



\$~107

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA 818/2025
VINOD KRIPASHANKAR PATHAK @ VINOD PATHAK @ V
KUMARAppellant
Through: Mr. Saran Suri, Ms. Ruchi Jani and
Mr. Sahil Goyal, Advocates.

versus

COL (RETD) RAMPAL SUHAGRespondent
Through: Respondent in-person.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **01.09.2025**

CM APPL. 54687/2025 (exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed-of.

RFA 818/2025 & CM APPL. 54688/2025 (stay)

By way of the present regular first appeal filed under section 96 of the Code of Civil Procedure 1908, the appellant impugns judgment and decree dated 31.05.2025 passed by the learned District Judge-02, South-West District, Dwarka Courts, New Delhi in suit bearing CS DJ ADJ No. 516734/2016.

2. Mr. Saran Suri, learned counsel appearing for the appellant points-out, that the suit from which the present appeal arises was based on a cheque bearing No. 833866 in the sum of Rs. 15 lacs drawn on State Bank of India, Vasant Kunj, New Delhi. Counsel submits that in an earlier suit bearing C.S. (O.S.) No. 2412/2011 titled ***Delta Guards***



Private Ltd. Vs. V. Kumar &Anr. the respondent in the present proceedings (who is the Managing Director of M/s. Delta Guards Private Ltd.) had contended as follows:

“32. Out of the said sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) (sic) was paid by the Plaintiff Company to the Defendant no.1 by way of the Cheque no. 833866 drawn by Col. R.P.Suhag at State Bank of India, Vasant Kunj in the favour of Defendant no. 1 herein. The said amount was transferred in the account of Defendant No. 1 with the name “Vinod Kripa Shankar Pathak”, in SBI A/c no. 0020003151888 on December 15, 2009. A copy of the relevant page of the Bank Statement of Col. R.P. Suhag’s Bank Account showing the transfer of Rs. 15,00,000 to the account of Defendant No. 1, is annexed herein as “Annexure no. XIV”.”

(emphasis supplied)

3. Counsel however points-out that the earlier suit was withdrawn vide order dated 28.03.2012 on an application filed under Order XXIII Rule 3 read with section 151 CPC, in which the order it was recorded as under:

“The plaintiff in the present application also seeks liberty to file or institute a fresh suit or claim against the defendant. Counsel for the plaintiff submits that Col. Ram Pal Suhag (rettd.), Managing Director of the plaintiff company had paid an amount of Rs. 15 lacs out of his own funds to the defendant while in the present suit, the said amount has been claimed by the Company. Counsel further submits that there is an apprehension that in the fresh suit to be filed by the said Director, the defendants may raise objection to challenge the maintainability of the suit being barred by the principles of res judicata.

“This application is strongly opposed by the counsel for the defendant. Learned counsel for the defendant submits that the plaintiff had filed the suit with a view to harass the defendants. Counsel also submits that nowhere in the plaint and the application,



it is mentioned that the said amount of Rs. 15 lacs was advanced by the said director.

“I have heard learned counsel for the parties. So far the withdrawal of the present suit is concerned, it is within the discretion of the plaintiff to continue the suit or withdraw the same. It is only in exceptional circumstances, the withdrawal of the suit can be refused by the Court. In any case, the liberty has not been sought by the plaintiff company but the plaintiff company in the present application is seeking liberty for the Director to file an independent suit to claim the said amount. No such averment has also been made by the plaintiff in the present application, in such circumstances no liberty can be afforded to the plaintiff company as a Director will have an independent right to claim the said amount from the defendant and on filing of such a suit, the defendant will have every right to raise all legal objections available to oppose the same.”

(emphasis supplied)

4. Learned counsel accordingly submits, that in the earlier suit and in the subsequent suit, the respondent has taken two contradictory stands, as to whether the alleged loan of Rs.15 lacs had been advanced to the appellant by the *company* or by its *managing director* from his personal account. Furthermore, it pointed-out that when the earlier suit was withdrawn, for the reasons recorded by the learned trial court as extracted above, no liberty was granted for the filing of the subsequent suit.
5. Issue notice.
6. Mr. Rampal Suhag, the respondent is present in-person on advance copy; accepts notice; and seeks time to file reply to CM APPL. No. 54688/2025.



7. Let reply to CM APPL. No. 54688/2025 be filed within 06 weeks; rejoinder thereto, if any, be filed within 04 weeks thereafter; with copies to the opposing counsel.
8. No reply is required in the appeal.
9. Let trial court record be requisitioned in electronic form; and copy of TCR be supplied to counsel on request.
10. Re-notify on 19th November 2025 before the learned Joint-Registrar for completion of pleadings in the application.
11. List before court thereafter.
12. On a *prima-facie* view of the matter, and in view of the submissions as recorded above, it is directed that the effect and operation of the impugned judgement and decree dated 31.05.2025 shall remain *stayed*, till the next date of hearing before this court; without requiring the appellant to deposit any money in court, *at this stage*.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 1, 2025

V.Rawat