

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

MC(EI.Pet.) No. 170 of 2022

Ref:- (i) MC(EI.Pet.) No. 54 of 2022

(ii) EI.Pet. No. 22 of 2022

Shri Moirangthem Okendro S/o. (Late) Moirangthem
Ibotombi aged about 54 years, resident of Heirok Part-II
Mayai Leikai, P.O. Wangjing and P.S. Heirok, Thoubal –
District, Manipur-795148.

.....Applicant

-Versus-

1. Shri Thokchom Radheshyam Singh aged about 57 years
S/o. Shri Thokchom Ibochouba of Heirok Khunou, Tehsil
Heirok, P.O. Wangjing and P.S. Heirok, Thoubal –
District, Manipur-795148.
2. Shri Ningthoujam Diten Singh, aged 53 about years, Son
of Late N. Kora Singh, resident of Ukhongshang Mayai
Leikai, P.O. Yairipok & P.S. Nongpok Sekmai, Thoubal
District, Manipur- 795149.
3. Shri Moirangthem Tomtomsana Nongshaba,aged about
50 years, Son of (Late) Moiranthem Tombiyaima agof
Heirok Part-II, Mayai Leikai Pujari Chithak, P.O.
Wangjing, Thoubal District, Manipur-795148.

...Respondents.

BEFORE

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

For the Applicant :: Mr. N. Jotendro, Sr. Adv.,
Mr. Syed Murtaza Ahmed, Adv.

For the Respondents :: Mr. N. Kumarjit, Sr. Adv.
Mr. N. Zequeson, Adv.

Date of Hearing and
reserving Judgment & Order :: 12.09.2023

Date of Judgment & Order :: **22.09.2023**

JUDGMENT AND ORDER
(CAV)

Heard Mr. N. Jotendro, learned counsel for the applicant and Mr. N. Kumarjit, learned senior counsel for the first respondent.

2. This miscellaneous case has been filed by the applicant under Order 8, Rule 1 read with Section 151 CPC and Section 87(1) of the Representation of People Act, 1951 to grant leave to file written objection subsequent to the rejoinder dated 13.9.2022 filed by the first respondent.

3. Mr. N. Jotendro, the learned senior counsel for the applicant submitted that the first respondent had filed MC (EP) No.54 of 2022 to dismiss the election petition and the applicant had filed his written objection on 29.8.2022 and the first respondent had also filed rejoinder to the said written objection. Upon perusal of the

rejoinder filed by the first respondent, the applicant found that there are certain statement made which are required to be further clarified by way of written objection in the manner of subsequent pleadings.

4. The learned senior counsel for the applicant admits that the written objection was filed beyond the prescribed period of 30 days from the date of delivery of the copy of the rejoinder filed in MC (EP) No.54 of 2022. The said delay was due to the time taken in making inquiries, consultations, preparations and other clerical tasks and also verification of various documents from the concerned departments. Moreover, the applicant was out of station from 7.10.2022 to 12.10.2022. In the aforesaid situation, the applicant took time in preparation and finalisation of the written objection to the rejoinder/replication.

5. The learned senior counsel for the applicant urged that by granting leave the applicant to file subsequent pleadings to the rejoinder/replication shall cause no prejudice to any of the parties in MC (EP) No.54 of 2022 and, on the other hand, if the applicant is not allowed by granting leave to file the subsequent pleadings, the applicant would be put to irreparable loss and hardship. which cannot be compensation in any manner whatsoever. Thus, a

prayer has been made to grant leave to file written objection to the rejoinder/replication filed by the first respondent.

6. Per contra, Mr. N. Kumarjit, the learned senior counsel for the respondents submitted that under Section 87(1) of the Representation of People Act, 1951, every election petition is to be tried by the High Court as nearly as may be, in accordance with the procedure applicable under the CPC. He would submit that there is no provision for filing additional written objection for clarification of the statement in the written objection filed earlier. There is also no provision under the Representation of People Act for filing additional written objection. However, there are provisions under the CPC for amendment of the written statement or written objection filed in the proceedings of the election petition. Thus, a prayer has been made to dismiss the petition.

