



2025:DHC:9403-DB



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

Judgment reserved on: 19.09.2025
Judgment pronounced on: 29.10.2025

+ RFA(COMM) 425/2025, CM APPL. 45370/2025 & CM APPL. 59561/2025

SHRI NEERAJ AGGARWALAppellant

Through: Mr. Sonal Anand, Mr. Aayush Sai and Ms. Surbhi Singh, Advocates.

versus

SH GAURAV PUNJ & ANR.Respondents

Through: Mr. Raman Gandhi, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

HARISH VAIDYANATHAN SHANKAR, J.

1. The present **Regular First Appeal**¹ has been preferred under Section 13 of the **Commercial Courts Act, 2015**², read with Section 96 and Order XLI Rule 1 of the **Code of Civil Procedure, 1908**³, assailing the **Judgment and Decree dated 25.04.2025**⁴ passed by the learned **District Judge (Commercial Court-01), Patiala House**

¹ RFA

² CC Act

³ CPC

⁴ Impugned Judgement



Courts, New Delhi⁵, in CS (COMM) No. 175/2023, titled *Gaurav Punj and Another v. Neeraj Aggarwal*.

2. By the Impugned Judgment, the learned Trial Court allowed the Plaintiffs/Respondents' application filed under Order XIII-A of the CPC (as amended by the CC Act) for summary judgment in respect of relief (a) of the Plaint, namely recovery of possession. The learned Trial Court consequently passed a decree of possession in favour of the Plaintiffs and against the Defendant and directed that the Defendant shall vacate the suit property i.e., **the basement portion of Punj House Annexe, situated at Plot Nos. 4 and 5 (Rear Side Portion), M-13, Middle Circle, Connaught Place, New Delhi⁶**, admeasuring 1,353.42 sq. ft. together with the staircase area from entry No. 1 measuring 76.86 sq. ft., which is in the Defendant/Appellant's tenancy. The learned Trial Court further directed that this vacation of the suit property shall take place immediately after the expiry of the statutory period for filing an appeal.

3. While passing the Impugned Judgment, the learned Trial Court clarified that, with respect to the remaining reliefs claimed in the suit, the Plaintiffs/Respondents shall be required to prove their case in accordance with law during the course of trial.

4. In the present appeal, the controversy is confined to a limited issue; whether the Impugned Judgment, whereby the learned Trial Court allowed the Plaintiffs/Respondents' application under Order XIII-A of the CPC and passed a summary judgment only in respect of recovery of possession of the suit property against the

⁵ Trial Court

⁶ Suit Property



Defendant/Appellant, is legally sustainable and in consonance with the law.

5. For the sake of convenience, uniformity, and consistency, the parties in the present Appeal shall hereinafter be referred to according to their respective ranks before the learned Trial Court.

BRIEF FACTS:

6. Shorn of unnecessary details, the brief facts necessary for adjudication of the present appeal are set out hereunder:

- (a) The present dispute pertains to the suit property, a portion of which is under the occupation of the Defendant. The said property forms part of a larger estate owned by various members of the Punj family.
- (b) Pursuant to the directions issued by the Hon'ble Supreme Court in earlier proceedings, the disputes among the family members of the Plaintiffs were referred to mediation under the aegis of Hon'ble Mr. Justice A.K. Mathur (Retd.). The mediation culminated in a *Memorandum of Family (Mediation) Settlement*, which was duly approved by the Hon'ble Supreme Court *vide* order dated 17.08.2016. The said settlement delineated the ownership, possession, and enjoyment of different portions of the family estate among various members, including the Plaintiffs.
- (c) Under the aforesaid settlement, the suit property came to the share of the Plaintiffs. Prior to filing the present suit, the Plaintiffs' predecessor-in-interest had issued several demand notices in the years 2009, 2012, and 2017, calling upon the Defendant to pay rent/licence fee for use and occupation of the



suit property, and also intimating termination of the licence/lease. Upon the Defendant's continued default in payment, the Plaintiffs' predecessor, i.e., the father of Plaintiff No. 1, instituted CS (COMM) No. 42/2021 on 05.02.2021 before the learned **District Judge (Commercial Court-03), Patiala House Courts, New Delhi⁷**, seeking recovery of possession, arrears of rent, and permanent as well as mandatory injunctions against the Defendant and his brother. The Defendant filed a Counterclaim seeking recovery of possession, while his brother was proceeded *ex parte*.

