



A.No.2728 of 2023
in
C.S.No.559 of 2004

P.T. ASHA, J.,

This application has been filed by the applicant / second defendant seeking leave to file subsequent pleadings by way of additional written statement. Along with this application, the additional written statement has been filed.

2. The applicant would submit that after he had completed his evidence and when the matter was posted for final arguments, the plaintiff had filed four applications one after the other for amending the plaint. In each of these applications, a new set of facts has been introduced and the applicant / second defendant's objections were not taken into consideration and all applications were allowed.

3. The applicant would further submit that there are two facts which he has to necessarily bring to the notice of this Court.



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In the course of the arguments, the party-in-person would submit that originally he had engaged the counsels, who had not taken out the defence, but after he had sought permission to appear as party-in-person, the covid lock down had stepped in and that, he has taken out this application immediately after the lock down was lifted. He would submit that the person, who originally filed the suit, by name, Abdul Haq was just 22 years of age on the date of institution of suit and therefore, he could not have any personal knowledge about the contents of the affidavit relating to the periods 1999-2000 during which time, the earlier power of attorney would have been hardly 18 years old and could not have been employed at Singapore. The second defence that has been taken is that the first defendant had received 23.30 kilograms of gold from the second defendant, which was recorded by the XI Magistrate Court, Saidapet, Chennai, which was not referred to in the plaint and that apart, during the arguments in A.No.3187 of 2022, the plaintiff had stated that he was not a party to the proceedings in C.S.No.280 of 2004, which is contrary to his



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own pleadings. Therefore, he had taken out this application appending the additional written statement.

4. A counter affidavit has been filed by the plaintiff, wherein it is stated that the objections raised by the second defendant have already been overruled by this Court and there is nothing to show that he had objected to the affidavit and plaint in the initial stage. The allegation with reference to Abdul Haq, the earlier Power of Attorney is nothing but an attempt to confuse the Court. The allegation that the plaintiff had misled the Court during the arguments in the rejection of plaint application is wrong.

5. Heard the learned counsel on both sides and perused the materials available on record.

6. The suit is one for recovery and the plaintiff would submit that all transactions have been carried out by the plaintiff with the



first defendant only through the second defendant. Further, the entire plaint has been verified by the earlier Power of Attorney, who has clearly and categorically stated that the averments contained in paragraphs 1 to are to his best knowledge and belief. The records would show that the party-in-person has been granted permission only in the month of April 2023 to defend his case by himself, and he has immediately taken out this application. There is no delay between the second defendant appearing in person and filing this current application.

7.The second argument that has been advanced is that during the hearing of the rejection of the plaint application, the plaintiff took a stand that he was not aware of the proceedings in C.S.No.280 of 2004, which is in conflict with the first defendant's pleadings. Therefore, taking into consideration the fact that these defences are very vital to the case of the applicant / 2nd defendant particularly when he is able to establish that the earlier power of attorney who



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has verified the plaint had no knowledge about the contents of the affidavit and that there has been an attempt to circumvent the orders of this Court, the application seeking leave has to be ordered. Sufficient reasons have been given by the applicant / second defendant to file subsequent pleadings by way of additional written statement, interest of justice would be served, if this application is allowed. Accordingly, leave is granted and the application is allowed as prayed for. The applicant / 2nd defendant is permitted to file subsequent pleadings by way of additional written statement.

04.07.2023

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P.T.ASHA.J

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