

CS DJ No. 58167/16
VINOD KAPUR Vs. VIJAY KAPUR ORS.

22.07.2025.

Present : **Sh. Shagun Mehra, Ld. counsel for the plaintiff.**
Sh. Ved Garg, Ld. Counsel for defendant No. 1.
Sh. B.L. Mehta, Ld. Counsel for defendant Nos. 2 & 3.

Arguments on application under section 151 CPC are heard. Record is perused carefully.

The plaintiff is under examination and he has partly tendered his examination-in-chief. Vide the application, it is stated that in his affidavit filed for evidence, the plaintiff has added certain facts in its para number 12, 5 and 8 and similarly in para Nos. 3, 8 and 9, he has introduced certain words, sentences and made changes which are beyond the scope of the pleadings, so same cannot be allowed and further, the plaintiff has mentioned in his affidavit certain documents stated to be marked Ex. PW1/13 to Ex. PW 1/19 and document marked H but no leave from the Court is taken to produce the document after filing of the plaint, so, when no leave has been taken, same should not be allowed to be tendered in the evidence.

On the other hand, the application is opposed on behalf of plaintiff submitting that no averment beyond the pleading is stated by the witness in his evidence though the same may not be worded as it was in the plaint and similarly, the documents pointed out on behalf of the defendant are only those documents which have been filed on record as required while pressing/contesting various applications moved in the case.

The Court has given thoughtful consideration to the contentions made. No doubt, affidavit for evidence is not required to be

replica to the plaint. It is also the settled law that in pleadings, only the facts giving rise to the claim of the plaintiff ought to be pleaded but the facts which enable the party to prove a fact being part of the evidence should not be pleaded. Defendants have been completely unable to state what new fact has been inserted in the affidavit. It has been stated and written in the application in iteration that the plaintiff has used different words, sentences. It does not make any part of the affidavit liable to be struck. It is also not disputed on behalf of the defendants that no new document is filed by the plaintiff with the affidavit but all the documents were already part of the record. Once these were already part of the record though may not be filed with the plaint, the very objection to marking of the documents only because no specific and independent application to seek leave of the Court is filed, is very hyper technical one, since the very fact that those documents were considered by the Court and also at the time of the filing of the same, same were not objected, a permission/leave of the Court is implied. Hence, the contentions of the defendants are found meritless. It is also noted here that the defendants have also relied upon *Doctor Morepen Ltd & Anr. Vs. Poysha Power Generation P. Ltd* passed by Hon'ble High Court of Delhi but the same does not apply to the present case. Hence the application in hand is dismissed.

Now, put up for PE for **04.11.2025**.

Aanchal
District Judge-03, Rohini Courts
North District, Delhi
22.07.2025(Amt)