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

Date of decision: 20th MAY, 2026

IN THE MATTER OF:

\+ **I.A. 38753/2024**

IN

CS(COMM) 826/2023

SANDEEP KUMAR .....Plaintiff

Through: Mr Sandeep Kumar (Plaintiff in person) and Ms Vishruti and Mr Anil Kumar Bakshi, Advs.

versus

SH TARUN ARORA AND ANR .....Defendants

Through: Mr. Sanjeev Mahajan, Ms Simran Rao, Advs. for D-1 and D-2

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

I.A. 38753/2024

1. The present application under Order XIIIA of the CPC has been filed by the Plaintiff for passing a summary judgment.

2. The present Suit has been filed by the Plaintiff seeking recovery of Rs.2.60 crores from the Defendants.

3. The averments, in brief, as made in the Plaint read as under:

a. The Plaintiff is a practising Advocate and Cost and Management Accountant (CMA) who has worked for more than twelve years in the

field of finance and accounts in various Public Sector Undertaking and also enrolled as an advocate since 2005.

b. The Defendant Nos. 1 and 2 are real brothers who along with their mother Smt. Santosh Arora were party to various litigation proceedings initiated at the instance of them and their uncle Sh. M. L. Arora since the year 1998.

c. It is stated that in March 2002, Defendant No.1 approached the Plaintiff to avail his services on a recommendation given by one Mr. Adarsh Bedi who is also a friend of the Plaintiff. It is further stated that the Defendant No.1 came to the Plaintiff *qua* several disputes and litigation proceedings going on between the Defendants and their uncle.

d. It is stated that the Plaintiff agreed to provide the professional services on the fees of Rs. 2,000/- per hour towards consultation, Rs. 15,000/- per appearance, Rs. 5,00,000/- if the Defendants would want the Plaintiff to prepare the written arguments, and 10% of the aggregate amount of fees for all other services rendered by the Plaintiff during the course of the professional engagement and the same was duly accepted by the Defendants.

e. It is stated that the services rendered by the Plaintiff also includes police related issues, electricity connection, issues pertaining to Shop No. 99 etc., administrative and quasi-judicial proceedings etc. It is further stated that during the professional engagement between the Plaintiff and the Defendants, the Defendants were continuously replacing the advocates at different stages of proceedings of the suits

and changed about ten advocates, however, the Defendants kept ascertaining that it is the Plaintiff whom they are relying on.

f. It is stated that the Defendants engaged different advocates who charged their fees as deemed appropriate by them. It is further stated that Defendants engaged some Advocate for final arguments who charged Rs. 1,00,000/- towards the final arguments only. It is stated that, however, it was the Plaintiff who drafted the written arguments which formed the basis of oral arguments and filed the same in Court. It is further stated that the Defendants took divergent opinions from several advocate, however, the Defendants placed reliance upon opinion and advice of the Plaintiff with regard to the approach to be followed in case involving Shop No. 128. It is the contention of the Plaintiff that it was the Plaintiff who formulated the arguments in rebuttal, defence of maintainability.

g. The Plaintiff delivered wide ranging services to the Defendants and continued to deliver the same for more than 18 years from March 2002 to January 2021 with regard to numerous issues and problems faced by the Defendants inside and outside the Court. It is further stated that the Plaintiff even after suffering heart attack in 2010 and during the COVID time has put a lot of hard work, his deep professional knowledge and precious productive time of life as per the terms agreed between the Plaintiff and the Defendants. It is the contention of the Plaintiff that on the conclusion of suits in January 2021, the Defendants became liable to pay the accumulated amount of fees/professional charges for the quantum of work done, the Plaintiff called upon Defendant No.1 who was acting on behalf of the

Defendants to make payment of Rs. 2.65 crores towards the professional charges as per the terms of fees agreed.

h. It is stated by the Plaintiff that the Defendant No.1 paid only Rs.5,00,000/- towards the professional charges incurred during the period of 18 years of professional engagement. It is further stated that when the Plaintiff called upon the Defendants to pay the balance amount, instead of paying and telling the time within which the balance amount will be paid, the Defendant No.1 on 28.02.2021 issued an e-mail stating that since the Plaintiff knew the case of their uncle was *mala fide,* therefore, the Plaintiff offered to provide services by help i.e., *pro bono*. It is further stated that the Defendants accepted the offer and that Rs. 5,00,000/- were paid out of morality and charity. It is further stated that the Defendants, instead of taking steps to pay the balance amount of Rs. 2.6 crores resorted to sending the fraudulent e-mail dated 28.02.2021 in complete disregard to law and ethics.

