

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC(EI. Pet.) No. 36 of 2023

*Ref:- 1) MC(EI.Pet.) No. 111 of 2022
2) EI. Pet. No. 10 of 2022*

Kshetrimayum Biren Singh, aged about 60 years, S/o Late Ksh. Pishak Singh of Sabungkhok Mayai Leikai, BPO-Yaingangpokpi, P.S. Yaingangpokpi Imphal East District, Manipur.

... .. **Applicant/Election Petitioner**

-VERSUS-

1. Khongbantabam Ibomcha Singh, aged about 63 years, S/O Late Pishak of Nongada Makha Leikai, P.O. Lamlong, P.S. Lamalai, Imphal East District, Manipur.

.... **Op/Respondent.**

2. Achoibam Deben Singh, aged about 41 years, S/O A. Rabungo Singh of Lamalai Mayai Leikai, P.O Lamlong, P.S.Lamlai, Imphal East District, Manipur.
3. Mongjam Poireihenba Meetei, aged about 35 years, S/O Late Mongjam Ibochou Meetei Singh of Yourabung Mamang Leikai, P.O. Lamlong, P.S. Lamalai, Imphal East District, Manipur.
4. Sapam Kangleipal Meitei, aged about 40 years, S/O S. Shyamdunder Meitei of Nongada Awang Leikai, P.O. Lamlong, P.S. Lamalai, Imphal East District, Manipur.

.... **Respondents.**

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN

For the applicant :: Mr. T. Rajendra, Sr. Adv.

For the Respondents :: Mr. Ajoy Pebam, Adv.

Date of Hearing and
reserving Judgment & Order :: 05.07.2023

Date of Judgment & Order :: **06.09.2023**

JUDGMENT AND ORDER
(CAV)

Heard Mr. T. Rajendra, learned senior counsel for the applicant and Mr. Ajoy Pebam, the learned counsel for the first respondent.

2. This miscellaneous case has been filed by the petitioner to permit the petitioner to file a rejoinder to the replication/subsequent pleading filed by the first respondent in the election petition.

3. The petitioner herein is the election petitioner. The petitioner has filed the election petition to declare the election of the first respondent from No.8-Laimai Assembly Constituency as void and to declare the petitioner as duly elected candidate from the said Constituency. Pending election petition, the first respondent filed M.C.No.111 of 2022 to reject the election petition. The petitioner has filed his written objection to

M.C.No.111 of 2022 and the first respondent has filed M.C.No.212 of 2022 to allow him to file replication to the written objection. By the order dated 16.5.2023, M.C.No.212 of 2022 was allowed by this Court. Subsequently, the petitioner has filed the present M.C.No.36 of 2023 to allow him to file the rejoinder to the replication.

4. Mr. T. Rajendra, the learned senior counsel for the applicant submitted that during the pendency of the election petition, the first respondent filed M.C.No.111 of 2022 under Order 7, Rule 11(a) CPC read with Section 86(1) of the Representation of People Act for rejecting the election petition. The petitioner herein opposed the said petition by filing his written objection dated 28.9.2022. The first respondent had filed M.C.No.212 of 2022 under Order 8, Rule 9 CPC for granting leave to file subsequent pleading/replication to the written objection dated 28.9.2022 filed by the petitioner. This Court, by the order dated 16.5.2023 in M.C.No.212 of 2022 granted leave to the first respondent to file the replication to the written objection dated 28.9.2022 filed by the petitioner. While allowing the petition, in paragraph 13, this Court observed that there is no dispute that “replication” is the plaintiff’s answer to the defendant’s plea and “rejoinder” is the defendant’s answer to the plaintiff’s replication. This Court also held that filing of

additional pleadings not contrary to the earlier pleas explanatory to the plea advanced earlier is permissible. In order to explain the plea of the party and also for fair enquiry, this Court allowed the prayer of the first respondent to file his replication.

5. The learned senior counsel further submitted that in the replication of the first respondent there are many facts which are very much required to be answered by giving proper explanation and clarification by filing a rejoinder, more particularly, paragraphs 1, 2, 5, 7 to 18 of the said replication and the rejoinder of the petitioner so far as the said paragraphs are very much necessary. According to the learned senior counsel, filing of the rejoinder in reply to the replication is necessary in order to avoid any procedural lapses and other legal difficulties. Hence, the petitioner has filed the present miscellaneous case allowing him to file the rejoinder to the replication of the first respondent.