- (d) After hearing the parties and appreciating the evidence on record, the learned District Judge (Commercial Court-03), by Judgment dated 31.10.2022, partly allowed both the Suit and the Counterclaim. The learned District Judge (Commercial Court-03) held that the relationship between the parties was that of landlord and tenant and not that of licensor and licensee. The District Judge (Commercial Court-03) further determined that the Defendant was a tenant in respect of the basement portion admeasuring 1,353.42 sq. ft., together with a staircase area of 76.86 sq. ft., at a monthly rent of Rs. 18,000/-, which was beyond the purview of the **Delhi Rent Control Act, 1958⁸**.
- (e) The learned District Judge (Commercial Court-03) further held that since the suit was instituted by only one of the co-owners, he was entitled to recover only his proportionate share of rent, i.e., Rs. 9,000/- per month. Consequently, arrears of Rs. 3,24,000/- for the period January 2018 to December 2020

⁷ District Judge (Commercial Court-03)

⁸ DRC Act



were decreed in his favour along with interest at 9% per annum from the date of institution of the suit till realization. However, the Plaintiff's claims for possession and injunction were dismissed, as such relief could not be granted at the instance of one co-owner alone. Simultaneously, the Defendant's Counterclaim seeking restoration of possession of the suit property was allowed to that limited extent.

- (f) Aggrieved by the finding of the learned District Judge (Commercial Court-03) determining the rent of the suit property at Rs. 18,000/- per month as against Rs. 2,000/- per month claimed by the Defendant, he has preferred an appeal before this Court, registered as RFA (COMM) No. 23/2023, titled *Shri Neeraj Aggarwal v. Shri Ravinder Parkash Punj & Anr.*
- (g) Subsequent to the Judgment dated 31.10.2022 in CS (COMM) No. 42/2021, the Plaintiffs, Sh. Ravinder Parkash Punj (father of Sh. Gaurav Punj, who expired during the pendency of the present suit) and Sh. Nilender Parkash Punj, instituted this suit, CS (COMM) No. 175/2023, on 10.03.2023 before the learned Trial Court, seeking recovery of possession, arrears of rent/*mesne* profits, and permanent injunction in respect of the suit property.
- (h) The Plaintiffs placed reliance on the findings recorded in the earlier Judgment dated 31.10.2022, contending that the Defendant occupied the disputed portion as a tenant at a monthly rent of Rs. 18,000/-, and that the tenancy stood duly terminated both by prior notices and by institution of the earlier suit.



- (i) The Defendant filed his Written Statement, denying the material averments of the Plaint and raising, *inter alia*, the pleas of *res judicata*, limitation, absence of any fresh valid notice terminating tenancy, and pendency of RFA (COMM) No. 23/2023 before this Court.
- (j) On 05.06.2023, the Plaintiffs moved an application under Order XIII-A of the CPC seeking summary judgment with respect to relief (a) of the Plaint, i.e., recovery of possession of the suit property. They contended that the Defendant had already admitted the landlord-tenant relationship, that the rate of rent had been judicially determined in the earlier judgment at Rs. 18,000/- per month, and that there existed no real prospect of the Defendant successfully defending the claim, as the tenancy stood validly terminated. The Plaintiffs accordingly urged that a decree for possession be passed summarily in their favour.
- (k) The Defendant filed a reply to the said application, primarily reiterating the defences of *res judicata*, limitation, and non-service of a valid tenancy termination notice.
- (l) Upon considering the rival submissions and applying the twin test under Order XIII-A CPC, *namely*, whether the Defendant had any real prospect of successfully defending the claim, and whether there existed any compelling reason for the matter to proceed to trial, the learned Trial Court concluded that the Defendant had failed to establish any plausible defence warranting oral evidence or framing of issues for trial. The learned Trial Court also found that the Defendant had not



identified any additional material or evidence that could alter the outcome.

- (m) Consequently, the learned Trial Court allowed the Plaintiffs' application under Order XIII-A of the CPC and passed a decree for recovery of possession in favour of the Plaintiffs and against the Defendant. The Defendant was directed to vacate and hand over peaceful possession of the suit premises comprising 1,353.42 sq. ft. of basement area together with the staircase area from entry No. 1 (76.86 sq. ft.) immediately after expiry of the statutory period for filing an appeal. The decree sheet was directed to be drawn accordingly.
- (n) The learned Trial Court also recorded that the remaining reliefs claimed in the Plaint, including those for arrears of rent, mesne profits, and permanent injunction, would be adjudicated at trial, and that the Plaintiffs would be required to prove those claims in accordance with law.
- (o) Aggrieved by the said summary decree of possession, the Defendant has preferred the present appeal.

CONTENTIONS OF THE PARTIES:

7. Learned Counsel for the Defendant would contend that the learned Trial Court erred in passing a summary judgement under Order XIII-A of the CPC, as the case involved several triable issues of fact and law relating to tenancy, termination, limitation, and maintainability, and therefore, the matter could not have been adjudicated without a full-fledged trial.

8. Learned Counsel for the Defendant would submit that the learned Trial Court failed to appreciate that no fresh notice of



termination of tenancy was ever issued by the Plaintiffs under Section 106 of the **Transfer of Property Act, 1882**⁹, prior to the institution of the present suit, and that the Plaintiffs sought to rely upon termination notices dated 2012 and 2017, which had already formed the basis of earlier proceedings and stood exhausted in law; hence, the absence of a valid and fresh termination notice rendered the present suit not maintainable, and the learned Trial Court erred in treating stale and ineffective notices as valid for the purpose of instituting the current proceedings.

