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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 334/2018, CRL.M.A. 31323/2018, I.A. 9068/2018,**
11837/2018,

GYAN MANDIR SOCIETY (REGD.) & ANR. Plaintiffs
Through: Mr, Sandeep Sethi, Senior Advocate
with Mr. Pramod Gupta, Ms. Nikita
Goyal and Ms. Pragya Aggarwal,
Advocates.

versus

AMIT AGARWAL & ORS. Defendants
Through: Mr. J.M. Kalia, Advocate with Ms.
Bhawana Garg, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
% **01.05.2019**

I.A No. 6281/2019 (application under Order 6 Rule 17 CPC)

1. By way of this application, Defendant No. 1 seeks amendment of the written statement. Before dealing with the averments made in the application, it is essential to note certain facts.

2. The summons in the suit were served on the Defendants on 16th August 2018. Mr. K. B. Jha, Advocate and Ms. Suman, Advocate (Defendant No. 6) appeared on behalf of the Defendants. However, no vakalatnama was filed on their behalf at that stage. Appearance of Mr. K.B. Jha, Advocate is also noted in the order dated 16th August 2018 and also the subsequent orders

dated 21st August 2018 and 27th November 2018. Ms. Suman, Advocate, also one of the parties herein i.e. Defendant No.6, has also been appearing before the court as noted in the orders dated 28th August 2019, 5th September 2019, 19th September 2019 and 12th March 2019.

3. Defendants filed an application being I.A. No. 11136/2018 (under Order 7 Rule 11 CPC) for rejection of the plaint. On 12th March 2019 after arguing for some time, the application was dismissed as withdrawn on the statement of Defendant No. 6-Ms. Suman, Advocate. During the hearing it was also noted that despite the Defendants having been served on 28th July 2018 no written statement had been filed on their behalf. The court however granted another opportunity to Defendants to file the written statement within a period of one week from the date of the order. Pursuant to the said order, a written statement has been filed. The said written statement is accompanied with an affidavit of Mr. Amit Aggarwal (Defendant No. 1). Further, the written statement bears the signatures of the counsel- Ms. Suman, Advocate.

4. Now, by way of the present application, the Applicant seeks to amend the written statement by incorporating the following paragraphs: -

“Para 11. That the plaintiffs have not verified the plaint in accordance with Order 6 Rule 15 of CPC. It is the statutory requirement that the person signing the pleading verify such paragraphs in accordance with his / her direct knowledge certifying it to be true and correct. Similarly, the paragraphs which are true and correct on the basis of the legal advice / information are required to be verified accordingly. Since the verification of the plaint is not correct, the plaint cannot be

termed as properly filed and as such deserves to be rejected.”

“VERIFICATION: Verified at Delhi on 17-03-2019 / 27-04-2019 that para 1 to 13 & 15 of the Written Statement are true 'and correct to my knowledge and those of para 1 to 11 under the caption Preliminary Objections and para 14 under the caption on Merit are true and correct on the basis of legal information received and believed to be true. Last para is prayer clause.”

5. In addition to the above, in para 7 of the application, Applicant seeks the following amendment: -

“7. That the portion / particulars at the bottom of the prayer clause just below the signature requires to be deleted to be replaced by "Ms. Suman, Defendant No.6".

6. Allowing the amendment as prayed for in para 7 of the application would mean that the written statement filed on record should be treated as one by Defendant No. 6. The original written statement is accompanied by the affidavit of Defendant No. 1. It bears the signatures of Defendant No. 6 as a counsel. Thus by way of the aforementioned proposed amendment, Defendant No. 6 in effect seeks to overcome the consequence of not filing the written statement. This is not permissible and the proposed amendment to that extent is declined. The remaining proposed amendments as noted in paras 6 & 8 of the application are legal and formal in nature. Having regard to the stage of the present proceedings and also for the fact that the proposed amendments are necessary for the proper adjudication of the controversy arising in the present suit, the application is partly allowed and Defendant No. 1 is permitted to amend the written statement as prayed for in paras 6 &

8 of the application.

7. Mr. Sandeep Sethi, learned Senior Counsel for the Plaintiff states that the proposed amended written statement which has been filed along with the application makes several averments which are beyond the “proposed amendments”. Defendant No.1 cannot be permitted to introduce amendments that are not sought in the application. The objection is valid and therefore, it is clarified that the Defendant No. 1 shall within a period of two weeks from today, file the amended written statement. No averments except those mentioned in para nos. 6 and 8 of the application shall be incorporated in the amended written statement.

8. At this stage, Mr. J.M. Kalia states that he has filed the vakalatnama on behalf of all the Defendant Nos. 2-11. The same is under objections. Let the same be placed on record. He states that, in view of the amendments being allowed, the other Defendants being Defendant Nos. 2 to 11 be also permitted to adopt the stand taken by the Defendant No. 1. He is unable to point any specific provision except for relying upon section 151 in the Code of Civil Procedure 1908 that would permit a Defendant to adopt the written statement filed by another Co-Defendant. In support of his submissions, though the learned counsel has relied upon several judgments, however, in none of the said judgments, the submission which is being advanced today has been considered or dealt with. The present suit is for damages on account of alleged defamation; the question of the allegations and the specific stand of each of the Defendants would have to be gone into independently. There is no procedure for adopting the written statement.

Each defendant has to verify the facts and file an affidavit in support of the written statement and there may be a joint written statement, but it can't be adopted by a co-defendant. There is no ground or reason for accepting the request of the learned counsel for the Defendants. The prayer is rejected. Since the statutory time for filing the written statement is already over, and there is no reason or explanation forthcoming for not filing the written statement, the right to file the written statement qua Defendant Nos. 2 to 11 stands closed.

9. List for further consideration on 18th July 2019.

SANJEEV NARULA, J

MAY 01, 2019

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