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

% ***Date of Decision: 15<sup>th</sup> May, 2025***

+ CM(M) 2226/2024 & CM APPL. 18697/2024  
M/S TOP MOTOCOMPONENTS PVT LTD

.....Petitioner

Through: Mr. Sahil Sharma with Mr. Saranga  
Awana, Advocates.

versus

AADITYA EMOTORS PVT LTD & ORS.

.....Respondent

Through: Mr. Vinod Dahiya and Ms. Vandana  
Dahiya, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**J U D G M E N T (oral)**

1. Petitioner herein had filed a commercial suit for seeking recovery which was directed against four defendants *viz* i) Aaditya Emotors India Pvt. Ltd., ii) Ms. Satender Dabas (Director), iii) Ms. Soniya (Director) and iv) Ms. Param Singh Jeet (Director).
2. Admittedly, all the defendants were proceeded against *ex parte*.
3. As far as defendant No. 2 Ms. Satender Dabas and Defendant No. 3- Ms. Soniya are concerned, since they had not even filed their written statement within the permissible outer limit of 120 days, their right to file written statement was closed by learned Trial Court on 21.04.2023.
4. Thereafter, the learned Trial Court ordered service by publication qua defendant No. 1 and when defendant No. 1 did not appear despite publication and keeping in mind the fact that there was no appearance from the side of defendant Nos. 2 and 3, defendant Nos. 2 and 3 were also proceeded against *ex-parte*.



5. Defendant Nos.2 and 3 moved an application seeking to set aside *ex-parte* order dated 14.09.2023. Learned Trial Court, though, dismissed the application, it permitted them to appear in the case, from that stage.
6. Fact remains that, even if, they were permitted to participate from that stage, these two defendants i.e. defendant Nos.2 and 3 cannot run away from the fact that they had not filed any written statement and their right to file written statement had already been closed.
7. Viewed thus, they had limited right of participation in the suit and besides conducting limited cross-examination of the plaintiff and addressing final arguments, they could not have been given any indulgence of entering into witness box.
8. When the case was taken up by the learned Trial Court on 29.01.2024, the plaintiff examined its last witness (PW-2) and, thereafter, it closed its evidence.
9. Learned Trial Court, after closing the evidence, adjourned the matter for recording of defendant's evidence.
10. Feeling aggrieved by the abovesaid order, the plaintiff moved an application seeking review of the abovesaid order. It seems that when the case was, earlier, taken up for *case management hearing* purpose, the learned Trial Court had also fixed up a date for recording of defendant's evidence and since the defendants were *ex-parte* and their right to file written statement had even been closed, review was filed.
11. However, learned Trial Court, taking note of the contentions made by defendant Nos. 2 and 3 who claimed that they had been cheated by the other two defendants, permitted them to enter into witness box to prove such element of *fraud*.



12. Such orders, permitting them to enter into witness box, are under challenge.

13. Learned counsel for petitioner/plaintiff submits that since written statements were never submitted by these defendants and since for all purposes, their defence is to be deemed as struck off, the learned Trial Court should not have given them any opportunity to lead any evidence in affirmative. He submits that the law is also well settled in this regard and any such party whose right to file written statement has been closed cannot be permitted to enter into witness box for proving its defence and in such a situation, any such defendant has a limited right of cross examining the plaintiff's witnesses and to address arguments on the basis of the case set up by the plaintiff.

14. He thus contends that under no circumstance, defendants are entitled to lead any evidence of their own and their cross examination also has to be limited one and they cannot travel beyond the limited scope of pointing out any infirmity, falsity or weakness appearing in the case of plaintiff.

15. It is also argued that the principles of law, which are applicable to a situation where the defence of any defendant is struck off, are squarely applicable to defendant who is proceeded against *ex-parte* and whose written statement is not even on record.

16. Learned counsel for defendant Nos. 2 and 3 joined the proceedings through *video conferencing* and admits that there is no written statement on behalf of defendant Nos. 2 and 3.

17. The evidence can be led in consonance with the pleadings and since there are no pleadings on behalf of defendant Nos. 2 and 3, there is no point in asking them to enter into witness box.



18. They do have right to address final arguments and at such stage of final arguments, they can always assert that they are victims of *fraud*.

19. Undoubtedly, if there is some complexity in the matter, the Court has ample power to call even a stranger as a witness to provide the Court with requisite clarity but such power of summoning anyone as a witness provided under Order XVI Rule 14 CPC has not been invoked herein.

20. It seems that after closing the plaintiff's evidence, in a routine manner, the matter was fixed for defendant's evidence, without realizing the fact that no such opportunity could have been given to defendants, whose right to file written statement was lying closed.

21. The impugned order whereby the learned Trial Court has given them such right has, virtually, permitted them to enter into the suit from backdoor, which is not permissible in the eyes of law.

22. If the defendant Nos.2 and 3 were of the view that their right to file written statement should not have been closed or that it had been wrongly closed, there was no one to prevent them to have challenged the abovesaid order. Admittedly, such order has never been challenged by them and faced with the abovesaid peculiar situation, and the fact that there is no pleading from the side of defendant Nos.2 and 3, they could not have been permitted to enter into witness box for purposes of proving their defence, by showing that they have been cheated by their co-defendants.

23. Keeping in mind the facts presented before this Court, there is apparently illegality in the impugned order and, therefore, the petition is allowed and, resultantly, the defendant Nos.2 and 3 would not be permitted to enter into witness box.

24. Needless to say, they have limited right of participation and they would



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be at, therefore, at liberty to address arguments before the learned Trial Court. They would also be permitted to file written submission, if so advised.

25. Petition is, accordingly, disposed of in aforesaid terms.

26. Pending application also stands disposed of in aforesaid terms.

**(MANOJ JAIN)**  
**JUDGE**

**MAY 15, 2025/sw/SS**