other additional facts, that the plaintiff is not entitled to the relief claimed. To deviate from the general rule, as regards who will lead the evidence, the Court has to satisfy itself that the situation is in compliant of the latter part of Order XVIII Rule 1, and as such the defendant has to begin before the plaintiff.

22. We have also perused the order passed by the learned Single Judge and do not find any observation to the effect that the defendant has admitted the material facts pleaded by the plaintiffs. Nor does the order indicate that the facts or documents relied upon by the defendant are, by themselves, capable of conclusively determining the plaintiffs’ entitlement to relief. On the contrary, the learned Single Judge has noted that in the event the defendant fails to prove issue nos. (iv) and (vii), the plaintiffs would become entitled to seek rendition of accounts in respect of the partnership



firm, M/s V. Shah & Company, as well as mesne profits from the suit property, subject to the plea of limitation. However, this observation itself suggests that the outcome of these issues, while relevant, would not by themselves resolve the fundamental dispute between the parties and they are required to discharge their respective onus of proof. In such circumstances, we are of the view that the directions given by the learned Single Judge in the impugned order dated 10.09.2024 to lead evidence, would not be justified.

23. In that view of the matter, we find that the order dated 10.09.2024 passed by the learned Single Judge in CS(COMM) 354/2022 is liable to be set aside. The plaintiffs will, therefore, have to lead the evidence in the proceedings, in accordance with law.”

24. Mr. Raina has not even sought to contend that these findings, which form the basis of our decision, suffer from any error either of law or of fact.

25. While doing so, we also noted the reliance of the respondents on the judgment of the Supreme Court in para 19 of our judgment in *Jami Venkata Suryaprabha v Tarini Prasad Nayak*<sup>6</sup>, thus:

“19. Learned Counsel for the respondent relies on the following passage from *Jami Venkata Suryaprabha v Tarini Prasad Nayak*.

“18. Order XVIII Rule 1 indeed provides for plaintiff's right to begin the evidence but not the court's obligation to ask the plaintiffs to begin first. There is no impediment for the court to call upon either party to lead evidence first, depending upon the facts and circumstances of the case and the nature of the issues framed. Neither party can insist that the other one should be asked to lead it first. It all depends upon what the Court deems proper in the circumstances. Where it finds that defendant's plea strikes of the root of the case, there would be no hitch in asking him/her to prove such plea first which can lead to disposal of the case. There

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<sup>6</sup> 2024 SCC OnLine SC 3862





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can be no watertight compartmentalisation in matters of justice and all rules of procedure are designed and directed to achieve and secure ends of justice.’”

**26.** We have already noted the contentions advanced by Mr. Raina. Apart from the fact that these contentions are foreign to the reply filed by the respondents to the appeal, and to the arguments advanced at the Bar at the stage of arguments in the appeal, we are also of the view that they do not constitute any justifiable basis to seek review of our judgment within the meaning of Article 226 of the Constitution of India.

**27.** As this is a commercial litigation, the Court has to be strict, and cannot be lenient while dealing with applications which tend to protract proceedings rather than further the cause of commercial justice.

**28.** In that view of the matter, we dismiss this review petition with costs of ₹ 25,000/- to be deposited with the Delhi High Court Bar Association within a period of two weeks from today.

**29.** Let proof of compliance be placed on record with the Registry of this Court.

**C. HARI SHANKAR, J.**

**AJAY DIGPAUL, J.**

**MAY 16, 2025/AS**

*[Click here to check corrigendum, if any](#)*