



2025:DHC:281-DB



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

Date of decision: 20.01.2025

+ **FAO (COMM) 20/2025**
M/S MN AUTOMOBILE PRIVATE LIMITEDAppellant
Through: **Mr. Sudeep Kumar Shrotriya,**
Adv.
versus

GURIQBAL SINGH & ANR.Respondents
Through: **Nemo**

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

CM APPL. 3489/2025 (Exemption)

1. Allowed, subject to all just exceptions.

FAO (COMM) 20/2025 & CM APPL. 3488/2025

2. This appeal has been filed by the appellant, challenging the Order dated 19.11.2024 passed by the learned District Judge (Commercial Court)-05 Tis Hazari Courts, West Delhi (hereinafter referred to as the learned "Trial Court") in CS(COMM) No. 317/2022, titled *Guriqbal Singh & Ors. v. MN Automobile Pvt. Ltd. & Ors.*, allowing the application filed by the respondents herein under Order XXXIX Rule 10 of the Code of Civil Procedure, 1908 (in short, 'CPC') and directing the appellant herein to deposit the entire arrears of rent within a period of four weeks from the date of the said order.



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3. As a brief background, it is an admitted case of the appellant that the subject premises, that is, property bearing No. 88/2, Block-B, Rewari Line Industrial Area, Mayapuri Phase-I, New Delhi-110064, ad-measuring 394.8 sq. yds, was leased by the respondents in favour of two companies, that is, M/s Sikka Kars Global Pvt. Ltd. and M/s Sikka Automobiles Pvt. Ltd by way of two lease deeds, both dated 10.12.2014. M/s Sikka Kars Global Pvt. Ltd. and M/s Sikka Automobiles Pvt. Ltd were group companies under the same management.

4. Subsequently, there was a change in the shareholding and Directors of the M/s Sikka Automobiles Pvt. Ltd. and the name of the company was also changed to that of the present appellant.

5. There was a covenant in the Lease Deed with M/s Sikka Automobiles Pvt. Ltd. that both the lease deeds were interlinked and either of the lease deeds could not be terminated singly, that is, if the lessee wished to terminate a lease, both the leases had to be terminated together. Clause 1 sub-clause (f) of the said Lease Deed is reproduced herein below:

“(f) That two separate lease deeds are being entered into for separate portions with Sikka Kars Global Pvt. Ltd. and Sikka Automobile Private Limited and both the leases are interlinked it will not be open to the lessee to terminate the lease only with Sikka Automobil Private Limited without terminating the lease with Sikka Kars Global Pvt. Ltd.”

6. The respondents filed the above Suit claiming therein that the appellant had defaulted in the payment of the rent of the subject



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premises from April, 2020, and that the appellant was also liable to pay the Conversion Charges and House Tax dues. The appellant, on the other hand, filed the Written Statement claiming therein that after the change of the management of M/s Sikka Automobiles Pvt. Ltd, the Lease Deed with M/s Sikka Automobiles Pvt. Ltd. was terminated by the appellant with effect from 24.02.2022 (the learned counsel for the appellant submits that it should, in fact, be 24.02.2021).

7. The learned counsel for the appellant submits that in view of the above pleadings, therefore, the appellant cannot be called upon to deposit the purported rent for the period beyond the period of termination of the Lease Deed, as this would not fall within the ambit and scope of Order XXXIX Rule 10 of the CPC. He submits that in terms of Order XXXIX Rule 10 of the CPC, it is only for the admitted rent which can be directed to be deposited. He submits that the appellant has already paid the admitted rent, amounting to Rs.1,97,064/-, to the respondents on 23.02.2024. He submits that, therefore, the learned Trial Court has erred in issuing the Impugned Directions by way of the Impugned Order dated 19.11.2024.

8. We have considered the submissions made by the learned counsel for the appellant, however, find no force in the same.

9. Order XXXIX Rule 10 CPC is reproduced herein below:

“10. Deposit of money, etc., in Court.—Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in



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Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.”

10. This Court, in **Nokia Technologies OY v. Guangdong Oppo Mobile Telecommunications Corp Ltd & Ors.**, 2023:DHC:4465-DB, held that the test applicable for passing a judgement under Order XII Rule 6 cannot be imported into Order XXXIX Rule 10. This Court observed as under:

“65. This is because Order XII CPC deals with “Admissions” whereas Order XXXIX CPC deals with “Temporary Injunctions and Interlocutory Orders”. The language of Order XII Rule 6 CPC requires an “admission of fact”, whereas Order XXXIX Rule 10 CPC only requires a party to admit that money is due to other party. Further, the Court is entitled under Order XII Rule 6 CPC to pass a judgment on admission as the Legislature itself conceptualized Order XII Rule 6 CPC to be applicable on an admission “of fact” where no further trial is required by the court to deliver its judgment, whereas the Court is entitled under Order XXXIX Rule 10 CPC to pass interim orders.

66. The said admission though sufficient for an interim deposit order under Order XXXIX Rule 10 CPC, is further subject to the outcome of trial. Thus, as Order XXXIX Rule 10 CPC has been enacted for passing interim orders pending the final outcome of the suit only, the threshold for admissions necessarily has to be different than that under Order XII Rule 6 CPC.

67. Had the scope been narrower, or even identical, then the Legislature in its wisdom, would not have enacted two separate provisions of law to cater to two different situations.

