2026 INSC 492

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.(s) OF 2026
(@ SPECIAL LEAVE PETITION (C) No. 7116 of 2025)

DHARMENDRA KALRA & ORS. .... Appellant(s)

VERSUS

KULVINDER SINGH BHATIA .... Respondent (s)

J U D G M E N T

PRASANNA B VARALE, J.

1. Leave granted.

2. The present special leave petition was filed under Article 136 of the Constitution of India against the impugned judgment and final orders dated 10.12.2024 passed by the Hon'ble High Court of Judicature at Allahabad in Case: S.C.C. Revision No.114 of 2023 and CMA No. 6 of 2025 in S.C.C. Revision No. 114 of 2023 whereby the Hon'ble High Court was pleased to allow the revision petition of the tenant against the judgment of the Ld. Trial court - striking off the

defence of the tenant on the ground of violation of the mandatory provisions of Order XV Rule 5 Code of Civil Procedure (hereinafter referred to as 'CPC') and thereafter allowing the application seeking extension of time filed by the respondent herein.

BRIEF FACTS:

3. The fathers of the Appellants namely, Sh. Uttam Chand Kalra and Sh. Sain Das Kalra purchased suit premises no. 118/1-A Kaushalpuri, Kanpur Nagar from the erstwhile owner Shri Surendra Nigam son of Shri Laxmi Narayan Nigam, through a registered sale deed registered in the office of Sub-Registrar Kanpur Nagar. The respondents occupied two halls on the ground admeasuring 27' 3" * 13 and 20" * 17'6" as a tenant at the aforesaid premises at an agreed rent which was revised from time to time and the tenancy corresponds to English Calendar Month. The defendant/respondent are running a Hotel named as 'Gyan Vaisnav Hotel' in the tenanted premises and the Appellants/landlords have to pay commercial taxes. Thereafter Shri Uttam Chand Kalra passed away on 29.09.2002 and Shri Sain Das Kalra passed away on 14.09.2014. Consequently, the Appellants/landlords became the owner of the suit premises. In the month of September 2020, the Appellants/landlords

revised monthly rent to Rs. 25,000/- per month and the respondent/tenant agreed to pay the revised amount of rent. Further, the respondent/tenant paid rent @ Rs.25,000/- for the month of September and October, 2020, but thereafter respondent stopped making the payment of rent.

4. The respondent/tenant failed to make the payment of rent from November 2020 to June 2021 amounting to Rs 2,00,000/- (Rs. 25,000/- pm). Being aggrieved with the aforesaid, the Appellants/landlords herein sent a legal notice dated 12.07.2021 terminating the tenancy prescribing 30 days' time to the respondent/tenant to pay the arrears of rent as per S. 106 of the Transfer of Property Act (hereinafter TPA).

5. Thereafter, the Appellants/original plaintiffs filed suit being Civil S.C.C Suit No. 52 of 2021 before the Judge, Small Causes Court namely Additional District Judge, Kanpur Nagar u/s 15 of the Provincial Small Causes Court Act r/w S.106 of the TPA praying inter-alia for a decree of eviction and a decree of recovery of arrears of rental Rs.2,37,000/- against the defendant/respondent. Further a decree of recovery of damages future and pendentlite @ Rs.2000/-

from 16.08.2021 till the date of actual eviction of the defendant/tenant from the suit premises.

6. Ld. Judge, Small Causes Court/ Additional District Judge, Kanpur vide order dated 08.03.2022 in S.C.C Suit No. 52/2021 ordered ex-parte proceedings against the respondent/defendant. Being aggrieved, the respondent/defendant appeared before the Hon'ble Trial Court and moved an application no. 25 C under Order IX Rule 7 of CPC for recall of ex-parte proceedings. Subsequently, Ld. Additional District Judge, Kanpur vide order dated 10.11.2022 in S.C.C Suit No. 52/2021 recalled the order dated 08.03.2022 by allowing the application no. 25 C subject to cost of Rs. 1000/-. Thereafter, the Appellants/plaintiffs preferred an application under Order XV Rule 5 CPC in S.C.C Suit No. 52/2021 before Ld. Judge, Small Causes Court/ Additional District Judge, Kanpur praying inter-alia to strike off the defence of the respondent/defendant for want of mandatory compliance of the provisions of Order XV Rule 5 CPC. The defendants had failed to deposit entire arrears of rent, damages and costs of the suits etc. on the first date of hearing or before the first date of hearing defying the mandatory provisions of Order XV Rule 5 of CPC.

