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A. No.3144 of 2021
in C.S. No.54 of 2018

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C.V.KARTHIKEYAN,J.

The Application has been filed by the 2nd and 3rd defendants in the suit under Order I Rule 10(2) of the Code of Civil Procedure, 1908, seeking to strike them out as the defendants in the suit.

2. The affidavit filed in support of the judge summons is sworn by the 2nd defendant, Rakesh P Sheth. In the affidavit he had stated that there is no question that he has anything to do with the 1st defendant, M/s.Karismaa Foundations Pvt. Ltd., and was not conjoined with any transaction or contractual agreement with the plaintiff. Thereafter in para No. 4 of the affidavit, he has very specifically stated as follows:-

"4. The 2nd Defendant is also not a proper and necessary party in the suit and there is no ground made out in the plaint to lift the corporate veil."

In the entire affidavit, there is no statement made that the 3rd defendant is not a necessary party to the suit. Thereafter, he had finally stated that in view of whatever he had stated in the affidavit, both he and the 3rd



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defendant are improper parties to the suit. The 3rd defendant has not filed independent affidavit affirming that she is also not a necessary party. A counter affidavit has been filed on behalf of the plaintiff, wherein it had been stated that the relief sought in the suit is against the 1st, 2nd and 3rd defendants jointly and severally and that is a money claim as against them. The merits of the case can be examined after the evidence is recorded, but however with respect to the 2nd and 3rd defendants, it had been stated that they were physically present and had held out that they agreed to put up the construction for the plaintiff and that they had failed in that particular promise and therefore, the plaintiff had been put to further loss by engaging yet another construction authority.

3. It had been further stated that the 3rd defendant is an Architect. It must also be stated that the 1st defendant had independently filed C.S.No.130 of 2022, where the 1st defendant, M/s.Karismaa Foundations Pvt. Ltd. had been described as being represented by its Managing Director, Rakesh P.Sheth, who is the 2nd defendant herein. Therefore, the 2nd defendant is a necessary party to examine the issues raised in the suit.



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4. So far as the 3rd defendant is concerned, there being no pleadings as to why she is not a necessary party and the affidavit being bereft of any details, I hold that the application has been filed only to protract the proceedings and not with any other object in mind. There is a specific averment in the plaint about the role of the 2nd and 3rd defendants that they have projected themselves as being capable of putting up construction for the plaintiff herein. As a matter of fact, the 3rd defendant had also held out that she is an Architect and construction of any building requires the assistance and advice of an Architect and when the 1st defendant failed, it would also mean that the 3rd defendant also failed in keeping up to the contractual agreement with the plaintiff. In view of those circumstances, I am not in agreement with the nature of the relief sought in the application. The application stands dismissed.

gsa

10.04.2024
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