i. It is stated that the Plaintiff was extremely shocked and disturbed by the conduct of the Defendants as even after putting all his efforts in resolving the issues and problems faced by the Defendants, the Defendants failed to pay the outstanding amount due to the Plaintiff. It is further stated that the Plaintiff even after being a heart patient since 2010, had to take medicines to overcome the shock and trauma suffered and it was also very traumatic for the family of the Plaintiff to see the Plaintiff suffer. It is further stated that the Plaintiff thereafter made a great amount of *bona fide* efforts to persuade the Defendants to give up the path of dishonesty and to settle the matter

amicably, however, the Defendants chose to persist with their dishonest course and refuse the settle the matter amicably and thus, the Plaintiff has filed the instant Suit for recovery of principle amount, interest, and the cost of litigation.

j. Written statement has been filed by the Defendants. In the written statement, the Defendants have raised the following arguments:

   i. The present Suit filed by the Plaintiff is nothing but an attempt to extort money from the Defendants.

   ii. No documents have been filed by the Plaintiff showing the nature of understanding, schedule of fees or any kind of arrangement entered into between the Plaintiff and the Defendants which gives rise to any cause of action for filing the present Suit.

   iii. The Plaintiff has also not filed any documents which indicates that the Defendants have agreed that the Plaintiff would be paid a sum of Rs.2,000/- per hour for consultation, Rs. 15,000/- per appearance or Rs.5,00,000/- for drafting written submissions.

   iv. The Plaintiff has not rendered services as claimed by him from the year 2002. The Defendants have also denied the claim of the Plaintiff that more than 18 years have been spent by the Plaintiff in rendering services to the Defendants. It is contended that the Plaintiff got enrolled as an Advocate only in the year 2005 and, therefore, the claim of the Plaintiff that he has been rendering services from the year 2002 is incorrect.

v. It is the specific case of the Defendants that the Plaintiff did not draft the main pleadings and only helped in filing 3 or 4 small applications. The Plaintiff has neither conducted any cross-examination nor has he addressed final arguments. It is contended that the Plaintiff was like a junior counsel who was eager to learn the act of advocacy by being associated and engaged in ongoing matters.

4. After completion of pleadings, the present application under Order XIIIA of the CPC has been filed by the Plaintiff for passing a summary judgment on the ground that the Defendants have no real prospect of successsfully defending the claims.

5. A written note has also been filed by the Plaintiff. In the written note, it is stated that the Plaintiff rendered professional services to the Defendants from March, 2002 to 2021 and during the said period the Plaintiff suffered a heart attack in 2010 and during COVID-19 also the Plaintiff who has continuously working hard in providing legal assistance to the Defendants. It is further stated that professional services could not have been given without agreeing to the terms of fees as the same is based on various components involved in professional services including time and complexity of task. It is the contention of the Plaintiff that the Defendants failed to deny the rationale of the fees stated and has only denied the fact that there was no agreement qua terms of fees. It is further stated that the claim of the Plaintiff in the present Suit is in line with the amount of work done and, therefore, the terms of the fee as agreed between the Parties does not suffer from any error.

6. It is further stated by the Plaintiff that the defence set up by the Defendants in their written statement is not only a moonshine defence but the same is nothing but a contumacious and impudent lies only. It is further stated that the present application being I.A. 38753/2024 satisfies the conditions prescribed under Rule 3 of Order XIIIA of CPC as the said Rule mandates that defence raised by the Defendants must be real and in the instant Suit, the same is not only unreal but also a moonshine defence which is based on bald assertions without any evidence and, therefore, the same requires to be disposed of before recording of evidence. It is further stated that the said application also satisfies the requirement under Order XII Rule 6 of CPC as the denial are evasive in nature and based on contumacious and impudent lies only.

7. *Per contra*, learned Counsel for the Defendants in its written statement have taken various objections qua the maintainability of the present Suit and on the merits of the present case. It is the contention of the Defendants that there was a professional arrangement and understanding between the Plaintiff and the Defendants is that of an Advocate and a Client. There was no arrangement or agreement neither oral nor written executed between the Plaintiff and the Defendants, the Plaintiff was supposed to act professionally in the capacity of an Advocate. It is further stated by the Defendants that the Plaintiff failed to comply with his professional duties required to be performed as an Advocate.

8. It is further stated by the Defendants that Plaintiff has failed to produce a single document or any shred of evidence which would demonstrate that there was any kind of understanding or arrangement between the Plaintiff and the Defendants whereby the Defendants were

supposed or agreed to pay an amount of Rs.2,000/- per hour for consultation, Rs.15.000/- per appearance and Rs.5,00,000/- for drafting and written submissions. It is further stated that the Plaintiff has also failed to show that at any point of time of their professional engagement the Defendants had agreed to be charged for the professional legal service as alleged by the Plaintiff. Defendants in their written statement have taken a stand that it is only in the year 2021 when the Defendants succeeded in Suits filed in 2000, 2002 & 2003 contrary to the Plaintiff's submission that that Plaintiff was rendering professional services from March, 2002. It is further stated that there was never an arrangement between the Plaintiff and the Defendants and that the Defendants are liable to pay any amount to the Plaintiff in capacity of an Advocate. It is the contention of the Defendants that the Plaintiff failed to raise bills during the period from March, 2002 to 2021 and the Plaintiff is now claiming money from the Defendants by allegedly and purportedly showing his services as an Advocate. The Defendants have further stated that the Plaintiff has failed to furnish any reason whatsoever for waiting for 20 years i.e., from March, 2002 to 2021 in raising the outstanding amount towards alleged professional services provided in capacity of an Advocate.