9. Learned Counsel for the Defendant would also submit that the learned Trial Court erred in heavily relying upon the findings recorded in the earlier Judgment dated 31.10.2022, particularly regarding the rate of rent, and since the said Judgment is already under challenge before this Court in RFA (COMM) No. 23/2023, the findings therein are *sub judice* and subject to reversal.

10. Learned Counsel for the Defendant would further submit that the learned Trial Court failed to appreciate that the earlier suit for possession and injunction between the same parties had already been dismissed *vide* Judgment dated 31.10.2022, and since the reliefs claimed in the present suit are substantially identical to those earlier rejected, no second suit is maintainable on the same cause of action or for the same reliefs merely by altering the language of the prayers; therefore, the present suit would be barred by the principles of *res judicata* under Section 11 of the CPC.

11. Learned Counsel for the Defendant would also submit that the claim in the present suit is barred by limitation, as the Plaintiffs have

⁹ TP Act



based their cause of action upon termination notices issued in 2012 and 2017, and under Article 65 of the **Limitation Act, 1963**¹⁰, the prescribed period for filing a suit for possession based upon termination of tenancy is twelve years; therefore, since no fresh notice has been issued and the old notices have long lapsed, the suit would be clearly time-barred and ought to have been dismissed at the threshold.

12. **Per contra**, learned Counsel for the Plaintiffs would submit that they are the rightful co-owners of the suit property by virtue of the Family (Mediation) Settlement approved by the Hon'ble Supreme Court on 17.08.2016, and since the site plans forming part of that settlement clearly delineate the Plaintiffs' respective shares, they would have a clear and enforceable proprietary locus to seek possession of the suit portion in the basement.

13. Learned Counsel for the Plaintiffs would further submit that the relationship of landlord and tenant between the Plaintiffs and the Defendant *qua* the subject portion has already been judicially determined in CS(COMM) No. 42/2021 by the Judgment dated 31.10.2022, which held, *inter alia*, that the Defendant is a tenant of 1,353.42 sq. ft. (plus staircase area) and that the monthly rent of the tenanted premises is Rs. 18,000/- (with the share of Plaintiff No. 1 fixed at Rs. 9,000/-), and therefore, the said judicial determination would constitute strong and relevant material in support of the Plaintiffs' claim.

14. Learned Counsel for the Plaintiffs would submit that the tenancy of the Defendant stood validly terminated, as the Plaintiffs

¹⁰Limitation Act



had served termination notices, including those dated 17.02.2012 and 14.03.2017, and in any event, the filing of the earlier suit and the service of the plaint/summons would operate to terminate the monthly tenancy as a matter of law; thus, technical objections to the service of Section 106 TP Act notices cannot defeat substantial justice where the tenant has been given the statutory 15-day period to vacate, and the Defendant's plea of non-service would be without merit.

15. Learned Counsel for the Plaintiffs would further submit that the Defendant has flagrantly failed and refused to comply with the decree and directions flowing from earlier proceedings and has not tendered or paid rent due for the period commencing January 2021 onwards, and therefore, the cause of action for recovery of *mesne* profits or market rent continues to subsist, as the Defendant has remained in unauthorised occupation since January 2021 and has also created apprehension of sub-letting.

16. Learned Counsel for the Plaintiffs would submit that the Defendant's challenge to the earlier judgment pending in RFA (COMM) No. 23/2023 does not operate as a stay of the operative rights flowing from that judgment, as no stay order has been granted, and since this Court's order dated 04.04.2024 in RFA (Comm.) No. 23/2023 makes it clear that there is no restraint on the adjudication of subsequent proceedings; the pendency of an appeal alone would not preclude the Plaintiffs from seeking reliefs that have accrued and are ripe for adjudication.

17. Learned Counsel for the Plaintiffs would also submit that by virtue of the earlier Judgment, the relationship of landlord and tenant and the extent of the area under the Defendant's occupation stand



conclusively established, and therefore, there was no real prospect that the Defendant could successfully defend the core claim for possession.

18. Learned Counsel for the Plaintiffs would submit that all requirements under Order XIII-A of the CPC stood duly satisfied, as the Plaintiffs' application for summary judgment specifically disclosed material facts and the documentary basis thereof, identified the points of law and the reliefs sought, and demonstrated that the Defendant had no real prospect of successfully defending the claim for recovery of possession of the suit property.

ANALYSIS:

19. We have heard the learned counsel for the parties at length and have carefully examined the pleadings, documents, and evidence placed on record with their valuable assistance. We have also meticulously considered the reasoning and findings recorded by the learned Trial Court in the Impugned Judgment.

