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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% ***Date of decision: 06<sup>th</sup> September, 2024***  
+ **CM(M) 3349/2024 & CM APPL. 51969-51970/2024**  
**ABHAY RAJ VERMA** .....Petitioner

Through: Mr. Tarun Arora, Advocate with  
petitioner-in-person

versus

**SHRI PAW AN SINGH & ORS. & ORS.** .....Respondent  
Through: None

**CORAM:**  
**HON'BLE MR. JUSTICE MANOJ JAIN**  
**J U D G M E N T (oral)**

**CM APPL. 51970/2024 (exemption)**

Exemption allowed, subject to all just exceptions.

**CM(M) 3349/2024 & CM APPL. 51969/2024**

1. Petitioner is plaintiff before the learned Trial Court.
2. He filed suit against six defendants seeking declaration and permanent injunction.
3. It is apprised that during proceedings of the matter, only defendant no. 4 Aryan Yadav participated in the proceedings and filed written statement. Rest of the defendants, including defendant no. 3 Yashvir Singh, were proceeded against *ex parte*.
4. Admittedly, defendant no. 3 Yashvir Singh did not even file his written statement, at any point of time.
5. Attention of the Court has been drawn towards order dated 24.09.2015



which records that despite service, said defendant was not present and, therefore, the learned Trial Court proceeded defendant nos. 2 & 3 against *ex parte*.

6. During trial, plaintiff also closed his evidence in affirmative and defendant no. 4, the sole contesting defendant, has been asked to lead evidence. He submitted a list of witnesses before the learned Trial Court and in his such list of witnesses, he has also cited defendant no. 3 Yashvir Singh as one of his witnesses.

7. Learned Trial Court, vide order dated 20.08.2024, has permitted defendant no. 4 Aryan Yadav to examine Mr. Yashvir Singh.

8. Before the learned Trial Court, learned counsel for the plaintiff contended that since Mr. Yashvir Singh is proceeded against *ex parte*, he could not be examined. His such request did not find favour and this is how, he is before this Court.

9. Legal position is very clear in this regard.

10. A defendant, who has not even submitted his written statement, has very limited rights of participation. He can cross-examine the plaintiff's witnesses while ensuring that he cannot cite his defence as he can only traverse the averments made in the plaint. Since there is no written statement filed by such defendant, there is no pleading in the eyes of law either coming from such defendant who is being proceeded against *ex parte* and since there is absence of pleading, such witness is also, automatically, precluded from leading evidence in his substantive capacity as well.

11. However, that does not mean that any such witness cannot be permitted to be called as witness by his co-defendant.

12. Learned counsel for petitioner states that defendant no. 4 Aryan Yadav



was required to disclose a specific reason as to why he wanted to examine said Mr. Yashvir Singh before his own examination.

13. It is noticed that affidavits have already placed on record not only by defendant no. 4 Aryan Yadav but also by Mr. Yashvir Singh.

14. Of course, it will be appropriate if first of all, Mr. Yashvir Singh enters into witness box and tenders his affidavit and is also cross-examined and only thereafter, the learned Trial Court or for that matter the learned Local Commissioner examines Mr. Yashvir Singh.

15. It is noticed that when list of witnesses was submitted by defendant no. 4 Aryan Yadav, he clearly indicated the purpose for which he wanted to examine Mr. Yashvir Singh. He mentioned that he would be required to prove his sale deed. Therefore, it cannot be said that the purpose of examination of Mr. Yashvir Singh has not been disclosed.

16. Learned counsel for petitioner has relied upon *T.G. Bavani Shankar Iyer Vs. P. Duraisamy & Ors.*: CRP (PD) (MD) No. 212 of 2017 (judgment dated 27.06.2017 passed by Madurai Bench of Madras High Court) and states that examination of any such *ex parte* co-defendant cannot be permitted unless the contesting defendant is examined and thereafter only, the Court can permit any such other co-defendant to enter into witness box. In that case, the situation was different as the contesting defendant, straightaway, wanted the learned Trial Court to call *ex parte* co-defendant as court witness, without he (contesting defendant) himself mounting the witness box. Here, the contesting witness has already submitted his evidence-affidavit before the learned Trial Court.

17. In view of the facts placed before this Court, the petition is disposed of while clarifying that since Yashvir Singh has not submitted any written



statement, his evidence would be only in support of the evidence of the contesting defendant no. 4 Aryan Yadav and his testimony shall not be taken in his substantive capacity as he is proceeded against *ex parte*.

18. It is expected that said aspect is duly taken care of when the evidence of Mr. Yashvir Singh is recorded and also the observation made in Para No. 14 above.

19. Petition stands disposed of in the aforesaid terms.

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

**SEPTEMBER 6, 2024/dr**