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

8. In the present miscellaneous case, the applicant is seeking leave to file written objection subsequent to the rejoinder filed by the first respondent.

9. The applicant, who is the original election petitioner, has challenged the election of the first respondent from 33-Heirok Assembly Constituency in Election Petition No.22 of 2022. Pending election petition, the first respondent filed MC (EP) No.54 of 2022 to dismiss the election petition. Resisting MC (EP) No.54 of 2022, the applicant has filed written objection on 29.8.2022 and the first respondent has also filed his rejoinder/replication to the written objection dated 29.8.2022. Finding certain statement made in the rejoinder, which are required to be clarified by way of written objection, the applicant praying leave of this Court to file written objection/subsequent pleadings.

10. The present miscellaneous case has been opposed by the first respondent contending that there is no provision for filing additional written objection for clarification of the statement in the written objection earlier filed and also there is no provision either under the Representation of People Act or the Rules framed thereunder or under the CPC for filing additional written objection.

11. The applicant himself admitted that the written objection has been filed beyond the period of 30 days from the date of supply of the copy of the rejoinder/replication filed by the first respondent in connection with MC (EP) No.54 of 2022. Stating that

the delay in filing the written objection was caused due to the time taken in making inquiries, consultations and other clerical tasks in obtaining various documents from the concerned Department, the applicant is seeking leave to file written objection to the rejoinder/replication. It is also the say of the applicant that he was out of station with effect from 7.10.2022 to 12.10.2022.

12. Order 8, Rule 1 CPC provides that the defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence. Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

13. While explaining the sweep and mandate of Order 8, Rule 1 and Order 8, Rule 10 CPC, the Apex Court in the case of *SCG Contracts (India) Private Limited v. K.S. Chamankar Infrastructure Private Limited and others*, reported in (2019) 12 SCC 210 held that a perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the

Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order 8, Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.

14. On a perusal of the first page of the present miscellaneous case, the applicant stated the date of filing of the rejoinder/replication by the first respondent as 13.09.2022. Assuming that the rejoinder/replication was filed on 13.9.2022, the thirty days' time prescribed under Order 8, Rule 1 CPC ends on 13.10.2022. However, the applicant has filed the miscellaneous case for leave to file written objection on 19.10.2022.

15. The learned senior counsel for the first respondent submitted that there are provisions under the CPC for amendment of the written statement or written objection filed in the proceedings of the election petition and therefore, the present miscellaneous case is not maintainable and is liable to be dismissed.

16. According to the applicant, there are certain statements made in the rejoinder/replication which are required to be further clarified by way of written objection/subsequent pleading.

17. At this juncture, the learned senior counsel for the first respondent urged that the applicant has no right to file additional written statement in the manner of subsequent pleadings. The learned senior counsel also referred to the provision Order 8, Rule 9 CPC, which reads thus:

“9. Subsequent Pleadings – No pleading subsequent to the written statement of a defendant other than by way of defence to 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 of not more than thirty days for presenting the same.”

18. Under Order 8 Rule 9 CPC a wide discretion is 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 CPC after commencement of the trial like in the

case of amending the plaint under Order 6, Rule 17 CPC where unless the Court comes to the conclusion that in spite of due diligence, the party could have not raised the matter before the commencement of the trial. Thus, under Order 8 Rule 9 CPC 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, CPC cannot be applied in the case of receiving additional written statement under Order 8 Rule 9 CPC

19. 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.

20. Admittedly, the applicant is not seeking to file written statement or additional written statement to the original miscellaneous case, namely, MC (EP) No.54 of 2022. The applicant seeks leave to file his written objection to the rejoinder/replication filed by the first respondent in MC (EP) No.54

of 2022. According to the applicant, the written objection sought to be filed is a clarification to the statement made in the rejoinder/replication filed by the first respondent. In order to controvert the statement made in the rejoinder/replication, the other party can be allowed to bring his version.