9. Learned Counsel for the Defendants states that in the written statement, the Defendants have taken a stand that the present Suit for recovery is otherwise is also misconceived for the reason that the present Suit is against the letter and spirit of Advocates Act, 1961. According to the Defendants, it is an established principle of law that the profession of a lawyer is a noble profession whereby the legal services rendered by an Advocate towards the welfare of the society and to ensure justice. The

Plaintiff's conduct is contrary to the heart and soul of the Advocates Act, 1961 as the Plaintiff is not only threatening the Defendants of dire consequences but also compelling the Defendants to pay the money by harassing the Defendants and extorting monies out of the Defendants by threat of embroiling them in litigation. It is further stated that the conduct of the Plaintiff towards Defendants is contrary to the noble profession and the same is done to compel the Defendants for payment of purported legal fees.

10. It is further stated by the Defendants that there is no provision in the Advocates Act, 1961 which entitles an Advocate to charge fees in an arbitrary or random manner bereft of any prior mutual understanding. The conduct of the Plaintiff in raising bills towards legal services after the culmination of the Suits without there being any Agreement between the Plaintiff and the Defendants is an absolute violation of the provisions of the Advocates Act, 1961. It is further stated by the Defendants that the Plaintiff's conduct shows that there is scant respect for law and professional ethics as is mandatorily required to be maintained by an Advocate as the Plaintiff had demanded payment towards legal services for the period when by his own admission, the Plaintiff was not even enrolled as an Advocate. It is further stated that the Plaintiff has claimed amount in the present Suit for the period between 2002 and 2005 contrary to his own statement in Plaint wherein it is stated that the Plaintiff was enrolled as an Advocate in the year 2005, therefore, the claims of the Plaintiff are misconceived and fraudulent in nature.

11. It is the contention of the Defendants that the present Suit filed by the Plaintiff is based on frivolous claims as the engagement of the Plaintiff by the Defendants was limited to a very narrow role in litigation of the

Defendants against their uncle Sh. M. L. Arora, therefore, the claim of Rs.2,60,00,000/- towards professional legal services is entirely misconceived and false. It is further stated that the Plaintiff did not even drafted the main pleadings and the only service of the Plaintiff availed by the Defendants was in filing 3 to 4 small applications, replies and initial draft of written submissions. It is also the submission of the Defendants that the Plaintiff neither conducted cross-examination nor addressed any final arguments. It is further stated that the role of the Plaintiff was like that of a Junior Advocate was either to learn the art of Advocacy by being associated and engaged in an ongoing matter with a main Advocate who had been handling the Defendants matters at various point of time. It is further stated that the Plaintiff learnt the art of advocacy at the cost of the Defendants by engaging in Defendants' several litigations wherein the Plaintiff primary task was to watch the proceedings and only in the absence of the main Advocate take adjournments in the matter. It is further stated that the Plaintiff throughout the course of litigation proceedings told the Defendants that the Plaintiff was acting as a friend/elder brother and not as an Advocate because the Plaintiff himself was learning the nuances of advocacy by attending and assisting the main Advocate or experienced Advocate engaged by the Defendants during the course of hearing the Suits. It is for this reason, the Plaintiff never appeared as a main or arguing Counsel in Suit proceedings initiated at the instance of the Defendants and their uncle before the District Court. It is further stated that the Plaintiff is trying to misguide this Hon'ble Court by stating that a fee of Rs.2,000/- per hour was fixed as a legal fee towards professional legal services in March, 2002 for studying of documents, judgments, and consultation as the Defendants would not agree

to pay the Plaintiff such an exponential fee as the Plaintiff was not even a qualified Advocate with no legal experience. It is further stated by the Defendants that the allegations enumerated in the present Suit would depict that the Plaintiff is raising claims based on contingent fee i.e., percentage of the value of claim in the litigation depending upon the outcome of the litigation against Defendants' uncle, however, such claims based on contingent fee raised by an Advocate is barred under law and as such the present Suit is itself barred. It is further stated that the litigation against Defendants' uncle involved several intricate questions involving question of law and question of fact and, therefore, the allegation of the Plaintiff that despite changing many Advocates the Defendants primarily relied upon the Plaintiff does not hold any merit.