7. In the meanwhile, the respondent/defendant filed an application under Order VII Rule 11 of the CPC in S.C.C Suit No. 52/2021 before Ld. Judge, Small Causes Court/ Additional District Judge, Kanpur for rejection of plaint on the ground inter-alia that the suit is barred under The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 i.e. U.P Act 16 of 2021. However, the same was rejected vide order dated 21.07.2023. Thereafter, the respondent/defendant filed an objection application dated 02.08.2023 in S.C.C Suit No. 52/2021 before Ld. Judge, Small Causes Court/ Additional District Judge, Kanpur praying inter-alla to dismiss the application filed by the Appellants/plaintiff under Order XV Rule 5 of CPC.

8. The respondent/defendant filed an application under Order XV Rule 5 regarding deposit of rent and interest in S.C.C Suit No. 52/2021 before Ld. Judge, Small Causes Court/ Additional District Judge, Kanpur praying inter-alla to condone the delay by accepting deposit of rent and interest from 1.04.2021 to 30.08.2021. Ld. Judge, Small Causes Court/ Additional District Judge, Kanpur vide order dated 05.08.2023 passed in S.C.C Suit No. 52/2021 allowed the application under Order XV Rule 5 of CPC filed by the

Appellants/plaintiff herein on the ground inter-alia that defendant has accepted plaintiff as the co-owner and landlord of the building and the defendant has not deposited the rent of Rs.1500 as accepted by him in compliance of Order XV Rule 5 of CPC nor any representation was submitted by the defendant within the time limit as prescribed under sub-Rule (2) of Order XV Rule 5 of CPC.

9. A delayed application for depositing the rent and interest was filed by the defendant/respondent on 02.08.2023. The said judgment was challenged by the respondent before the Hon'ble High Court of Judicature at Allahabad and the Hon'ble High Court vide impugned judgment and final order dated 10.12.2024 in S.C.C Revision No. 114 of 2023 allowed the revision petition filed by the respondent herein while directing the respondent to deposit monthly rent Rs. 1500/- on or before 31.12.2024 and if the respondent fails to deposit first rent or future monthly rent then the defence of the respondent shall be struck off.

10. The respondent failed to deposit the amount and subsequently filed application being C.M.A No. 6 of 2025 for extension of time in S.C.C Revision No. 114/2023 before the Hon'ble High Court of Judicature at Allahabad on the ground inter-alia that the respondent

failed to make the deposit on time for a sum of Rs. 9000/- (@Rs. 1500/-) for the rent of period running from 01.10.2024 to 31.3.2025 as his local counsel had gone abroad and the time provided in the order dated 10.12.2024 had expired. The Hon'ble High Court of Judicature at Allahabad vide impugned judgment and final order dated 07.02.2025 in S.C.C Revision No. 114 of 2023 (C.M.A-No. 6 of 2025) was pleased to allow the application for extension of time filed by the respondent herein.

11. Aggrieved by the said judgment of the Allahabad High Court, the Appellants are before us.

CONTENTIONS

12. Learned counsel for the Appellants vehemently submitted that the High Court has committed a manifest error in law in interfering with the well-reasoned order of the Trial Court and in granting indulgence to the respondent despite clear and admitted defaults. It was submitted that the High Court proceeded on an erroneous premise that the landlord–tenant relationship was in dispute, whereas the same stood unequivocally admitted by the respondent in the written statement as well as before the High Court, and therefore, no such issue arose for consideration. It was further

submitted that the High Court failed to appreciate the settled legal position governing Order XV Rule 5 of the Code of Civil Procedure, 1908, inasmuch as mere denial of the landlord–tenant relationship does not absolve the tenant from the statutory obligation to deposit rent. The conduct of the respondent clearly demonstrated deliberate default and non-compliance, thereby attracting the consequence of striking off the defence. Learned counsel contended that the High Court, vide order dated 10.12.2024, had granted a final opportunity to the respondent to deposit the rent subject to an express condition that failure to do so would entail striking off the defence and that no liberty would be granted to seek extension of time. Despite such a categorical direction, the respondent failed to deposit the rent within the stipulated period, yet the High Court, by a subsequent order dated 07.02.2025, erroneously extended the time in the teeth of its earlier order, which is impermissible in law. It was also submitted that the respondent failed to deposit the entire arrears of rent, damages, and costs on or before the first date of hearing, as mandatorily required under Order XV Rule 5 CPC, and no representation was made within the prescribed time. In such circumstances, the defence of the respondent was liable to be struck

off in view of the statutory mandate. Learned counsel further submitted that the Trial Court had rightly allowed the application under Order XV Rule 5 CPC after recording a finding that the respondent had accepted the Appellants as co-owners/landlords. The interference by the High Court with such a finding was unwarranted and contrary to law. It was additionally contended that the respondent's conduct throughout has been contumacious, inasmuch as he deliberately avoided service of summons, resulting in ex parte proceedings, and thereafter continued to default in payment of rent in order to protract the proceedings. The filing of an application seeking extension of time, despite a clear prohibition in the earlier order, amounts to wilful disobedience and abuse of the process of law.