20. Before proceeding to examine the merits of the present Appeal, it is considered appropriate to reproduce the relevant findings and observations of the learned Trial Court as recorded in the Impugned Judgment, which read as under:

“17. I have heard Sh. Raman Gandhi, Ld. Counsel for the plaintiffs and Sh. Sonal Anand, Ld. Counsel for the defendant and carefully gone through the record.

18. The instant application has been filed by the plaintiffs under Order 13A CPC.

19. Order XIII-A of CPC provides mechanism for summary judgment in Commercial disputes as per the detailed procedure contained in Order XIII-A.

28. The twin test therefore, provided for a Summary Judgement is:

“(i) that there is no real prospect of succeeding or of defending the claim, or



(ii) there are no other compelling reasons as to why the claim should not be disposed of before recording of oral evidence.”

29. In the light of this twin test prescribed under Order XIII A Rule 3 CPC, the facts of the present case need to be considered.

30. It is admitted case of the parties that plaintiff no.1 in the present case filed a suit bearing CS (COMM) No. 42/2021 before Ld. District Judge, Commercial Courts-03, Patiala House Courts, New Delhi for permanent and mandatory injunction and recovery of arrears of rent against the defendant in the present case and against his brother Sh. Pramod Aggarwal for restraining them from entering into or possessing/occupying the premises admeasuring 832 sq. ft. in the basement area of Punj House Annexe at Plot No.4 and 5 (backside portion), M-13, Middle Circle, Connaught Place, New Delhi directing them to remove their goods/articles lying in a portion of the property and for recovery of Rs. 16,63,200/- towards arrears of rent of past three years from January 2018 to December 2012 @ Rs. 30,000/- per month along with interest and the said suit was amended by plaintiff no.1 in the present suit and filed amended plaint on 15.03.2021 incorporating the relief of recovery of possession alleging that area in the occupation of defendant no. 1 in the present case and his brother Sh. Pramod Aggarwal is 530 sq. ft. and not 832 sq. ft. and they are not the lessee(s) but the licensee(s).

31. In the said judgment dated 31.10.2022 passed by Ld. District Judge, Commercial Courts 03, Patiala House Courts, New Delhi, it was observed in Para 85 that the plaintiff and defendant Sh. Neeraj Aggarwal are the landlord and tenant in respect of the portion described in orange colour in the site plan Annexure 2 Page 8 of 8 of memorandum of settlement Ex. PW1/1 to be read with the memorandum of settlement particularly in Para 25 and defendant Sh. Neeraj Aggarwal in the present case is 'lessee' and not licensee in respect of that portion in the premises. It was further observed in Para 87 of the said judgment dated 31.10.2022 passed by Ld. District Judge, Commercial Courts-03, Patiala House Courts, New Delhi that there exists the relationship of the landlord and tenant respectively between the plaintiffs and defendant Sh. Neeraj Aggarwal and with respect to the rent, it was held by the court that the rent was Rs. 18,000/- per month of the property and the rent has to be halved equally by the plaintiffs on the basis on sharing of area as per the memorandum of settlement in respect of the premises.

32. It was further observed in Para 93 of the said judgment dated 31.10.2022 passed by Ld. District Judge, Commercial Courts-03, Patiala House Courts, New Delhi that the plaintiff no. 1 in the present case is entitled for rent at the rate of Rs.9,000/- per month as well as payment of rent at the rate of Rs. 9,000/- per month for the period from January 2018 to December 2020 from the



defendant in the present case which comes to Rs. 3,24,000/- and the court also directed that the amount deposited by the defendant in the present case in terms of order dated 29.01.2022, shall be adjusted.

33. There was some dispute with respect to the area of the suit property/tenanted property. While passing the judgment dated 31.10.2022 in the said case, Ld. District Judge, Commercial Courts-03, Patiala House Courts, New Delhi observed in Para 89 of the judgment that an area of 550.88 sq. ft.+392.38+410.16=1352.42 sq. ft. + staircase area from entry no. I i.e. 76.86 sq. ft. is in occupation/possession of defendant Sh. Neeraj Aggarwal in the present case which the defendant has been exclusively using for keeping the mineral bottles/storage, materials including ice cube making machines, offices and the passage and out of the area of 1352.42 sq. ft., an area of 943.26 sq. ft.+common staircase fell to the ownership of plaintiff no. 1 in the present case by virtue of the family settlement and an area of 410.16 sq. ft.+ common staircase fell to the ownership of plaintiff no.2 in the present case.

34. It was further observed in Para 97 of the said judgment dated 31.10.2022 passed by Ld. District Judge, Commercial Courts-03, Patiala House Courts, New Delhi that the said suit was filed by plaintiff no. 1 only in the said suit and his brother i.e. plaintiff no.2 in the present suit, was not a party to the said suit and therefore, plaintiff no. 1 Ravinder Parkash Punj cannot seek possession of his plaint partly of his own share and partly the share of his brother Nilender Prakash Punj, plaintiff no.2 in the present case.

