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

Reserved on: 03.11.2026
Date of Decision: 17.11.2026
Date of Uploading: 17.11.2026

\# **CNR No. DLHC010531432026**

\+ CM(M) 2409/2026 & CM APPL. 76468/2026 & CM APPL. 76469/2026

HARISH KUMAR .....Petitioner

Through: Mr. Amit Alok and Ms.Visakhonou, Advocates

versus

YATENDER ARORA AND ORS .....Respondents

Through: *Nemo*

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

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1. Through the present petition, the petitioner is assailing the order dated 07.05.2025 passed by the learned District Judge (Commercial) - 02, North District, Rohini Courts, New Delhi[1] in CS (COMM.) No. 6652/2024, titled *'Yatender Arora & Ors. v. Harish Kumar'*, whereby the application filed by the respondents under Order XXXIX Rule 10 of the Code of Civil Procedure, 1908[2] , was allowed with the direction to the petitioner to deposit an amount of Rs. 35,13,900/- with the learned Trial Court on or prior to 17.05.2025.

2. Briefly stated, on 08.08.2024, the respondents/plaintiffs instituted the underlying commercial suit for ejectment, injunction,

[1] "Hereinafter as "learned Trial Court"

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recovery of arrears of rent to the tune of Rs. 28,62,500/-, along with interest at the rate of 24% per annum, and Rs. 20,000/- as damages and mesne profits for the period from 12.05.2024 till handing over the possession of the first, second and third floors of the property bearing No. 5, Block – 33, Indira Vikas Colony, New Delhi – 110009[3], against the petitioner. The petitioner was inducted as a tenant in the subject premises by the respondents in terms of the lease deed dated 08.03.2022, and the rent agreement dated 21.11.2022.

3. Along with the suit, the respondents filed an application under Order XXXIX Rule 10 CPC read with Section 151 CPC, seeking deposit of the rent arrears in the terms of the relief sought in the suit against the petitioner.

4. The learned Trial Court *vide* impugned order dated 07.05.2025 allowed the aforesaid application moved by the respondents. It was observed that although there was no clear document to show non-payment of rent from March 2024 till realisation of the suit, the petitioner failed to place on record any rent receipts demonstrating that rent had been paid even after institution of the suit. Accordingly, the petitioner was directed to deposit the outstanding rent arrears, computed from the period when the suit was instituted i.e., 01.08.2024 to 01.05.2025, with the learned Trial Court on or prior to the next date of hearing, being 17.05.2025. The relevant portion of the impugned order is reproduced hereinabove for ready reference:

> "There is no straight document to show that the defendant has not paid rent from March 2024 till the date of the filing of the suit and hence the defendant's counsel was asked to comment whether any rent has been paid after institution of the suit till today and if any,

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[2] Hereafter as "CPC"

[3] Hereinafter as "subject premises"

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he was asked to place on record rent receipt which has not been filed. It shows that the defendant has not paid rent at least from the date of institution of suit till today.

For first property and second property, the outstanding rent from 01.08.2024 till 01.05.2025 comes out as under:-

a) For the month of August 2024 = Rs.2,80,500/-.

b) From 12.09.2024 to 01.05.2025 for 8 months @ Rs.3,08,550/- x 8 = Rs.24,68,400/-

Total= Rs.2,80,500.00 + Rs.24,68,500.00 = Rs.27,48,900/-

i) Due rent for the other floor i.e. top floor is as under:-

from 01.08.2024 to 01.05.2025 for 9 months = Rs.85,000.00 x 9 months= Rs.7,65,000/-

Grand total is = Rs.27,48,900.00 + Rs. 7,65,000.00 = Rs.35,13,900.00

The above outstanding rent has not been paid and hence the defendant is required to deposit the amount in the court by way of DD.

In view of above, the application of the plaintiff U/o 39 Rule 10 CPC stands disposed of with the direction to the defendant to deposit the aforesaid amount of Rs.35,13,900.00 in the name of the Court on or before 17.05.2025."

