



A.No.2794 of

A.No.2794 of 2023
in C.S.No.393 of 2019

WEB C **K.KUMARESH BABU,J.**

This Application has been filed by the applicant/ 2nd defendant seeking to eschew paragraph 21 to 29 of the proof affidavit filed by the plaintiff on the ground that the same is beyond the pleadings made in the plaint. He would submit that the plaintiff cannot be allowed to depose more than what is stated in the plaint.

2.Learned counsel also relied upon the judgment of the Hon'ble Apex Court made in Civil Appeal No.1148 of 2010 dated 08.07.2015 and contended that the object and purpose of the pleadings and the issues is to ensure that the litigants come to the trial with all the issues clearly defined so as to prevent the cases being expanded or the grounds being shifted during the trial. He would submit that what the plaintiff seeks to do is to expand the pleadings made in the plaint by introducing new facts and therefore, he would seek the indulgence of this Court to eschew particularly paragraph 21 to 29 of the proof affidavit filed by the plaintiff.

3.Countering his arguments Mr.S.Ramesh, learned counsel appearing for the 1st respondent/ plaintiff would submit that the allegations made by the 2nd respondent are all false and would submit that the 2nd respondent not only had



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filed a written statement but has also filed a counter claim as against the plaintiff. The plaintiff had filed a reply statement to the written statement filed by the 2nd defendant apart from also filing a reply statement to the written statement with the leave of this Court. He would submit that the deposition particularly paragraph 21 to 29 of the proof affidavit of the plaintiff only reflects the facts that has been stated in the reply statement to the written statement filed by the plaintiff. He would particularly refer to paragraph 3 to 7 and contend that paragraph 21 to 29 are only reflection of the statement made in the reply statement and the documents relating to the claim made by the plaintiff. Therefore, he would pray that no new facts are sought to be inserted by way of proof affidavit so as to expand the pleadings and therefore, requested this Court to dismiss the application.

4.I have considered the rival submissions made by the learned counsel appearing on either side.

5.As rightly pointed out by the learned counsel for the plaintiff, the statements made in paragraph 21 to 29 specifically alleged by the petitioner are not any new facts, same have been pleaded by the plaintiff in his reply statement filed to the written statement.



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6.In such view of the matter, I do not find any necessity to eschew the certain portion of the proof affidavit filed by the plaintiff. Hence, The above captioned application fails and is accordingly dismissed. There shall be no order as to costs.

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