



2025:DHC:8683



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

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Date of Decision: 26.09.2025

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CM(M) 1921/2025, CM APPL. 61750/2025 & CM APPL. 61751/2025

M/S DEN DIGITAL ENTERTAINMENT NETWORKS PVT LTD

.....Petitioner

Through: Mr. Preetpal Singh and Ms. Priya
Puri, Advocates.

versus

M/S EXPLORER ASSOCIATES & ANR.

.....Respondents

Through: None.

CORAM: JUSTICE GIRISH KATHPALIA

ORDER (ORAL)

1. Petitioner/defendant no.1 has assailed order dated 28.07.2025 of the learned trial court, whereby prior to commencement of evidence of the petitioner/defendant no.1, application of respondent/plaintiff was allowed, thereby permitting him to lead additional evidence.

2. Having heard learned counsel for petitioner/defendant no.1, I do not find it a fit case to issue notice to the other side.



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3. It is contended by learned counsel for petitioner/defendant no.1 that by way of impugned order, the respondent/plaintiff has been given an opportunity to plug loopholes, so the impugned order is not sustainable in the eyes of law. It is contended that no reasonable explanation has been tendered by the respondent/plaintiff for having closed their evidence midway without examining all the witnesses. No other argument has been advanced.

4. As reflected from the impugned order, it is after closing of plaintiff's evidence but prior to tendering of evidence affidavit of the defendant, the present respondent/plaintiff filed an application for leading additional evidence, explaining that while preparing for cross-examination of the witnesses of the petitioner/defendant no.1, learned counsel for respondent/plaintiff realized that some of the witnesses were left unexamined.

5. Learned trial court, on the basis of material on record took a clear view that testimony of the witnesses sought to be examined through additional evidence is relevant for deciding matters in controversy and no prejudice would be caused to the other side.

6. So far as the argument of filling in lacunae, in my considered view the issue of lacunae or loopholes can be examined only after both sides have concluded their evidence and it is during final arguments that either side realises certain errors, which he wants to plug in. In the present case, that is



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not the situation. As mentioned above, evidence of the petitioner/defendant no.1 is yet to commence.

7. It is the cardinal principle of justice that disputes should be decided on merits instead of defaults. Where the defaulting party can compensate the other side in terms of cost, the Court must be open to allow the request of the defaulting party. More so, in the case of the present nature where the learned trial court itself has taken a very clear view, recording the relevance of the witnesses sought to be examined by way of additional evidence. Where the trial court is of the view that recording testimony of some witness would help arriving at the truth and resolving the controversy, the decision to call those witnesses cannot be faulted with.

8. I am unable to find any infirmity, much less any perversity which would call for invoking jurisdiction under Article 227 of the Constitution of India.

9. Therefore, the petition and the accompanying applications are dismissed.

**GIRISH KATHPALIA
(JUDGE)**

SEPTEMBER 26, 2025/dr