



**Application No. 3351 of 2024
and C.S. No. 501 of 2018**

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C.V.KARTHIKEYAN, J.

This application has been filed by the first defendant in the suit under Order VIII Rule 9 of the Code of Civil Procedure, 1908, seeking permission to file an additional written statement in response to the written statement filed by the second defendant.

2. The suit is ripe for trial. The issues have already been framed. Answering to the allegations raised in the plaint, both the defendants have already filed their written statements.

3. The grievance expressed by the learned Senior Counsel on behalf of the applicant /first defendant is that the second defendant in their written statement have questioned the locus of the first defendant and their eligibility to conduct what could be called an audit of the functioning of the plaintiff.

4. It is contended that it was the second defendant who had initially appointed the first defendant to do that particular task. In order



**Application No. 3351 of 2024
and C.S. No. 501 of 2018**

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to uphold the reputation of the first defendant, it is contended by the learned Senior Counsel that a written statement is required in furtherance to the written statement already filed. It is under those circumstances that this application has been filed seeking leave to file a further written statement /additional written statement, in answer to the written statement filed on behalf of the second and not to answer any of the allegations raised in the plaint.

5. A counter affidavit had been filed on behalf of the plaintiff, wherein the very provision under which this particular application had been filed was questioned. It had been stated that there cannot be pleadings within the pleadings and this would lead to more confusion. Objections have been raised for receiving the additional written statement.

6. Order VIII Rule 9 of CPC gives liberty to any one of the defendants to file an additional written statement or a counter claim if need arises depending on the facts and circumstances of the case.

7. The provision also states that the Court may permit any one of the parties to file additional written statement, if further required. But



**Application No. 3351 of 2024
and C.S. No. 501 of 2018**

that would be limited to the allegations made in the plaint since it is the plaintiff who had instituted the *lis* and in answer to those allegations, the defendants may be permitted to file written statement and an additional written statement, if required. A contingency may arise to file an additional written statement, if the plaint had been amended for any reason whatsoever and fresh pleadings have been incorporated. But there cannot be additional pleadings taken on behalf of the one of the defendants to counter the statements made in the written statement by the other defendants.

8. The first defendant is always at liberty to cross-examine the witness for the second defendant about the averments made in their written statement. Even if a defendant is set *exparte*, the right to cross examine is not extinguished. The cross examination should however be limited only to the allegations in the plaint and the defendant who has been set *exparte* cannot put up a fresh case.

9. It is contended by the learned senior counsel that in the counter affidavit of the plaintiff, the stand of the second defendant in their written statement had been supported. But however, unless



**Application No. 3351 of 2024
and C.S. No. 501 of 2018**

pleadings are amended the plaintiff will have to stick to the pleadings stated in the plaint and cannot go any further. No further evidence can be added, which goes beyond the pleadings.

10. In the instant case, the first defendant has a right to cross-examine the witness for the second defendant to elucidate the basis on which the statements had been made in their written statement. Giving that particular liberty to the first defendant, which is already available to them and which right is available during the course of trial, which process is to elucidate facts and to adduce evidence, this application stands disposed of.

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1/2



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Application No. 3351 of 2024
and C.S. No. 501 of 2018

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Application No. 3351 of 2024
and
C.S. No. 501 of 2018

24.07.2024
1/2