12. Heard learned Counsel appearing for the Parties and perused the material on record.

13. The Apex Court in Reliance Eminent Trading and Commercial Private Limited vs. Delhi Development Authority vide Judgment dated 29.04.2026 passed in **Special Leave Petition (C) No. 22100 of 2025,** has explained the scope of Order XIIIA of CPC which reads as under:

> ***"52.*** *The question then arises regarding the scope of enquiry under Order XIII-A of the CPC. At one end of spectrum, it is to follow the test laid out in Wenlock v. Moloney, [1965] 1 WLR 1238, wherein the English Court of Appeal adopted rigid standard to state that: –*
>
> > *"…this summary jurisdiction of the court was never intended to be exercised by a minute and protracted examination of the documents and facts of the case, in order to see whether the plaintiff really has a cause of*

action. To do that is to usurp the position of the trial judge, and to produce a trial of the case is chambers, on affidavits only, without discovery and without oral evidence tested by cross-examination in the ordinary way. This seems to me to be an abuse of the inherent power of the court and not a proper exercise of that power."

53. *A less stringent standard was adopted in William and Humbert Ltd. v. W & H Trade Marks (Jersey) Ltd., [1986] AC 368, wherein the U.S. Court of Appeals for the District of Columbia Circuit observed that a Court should, as a general rule, decline to proceed with the argument unless it not only harbours doubts about the soundness of the pleadings but, in addition, is satisfied that striking out will obviate the necessity for a trial or will substantially reduce the burden of preparing for the trial or the burden of the trial itself.*

54. *In Three Rivers District Council v. Governor and company of the Bank of England, [2001] UKHL 16, the House of Lords was considering a suit for damages against the Bank of England for misfeasance in public office arising from collapse of Bank of Credit and Commerce International SA. While considering the application of the defendant for summary judgement, it was held that: –*

"95. I would approach that further question in this way. The method by which issues of fact are tried in our courts is well settled. After the normal processes of discovery and interrogatories have been completed, the parties are allowed to lead their evidence so that the trial judge can determine where the truth lies in the light of that evidence. To that rule there are some well-recognised exceptions. For example, it may be clear as a matter of law at the outset that even if a

party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks. In that event a trial of the facts would be a waste of time and money, and it is proper that the action should be taken out of court as soon as possible. In other cases it may be possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance. It may be clear beyond question that the statement of facts is contradicted by all the documents or other material on which it is based. The simpler the case the easier it is likely to be take that view and resort to what is properly called summary judgment. But more complex cases are unlikely to be capable of being resolved in that way without conducting a mini-trial on the documents without discovery and without oral evidence. As Lord Woolf said in Swain v Hillman, at p 95, that is not the object of the rule. It is designed to deal with cases that are not fit for trial at all."

55. *Closer to the home, various High Courts have rendered their opinions primarily on a cautionary note in adjudicating summary judgments, which have been held to be applicable in exceptional cases. Reference in this regard can be made to Bright Enterprises Pvt. Ltd. v. MJ Bizcraft LLP & Anr., 2017 SCC Online Del 6394 and Su-kam Power Systems Ltd. v. Mr. Kunwer Sachdev & Anr., 2019 SCC Online Del 10764.*

56. *If a case before the Court gives rise to a neat point of law or construction, and if the Court is satisfied that it has all evidences necessary for the proper determination of the question and that the parties have had an adequate opportunity to address their arguments; it should grasp the nettle and decide the*

same. While it is simply not enough for the defendant to argue that something may come up in trial, at the same time the defendant has to show from the documents available on record, or portray that such evidence likely exists and can be expected to be made available during the trial.

57. *There is no gainsaying that the Court ought not to conduct a mini-trial in this regard, rather take the statements and facts on the face, until any contemporaneous document indicates otherwise. In doing so, the Court ought to not only take into account the evidence actually available on the record, but also the evidence that can be reasonably be expected to be available in the process of trial.*

58. *It may not be out of context to note that the use of summary judgment will not be against the interest of justice if it will lead to a fair and just result, and serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole.*

59. *Therefore, while considering an application for summary judgment under Order XIII-A of the CPC, the following nonexhaustive guidelines have to be complied –*

(i) That the procedural mandate under Order XIII-A, CPC be strictly complied.

(ii) The Court should consider,

> *(a) Whether Plaintiff has no real prospect of succeeding on the claim or issue; or*
>
> *(b) Whether the defendant has no real prospect of successfully defending the claim or issue; and*

(iii) The Court should also consider whether there is no other reason why the case or issue(s) should be allowed to go to trial.

(iv) While ascertaining above, the Court does not have to take everything on the face value, but it must also not conduct a mini trial at the same time.

(v) That the Court has to differentiate between a cause of action/defence respectively, which is real as opposed to fanciful prospect.