35. The said suit filed by plaintiff no. 1 in the present suit, was disposed off by Ld. District Judge, Commercial Courts-03, Patiala House Courts, New Delhi vide judgment dated 31.10.2022 whereby passing decree for Rs. 3,24,000/- as arrears of rent @ Rs. 9,000/- per month for the period from January 2018 to December 2020 along with interest @ 9% from the date of institution of the suit till realization of the amount in favour of plaintiff no. 1 in the present suit and against defendant no. 1 in the present suit with directions that amount paid by defendant no.1 pursuant to order dated 29.01.2022 be adjusted from the said amount; Further the suit of plaintiff no. 1 in the present case for recovery of possession was dismissed and also the same was dismissed for mandatory and permanent injunction. Further the counter claim of the defendants in the said suit was decreed for restoration of possession in favour of defendant no. 1 who is also defendant in the present case and against the plaintiff who is plaintiff no. 1 in the present case.

39. It is apparent from the order passed by the Hon'ble High Court of Delhi that there is no stay to the judgment dated 31.10.2022 passed by the Ld. District Judge, Commercial Courts-03, Patiala House Courts, New Delhi



40. The defendant has raised the plea that no fresh notice for terminating the tenancy of the defendant has been served upon the defendant and the earlier alleged notices dated 17.02.2012 and 14.03.2017 on which the cause of action has been based in the present suit, has already been exhausted and the tenancy of the defendant was never determined in the present case.

41. On the other hand, Ld. Counsel for the plaintiffs argued that the tenancy had stood terminated even by the earlier termination notices dated 17.02.2012 and 14.03.2017. He further argued that the tenancy of the defendant also stood terminated, the moment, the earlier suit for recovery of possession was filed by plaintiff no. 1 against the defendant. He further argued that even the filing of the present suit amounts in the termination of the tenancy of the defendant.

42. Be that as it may be, without going into this controversy, the court is of the opinion that the question of termination of tenancy is hardly of any relevance in view of the *ratio decidendi* of the judgement passed by the **Hon'ble Supreme Court of India in the case of Nopany Investments (P) Ltd. v. Santokh Singh (HUF), I (2008) SLT 195=146 (2008) DLT 217 (SC)=2008 (20 SCC 728.** Moreover, our own **Hon'ble High Court in the case titled as Nawabuddin Vs. Shaffiulla @Raja, RFA 462/2023 dated 22.12.2023** has held that:-

“38. The notice under section 106 of TP Act is served upon defendant no. 1 only and hence there is no service of notice on the appellant. This court in numerous judgment and more particularly ***in M/s. Jeevan Diesels & Electricals Ltd. v. M/s. Jasbir Singh Chadha, 2011 SCC OnLine Del 1515*** has observed as under:-

“11. The second argument that the legal notice dated 15.7.2006 was not received by the appellant, and consequently the tenancy cannot be said to have been validly terminated, is also an argument without substance and there are many reasons for rejecting this argument. These reasons are as follows : -

(i)....

(ii)The Supreme Court in the case of Nopany Investments (P)Ltd. v. Santokh Singh (HUF), (2008) 2 SCC 728 has held that the tenancy would stand terminated under general law on filing of a suit for eviction. Accordingly, in view of the decision in the case of Nopany (supra) I hold that even assuming the notice terminating tenancy was not served upon the appellant (though it has been served and as held by me above)



the tenancy would stand terminated on filing of the subject suit against the appellant/defendant.

(iii)In my opinion, similar logic can be applied in suits for possession filed by landlords against the tenants where the tenancy is a monthly tenancy and which tenancy can be terminated by means of a notice under Section 106 of the Transfer of Property Act. Once we take the service of plaint in the suit to the appellant/defendant as a notice terminating tenancy, the provision of Order 7 Rule 7 CPC can then be applied to take notice of subsequent facts and hold that the tenancy will stand terminated after 15 days of receipt of service of summons and the suit plaint. This rationale ought to apply because after all the only object of giving a notice under Section 106 is to give 15 days to the tenant to make alternative arrangements. In my opinion, therefore, the argument that the tenancy has not been validly terminated, and the suit could not have been filed, fails for this reason also. In this regard, I am keeping in view the amendment brought about to Section 106 of the Transfer of Property Act by Act 3 of 2003 and as per which Amendment no objection with regard to termination of tenancy is permitted on the ground that the legal notice did not validly terminate the tenancy by a notice ending with the expiry of the tenancy month, as long as a period of 15 days was otherwise given to the tenant to vacate the property. The intention of Legislature is therefore clear that technical objections should not be permitted to defeat substantial justice and the suit for possession of tenanted premises once the tenant has a period of 15 days for vacating the tenanted premises.

(iv)...

