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

% ***Date of Decision: 23rd April, 2025***

+ **CM(M) 617/2025 & CM APPL. 19664-19665/2025**

SUNMEET SINGH

.....Petitioner

Through: Mr. Rakesh Patiyal with Mr. Rohan Nagpal, Mr. P. Mohan, Mr. Bhupesh Verma, Advocates.

versus

DIVYANK BOSE & ORS. & ORS.

.....Respondents

Through: Mr. Sumit Kasana, Advocate
(through V.C.)

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (oral)

1. Petitioner is defending a commercial suit which seeks ejectment, recovery of arrears of rent and damages.
2. During pendency of the suit, learned District Judge (Commercial Court) passed an order under Order XV-A CPC on 11.02.2025. Such order has already been challenged by defendant by filing a separate petition i.e. CM(M) 414/2025.
3. The present petition challenges a subsequent order dated 19.03.2025 whereby the defence of defendant No.4 (petitioner herein) has been struck off for non-compliance of the abovesaid order.
4. Learned counsel for the petitioner submits that, even as per the bare provision contained under Order XV-A(2) CPC, before passing any such order for striking off defence, the Court is mandated to serve a notice upon the defendant or his counsel to show cause as to why the defence should not be struck off.
5. When the matter was taken up by this Court on 03.04.2025, notice was



directed to be issued to respondents.

6. Pursuant to that, Mr. Sumit Kasana learned proxy counsel for Mr. Pratyaksh Raj, Advocate has joined the proceedings through *video conferencing*. He also informs that Mr. Pratyaksh Raj is in some personal difficulty as his nephew is hospitalized.

7. Fact, however, remains that the present petition involves a very short point.

8. According to the petitioner, though the learned Trial Court has every right to strike off the defence for non-compliance of the order passed under Order XV-A CPC but it could have been done only after serving a notice in this regard in terms of Order XV-A (2) CPC, which reads as under:-

“ORDER XV-A - Striking off defence in a suit by a lessor

(2) Before passing an order for striking off the defence, the court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.”

9. It is submitted that there is no reasoning assigned and by virtue of a single line order, the defence has been struck off.

10. This Court has also seen order dated 19.03.2025, which reads as under:-

“Present: None for the plaintiff.

Ld. Counsel Mr. Rakesh Patiyal for the defendant no.4 through VC.

It is submitted by the counsel for defendant no.4 that there is no stay before the Hon’ble High Court.

For non compliance of the order, the defence of the defendant no.4 is struck off.

Put up for PE on 09.04.2025”

11. Undoubtedly, the petitioner herein has already challenged one earlier



order dated 11.02.2025 whereby he was directed to deposit user charges of the suit property @ Rs.50,000/- per month and there is no compliance so far, *albeit*, the abovesaid order has been challenged before this Court.

12. The learned Trial Court can always strike off defence of any such party who does not comply with the directions issued under Order XV-A CPC but not without adhering to the specific provision in this regard. The impugned order dated 19.03.2025 would reflect that there is no notice to defendant No.4 before passing such extreme order of striking off defence. To that extent, the impugned order does not seem to be sustainable in the eyes of law.

13. Mr. Kasana, learned counsel for the respondent submits that in view of the abovesaid, he would leave it to the Court to pass appropriate orders. He submits that next date before the learned Trial Court is 05.05.2025 and the learned Trial Court may, at least, be requested to consider the abovesaid aspect afresh and to thereafter, pass appropriate orders in this regard.

14. In view of the above, the present petition is disposed of with direction to the learned Trial Court to strictly adhere to the statutory provision as aforesaid and then to pass appropriate order with respect to striking off the defence of defendant No.4.

15. This order is, however, without prejudice to the rights and contentions of the parties.

16. The petition stands disposed of in aforesaid terms.

17. All the pending applications also stand disposed of accordingly.

(MANOJ JAIN)
JUDGE

APRIL 23, 2025

st/js