6. Drawing this Court's attention to Order 8, Rule 9 CPC, learned senior counsel submitted that the said provision gives ample powers to this Court to allow the election petitioner to file rejoinder to the subsequent pleading of the first respondent and the learned senior counsel also relied upon the following decisions in support of his arguments:

- (i) Gorantla Kondalarayudu v. Marvel Organics, rep. by its Partners, Chirala, 1997 Legal Eagle (AP) 767.**
- (ii) Malgireddy Venkata Ramana v. Thippana Narsi Reddy, 2010 Legal Eagle (AP) 153.**
- (iii) P.Saraswathi v. C.Subramaniam, AIR 2014 Madras 50.**
- (iv) Shreenath and another v. Rajesh and others, AIR 1998 SC 1827.**
- (v) Rani Kusum v. Kanchan Devi and others, (2005) 6 SCC 705.**

7. Per contra, Mr. Ajoy Pebam, the learned counsel for the first respondent submitted that paragraphs 1, 2, 5 7 to 18 of the replication dated 28.11.2022 filed in M.C.No.111 of 2022 are explanation/clarification and amplification of the earlier pleading made. Moreover, the election petition is being filed just for the sake to harass the first respondent, as after being rejected by the public in the 12th Manipur Legislative Assembly Election, the petitioner is looking for a chance to point out on technicality thereby basing on some baseless issues. As such, there is no point of entertaining the present miscellaneous case.

8. The learned counsel further submitted that there is no such provision under Code of Civil Procedure or the Representation of People Act for filing rejoinder to the replication and, moreover, there is no requirement for filing further rejoinder in reply to the replication dated 28.11.2022.

9. According to the learned counsel, the petitioner is trying to amend the written objection by inserting so many new facts in his rejoinder which are not permissible under law and if the petitioner desires to bring new facts, he could file amendment application instead of filing rejoinder. Only to fill up the lacuna, the present miscellaneous case has been filed, which is not permissible under law. Therefore, the present miscellaneous case is liable to be dismissed.

10. This Court considered the rival submissions and also perused the materials available on record.

11. The petitioner seeks permission of this Court to file a rejoinder to the replication filed by the first respondent, as the rejoinder is very much necessary. The petitioner states that there are many facts which are very much required to be answered by giving proper explanation by filing a rejoinder, more particularly, paragraphs 1, 2, 5, 7 to 18 of the replication filed by the first respondent.

12. It is apposite to mention that pleas taken in the replication is part of pleadings and, therefore, the averments made in the replication unless replied may be considered as admitted.

13. Order 8, Rule 9 of the CPC gives ample powers to the Court to allow the applicant to file rejoinder to the replication/subsequent pleading of the opposite party. Order 8, Rule 9 deals with subsequent pleadings. It states as follows:

“No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter-claim shall be presented except by the leave of the court and upon such terms as the court thinks fit. But the court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.”

14. Pending Election Petition, the first respondent filed M.C.No.111 of 2022 to reject the election petition under Order 7, Rule 11(a) CPC where the petitioner has filed his written objection dated 28.9.2022. The first respondent filed M.C.No.212 of 2022 in M.C.No.111 of 2022 under Order 8, Rule 9 CPC for granting leave to file subsequent pleading to the written objection dated 28.9.2022 of the petitioner. M.C.No.212

of 2022 was allowed by this Court under order dated 16.5.2023 and the replication filed by the first respondent to the written objection dated 28.9.2022 of the petitioner has been received by this Court.

15. The specific plea of the petitioner is that in paragraphs 1 and 2 of the replication of the first respondent contain facts which are not the answer to the written objection of the petitioner. Further, in paragraph 5 of his replication, the first respondent has pleaded so many facts which are in addition to the answer of paragraph 2 of the written objection filed by the petitioner. Further, in paragraphs 7 to 18 of the replication, the first respondent has given many facts in addition to the answers of statements of the petitioner made in paragraphs 2 to 24 of his written objection. Therefore, proper replies/explanations on the side of the petitioner are very much required.

16. In *Gorantla Kondalarayudu*, supra, the Andhra Pradesh High Court held thus:

“(4) Order 8, Rule 9 of C.P.C. should not be confused by reading together that it permits only additional written statement by way of pleadings. Because the expression used therein is ‘that no pleading’ subsequent to written statement shall

be filed meaning thereby both plaint and written statement. Pleadings shall mean plaint and written statement as per order 6 rule 1 C.P.C. In that context, the pleadings and additional pleadings in order 8 rule 9 include the additional plaint also which can be either called as rejoinder or the reply in its real consequences.”

17. The learned counsel for the first respondent contended that the petitioner desires to bring new facts and, therefore, the petitioner could file amendment application instead of filing rejoinder.

18. In *Malgireddy Venkata Ramana*, supra, the Andhra Pradesh High Court held as under:

“8. In Sri Gavi Matt Samsthanams case (supra), it has been held that Rule 9 of Order 8 CPC specifically provides for filing subsequent pleadings by any of the parties with the leave of the Court.

9. In S.Venkata Ramanaiah’s case (supra), it has been observed as hereunder:

“It is needless to say that Order VI, Rule 1 of the Code dealing with pleadings reads pleading shall mean plaint or written statement. Instead of filing an application praying for amendment of plaint under Order VI, Rule 17 of the Code, may be the first respondent/plaintiff was advised to file the present application under Order VIII,

Rule 9 to put in subsequent pleadings by way of rejoinder.”