12. Therefore, looking at it from any point i.e. the fact that legal notice terminating tenancy



was in fact served, the suit plaintiff itself can be taken as a notice terminating tenancy or that the copy of the notice along with documents was duly served to the appellant/tenant way back in the year 2007, I hold that the tenancy of the appellant/tenant stands terminated and the appellant/tenant is liable to hand over possession of the tenanted premises.”

39. The above said judgment was challenged before the Hon’ble Supreme Court in SLP (C) No. 15740 of 2011 and was dismissed by vide order dated 07.07.2011. Thus the order has attained finality. I am in agreement with the said judgement that although notice under section 106 of TP Act 1882 is not served or is disputed by the appellant who is the tenant then also upon issuance of summons with the copy of plaint and notice, it is deemed that notice has been served and 15 days period is to be counted therefrom. Therefore, the tenancy of the appellant is terminated upon receiving summons. Hence the argument of the appellant that no notice under Section 106 of TP Act was served upon him does not hold any merit and is rejected.”

43. In view of the aforesaid, it is held that notice of termination of tenancy was duly and validly served upon the defendant and accordingly, it is held that the tenancy of the defendant was validly terminated.

44. It is admitted case of the parties that the that the said suit bearing CS (COMM) No. 42/2021 which was filed by plaintiff no.1 only and his brother i.e. plaintiff no.2 in the present suit, was not a party to the said suit and thus, in the judgment dated 31.10.2022 passed by Ld. District Judge, Commercial Courts-03, Patiala House Courts, New Delhi in the said case, the court has observed that the plaintiff i.e. plaintiff no. I in the present suit cannot seek possession of his plaint partly of his own share and partly the share of his brother Sh. Nilender Parkash Punj, plaintiff no.2 in the present case and dismissed the relief of plaintiff no.1 qua the same.

45. The present suit has been filed by plaintiff no.1 and his brother Sh. Nilender Parkash Punj, plaintiff no.2 for recovery of possession, recovery of anears of rent/mesne profits and permanent injunction against the defendant.

46. In the present case, by way of the present application under Order 13A CPC, the plaintiffs have only prayed for passing of summary judgment in the present case thereby granting relief (a), as prayed in the prayer clause of the plaint, by issuing a decree of recovery of possession in favour of the plaintiffs and against the defendant, his legal heirs, representatives, agents, associates, assigns etc. thereby directing the defendant to handover the vacant and peaceful possession of the property admeasuring 1353.42 sq.



ft. and the staircase from entry no. 1 i.e. 77.8 sq. ft. in basement area of Punj House Annexe located at Plot No.4 and 5 (Back side portion), M-13, Middle Circle, Connaught Place, New Delhi as shown in red colour in the site plan filed along with the plaint.

47. What emerges from the judgment dated 31.10.2022 passed by Ld. District Judge, Commercial Courts-03, Patiala House Courts, New Delhi in CS (Comm) No. 42/2021 and the pleadings of the present case as well as from the submissions of the Ld. Counsels for the parties is that in total 1770 sq. ft. (or 1738.65 sq. ft.) appropriately basement area of Punj House Annexe located at Plot No.4 and 5 (Back Side Portion), M-13, Middle Circle, Connaught Place, New Delhi, an area of 550.88 sq. ft.+392.38+410.16=1353.42 sq. ft.+ staircase area from entry no. 1 i.e. 76.86 sq. ft. is under the tenancy of defendant Sh. Neeraj Aggarwal in the present case; Further the relationship between the plaintiffs and defendant Sh. Neeraj Aggarwal has been decided in the judgment dated 31.10.2022 passed by Ld. District Judge, Commercial Courts-03, Patiala House Courts, New Delhi in CS (Comm) No. 42/2021 as landlords and tenant in respect of the portion described in orange colour in the site plan Annexure 2 Page 8 of 8 of memorandum of settlement Ex. PW1/1 to be read with the memorandum of settlement particularly in Para 25; Further in the said judgment dated 31.10.2022 passed by Ld. District Judge, Commercial Courts-03, Patiala House Courts, New Delhi in CS (Comm) No. 42/2021, the rate of rent of the suit property under the occupation of the defendant, has been decided as Rs. 18,000/- per month which is beyond the purview of DRC, though the RF A qua the same is pending. Further the notice of termination of tenancy of the defendant by the plaintiffs is also held by this court to have been served upon the defendant.

48. In view of the aforesaid, in the present case, I am of the considered opinion that defendant has failed to establish any ground of defence to satisfy what material facts are denied; to point out that what issues be framed; and to clarify that what kind of oral evidence is required. I have no hesitation to conclude that infact defendant has failed to establish any plausible defence in response to the present application. Accordingly, in my considered view, the twin test is satisfied in the present case as there is no real prospects of succeeding or defending the claim of the plaintiffs raised in the present application and there are no other compelling reasons as to why the claim should not be disposed off before recording of oral evidence.

