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

CNR No. DLHC010458422026

+ **CM(M) 2126/2026**

DR M L PARNAMI

.....Petitioner

Through: **Mr. P.D. Gupta, Sr. Adv. with Mr.
Atul gupta, Adv.**

versus

DR DINESH KARGWAL

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AJAY DIGPAUL

ORDER

% **24.09.2026**

CM APPL. 66035/2026 (Exemption)

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

CM(M) 2126/2026 & CM APPL. 66034/2026 (Stay)

3. Through the present petition, the petitioner is assailing the order dated 01.08.2026 passed by the learned District Judge (Commercial Court-02), North District, Rohini Courts, New Delhi, in CS (COMM) No. 325/2024 titled as '*Dr. Dinesh Kargwal v. Dr. M.L. Parnami*', whereby the learned Trial Court dismissed petitioner/defendant's application, filed under Order XIII-A of the Code of Civil Procedure, 1908 ("*CPC*"), seeking summary dismissal of the respondent/plaintiff's suit.
4. Succinctly put, the underlying commercial suit was filed by the respondent/plaintiff, seeking the below mentioned reliefs from the



petitioner/defendant:

“(a) Pass a decree for declaration that Cheque bearing No. 718453 dated 05.04.2024 for Rs.50,00,000/- drawn on State Bank of India, Kingsway Camp, Delhi and Cheque bearing No. 364056 dated 05.04.2024 for Rs.50,00,000/- drawn on State Bank of India, Nehru Enclave, Alipur, Delhi are null and void in effect.

(b) pass a decree for mandatory Injunction commanding the defendant to perform the obligations as mutually agreed and to provide all the original invoices in support of the defendant's claim of expenditure allegedly incurred by defendant for and on behalf of plaintiff; warrantee cards; AMCs and statement of accounts along with supporting invoices, for the materials and equipments installed and/or used in construction of property No. Plot No. 23, Pocket-3, Sector-A9, Narela, Delhi-110040, wherever it is applicable.

(c) pass a decree for recovery for Rs.38,12,476/- together with pendente lite and future interest @10% per annum, in favour of the Plaintiff and against the Defendant till the actual realization.”

5. In the *interregnum*, petitioner preferred an application, filed under Order XIII-A CPC, seeking dismissal of respondent's suit, on the ground that the concerned cheques were in fact issued by the respondent in consequence of the parties settling their accounts 12.06.2023, after arriving at a balance of Rs. 1,52,29,928/- which remained payable to the petitioner, and not as a security deposit in the hospital construction project in November 2021, as claimed by the respondent in contradiction to the admitted documents.

6. The learned Trial Court *vide* impugned order dated 01.08.2026, dismissed petitioner's application, and recorded the following observations:

“Being guided by above legal proposition, court can pass a summary judgment even against the plaintiff if the court is satisfied that the plaintiff has no real prospect of succeeding in his claim. Such judicial satisfaction,



would be obviously on meaningful reading of facts arising out of pleadings of the parties. Such discretion cannot be arbitrary or against the record. If we examine the facts of the present case, this court is of the considered view that suit cannot be dismissed straightaway by summary judgment by invoking Order XIII-A CPC, firstly because even if it is admitted that two cheques were issued by plaintiff herein, the question whether same were given in year 2021 as security or not, require an evidence. Even if there may be banking record to show that those cheques could not have been issued in year 2021 as the cheque book containing leaves of the cheques, as per defendant was issued later in point of time, is something, cannot be decided without taking evidence on record. Moreover there is inter se dispute among two doctors regarding raising of construction of hospital building on their adjoining plots of land, admittedly there has never been any written agreement before commencement of construction. Therefore there are certain complex issues of facts involving in their dispute which is not only confined regarding issuance of two cheques rather other important issues. Therefore no case is made for exercising judicial discretion under Order XIII-A CPC. Accordingly application stands declined.”

7. Learned counsel appearing on behalf of the petitioner submits that the learned Trial Court erroneously dismissed petitioner’s application under Order XIII-A CPC, and failed to appreciate that respondent’s suit is a mere a counter blast to the proceedings initiated by the petitioner under Section 138 of the Negotiable Instruments Act, 1881, in May 2024 against cheques, bearing No. 718453 and No. 364056, issued in favour by the respondent, which stood dishonoured. It is submitted that the declaratory relief claimed by the respondent, seeking to declare the said cheques as null and void, is aimed at restraining the petitioner from pursuing his remedy in respect of the dishonoured cheques.