19. Thus, as per the decision in the case of *Venkata Ramanaiahs*, reported in (2009 (5) ALD 211) referred in *Malgireddy Venkata Ramana*, supra, the subsequent pleadings by way of rejoinder is permissible instead of filing an application for amendment of the petition.

20. In *P.Saraswathy*, supra, the Madras High Court held thus:

“12. Under Order 8 Rule 9 C.P.C. wide discretion was given to the Court to give a chance to the parties to agitate their right even by raising subsequent pleas. Moreover, no restriction was imposed with regard to the receiving of additional written statement under Order 8, Rule 9 C.P.C. after commencement of the trial like in the case of amending the plaint under Order 6, Rule 17 C.P.C. where unless the Court comes to the conclusion that in spite of due diligence, the party could have not raised the matter before the commandment of the trial. Keeping the dictum laid down in the above judgment, I am of the view that under Order 8 Rule 9, C.P.C. wide discretion is given to the Court to receive the written statement or additional written statement to give opportunity to the parties to agitate the case effectively. Therefore, the rigid principle

applicable in the case of amendment of plaint under Order 6 Rule 17, C.P.C. cannot be applied in the case of receiving additional written statement under Order 8 Rule 9, C.P.C.”

21. It is well settled that the primary object of subsequent pleading is to supply what has been omitted inadvertently or unintentionally or to deny or clarify the facts stated in the pleadings of the opposite party. In the rejoinder the plaintiff can be permitted to explain the additional facts, which have been incorporated in the written statement.

22. There is no dispute that “replication” is the plaintiff’s answer to the defendant’s plea and “rejoinder” is the defendant’s answer to the plaintiff’s replication. Black’s Law Dictionary, 6th Edition, defines “replication” as pleading in common law made by the plaintiff in an answer to the defendant’s plea; and “rejoinder” as a second pleading in common law on the part of the defendant being his answer to the plaintiff’s replication.

23. Though the first respondent contended that the election petition itself is filed just for the sake to harass the first respondent as after being rejected by the public and that the petitioner is looking for a chance to point out on technicality based on the baseless issues and, as such, there is no point in

entertaining the present petition, the merits of the main election petition cannot be gone into at this stage.

24. As stated supra, the pleadings and additional pleadings, includes the additional plaint also which can be either called as rejoinder or the reply to its real consequences. In the case on hand, the first respondent has been permitted to file replication to the written objection of the petitioner dated 28.9.2022 filed in M.C.No.111 of 2022. The petitioner now sought to file a rejoinder to the replication dated 28.11.2022 filed by the first respondent, more particularly to give explanations to paragraphs 1, 2, 5, 7 to 18 of the said replication.

25. The law is well settled that the plaintiff cannot be permitted to raise a new plea under the garb of filing rejoinder/replication or take a plea inconsistent to the pleas taken by him in the plaint, nor the rejoinder can be filed as a matter of right, even the Court can grant leave only after applying its mind on the pleas taken in the plaint and the written statement.

26. On examination of the entire materials on record, it is clear that the first respondent was permitted to file a replication vide order dated 16.5.2023. Thereafter, on

12.6.2023 itself, the petitioner has filed the present miscellaneous case permitting him to file a rejoinder. Thus, there is no delay on the part of the petitioner in filing the present miscellaneous case. Since the pleadings and additional pleadings under Order 8, Rule 9 CPC include the additional plaint which can be either called as rejoinder or reply in its real consequence, there is no bar in filing the rejoinder by the petitioner to the replication dated 28.11.2022, as the rejoinder is the answer by way of explanation to the statement made by the first respondent in the replication.

27. Since the provision of Order 8, Rule 9 CPC being a procedural law, the same is to advance the cause of justice and any interpretation which eludes or frustrates the recipient of justice is not to be followed. If the rejoinder of the petitioner is received, no prejudice would be caused to the first respondent. The argument of the first respondent that there is no such provision under the Code of Civil Procedure or the Representation of People Act for filing rejoinder to the replication and moreover, there is no requirement for filing rejoinder in reply to the replication cannot be countenanced.

28. For all the reasons stated above, this Court is of the view that no new facts brought in his pleading by way , rejoinder; the petitioner is not trying to fill up the lacuna of his

case and therefore, the present petition is bona fide one and, in the interest of justice, the same is liable to be allowed.

29. In the result,

- (i) *M.C.(El.Pet.)No.36 of 2023 in M.C. (El.Pet.) No.111 of 2022 in El. Petn.No.10 of 2022 is allowed.*
- (ii) *The petitioner is permitted to file a rejoinder to the replication of the first respondent dated 28.11.2022.*
- (iii) *There will be no order as to costs.*

ACTING CHIEF JUSTICE

FR/NFR

Sushil