5. On 17.05.2025, the learned Trial Court recorded that the petitioner failed to comply with the aforesaid direction. Additionally, it was observed that the petitioner was served with the summons of the suit on 09.01.2025, and as on the date of the hearing, no written statement was preferred on his behalf despite the lapse of 128 days from the date of service. Accordingly, the learned Trial Court closed the petitioner's right to file a written statement and struck off his defence from the record.

6. The petitioner assailed the order dated 17.05.2025 before this Court by way of CM(M) No. 1263/2025. During the course of arguments in the said petition, learned counsel for the petitioner submitted that the petitioner endeavoured to seek relief only in respect of the order dated 17.05.2025 and had not, at that stage, challenge the

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order dated 07.05.2025. It was further submitted that contrary to the observation made by the learned Trial Court, the written statement had been e-filed on 08.04.2025, within the prescribed outer limit of 120 days. This Court, *vide* order dated 14.08.2025, accepted the submission made on behalf of the petitioner and directed that the written statement be taken on record, subject to payment of cost of Rs. 50,000/- on account of delay in filing the same.

7. Aggrieved by the impugned order dated 07.05.2025, the petitioner has filed the present petition invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

8. Learned counsel for the petitioner submits that the learned Trial Court passed the impugned order dated without considering that the written statement, which had been e-filed on 08.04.2025, had not been taken on record. It is further contended that the application filed by the respondents under Order XXXIX Rule 10 CPC was allowed without affording the petitioner an opportunity to file a proper reply or advance arguments thereon. Consequently, the petitioner was directed to deposit a sum of Rs. 35,13,900/- before the learned Trial Court.

9. Learned counsel contends that the respondents suppressed material facts from the learned Trial Court. It is his case that the respondents received all payments in cash, including an advance payment exceeding Rs. 50,00,000/-, but never issued any rent receipts in respect of the amounts received. It is further submitted that the petitioner invested more than Rs. 50,00,000/- in renovating the subject premises.

10. Heard. Perused the record.

11. At the outset, the limited question that arises for consideration

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before this Court is whether the present petition filed under Article 227 of the Constitution is maintainable against the impugned order dated 07.05.2025, passed on an application under Order XXXIX Rule 10 CPC.

12. The impugned order has been passed by a Commercial Court at the level of a District Judge on an application filed by the respondents under Order XXXIX Rule 10 CPC. Order XLIII Rule 1(r) CPC expressly provides for an appeal against an order passed under the said provision. Accordingly, the impugned order is one of the orders specifically enumerated under Order XLIII CPC, against which an appeal lies to the Commercial Appellate Division of this Court under Section 13(1A) of the Commercial Courts Act, 2015.

13. A perusal of the record indicates that the petitioner did not avail himself of the aforesaid statutory remedy within the prescribed period of limitation. Instead, the petitioner has invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India to assail the order dated 07.05.2025.

14. The question as to whether this Court ought to entertain a petition under Article 227 in such circumstances stands answered by the Hon'ble Supreme Court in ***A. Venkatasubbiah Naidu v. S. Chellappan***[4]. The Hon'ble Supreme Court observed that in the ordinary course, an aggrieved party may prefer an appeal against an order passed under Rules 1, 2, 2A, 4 or 10 of the Order XXXIX Rule 10 CPC in terms of Order XLIII Rule 1 CPC. The relevant portion of the judgment is reproduced hereinbelow:

> "**22.** Now what remains is the question whether the High Court should have entertained the petition under Article 227 of the

[4] **(2000) 7 SCC 695**

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> Constitution when the party had two other alternative remedies. Though no hurdle can be put against the exercise of the constitutional powers of the High Court it is a well-recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy. Learned Single Judge need not have entertained the revision petition at all and the party affected by the interim ex parte order should have been directed to resort to one of the other remedies. Be that as it may, now it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition."