49. In terms of the above observations and findings, the application under Order 13-A CPC of the plaintiffs is allowed and a decree of possession is hereby passed in favour of the plaintiffs and against the defendant under Order 13A CPC as amended by the Commercial Courts Act, 2015 and it is directed that defendant shall vacate the suit premises, viz basement area of Punj House Annexe



located at Plot No.4 and 5 (Back Side Portion), M-13, Middle Circle, Connaught Place, New Delhi admeasuring 1353.42 sq. ft. + staircase area from entry no. 1 i.e. 76.86 sq. ft. is under the tenancy of defendant Sh. Neeraj Aggarwal in the present case and the defendant is directed to hand over its peaceful and vacant possession of the suit property as also shown in red colour in the site plan filed along with plaint, to the plaintiffs immediately after the expiry of statutory period of appeal. Decree sheet shall be drawn in accordance with this order passed today.

50. For the remaining reliefs as prayed in the present suit, the plaintiffs have to prove the case in accordance with the law during the trial.

51. With these observations, the application under Order 13A filed by the plaintiffs stands disposed off.”

21. Order XIII-A of the CPC, introduced by the CC Act, serves a distinct and significant purpose, to ensure that commercial disputes are adjudicated efficiently by avoiding unnecessary, frivolous, or protracted trials. The underlying legislative intent behind this provision is to streamline commercial litigation by empowering courts to decide cases summarily where there exists no genuine dispute requiring a full-fledged trial.

22. This procedural innovation recognizes that commercial matters often involve clear contractual terms, documentary evidence, and well-defined rights and obligations, leaving little room for speculative defences or baseless claims. Order XIII-A thus enables courts to filter out cases that do not merit trial, conserving judicial time and resources for disputes that genuinely warrant examination of oral evidence or complex factual determination.

23. By authorizing courts to grant summary judgment where the defendant lacks a real prospect of successfully defending the claim, the provision seeks to uphold the principle of economising judicial time while promoting commercial certainty. It ensures that litigants who are evidently entitled to relief are not subject to undue delay in



obtaining justice due to prolonged trial or meritless defences. Therefore, the object and purpose of Order XIII-A are not merely procedural but rooted in advancing the broader goals of efficiency, fairness, and expeditious resolution in commercial litigation.

24. Upon perusal of the Impugned Judgment, we are in agreement with the findings of the learned Trial Court. The argument advanced by the Defendant that no valid notice under Section 106 of the TP Act was issued seeking termination of tenancy is misconceived. This Court, in RFA (COMM) No. 23/2023, which arose from CS (COMM) No. 42/2021 for the same suit property, has already observed that the Original Plaintiff No. 1 in the present suit, Late Sh. Ravinder Parkash Punj (father of Sh. Gaurav Punj) had issued a notice dated 14.02.2017 seeking rent for the same suit property. In response, the Defendant, on 30.03.2017, raised a vague objection questioning the authority of the Plaintiff to receive rent and requested supporting documentation verifying such authority.

25. In compliance, Sh. Ravinder Parkash Punj furnished a detailed reply dated 22.06.2017, enclosing the requested documents and sending the same to the Defendant. Notably, the Defendant never responded to this communication. This Court in the said RFA has held that the failure to reply to such notice permits the drawing of an adverse inference as against the Defendant in the facts and circumstances of the case. Consequently, the Defendant was held liable to pay the rent for the relevant period.

26. It is further pertinent to note that the notice dated 14.02.2017 explicitly terminates of tenancy. The relevant portion reads as follows:

“In these circumstances, you are hereby called upon to clear the arrears at the rate of Rs. 18,000/- per month w.e.f. December, 2011



till date within one week from receipt of this letter / notice jointly to the undersigned and Shri R P Punj by issuing two separate cheques of equal amount. Also note that we do not wish to continue with you as user/tenant. The arrangement / tenancy is hereby terminated and you are further called upon to remove all your stocks and vacate the premises and hand over vacant, physical and peaceful possession to the undersigned on or before 31 March, 2017.

Kindly note that in case the requisite is not done, besides claiming possession, we shall be claiming damages at the rate prevailing in the market. The premises in your occupation if let out in the market would fetch Rs.225/- per sq.ft. per month. Besides damages, you shall also be liable to pay cost of proceedings which we may initiate for recovery of possession and damages against you.”

27. In view of the above, the ground raised by the Defendant regarding non-service of a valid notice clearly does not survive.

28. Similarly, the Defendant’s reliance on the doctrine of *res judicata* under Section 11 of the CPC is entirely unsustainable. Section 11 of the CPC clearly stipulates that no Court shall try any suit in which a matter directly and substantially in issue has been previously heard and “finally decided” by a competent Court. The essential requirement for *res judicata* to apply is that the issue must have been conclusively adjudicated between the same parties or their privies under the same title. The relevant portion of Section 11 reads:

“**11. Res judicata.**—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

29. Applying this principle to the present case, it is evident that in the earlier suit, CS (COMM) No. 42/2021, the issue of recovery of possession was raised by the Plaintiff therein, who is Plaintiff No. 1 in the present suit. However, the learned District Judge (Commercial



Court-03), *vide* Judgment dated 31.10.2022, in that suit, did not decide this issue on its merits. The District Judge (Commercial Court-03) observed that relief for possession had been sought only by one co-owner of the suit property, while the other co-owner, holding a legally recognized share, was not a party to the suit. The District Judge (Commercial Court-03) held that a decree for possession of only part of the property in favour of a single co-owner could not be granted. Therefore, in our considered opinion, the earlier judgment did not constitute a final adjudication on the Plaintiff's entitlement to possession.