(vi) That the Court ought to grasp the nettle, when dealing with the summary judgment applications to decide short points of law and interpretations.

(vii) The Court must take into account not only the evidence before it but also the evidence that can reasonably be expected to be led/available at the trial.

(viii) That the Court's usage of power under Order XIII-A, CPC is exceptional as it cuts short the process of trial and ought to be exercised where oral evidence and full trial is not required.

(ix) In order to ascertain the need for full trial over summary judgment, the Court has to see whether, in the interest of justice, it is more suited to conduct trial to –

(a) Weigh the evidence,

(b) Evaluate the credibility of a deponents,

(c) Draw reasonable inferences from the evidence."

14. A perusal of the above judgment indicates that the Court cannot take every averment made in the Plaint on its face value and the Court must take into account not only the evidence before it but also the evidence that can reasonably be expected to be led at the trial. Order XIIIA of CPC is an exceptional power and must exercise only in the interest of justice.

15. A Co-ordinate Bench of this Court in Su-Kam Power Systems Ltd. vs. Kunwer Sachdev and Another, **2019 SCC OnLine Del 10764** has observed as under:

> *"**49.** Consequently, this Court is of the view that when a summary judgment application allows the Court to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. It bears reiteration that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the Court the confidence that it can find the necessary facts and apply the relevant legal principles so as to resolve the dispute as held in Robert Hryniak (supra).*
>
> ***50.** In fact, the legislative intent behind introducing summary judgment under Order XIIIA of CPC is to provide a remedy independent, separate and distinct from judgment on admissions and summary judgment under Order XXXVII of CPC.*
>
> ***51.** This Court clarifies that in its earlier judgment in Venezia Mobili (India) Pvt. Ltd. v. Ramprastha Promoters & Developers Pvt. Ltd., 2019 SCC OnLine Del 7761 while deciding two applications, both filed by the plaintiff in the said case (one under Order XII Rule 6 and other under Order XIIIA) it had applied the lowest common denominator test under both the provisions of the Code of Civil Procedure and held that the suit could be decreed by way of a summary judgment.*
>
> ***52.** Consequently, this Court is of the opinion that there will be 'no real prospect of successfully defending the claim' when the Court is able to reach a fair and just determination on the merits of the application for summary judgment. This will be the case when the process allows the court to make the*

necessary finding of fact, apply the law to the facts, and the same is a proportionate, more expeditious and less expensive means to achieve a fair and just result."

16. Similarly, another Co-ordinate Bench of this Court in Sun Parma Laboratories Ltd. vs. Mylan Laboratories Limited and Another, **2023 SCC OnLine Del 4661** has observed as under:

*"**10.** The Court has considered the matter. The present application under Order XIII-A Rule 3 CPC is one seeking summary judgment. This Court has in Rockwool International A/S v. Thermocare Rockwool (India) Pvt. Ltd., 2018 : DHC : 6774, considered the necessary conditions for passing summary judgment. The kind of cases that can be decided in a summary manner have to be those cases where a party has no real prospect of succeeding in the claim. A perusal of Order XIII A Rule 3 as amended by the Commercial Courts Act, 2005 reads as under:*

> *"Order XIII-A Summary Judgment 1……2……. 3. Grounds for summary judgment. - The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that -*
>
> *(a) the plaintiff has not real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and*
>
> *(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence."*

***11.** The pre-conditions for passing of a summary judgment under Order XIIIA Rule 3 CPC, as elucidated in Rockwool International (supra) are:*

i) that there is no real prospect of a party succeeding in a claim;

ii) that no oral evidence would be required to adjudicate the matter;

iii) there is a compelling reason for allowing or disallowing the claim without oral evidence."

17. A Division Bench of this Court in Bright Enterprises Private Ltd. & Anr. vs. MJ Bizcraft LLP & Anr., **2017 SCC OnLine Del 6394** has observed as under:

> ***"20.*** *We may also point out that there is a clear distinction between 'return of a plaint', 'rejection of a plaint' and 'dismissal of a suit'. These three concepts have different consequences. A dismissal of a suit would necessarily result in a subsequent suit being barred by the principles of res judicata, whereas this would not be the case involving 'return of a plaint' or 'rejection of a plaint'. What the learned Single Judge has done is to have dismissed the suit of the appellants/plaintiffs at the admission stage itself without issuance of summons and this, we are afraid, is contrary to the provisions of the statute.*
>
> ***21.*** *Apart from this, we are of the view that the learned Single Judge has gone wrong in invoking the provisions of Order XIIIA CPC for rendering a summary judgment. It is true that Rule 3 of Order XIIIA CPC empowers the Court to give a summary judgment against a plaintiff or defendant on a claim if it considers that - (a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and (b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. But, in our view, this power*

can only be exercised upon an application at any date only after summons have been served on the defendant and not after the Court has framed issues in the suit. In other words, Order XIIIA Rule 2 makes a clear stipulation with regard to the stage for application for summary judgment. The window for summary judgment is after the service of summons on the defendant and prior to the Court framing issues in the suit."