15. The aforesaid principle was further elaborated by the Hon'ble Supreme Court in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society***[5] wherein it was observed that where an order is passed by a civil court under CPC and the Code itself provides a remedy of appeal against such an order, the availability of that appellate remedy ought to be construed as a *"near total bar"* to the exercise of supervisory jurisdiction under Article 227 of the Constitution. The relevant portion of the judgment is reproduced hereinbelow:

> **"13.** Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself."

16. Following the decision in ***Virudhunagar (Supra),*** this Court in ***Rajesh Singh v. Rakesh Kumar Mittal***[6] reiterated that the availability of an alternative remedy of appeal operates as a near total bar to the

[5] **(2019) 9 SCC 538**

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exercise of supervisory jurisdiction under Article 227. Finding no exceptional circumstances warranting interference, this Court dismissed the petition under Article 227 as not maintainable, while reserving liberty to the petitioner to avail of such other remedies as may be available in accordance with law.

17. The aforesaid position finds further support in the recent decision of the Hon'ble Supreme Court in ***P. Suresh v. D. Kalaivani***[7]. Upon considering, *inter alia,* the decisions in ***A. Venkatasubbiah Naidu (Supra)*** and ***Virudhunagar (Supra)***, the Hon'ble Supreme Court reiterated that the exercise of supervisory jurisdiction under Article 227 is to be resorted to only in exceptional circumstances, particularly where an efficacious alternative remedy by way of appeal, revision or otherwise is available to the aggrieved party. It was further observed that the supervisory jurisdiction of the High Court cannot be permitted to supplant the specific statutory remedy provided by law. The relevant observations, contained in paragraph 9 of the judgment, read as follows:

> "**9.** From the aforesaid discussion, it would logically follow that the High Court would not only discourage but desist from exercising jurisdiction under Article 227 of the Constitution in respect of a challenge for which a separate, distinct, and specific remedy or statutory provision is available under the statute concerned. Availability of an alternative civil remedy and/or under the CPC shall be treated as complete and near total bar on the High Court to venture to invoke and exercise its power available under Article 227 of the Constitution, except where exercise of supervisory jurisdiction becomes absolutely necessary."

18. The legal position emerging from the aforesaid decisions is that

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[6] **CM(M) No. 166/2022, decided on 05.05.2022 (2022:DHC:1733)**

[7] **2026 INSC 121 (SLP(C) No. 20423/2025)**

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wherever an order passed by a civil court under CPC is amenable to a specific statutory remedy of appeal, the aggrieved party ought ordinarily to be relegated to such remedy. The supervisory jurisdiction under Article 227 is not intended to substitute the appellate remedy or to enable a party to circumvent the statutory remedy and the period of limitation prescribed thereof. Interference may be warranted only in exceptional circumstances where exercise of such jurisdiction becomes absolutely necessary.

19. Applying the aforesaid principles to the facts of the present case, it is evident that the underlying proceedings arise out of a commercial suit governed by the provisions of CPC and the Commercial Courts Act, 2015, pending before a civil court designated as a Commercial Court. The impugned order dated 07.05.2025, having been passed under Order XXXIX Rule 10 CPC, is appealable under Order XLIII Rule 1(r) CPC read with Section 13(1A) of the Commercial Courts Act, 2015. Furthermore, no exceptional circumstance has been brought to the notice of this Court to warrant exercise of such jurisdiction despite the availability of the statutory remedy.

20. In view of the foregoing, this Court finds no reason to entertain the present petition under Article 227 of the Constitution. The present, is, accordingly, dismissed in *limine* as not maintainable.

21. Needless to state, this Court has not expressed any opinion on the merits of the impugned order dated 07.05.2025. The petitioner shall, however, be at liberty to avail of such remedy as may be available to him in accordance with law.

22. The pending application(s), if any, also stand dismissed in the aforesaid terms.

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23. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J.

NOVEMBER 17, 2026
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