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

+ **RFA(COMM) 382/2024**

M/S SHEERIE FOODS & ORS.

.....Appellants

Through: **Mr. Mudit Talesara and Mr. Samarth
Talesara, Advocates.**

versus

M/S DARSHANA AGRO

.....Respondent

Through: **Mr Anis Mohammad, Advocate.**

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

21.05.2025

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CM APPL. 53271/2024

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 53270/2024 (seeking condonation of delay in filing the appeal)

3. The application has been filed seeking condonation of delay of 53 (fifty-three) days in filing the present appeal.
4. For the reasons stated in the application, the delay is condoned.
5. Application stands disposed of.

RFA(COMM) 382/2024 and CM APPL. 53269/2024 (stay)

6. The appellant has filed the present appeal impugning the judgment dated 02.04.2024 [**impugned judgement**] passed by the learned Commercial Court, whereby the respondent's application under Order XIII-



A Rule 3 of the Code of Civil Procedure, 1908 [**CPC**], was allowed and consequently, the respondent's suit [CS(COMM) 01/2023 captioned *M/s Darshana Agro v. M/s Sheerie Foods and Others*], was allowed.

7. The respondent (plaintiff in the suit) had instituted the aforesaid suit [CS(COMM) No. 01/2023] before the learned Commercial Court seeking recovery of a sum of ₹14,51,108/- (Rupees Fourteen Lakhs Fifty-One Thousand One Hundred and Eight Only).

8. The respondent claimed that the said amount was outstanding and payable by the appellant (defendant in the suit) on account of various supplies made. However, the appellant had failed and neglected to clear the outstanding dues.

9. It is important to note that the aforementioned suit was instituted as a summary suit under Order XXXVII of the CPC. However, by order dated 23.01.2023 passed by the learned Commercial Court, the suit was directed to be treated as an ordinary suit instead of summary suit.

10. In view of the above, an application for a summary judgment under Order XIII-A of the CPC would not be maintainable. Rule 1 of Order XIII-A of the CPC as applicable to matters involving commercial disputes, which reads as under:

**“ORDER XIII-A
SUMMARY JUDGMENT**

1. Scope of and classes of suits to which this Order applies.— (1) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.

(2) For the purposes of this Order, the word “claim” shall include—

(a) part of a claim;

(b) any particular question on which the claim (whether in whole or in part) depends; or



(c) a counterclaim, as the case may be.

(3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.”

11. It is clear from the plain language of Sub-rule (3) of Rule (1) of Order XIII-A of the CPC that an application for summary judgment under Order XIII-A of the CPC would not lie in a suit in respect of a commercial dispute, which was originally filed as a summary suit under Order XXXVII of the CPC.

12. Concededly, the respondent had filed a suit as a summary suit and therefore, an application under Order XIII-A of the CPC for the summary judgment was not be maintainable.

13. In view of the above, we do not consider apposite to examine the dispute and render any opinion on the merits of the dispute between the parties.

14. We, accordingly, set aside the impugned judgment and remand the matter to the learned Commercial Court to the position as obtaining on the date of the impugned judgment.

15. The present appeal is allowed in the aforesaid terms. Pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 21, 2025/PB

[Click here to check corrigendum, if any](#)