18. Another Co-ordinate Bench of this Court in Kamdhenu Limited vs. Aashiana Rolling Mills Ltd., **2021 SCC OnLine Del 2426** has analysed Order XIII-A as under:

"VI. Analysis

A. Principles of Order XIII-A of the CPC

28. *Before dealing with the arguments of the parties on merits, it is necessary to appreciate the principles applicable to adjudication of an application under Order XIII-A of the CPC.*

29. *This Court has had occasion to deal with this in several judgments. Mr. Rao referred me to the decisions of coordinate benches in Jindal Saw Ltd. (supra), Venezia Mobili (supra), Mallcom (India) (supra), K.R. Impex (supra), Su-kam (supra) and Elder Projects Ltd. (supra). Mr. Bansal, on the other hand, relied upon the Division Bench decision in Bright Enterprises (supra), Clues Network (supra), Rockwool (supra), and CFA Institute (supra).*

30. *In Bright Enterprises, the Division Bench allowed the plaintiff's appeal against dismissal in limine of a suit for injunction against infringement of trademark, passing off, etc. The Division Bench held that, upon the institution of a suit, the issuance of summons to the*

defendant is mandatory, and that the power under Order XIII-A can be exercised only upon an application being made after the service of summons and prior to framing of issues. In Rockwool, the learned Single Judge applied the judgment in Bright Enterprises and came to the conclusion that several of the issues arising in that case could not be decided without trial.

31. *After the publication of the Delhi High Court (Original Side) Rules, 2018 ["the Rules"], a view has been taken in K.R. Impex (supra), Mallcom (India) (supra) and Jindal Saw Ltd. (supra), that Chapter XV-A of the Rules (which would override the provisions of the CPC by virtue of Section 129 thereof) permits disposal of a suit by summary judgment on any date of hearing. However, it is not necessary in the facts of the present case to enter into this controversy, as summons have indeed been issued in the present suit, and a formal application invoking the provisions of Order XIII-A has been filed by the defendant prior to framing of issues.*

32. *Mr. Bansal relied upon the judgment in Clues Network (supra), wherein the Division Bench cited the judgment in Bright Enterprises (supra), to hold that the procedure laid down therein has to be followed. In Clues Network, earlier applications filed under Order XIII-A of CPC had already been dismissed and there was no pending application for this purpose. It is in these circumstances that the Division Bench set aside an order of the learned Single Judge disposing of the suit under Order XIII-A, albeit after recording that counsel for the parties had consented to such disposal. The circumstances of the present application are entirely different. It has been instituted in writing after service of summons and prior to framing of issues, as contemplated by Order XIII-A Rule 2. No argument has been raised by Mr. Bansal regarding the proper constitution or presentation of the present application,*

and the judgment in Clues Network is, in my view, of no assistance to him.

33. *The circumstances in which an application under Order XIII-A ought to be allowed have been dealt with in Su-Kam (supra). The Court considered the English Law pertaining to Rule 24 of Civil Procedure Rules, which is in pari materia to Order XIII-A of the CPC.*

34. *Rule 3 of Order XIII-A lays down the tests which must be satisfied in order to enter judgment under the said provision. With regard to the 'real prospect of success' limb of the test, the judgment of the Chancery Division in Easyair Ltd. v. Opal Telecom Ltd., [2009] EWHC 339 (Ch) was cited before the Court in Su-Kam. In Easyair, the Chancery Court distilled the principles thus:*

> *"i) The court must consider* ***whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success****: Swain v. Hillman (2001) 1 All ER 91;*
>
> *ii) A "realistic" claim is* ***one that carries some degree of conviction****. This means a claim that* ***is more than merely arguable*** *: ED & F Man Liquid Products v. Patel (2001) 1 All ER 91 at [8];*
>
> *iii) In reaching its conclusion the court must not conduct a "mini-trial": Swain v. Hillman;*
>
> *iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court.* ***In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents*** *: ED & F Man Liquid Products v. Patel at [10];*
>
> *v) However, in reaching its conclusion the court must take into account not only the evidence*

actually placed before it on the application for summary judgment, but also ***the evidence that can reasonably be expected to be available at trial*** *: Royal Brompton Hospital NHS Trust v. Hammond (No 5) [2001] EWCA Civ 550;*

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case : Doncaster Pharmaceuticals Group Ltd. v. Bolton Pharmaceutical Co. 100 Ltd. [2007] FSR 63;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, ***if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it.*** *The reason is quite simple : if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to*

be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction : ICI Chemicals & Polymers Ltd. v. TTE Training Ltd. [2007] EWCA Civ 725."

