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

% Judgment delivered on: 16.03.2023

+ CM(M) 419/2023

YOUTH HOSTELS ASSOCIATION
OF INDIA

..... Petitioner

versus

DR HARISH K SAXENA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Thakur Sumit, Adv.

For the Respondent : Mr. Suhail Sehgal and Mr. Chandan, Adv.
for R-1

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 12581/2023 (Exemption)

1. Exemption is allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) 419/2023 & CM APPL. 12580/2023 (Interim Relief)

3. With the consent of the parties and also keeping in view the fact that the learned Trial Court has made observations on the merits of the contents of the evidence by way of the affidavit, by categorising those paragraphs as explanation to several aspects of the suit, simultaneously also observed on the basis of judgments, that the paragraphs which do not form part of the pleadings can be eschewed and expunged at the

stage of cross examination or even at the later stage when an objection to that extent is taken by the parties, the impugned order needs to be corrected. If the learned Trial Court was of the opinion that the petitioner had opportunity in law to object and question the paragraphs which were alleged to be beyond pleadings, then it could have simply noted the same and proceeded with cross examination, without commenting or making observations on the merits of such paragraphs. The moment learned Trial Court made factual observations, it would tend to bias one of the parties, which is impermissible. The contradiction is apparent on the face of it and cannot be sustained in law.

4. Accordingly, para 8 of the impugned order dated 28.02.2023 passed in CS SCJ No. 56685/2016 titled "*Harish K. Saxena Vs. Youth Hostels Association of India & Anr.*" is expunged from the impugned order leaving the other paragraphs of the impugned order intact.

5. Needless to observe that the petitioner/defendant has indelible rights to put all questions relatable to the affidavit whether arising from the petition/suit or those paragraphs alleged to be beyond the pleadings and the Trial Court shall note the same and deal with such objections at the stage of final hearing.

6. The petition is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J .

MARCH 16, 2023/ms