



2025:DHC:2180-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 111/2024, CM APPL. 18301/2025 & CM APPL. 18302/2025**

**SHASMITH TECHNOLOGIES
PRIVATE LIMITED**

.....Appellant

Through: Mr. Talha Abdul Rahman and
Mr. M.Shaz Khan, Advs.

versus

**MAX HEALTHCARE
INSTITUTE LIMITED**

.....Respondent

Through: Mr. Raunaq Kamath and Mr.
Siddharth Varshney, Advs.

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

**ORDER (ORAL)
28.03.2025**

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C.HARI SHANKAR, J.

CM APPL. 18301/2025

1. This application seeks stay of proceedings pending before the learned District Judge (Commercial Court)¹ in CS (Comm) 555/2022.
2. The present appeal is directed against an order passed by the learned Commercial Court in an application under Order XXXIX Rule

¹ "learned Commercial Court" hereinafter



4 of the Code of Civil Procedure, 1908². It appears that the respondent has, during the pendency of this appeal, moved an application before the learned Commercial Court under Order XIII-A of the CPC as amended by the Commercial Courts Act, 2018, seeking summary judgment.

3. It is trite that opinions expressed in interlocutory applications are not binding when the suit is taken up, or even when the application under Order XIII-A is taken up.

4. As such, we do not see any justification for staying proceedings in the suit merely because the present appeal under Order XXXIX Rule 4 of the CPC is pending before us.

5. The only contention of Mr. Khan is that, if the learned Commercial Court allows the application under Order XIII-A and decrees the suit summarily, this appeal would become infructuous.

6. In the first place, we cannot predict the decision of the learned Commercial Court in the application filed by the respondent under Order XIII-A. Secondly, it is matter of common occurrence that, during the pendency of appeals against interim orders passed in suits, the suit proceeds and is decreed. The remedy with the party against whom the decree is passed is to challenge the decree. The mere fact that an appeal against an interim order is pending, cannot be a basis to stay the suit, unless there is some challenge to the manner in which the suit itself is proceeding.

² “CPC” hereinafter



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7. In that view of the matter, this application is misconceived and is accordingly disposed of.

C.HARI SHANKAR, J.

AJAY DIGPAUL, J.

MARCH 28, 2025

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