(Emphasis supplied.)

35. *With regard to the second limb of the test, [corresponding to Order XIII-A Rule 3(b) of the CPC], this Court in Su-kam has recorded the submission based upon the following observations in Blackstone's Civil Practice : The Commentary with regard to 'compelling reasons', thus:*

"(a) The respondent is unable to contact a material witness who may provide material for a defence.

(b) The case is highly complicated such that judgment should only be given after mature consideration at trial.

(c) The facts are wholly within the applicant's hands. In such a case it may be unjust to enter judgment without giving the respondent an opportunity of establishing a defence in the light of disclosure or after serving a request for further information. However, summary judgment will not necessarily be refused in cases where the evidence for any possible defence could only lie with the applicant if there is nothing devious or artificial in the claim.

(d) The applicant has acted harshly or unconscionably, or the facts disclose a suspicion of dishonesty or deviousness on the part of the

applicant such that judgment should only be obtained in the light of publicity at trial."

36. *After a consideration of the Statement of Objects and Reasons of the 2015 Act and the English and Canadian judgments relating to similar provisions for summary judgment, this Court has held as follows:*

> *"42. Consequently, the new Rule,* ***applicable to commercial disputes, demonstrates that trial is no longer the default procedure/norm.***
>
> *xxxx xxxx xxxx*
>
> *44. While deciding the test for summary judgment under Rule 24.2, House of Lords in Three Rivers District Council v. Governor and Company of the Bank of England, [2003] 2 A.C. 1, reiterated the observation in Swain v. Hillman, (2001) 1 All ER 91* ***that the word 'real' distinguishes 'fanciful' prospects of success and it directs the Court to examine whether there is a 'realistic' as opposed to a 'fanciful' prospect of success****. The House of Lords in Three Rivers District Council (supra) also held that the Court while considering the words 'no real prospect' should look to see what will happen at the trial and that if the case is so weak that it has no reasonable prospect of success, it should be stopped before great expenses are incurred…*
>
> *xxxx xxxx xxxx*
>
> *45. The Supreme Court of Canada in Robert Hryniak v. Fred Mauldin, 2014 SCC OnLine Can SC 53 has also held that trial should not be the default procedure. In the said case, which was an action for civil fraud against the appellant and a corporate lawyer, who acted for the appellant, the allegation was that the appellant, through that company, had transferred more than US $10 million to an offshore bank following which he*

claimed that the money had been stolen. That money had initially been transferred to the appellant's company, by the respondents therein, in respect of an investment opportunity.

xxxx xxxx xxxx

47. The Supreme Court of Canada, despite allegation of fraud, did not exercise the power to record oral evidence. Instead, the Court granted summary judgment in favour of the respondents/plaintiff on the basis of the material/pleadings already available with it. The Court held that there is no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. The Court further held that that is the case when the process allows the judge to make necessary findings of fact, allows the judge to apply the law to such facts and when such a process is proportionate, more expeditious and a less expensive means of achieving a just result. Consequently, when a summary judgment motion allows the judge to find the necessary facts and resolve the dispute, it would not be necessary to proceed to trial. In this regard the standard for fairness is whether or not the procedure involved in a summary judgment would give the judge the confidence to find necessary facts and apply the relevant legal principles to resolve the dispute…

xxxx xxxx xxxx

49. ***Consequently, this Court is of the view that when a summary judgment application allows the Court to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. It bears reiteration that the standard for fairness is not whether the procedure is as exhaustive as a***

trial, but whether it gives the Court the confidence that it can find the necessary facts and apply the relevant legal principles so as to resolve the dispute as held in *Robert Hryniak (supra).*

50. In fact, the legislative intent behind introducing summary judgment under Order XIIIA of CPC is to provide a remedy independent, separate and distinct from judgment on admissions and summary judgment under Order XXXVII of CPC.

xxxx xxxx xxxx

52. Consequently, this Court is of the opinion that there will be 'no real prospect of successfully defending the claim' when the Court is able to reach a fair and just determination on the merits of the application for summary judgment. This will be the case when the process allows the court to make the necessary finding of fact, apply the law to the facts, and the same is a proportionate, more expeditious and less expensive means to achieve a fair and just result."

(Emphasis supplied.)

37. *In Su-Kam, the Court also explained an earlier judgment of the learned Single Judge in Venezia (supra), wherein it was held that the principles under Order XII Rule 6 and Order XIII-A are similar, inasmuch as the Court is required to consider whether the defences raised by the defendants are a moonshine and sham. Under both provisions, judgment may be entered without trial, if the Court comes to the conclusion that the suit raises no genuine triable issues. This was clarified in Su-Kam to the extent that the remedies are independent, separate and distinct, but were considered in a composite manner*

in Venezia as the plaintiffs therein had filed separate applications under the two provisions.

