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

Date of decision: 4th May, 2026

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+ **RFA(COMM) 55/2023 & CM APPL. 22037/2023**

M/S EUROTOYS PVT LTD

.....Appellant

Through: Mr. Paras Verma, Authorized
Representative

versus

M/S TOY ZONE

.....Respondent

Through: Mr. Rovin Kumar, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE MADHU JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed seeking setting aside of the judgement & Decree dated 21st January, 2023 passed by the District Judge (Commercial Court), East District, Karkardooma Courts in *CS (COMM) No. 66 of 2021* titled '*Eurotoys Pvt. Ltd. Vs. M/S. TOY ZONE*'.
3. The background of this case is that a suit for recovery of sum of Rs.3,55,277.90/- was filed by the Plaintiff/Appellant before the District Judge (Commercial Court), Karkardooma Court, Delhi.
4. The case of the Plaintiff that led to the institution of the suit is that the Plaintiff/Appellant had supplied various toys to the Defendant/Respondent herein and tax invoices, as also transport bills, etc. were also placed on record. Despite this position, the Id. Trial Court has dismissed the suit *vide* judgment



dated 21st January, 2023, on the ground that sufficient documents were not filed by the Plaintiff/Appellant.

5. On 12th August, 2025, after hearing the Counsels for the parties, the Court had observed as under:

5. This Court has heard the Id. Counsel for the Plaintiff/Appellant and has also perused the trial court record. There is a substantial amount of evidence which is on record to show the issuance of invoices and the transport receipts, etc.

6. Prima facie this Court is of the view that the Trial Court has failed to appreciate the evidence already on record.

7. However, at this stage, it is also submitted that both the parties are willing to explore the possibility of mediation. Accordingly, the parties are referred to the Delhi High Court Mediation and Conciliation Centre.”

6. As can be seen above, this Court came to the conclusion after seeing the records that there was substantial amount of evidence in the form of tax invoices, E-way bills of the transport company, ledger accounts and other documents to show the supply of the goods.

7. None of this appears to have been considered by the Id. Trial Court.

8. Merely on the ground that the purchase order has not been acknowledged by the opposite party, the suit has been dismissed by the Id. Trial Court.

9. The entire reasoning of the Id. Trial Court is encapsulated in one paragraph, which reads as under:

“6. A perusal of the judicial record shows that the plaintiff has filed (i) original copy of Board Resolution dated 07.10.2021 in favour of Sh. Paras Verma, Director of the plaintiff, (ii) photocopy of certificate of



registration of plaintiff company, (iii) photocopies of invoices, (iv) certified copy of statement of account maintained by the plaintiff, (v) original certificate u/s 65-B of Evidence Act and (vi) original certificate for non starter report dated 17.11.2021 with the plaint.

It is observed that the plaintiff has claimed that defendant placed orders to supply the goods regarding which the present suit has been filed but the orders placed by defendant have not been annexed with the plaint and there is no evidence on judicial record which suggests that the goods were in-fact supplied by the plaintiff or the same were received by the defendant. The plaintiff has not exhibited any such documents even in the affidavit which was filed on 28.10.2022. There are some documents in photocopy which suggests that goods carriers were engaged by the plaintiff to supply some goods to defendant but the vehicle no. is not mentioned on the said documents and there is nothing on them which suggests that goods were received by someone on behalf of defendant or by the defendant, the plaintiff itself has not relied upon the same, as the same are not mentioned in the list of documents and the affidavit filed by the plaintiff therefore, unless factum of delivery of goods is proved no liability against defendant can be inferred. In view of the aforesaid facts, it seems that the plaintiff has failed to prove its case against the defendant to the extent of preponderance of probabilities hence, the suit of the plaintiff is dismissed and disposed off accordingly.”