8. Learned counsel for the petitioner draws this Court’s attention to the judgment of the Hon’ble Supreme Court in ***Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd., (2022) 8 SCC 633***, wherein a similar



view was taken. The relevant para of the said judgment is reproduced herein below:

“52.2. In *Ratna Commercial Enterprises Ltd. v. Vasutech Ltd.* [*Ratna Commercial Enterprises Ltd. v. Vasutech Ltd.*, 2007 SCC OnLine Del 914 : AIR 2008 Del 99] , it was held : (SCC OnLine Del paras 29-30)

“29. The other issue concerns the maintainability of the suit itself in terms of Section 41(d) of the Specific Relief Act, 1963 (“SRA”) which reads as under:

‘41. Injunction when refused.—An injunction cannot be granted—

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter.”

The law concerning the interpretation of Section 41(d) of the SRA is fairly well settled. It has been held *N.P. Esappa Chettiar, In re* [*N.P. Esappa Chettiar, In re*, 1942 SCC OnLine Mad 283 : AIR 1942 Mad 756] and in *Gauri Shanker v. District Board of Farrukhabad* [*Gauri Shanker v. District Board of Farrukhabad*, 1946 SCC OnLine All 149 : AIR 1947 All 81] that a suit to restrain criminal proceedings being initiated is not maintainable. In *Aristo Printers (P) Ltd. v. Purbanchal Trade Centre* [*Aristo Printers (P) Ltd. v. Purbanchal Trade Centre*, 1991 SCC OnLine Gau 24 : AIR 1992 Gau 81] a Division Bench of the Gauhati High Court was dealing with a case where cheques issued by the plaintiff to the defendant had been dishonoured and notice had been issued to the defendant under Section 138 of the NI Act. The plaintiff then filed a suit to restrain the defendant from instituting proceedings under the NI Act. The Court referred to a judgment of the Hon'ble Supreme Court in *State of Orissa v. Madan Gopal Rungta* [*State of Orissa v. Madan Gopal Rungta*, 1951 SCC 1024 : AIR 1952 SC 12] and *Cotton Corpn. of India Ltd. v. United Industrial Bank Ltd.* [*Cotton Corpn. of India Ltd. v. United Industrial Bank Ltd.*, (1983) 4 SCC 625] and held that ‘an order of injunction of the nature issued in this case cannot be granted and the hands of the criminal court cannot be fettered by the civil court’.

30. The decision of this Court in *Atul Kumar Singh v. Jalveen Rosha* [*Atul Kumar Singh v. Jalveen Rosha*, 1999 SCC OnLine Del 149 : AIR 2000 Del 38] was in a case where the plaintiff had issued four cheques in favour of the defendant for a value of Rs 7 lakhs. The cheques when presented were dishonoured. After service of notice under Section 138 of the NI Act, the plaintiff filed a suit for a declaration that ‘the defendant is



not entitled to any benefit on account of holding the cheques' and to injunct the defendant 'from using or claiming any benefit by virtue of possessing the instruments'. This Court, while allowing the defendant's application for rejecting the plaint, held that (AIR p. 40) : (SCC OnLine Del para 7)

'7. ... The reliefs claimed in this suit are in substance for an injunction restraining the defendant from prosecuting the criminal case instituted against the plaintiff. Section 41(b) of the Specific Relief Act denies to the Court the jurisdiction to grant an injunction restraining any person from prosecuting any proceedings in a court. Consequently, the injunction sought by the plaintiff cannot be granted since it would have the effect of preventing the defendant from prosecuting the criminal case against the plaintiff.'”

9. *Prima facie*, and having heard the counsel appearing for the petitioner, this Court is of the view that the question of maintainability of the respondent's claim for declaratory relief, seeking declaration of the cheques bearing No. 718453 and No. 364056, are null and void, requires consideration.

10. In view of the aforesaid, this Court deems it appropriate to stay the operation of the impugned order dated 01.08.2026, passed by the learned Trial Court in CS (COMM) No. 325/2024, till the next date of hearing.

11. Issue notice to the respondent through all permissible modes on filing of PF within one week, returnable on 16.02.2027.

12. Upon receipt of notice, liberty is granted to the respondent to file a reply, if any, within a period of four weeks, with an advance copy to the counsel for the petitioner. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.

13. List on 16.02.2027.

AJAY DIGPAUL, J

SEPTEMBER 24, 2026/ar/os