

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

MC(EI.Pet.)No.131 of 2022
Ref: EI.Pet.No.34 of 2022

Kenn Raikhan, aged about 46 years, S/o surrender Raikhan, resident of Mapao Khullen Village, PO & PS Sekmai, Sub-Division- Saikul, District- Kangpokpi, Manipur, Pin-795118.

...Applicant

– Versus –

1. Kimneo Haokip Hangshing aged about 34 years, W/o David Hangshing, resident of saikul Bazar, PO & PS- Saikul, District- Kangpokpi, Manipur, Pin-795118.
2. Seikholal Haokip, aged about 46 years, S/o (Late) Nengkholun Haokip, resident of Ankumbhung Village, PO & PS Saikul, Saikul Sub-Division, Kangpokpi District, Manipur, Pin-795118.
3. Yamthong Haokip, aged about 59 years, S/o (Late) Holkhothang Haokip, , resident of Ekou Mulam, PO & PS Saikul, Saikul Sub-Division, Kangpokpi District, Manipur, Pin-795118..
4. Lhingkim Haokip, aged about 50 years, resident Koirengei, PS – Heingang, PO- Mantripukhri, Imphal East District, Manipur, Pin-795002.

5. Ch. Ajang Khongsai, aged about 59 years, S/o Lhungkhothang Khongsai, resident of Lhungjang Village, PO & PS Saikul, Saikul Sub-Division, Kangpokpi District, Manipur, Pin-795118..
6. Chungkhokai DOUNGEL, aged about 81 years, S/o (Late) Thangpao DOUNGEL, resident of resident of C. Aisan Village, BPO- Molkon, PO & PS Saikul, Saikul Sub-Division, Kangpokpi District, Manipur, Pin-795118.
7. Jamchinlen Lunkim, aged about 62 years, S/o Tongkhojang Lunkim, resident of L. Molnom Village, Saikul Sub-Division, PO-Yairipok, PS-Yairipok, Manipur-795148

...Respondents

BEFORE

HON'BLE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN

For the Applicant : Mr. Ajoy Pebam, Adv.

For the Respondents : Mr. A. Mohendro, Adv.

Date of reserved. : 03.02.2023

Date of Judgment & Order : 22.02.2023.

JUDGMENT & ORDER
(CAV)

This application has been filed by the applicant under Order 8, Rule 9 CPC read with Section 87 of the Representation of People Act, 1951

and Section 151 CPC to grant leave to file subsequent pleading/replication in answer to new facts asserted in the written statement of the first respondent.

2. Heard Mr. Ajoy Pebam, the learned counsel for the applicant and Mr. A. Mohendro, the learned counsel for the contesting first respondent.

3. The applicant is the election petitioner to declare the election of the first respondent/returned candidate of 46-Saikul Assembly Constituency of 12th Manipur Legislative Assembly, 2022 as null and void under Section 100(1)(d)(i) and (v) as well as under Section 100(1)(b) of the Representation of People Act, 2019 and to declare that the election petitioner is the duly elected member in the said constituency under Section 101 of the Act.

4. Resisting the election petition, the first respondent filed the written statement and he has filed Election Recrimination Petition No.30 of 2022.

5. The learned counsel for the applicant/election petitioner submitted that while filing the written statement, the first respondent asserted new facts over and above the denial of assertion made in the written statement. In fact, the first respondent asserted new facts in certain paragraphs of the written statement. Therefore, it is necessary to reply to the assertions by way of replication. Hence, the applicant/election petitioner sought leave of this Court to file subsequent pleading/replication for just decision of the election petition.

6. On the other hand, the learned counsel for the first respondent submitted that no new facts have been asserted by the first respondent in her written statement and the applicant/election petitioner has failed to demonstrate the new facts set out in the written statement. He would submit that in the matter of election petition, no new plea in the name of amplification can be allowed as the same is against the provisions of the Representation of People Act, 1951.

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

8. The applicant/election petitioner sought leave of this Court to file subsequent pleading/replication in answer to the new facts asserted in the written statement filed by the first respondent. The applicant seeks to file replication blindly not denying the averments set out in the written statement and he seeks permission to file replication wherever new facts set out in the written statement.

9. Though the first respondent contended that he has not raised any new facts in the written statement which warrants filing of replication and in the matter of election cases, no new plea in the name of improvement can be allowed, nothing has been produced to prove the said plea.

10. Placing reliance upon the decision of the Rajasthan High Court in the case of *Gurjant Singh v. Krishan Chander and others*, (2001) 1 RLW 37, the learned counsel for the first respondent contended that the applicant as election petitioner cannot be allowed to introduce new pleas under the garb of filing rejoinder so as to alter the basis of his election petition.

11. Order 8, Rule 9 CPC provides for subsequent pleadings, which reads thus:

“9. Subsequent pleadings -No pleading subsequent to the written statement of the defendant, other than by way of defence to be 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.”

12. The law is well settled that it is not permissible to file a rejoinder to all the allegations made in the written statement and the rejoinder or replica can be filed with the permission of the Court only if the defendant has raised a plea of new facts and, thus, permission must be granted after taking into consideration all the facts and circumstances of the case, especially the pleas which have been raised in the written statement.

13. As stated supra, the applicant as election petitioner has not intended to file replication to all the allegations set out in the written statement. The

applicant has stated in his application itself that the first respondent asserted new facts in paragraphs 12, 14, 15, 17, 25 and 27 which have to be replied suitably by way of replication.

14. Replication has well defined meanings. Replication is a pleading by plaintiff in answer to defendant's plea. Ordinarily, replication to written statement cannot be filed, nor can be permitted to be filed much less in routine. A replication is permissible in three situations, namely (i) when required by law; (ii) when a counter-claim is raised or set off is pleaded by the defendant and (iii) when the Court directs or permits a replication being file.

15. The Court could direct or permit replication being filed when having scrutinized plaint and written statement. Upon scrutinizing the election petition and the written statement, this Court is of the view that in order to make out the case of the applicant/election petitioner and having found certain new facts said to have been stated by the first respondent in her written statement, a replication is necessary in this case for proper adjudication of the issues involved, for which this Court is inclined to grant leave to the applicant/election petitioner to file replication in the interest of justice. If leave is granted to file the replication by the applicant/election petitioner, no prejudice would be caused to the first respondent. On the other hand, if leave is not granted as prayed for by the applicant/election petitioner, much hardship and irreparable loss would be caused to applicant/election petitioner.

15. In the result, MC (EP) No.131 of 2022 is allowed. Leave is granted to the applicant/election petitioner to file replication in answer to the new facts asserted in the written statement filed by the first respondent dated 22.8.2022.No costs.

ACTING CHIEF JUSTICE

FR/NFR

John Kom