38. *Although the judgment of the learned Single Judge in Su-Kam (supra) has been carried in appeal [RFA(OS)(COMM) 1/2020], the Division Bench has not stayed the operation of the judgment.*

39. *The judgment of a coordinate bench in Mehra Cosmetics (supra) is also instructive as to the approach to be applied. The Court noticed that under the 2015 Act, a suit is supposed to be disposed of without trial, in the absence of any real prospect of success of either of the parties. In the context of a suit alleging infringement of trademark and design, the Court held as follows:*

> *"15. This Court, in the interim order/judgment, on a perusal of the registered design, has already returned a finding, again though prima facie, that there is no novelty in the design of the container of the Petroleum Jelly, against copying of which infringement is claimed, inasmuch as a large number of other products are available in the market in similar containers.*
>
> *16. I have thus asked the counsel for the plaintiff, how the decision on the said aspect can be any different today and or what evidence would be led by the plaintiff to establish the novelty in the design, even if put to trial. The decision is unlikely to be before the expiry of the period of validity of the design.*
>
> *17. The counsel for the plaintiff has contended that since the plaintiff has a certificate of registration of design, the same will be shown to establish novelty. It is also contended that the defendant no. 4 has since also obtained registration of a similar design and the same will be proved in evidence.*

18. The process of registration of a design is materially different from that of a trade mark, where an opportunity is given to others to object. Merely because registration has been obtained, is no proof, even prima facie, of the validity of the design. Reference, if any required, in this regard can be made to observations in Mohan Lal, Proprietor of Mourya Industries v. Sona Paint & Hardwares (2013) 200 DLT 322, Aashiana Rolling Mills Ltd. v. Kamdhenu Ltd. (2018) 253 DLT 359 and Vega Auto Accessories (P) Ltd. v. S.K. Jain Bros Helmet (I) Pvt. Ltd. 2018 SCC OnLine Del 9381. Similarly, merely because the defendant no. 4 may have obtained registration of the same design would not make the design of the plaintiff novel.

19. A perusal of the certificate of registration of design at Pages 17 to 22 of Part IIIA File also shows the plaintiff to have claimed novelty "in the shape and configuration of container" without any particulars and the counsel for the plaintiff on enquiry has only contended that the novelty is in the ring at the centre of the container to handhold the same. To say the least, the same is not even claimed in the registration, particularly in respect of the front side, back side, left side and right side view of the container.

20. Thus, no purpose will be served in putting the claim of the plaintiff for infringement of design also to trial and the same can be summarily dismissed."

(emphasis supplied)

19. Applying the aforesaid law laid down to the facts of the present case, it can be seen that the case of the Plaintiff is that he has rendered services to the Defendants for more than 18 years and he has not been paid for the

same. On the other hand, it is the case of the Defendants that there is no written document to substantiate that case of the Plaintiff.

20. The Plaintiff is basing his case on Whatsapp chats between the Parties and a chart filed by the Plaintiff indicating the number of hours and time spent on the cases of the Defendants. In the opinion of this Court these materials have to be proved in the Court of law by leading evidence by cross-examining the Defendants. The documents filed by the Plaintiff unless proved by leading evidence cannot be accepted as it is only an *ipse dixit* of the Plaintiff. All the averments made by the Plaintiff in course of the proceedings, would have to be tested in cross-examination of the Defendants in order to ascertain its veracity and cannot be accepted merely on its face value. Similarly, Whatsapp chats and the context in which the chats were made etc., also would have to be tested at time of leading oral evidence.

21. The case of the Defendants is that the Plaintiff was not rendering services for more than 18 years and he was only a junior Counsel assisting senior Counsels and in the absence of any document to show that the Defendants have admitted the terms of engagement and any acceptance regarding hours put in by the Plaintiff in rendering services to the Defendants, the claim of the Plaintiff is completely misconceived.

22. In the opinion of this Court, the Plaintiff has miserably failed to substantiate that the Defendants have no defence at all. The case of the Plaintiff has to be proved by substantiating documents in the course of trial.

23. Another question which has been raised is whether the present Suit is a commercial Suit or not. A Co-ordinate Bench of this Court in Atmastco Ltd. Vs. Mandeep Kalra, **2024 SCC OnLine Del 4467** has held that services

rendered by an Advocate does not fall within the ambit of Commercial Courts Act, 2015. This Court is not going into this question at this juncture, in the present application filed by the Plaintiff under Order XIIIA of CPC and the same shall be adjudicated upon at an appropriate stage.

24. Resultantly, the present application stands dismissed.

CS(COMM) 826/2023 & I.A. 22823/2023

List before the Ld. Joint Registrar on 23.07.2026.

SUBRAMONIUM PRASAD, J

MAY 20, 2026
Prateek/KG