10. Further, it is also noted that the impugned judgment states that *vide* order dated 20th September, 2022, the suit was proceeded *ex parte* against the Defendant, since despite all the attempts made, no appearance was made on behalf of the Defendant before the Id. Trial Court during the course of trial. Thus,



on the ground that the suit was proceeding *ex parte* and no written statement was filed on behalf of the Defendant, the Id. Trial Court decreed the suit under Order VIII, Rule 10, CPC. Relevant portion of the impugned judgment is extracted below:

“2. The summons for settlement of issues were sent to the defendant, but service could not be effected and the process was received back unclaimed. The speed post was returned back with the report that there is no such person available at the given address. On 07.09.2022, Ld. Counsel for the plaintiff had filed an affidavit of the plaintiff alongwith certificate u/s 65-B of Indian Evidence Act stating that service was effected to the defendant through Whatsapp and e-mail. On 20.09.2022 he relied upon a case law titled as Swati Pipes Ltd. vs. Subhash Gupta ARBP No. 298/22 decided by the Hon'ble High Court of Delhi, wherein service through electronic modes was accepted as valid service by the Hon'ble High Court of Delhi and requested that it may be deemed in the present case also that service to the defendant has been effected through electronic mode. In view of the affidavit filed on 07.09.2022 and submissions made by Ld. Counsel for plaintiff on 20.09.2022 with regard to service to the defendant through electronic mode, it was deemed that service to the defendant was effected through electronic mode prior to 07.09.2022, but as none appeared on behalf of the defendant on 07.09.2022 and 20.09.2022, therefore on 20.09.2022, defendant was proceeded ex-parte.

3. On 28.10.2022 Ld. Counsel for the plaintiff filed affidavit of Sh. Paras Verma, Director of the plaintiff to lead ex-parte plaintiff's evidence. On the same day, in view of the case law titled as Parsvanath Developers Ltd. vs. Mr. Vikram Khosla, CS (Comm.) 618/2019 & C.M. No. 8431/2020 decided on 03.03.2021 by the Hon'ble High Court of Delhi, it was observed that there was no need to lead ex-parte



plaintiff's evidence and the suit of the plaintiff may be decreed on the basis of verification in plaintiff, statement of truth and other documents annexed with the plaintiff. The plaintiff was exempted to lead ex parte plaintiffs' evidence.

4. I have patiently heard the submissions of Ld. Counsel for the plaintiff on ex-parte final arguments. Ld. Counsel for the plaintiff has submitted that defendant did not join proceedings of pre litigation mediation, did not choose to contest the case of the plaintiff, despite service through electronic modes. The case of the plaintiff is within limitation and jurisdiction of this court, therefore suit of the plaintiff may be decreed against the defendant, in terms of prayer made in the plaintiff.

5. I have considered the submissions of Ld. Counsel for the plaintiff, perused the judicial record. As per para no. 9 of the above quoted judgment, if the defendant has been proceeded ex-parte and written statement is not on record, the suit of plaintiff may be decreed u/O 8 Rule 10 CPC as per law. The relevant portion of the said judgment in para no. 9 is quoted hereunder for reference and convenience:

Para 9:

9. Having heard the learned counsel for the plaintiff, it is noted that the defendant has not cared to appear before this Court and was proceeded ex-parte. The law with regard to Order VIII Rule 10 CPC is clear, which stipulates that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within time permitted or fixed by the court as the case may be, the Court shall pronounce judgment or make such orders in relation to the suit as it thinks fit and on the pronouncement of the same, the decree sheet shall be drawn up.”



11. Apart from proceeding ex-parte, the reasoning on merits given by the trial court in the impugned judgment is sketchy and cryptic to say the least. If the trial court was of the opinion that evidence was required, it ought not to have proceeded under Order 8 Rule 10 CPC. It could have directed the Plaintiff to lead evidence in the matter but not dismiss the suit, in a summary fashion without giving an opportunity to the Plaintiff. In fact in its order, the trial court does not discuss the documentary evidence which was on record.

12. Accordingly, the impugned judgment dated 21st January, 2023 is set aside.

13. The parties are relegated back to the Id. Trial Court for fresh adjudication.

14. The Id. Trial Court shall consider the matter, frame issues and conduct the trial and thereafter, shall finally adjudicate in terms of the CPC and the Commercial Courts Act, 2015.

15. The Defendant/Respondent shall be given 30 days' time to file a fresh written statement in the matter.

16. List before the concerned Trial Court for further proceedings on 15th May, 2026.

17. The petition is disposed of in said terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

MADHU JAIN
JUDGE

MAY 4, 2026/ys/ss