13. ***Per contra***, learned counsel for the respondent submitted that the present Special Leave Petition does not raise any substantial question of law warranting interference under Article 136 of the Constitution of India and is liable to be dismissed at the threshold. It was contended that the petition is primarily directed against the extension of time granted by the High Court vide order dated 07.02.2025, which, however, has not even been specifically

impugned, rendering the challenge itself not maintainable. It was further submitted that the order dated 10.12.2024 passed by the High Court is a consent order, recorded upon the unequivocal "no objection" of the Appellants. Having consented to the same and allowed the respondent to act upon it by depositing rent, the Appellants are estopped from challenging the said order at a belated stage. The plea that such consent was limited in nature is an afterthought and unsupported by the record. Learned counsel contended that the delay in deposit of rent was minimal, being only seven days, and occurred due to bona fide reasons, namely the absence of the respondent's counsel. The High Court, in exercise of its discretion, rightly adopted a pragmatic approach in condoning the delay and permitting compliance. It was also submitted that the Appellants never objected to the order dated 10.12.2024 nor sought any review or clarification thereof, and even during the hearing of the application for extension of time, no such objection was raised. The present petition has been filed only after the grant of extension, which clearly indicates that the grievance is limited to the discretionary order dated 07.02.2025. Learned counsel further submitted that in view of the subsequent compliance with the

conditions imposed by the High Court, including deposit of the entire due rent, the present petition has become infructuous and does not warrant consideration on merits. Without prejudice, it was contended that the underlying suit itself is not maintainable in view of the enforcement of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021, and the applicability of the earlier regime stands excluded. It was also submitted that the Trial Court erred in allowing the application under Order XV Rule 5 CPC without determining the "first date of hearing" and without ensuring proper service of the plaint or affording an opportunity to file a written statement. It was emphasized that striking off the defence is a penal consequence and the power under Order XV Rule 5 CPC is discretionary, requiring due consideration of the facts and circumstances. In the present case, the respondent had substantially complied with the requirement by depositing the rent along with interest, and therefore, the extreme consequence of striking off the defence was not warranted. In view of the aforesaid submissions, it was contended that the impugned orders passed by the High Court are legal, justified, and do not call for any interference.

ANALYSIS

14. Having heard the learned counsel for the parties and upon perusal of the material placed on record, this Court is of the considered view that the controversy lies in a narrow compass, namely, the applicability and manner of exercise of jurisdiction under Order XV Rule 5 of the Code of Civil Procedure, 1908, and the propriety of the orders passed by the High Court in the facts of the present case.

15. At the outset, it is not in dispute that the provision contained in Order XV Rule 5 CPC is intended to ensure that a tenant does not continue in possession of the tenanted premises without complying with the statutory obligation of depositing admitted rent/damages during the pendency of the suit. At the same time, it is equally well settled that the consequence of striking off the defence is a drastic one and the provision, though mandatory in form, has been interpreted to confer a degree of judicial discretion.

16. In ***Bimal Chand Jain v. Sri Gopal Agarwal***[1], this Court observed:

[1] (1981) 3 SCC 486

***6.** It seems to us on a comprehensive understanding of Rule 5 of Order 15 that the true construction of the Rule should be thus. Sub-rule (1) obliges the defendant to deposit, at or before the first hearing of the suit, the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent per annum and further, whether or not he admits any amount to be due, to deposit regularly throughout the continuation of the suit the monthly amount due within a week from the date of its accrual. In the event of any default in making any deposit, "the court may subject to the provisions of sub-rule (2) strike off his defence". We shall presently come to what this means. Sub-rule (2) obliges the court, before making an order for striking off the defence to consider any representation made by the defendant in that behalf. In other words, the defendant has been vested with a statutory right to make a representation to the court against his defence being struck off. If a representation is made the court must consider it on its merits, and then decide whether the defence should or should not be struck off. This is a right expressly vested in the defendant and enables him to show by bringing material on the record that he has not been guilty of the default alleged or if the default has occurred there is good reason for it. Now, it is not impossible that the record may contain such material already. In that event, can it be said that sub-rule (1) obliges the court to strike off the defence? We must remember that an order under sub-rule (1) striking off the defence is in the nature of a penalty. **A serious responsibility rests on the court in the matter and the power is not to be exercised mechanically. There is a reserve of discretion vested in the court entitling it not to strike off the defence if on the facts and circumstances already existing on the record it finds good reason for not doing so. It will always be a matter for the judgment of the court to decide whether on the material before it, notwithstanding the absence of a representation under sub-rule (2), the defence should or should not be struck off.** The word "may" in sub-rule (1) merely vested power in the court to strike off the defence. It does not oblige it to do so in every case of default. To that extent, we are unable to agree with the view taken by the High Court in Puran Chand [Civil Revision No. 356 of 1978, decided on October 30, 1980] . We are of opinion that the High Court has placed an unduly narrow construction on the provisions of clause (1) of Rule 5 of Order 15.*