*68. The Division Bench of the High Court of Bombay in **Rajul Manoj Shah vs. Navin***



Umarshi Shah (supra) has rightly held that the threshold of admission required for applicability of the two provisions is different and applying a strict standard of Order XII Rule 6 CPC would make the existence of Order XXXIX Rule 10 CPC otiose. This Court is also in agreement with the view of the Bombay High Court in **Rajul Manoj Shah vs. Navin Umarshi Shah** (supra) to the extent it disagrees with the ratio of the judgment of the learned Single Judge of this Court in **Harish Ramchandani vs. Manu Ramchandani** (supra) and holds that the test applicable for passing a judgment on admission under Order XII Rule 6 cannot be imported in Order XXXIX Rule 10 CPC which empowers the Court to pass an interim order. The relevant portion of the judgment in *Rajul Manoj Shah* (supra) is reproduced hereinbelow:-

22.The power under Rule 10 of Order XXXIX is a power to pass an interim order pending suit. But the power under Rule 6 of Order XII is a drastic power of passing a decree on admission without conducting trial. The standards applicable to a provision conferring power to pass a decree on admission cannot be applied to Rule 10 of Order XXXIX which empowers the Court to pass an interim order. Therefore, in our view, the test applicable for passing the judgment on admission under Rule 6 of Order XII of the said Code cannot be imported in Rule 10 of Order XXXIX.....”

11. This Court also explained that the power to pass such an order may also be traced to Section 151 of the CPC. It was held that:

“76. A learned Single Judge of this Court in **Sanjay Gupta vs. Cottage Industries Exposition Ltd.**, 2008 SCC OnLine Del 37 quoted with approval the decision in **Surjit Singh vs. H.N. Pahilaj**, 1996 SCC OnLine



Del 754, wherein it was held that every Court is constituted for the purpose of doing justice according to law and must be deemed to possess by virtue of Section 151 CPC, as a necessary corollary and as inherent in its very constitution, all such powers as may be necessary to do the right and to undo a wrong in the course of the administration of justice. In the said case, it was further held that in appropriate cases, the Court can exercise powers under Section 151 CPC where Order XII Rule 6 or Order XXXIX Rule 10 CPC may not be applicable for the purpose of doing justice or to prevent abuse of the process of the Court. 77. A Division Bench of the High Court of Bombay (Nagpur) in *Chandrakant Shankarrao Deshmukh vs. Haribhau Tukaramji Kathane & Ors.*, 1982 SCC OnLine Bom 152 has also held that whereas the principle and provisions of Section 151 CPC can be exercised and utilised in aid and in furtherance of the provisions expressly made in the CPC, they cannot be employed as against the said provisions. 78. Consequently, a combined result of Section 151, Order XII Rule 6, Order XXXIX Rule 10 CPC is that the Courts have the power to pass orders for deposit of money pending decision in a suit, if the facts so warrant. Section 151 CPC can be called in aid to cover cases which are analogous to these principles but may not be directly covered by the express words in the Code.”

12. On the facts of the case, this Court further held as under:

“70. This Court is of the view that in view of the settled law the admission required under Order XXXIX Rule 10 CPC in the present case is not of the quantum of money claimed by Nokia; instead, all that is required is Oppo’s admission of a relationship of a licensee-licensor or its resultant obligation to make payment of some license fee.



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71. Further, where there is a dispute about the quantum of liability, then the minimum deposit that ought to be ordered normally is the last-paid-fee.”

13. In ***Pradeep Gandotra & Anr. v. Pyush Lohia & Anr.***, 2017:DHC:3635, this Court held as under:

“...[E]arlier the law under Order XXXIX Rule 10 CPC was that an order could be passed under Order XXXIX Rule 10 CPC only on account of law as per the provision of Order XII Rule 6 CPC, but that legal position no longer stands in view of adding of Order XVA CPC to Delhi with respect to suits by landlords against the tenants, and as per which provision in spite of their existing disputed questions of fact, on a prima facie view of the matter, the civil court can pass orders for payment of rent/user and occupation charges for the period of occupation by the tenants of tenanted premises.”

14. From the above it is evident that for the application of Order XXXIX Rule 10 of the CPC, the threshold for admission is substantially different from that under Order XII Rule 6 of the CPC. All that is required is an admission of the underlying lessor-lessee relationship and an acknowledgment of a payment obligation, not necessarily the precise quantum of such obligation. In the present case, the appellant has not disputed the lease arrangement between M/s Sikka Automobiles Pvt. Ltd. (its earlier name) and the respondents, or the basic obligation to pay rent. It is not denied by the appellant that there was only a change of shareholding and management of the company M/s Sikka Automobiles Pvt. Ltd. The appellant, therefore, remained bound by the terms of the Lease Deed



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that had been executed by the respondents in favour of M/s Sikka Automobiles Pvt. Ltd. One of the important terms of the said Lease Deed was that two simultaneous lease deeds have been executed on the same day, which are interlinked, and cannot be terminated individually. Admittedly, there is no termination of the Lease Deed in the name of M/s Sikka Kars Global Pvt. Ltd., which was earlier the sister concern of the appellant, and it is now submitted that the same is no longer a sister concern of the appellant. Mere change of shareholding or the management of the Company neither terminates the lease nor excuses the Company from complying with the terms thereof. Therefore, the appellant cannot escape the payment of the rent in accordance with the terms of the said Lease Deed.

15. Therefore, no infirmity can be found in the Impugned Order dated 19.11.2024.

16. The appeal is accordingly, dismissed. However, on the prayer of the learned counsel for the appellant, the time for depositing the arrears of rent is further extended by a period of six weeks from today.

NAVIN CHAWLA, J

SHALINDER KAUR, J

JANUARY 20, 2025/Arya/SJ

Click here to check corrigendum, if any