30. It is a settled principle that for *res judicata* to operate, the issue must have been finally decided. In the present case, the District Judge (Commercial Court-03) expressly refrained from deciding the merits of the Plaintiff's claim for possession, as the necessary party, the co-owner, was absent from the suit. In contrast, in the present suit, CS (COMM) No. 175/2023, both co-owners have jointly claimed recovery of possession. The learned Trial Court in the present suit has duly considered all relevant contentions and evidence and passed the Impugned Judgment. The relevant portion of the earlier judgment passed in CS (COMM) No. 42/2021 by the District Judge (Commercial Court-03) reads as under:

“97. However, despite all these circumstances and evidence on record, the plaintiff is seeking possession of 530 sq.ft. area, being a part eviction, vis. a, vis. for the purposes of 530 sq.ft. area, he is seeking part area belonging to and falling in the share of Nilender Prakash Punj. To say firstly, he is seeking partial eviction of defendant no.1, which is not tenable under the law and secondly, for the purposes of 530 sq.ft. area, he is including the area falling in the share of Nilender Prakash Punj. The plaintiff Ravinder Prakash Punj cannot seek possession in his plaint partly of his own share and partly the share of his brother Nilender Prakash Punj. At the cost of repetition, it is reiterated that present plaint was filed by



Ravinder Prakash Punj and his brother Nilender Prakash Punj is not a party to the suit.”

31. It is, therefore, evident that the issue of possession was not finally adjudicated in the earlier suit. The present claim involves both co-owners and requires a detailed and comprehensive evaluation of their joint entitlement, a matter that could not have been addressed or determined in the prior suit. As such, the doctrine of *res judicata* under Section 11 of the CPC is wholly inapplicable in the present case and merits rejection.

32. Any contrary conclusion would amount to a misinterpretation of both the facts and the law, particularly the provisions of Section 11 of the CPC, and could lead to the unjust consequence of denying the Plaintiffs any opportunity to assert or recover their lawful rights in the suit property. The earlier judgment cannot be construed as a final determination on the Plaintiffs’ entitlement, and it would be both legally and factually incorrect to preclude them from pursuing the present claim on the ground of *res judicata*.

33. The Defendant’s contention regarding limitation is also wholly without merit. Article 67 of Schedule I of the Limitation Act clearly provides that a landlord has a period of 12 years from the date of termination of tenancy to file a suit for recovery of possession. In the present case, as hereinabove established, the Plaintiff issued a valid notice of termination on 14.03.2017. Therefore, the cause of action for recovery of possession indisputably falls well within the statutory limitation period. Any argument to the contrary is entirely misconceived, as it ignores both the actual date of termination and the clear statutory mandate under the Limitation Act. The Defendant



cannot rely on technicalities to evade liability when the legal framework unequivocally supports the Plaintiff's claim.

34. Equally untenable is the Defendant's reliance on the pendency of RFA (COMM) No. 23/2023 before this Court to adjudication of CS (COMM) No. 175/2023. The pendency of that appeal has no legal bearing on the present proceedings, also since, no stay was granted in that appeal, which could have restrained or affected the adjudication of CS (COMM) No. 175/2023 and passing of the Impugned Judgment. Further, by order dated 04.04.2024 in RFA (COMM) No. 23/2023, this Court explicitly clarified that the pendency of the appeal does not impact the proceedings in the present suit. Consequently, the Defendant's attempt to delay or nullify the Plaintiffs' rightful claim by invoking the pendency of another appeal is both legally and factually baseless.

DECISION:

35. In view of the foregoing discussion, we are of the considered opinion that the present Appeal is wholly devoid of merit. The Impugned Summary Judgment and Decree dated 25.04.2025, passed by the learned Trial Court, is well-reasoned, grounded in the material on record, and fully consistent with the applicable law. There is no infirmity or error warranting interference. Accordingly, the Impugned Judgment and Decree merit affirmation, and the present Appeal is therefore dismissed.

36. It is further clarified that the observations and findings recorded herein are strictly limited to the issues adjudicated in the present Appeal. These observations shall not, in any manner, affect or



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prejudice the adjudication of other issues that are pending before the learned Trial Court.

37. The present Appeal, along with pending application(s), if any, stands disposed of in the above terms.

38. No Order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
OCTOBER 29, 2025/sm/kr