(emphasis supplied)

The power to strike off the defence under Order XV Rule 5 CPC, though couched in mandatory terms, is not to be exercised mechanically. The Court must consider whether there has been substantial compliance and whether the default is wilful or contumacious.

17. Similarly, in ***Santosh Mehta v. Om Prakash***[2], it was held:

> ***"2.*** *Rent Control laws are basically designed to protect tenants because scarcity of accommodation is a nightmare for those who own none and, if evicted, will be helpless. Even so, the legislature has provided some grounds for eviction, and the Delhi law contains an extreme provision for striking out altogether the defence of the tenant which means that even if he has excellent pleas to negative the landlords's claim the court will not hear him.* ***Obviously, this is a harsh extreme and having regard to the benign scheme of the legislation this drastic power is meant for use in grossly recalcitrant situations where a tenant is guilty of disregard in paying rent. That is why a discretion is vested, not a mandate imposed.*** *Section 15(7) reads thus:*
>
> > *"If a tenant fails to make payment or deposit as required by this section, the Controller may order the defence against eviction to be struck out and proceed with the hearing of the application."*
>
> ***3.*** *We must adopt a socially informed perspective while construing the provisions and then it will be plain that the Controller is armed with a facultative power. He may, or may not strike out the tenant's defence. A judicial discretion has built-in-self-restraint, has the scheme of the statute in mind, cannot ignore the conspectus of circumstances which are present in the case and has the brooding thought playing on the power that, in a court, striking out a party's defence is an exceptional step, not a routine visitation of a punitive extreme following upon a mere failure to pay rent.* ***First of all, there must be a failure to pay rent which, in the context, indicates wilful failure, deliberate default or volitional non-performance. Secondly, the section provides no automatic weapon but prescribes a wise discretion, inscribes no***

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[2] (1980) 3 SCC 610

> ***mechanical consequence but invests a power to overcome intransigence. Thus, if a tenant fails or refuses to pay or deposit rent and the court discerns a mood of defiance or gross neglect, the tenant may forfeit his right to be heard in defence.*** *The last resort cannot be converted into the first resort; a punitive direction of court cannot be used as a booby trap to get the tenant out. Once this teleological interpretation dawns, the mist of misconception about matter-of-course invocation of the power to strike out will vanish. Farewell to the realities of a given case is playing truant with the duty underlying the power."*
>
> ***(emphasis supplied)***

Striking off the defence is a serious matter and ought not to be resorted to unless there is a clear case of deliberate default or contumacious conduct on the part of the tenant.

18. In the present case, the Trial Court proceeded to allow the application under Order XV Rule 5 CPC and struck off the defence of the respondent primarily on the ground of non-deposit of rent within the stipulated time. However, from the record, it appears that certain foundational aspects, such as determination of the "first date of hearing" and the issue of proper service and opportunity, were neither conclusively determined nor adequately examined.

19. This Court has consistently held that the "first date of hearing" is not a mere formal date but the date on which the Court applies its mind to the case, ordinarily at the stage of framing of issues or

consideration of pleadings. In ***Siraj Ahmad Siddiqui v. Prem Nath Kapoor***[3], it was observed:

