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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Date of decision: 21<sup>st</sup> August, 2024*

+ CM(M) 3184/2024 &amp; CM APPL. 47270/2024

KAVITA

.....Petitioner

Through: Mr. Rhythm Buaria, Advocate.

versus

M/S D L NAGPAL FINANCE AND LEASING CO. PVT. LTD &  
ORS.

.....Respondents

Through: None.

**CORAM:****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)****CM APPL. 47372/2024 (Exemption)**

Exemption allowed, subject to all just exceptions.

**CM(M) 3184/2024**

1. Petitioner is defendant No.3 before the learned Trial Court.
2. Her right to file written statement had been closed way back on 31<sup>st</sup> August, 2023 and since such order was never challenged by her, such order has already attained finality.
3. During further proceeding of the case, defendant No.3 and 4 moved application under order I Rule 10 (2) CPC praying for deletion of their names from the array of the parties.
4. Such application has been dismissed by the learned Trial Court while observing that as per the averments made in the petition, they were the guarantors and, therefore, their names could not be deleted from the array of the parties.
5. It is noticed that the alleged borrowers i.e. defendant no. 1 and 2 are already proceeded against ex-parte.



6. While dismissing the above application moved under order I Rule 10(2) CPC, learned Trial Court also observed that defendant No.3 and 4 had limited right to cross-examine the plaintiff witness on legal points. It seems that such observation has been made as their right to file written statement was closed and, therefore, they were not permitted to lead evidence in defence.

7. Needless to say, that besides raising legal issues, any such party, whose right to file written statement has been closed, can also confront the plaintiff in order to demonstrate that defendant No. 3 was never a guarantor.

8. To that extent, the right to cross-examine is always with defendant No.3.

9. Be that as it may, since the right to file written statement of the defendants No. 3 and 4 had already been closed and since there is a specific averment in the plaint that they had stood guarantors, I do not find any merit in the present petition. This Court cannot sideline or overlook the specific averments made in Para 16 and Para 17 of the plaint which clearly suggest the existence of cause of action qua defendant No.3.

10. However, before parting, this Court would be tempted to observe that it is for the plaintiff to establish on record the legal relationship with respect to the fact that defendant No. 3 and 4 had stood guarantors with respect to the loan in question.

11. The present petition stands disposed of in the aforesaid terms.

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

**AUGUST 21, 2024/ss**