> ***"12.*** *A few provisions of the said Act and of the Code of Civil Procedure, 1908, need to be examined. Section 38 of the said Act states that the provisions thereof would have effect notwithstanding anything inconsistent therewith contained in the Code. Order V, Rule 1 of the Code states that when a suit has been duly instituted summons may be issued to the defendant to appear and answer the claim on a day to be therein specified, provided that no summons need be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim. Where the summons is issued the court may direct the defendant to file a written statement on the date of his appearance and cause an entry to that effect to be made in the summons. Order V, Rule 5 provides that in every suit heard by a Court of Small Causes (which the trial court was) the summons shall be for the final disposal of the suit.* ***Order VIII, Rule 1 of the Code uses the expression first hearing and it says that the defendant shall on or before the first hearing or within such time as the court may permit present a written statement of his defence. The court is called upon to frame issues under the provisions of Order XIV, Rule 3 on the basis of the pleadings and documents of either party to the suit.***
>
> ***13.*** *The date of first hearing of a suit under the Code is ordinarily understood to be the date on which the court proposes to apply its mind to the contentions in the pleadings of the parties to the suit and in the documents filed by them for the purpose of framing the issues to be decided in the suit. Does the definition of the expression "first hearing" for the purposes of Section 20(4) mean something different? The step or proceeding mentioned in the summons referred to in the definition should, we think, be construed to be a step or proceeding to be taken by the court for it is, after all, a "hearing" that is the subject-matter of the definition, unless there be something compelling in the said Act to indicate otherwise; and we do not find in the said Act any such compelling provision. Further, it is not possible to construe the expression "first date for any step or proceeding" to mean the step of filing the written statement, though the date for that purpose may be mentioned in the summons, for the reason that, as set out earlier, it is permissible under the Code for the defendant to file a written statement even*

[3] (1993) 4 SCC 406

> *thereafter but prior to the first hearing when the court takes up the case, since there is nothing in the said Act which conflicts with the provisions of the Code in this behalf.* ***We are of the view, therefore, that the date of first hearing as defined in the said Act is the date on which the court proposes to apply its mind to determine the points in controversy between the parties to the suit and to frame issues, if necessary.***
>
> ***(emphasis supplied)***

The expression 'first date of hearing' has to be understood as the date when the Court proposes to apply its mind to the controversy involved in the suit and not any earlier date fixed for procedural purposes.

20. In the absence of a clear determination of such a date, the very foundation for invoking Order XV Rule 5 CPC becomes uncertain.

21. Further, it is evident that the High Court, while passing the order dated 10.12.2024, granted an opportunity to the respondent to deposit the rent, subject to certain conditions. Subsequently, by order dated 07.02.2025, the High Court exercised its discretion to extend the time for compliance, taking into account the explanation furnished by the respondent.

22. While the Appellants have contended that such extension was impermissible in view of the earlier order, it cannot be lost sight of that procedural laws are intended to advance justice and not to

defeat it. In ***Salem Advocate Bar Association v. Union of India***[4] this Court held:

> ***20.*** *The use of the word "shall" in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory.* ***The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress.*** *In the present context, the strict interpretation would defeat justice.*
>
> ***(emphasis supplied)***

Procedural law is the handmaid of justice and is meant to advance its cause and not to thwart it.

23. At the same time, the conduct of the respondent in not strictly adhering to the timelines prescribed cannot be completely overlooked. In spite of the opportunities being given and though the assurance was given to the Court by submitting an application that the amount would be deposited, the amount was not deposited within the prescribed timeline and again an application was filed for

[4] (2005) 6 SCC 344

extension. The record reflects certain lapses, however, the explanation offered indicates that the delay was neither gross nor wholly unexplained.

24. In such a situation, this Court is of the view that both the Trial Court and the High Court have not comprehensively addressed all relevant aspects in their proper perspective. The Trial Court appears to have proceeded in a somewhat mechanical manner in invoking the penal consequence of striking off the defence, whereas the High Court, while granting extension, did not sufficiently reconcile its earlier conditional order with the subsequent indulgence granted.

25. Considering all the aforesaid circumstances, we are of the opinion that the ends of justice would be best served by remanding the matter to the Trial Court for a fresh consideration of the application under Order XV Rule 5 CPC.

26. The Trial Court shall, upon remand:

1. Determine, in accordance with law, the “first date of hearing” of the suit;
2. Examine whether there has been due compliance or substantial compliance with the requirements of Order XV Rule 5 CPC;
3. Consider whether the default, if any, is wilful or bonafide;

4. Pass a reasoned order after affording adequate opportunity to both parties.

27. It is made clear that this Court has not expressed any opinion on the merits of the rival contentions, and all issues are left open to be decided by the Trial Court in accordance with law.

28. Accordingly, the impugned orders are set aside, and the matter is remanded to the Trial Court for fresh adjudication in light of the observations made hereinabove.

29. The Trial Court is requested to dispose of the matter expeditiously, preferably within a period of six months from the date of receip of this order.

30. The appeal is disposed of in the above terms.

……………………………………J.
[S.V.N. BHATTI]

……………………………………J.
[PRASANNA B. VARALE]

NEW DELHI;
MAY 15, 2026.