21. Time and again, the Apex Court as well as this Court held that if the defendant introduces a new case, it is fair to allow the plaintiff to file his subsequent pleading. Also, it has been laid down that if the plaintiff amends his plaint, the defendant should be given leave to file a subsequent pleading. Conversely, if the defendant amends his written statement, then leave should be granted to permit the plaintiff to file his additional pleading to react to it. The leave to file an additional pleading may be granted to take into account subsequent events, occurring after the filing of the suit and to avoid multiplicity of suits.

22. In *Olympic Industries v. Mulla Hussainy Bhai Mulla Akberally and others*, reported in (2009) 15 SCC 528, the Apex Court held that even by filing an amendment or additional written statement, it is open to defendant to add a new ground of defence or to substitute or alter the defence or even to take inconsistent pleas in the written statement so long as the pleadings do not result

in causing grave injuries/irretrievable prejudice to plaintiff. It was further observed that mere delay is not sufficient to refuse amendment of pleadings or an additional written statement.

23. It is not the case that there is a delay in filing the written objection in MC (EP) No.54 of 2022. The delay canvassed by the parties is to the filing of the written objection to the rejoinder/replication filed by the first respondent. As stated supra, the delay is very shorter and within the extended time period of 120 days.

24. In the instant case, the first respondent cannot be allowed to introduce new pleas under the garb of filing rejoinder/replication so as to alter the basis of his MC (EP) No.54 of 2022. In rejoinder, the first respondent has a right to explain only the additional facts incorporated by the applicant in his written objection to MC (EP) No.54 of 2022. If there appears to be certain statement made in the rejoinder, which requires to be clarified, a chance has to be given to the other side to file written objection. Here, it is a case where after filing of the written objection to MC (EP) No.54 of 2022, the first respondent had filed rejoinder/replication. To deny and/or controvert the statement made and to clarify the statement in the rejoinder/replication, the

applicant is entitled to file the written objection. If leave is granted to file the written objection to the rejoinder/replication filed by the first respondent in MC (EP) No.54 of 2022, no prejudice would be caused to any of the respondents, much less the first respondent. That apart, the written objection sought to be filed by the applicant is in connection with the miscellaneous case and not the original election petition. At this stage, if MC (EP) No.170 of 2022 is allowed and leave is granted, no hardship would be caused to the first respondent. Therefore, in the interest of justice and for proper adjudication of MC (EP) No.54 of 2022, in the facts and circumstances of the case, it would be appropriate to grant leave to the applicant to file written objection to the rejoinder/replication within the time limit.

25. It may be worthwhile to mention that the rules of procedure like Order 8, Rule 1 CPC are aimed at not only advancing the cause of justice, but also doing substantial justice between the parties. In no case, the rule of procedure can be brought to be interpreted in a manner, which may thwart the juridical process. The ultimate aim of all laws including the procedural laws has to finally set at rest controversies between the parties. Thus, while allowing written objection to the rejoinder filed in MC (EP) No.54 of 2022 or refusing to accept the same, the Court should only see that

if such written objection is not accepted, the real controversy between the parties could not be decided. As stated supra, if the present miscellaneous case is allowed, no prejudice would be caused to the respondents. On the other hand, if the written objection to the rejoinder/replication is permitted to be filed, it would be very much helpful for this Court to decide MC (EP) No.54 of 2022.

26. For all the reasons stated above, this Court is inclined to pass the following orders:

- (i) MC (EP) No.170 of 2022 in MC (EP) No.54 of 2022 in Election Petition No.22 of 2022 is allowed.
- (ii) Leave is granted to the applicant to file written objection to the rejoinder/replication dated 13.9.2022 filed by the first respondent.
- (iii) The applicant is directed to file written objection to the rejoinder/replication in MC (EP) No.54 of 2022 within a period of seven (7) days from today. If the applicant filed written objection to the

rejoinder/replication along with MC (EP) No.170 of 2022, the same may be received by the Registry.

- (iv) No costs.
- (v) It is made clear that in the given facts and circumstances of the present case, this Court granted leave to file written objection to the rejoinder filed by the first respondent. This order may not be cited as precedent.

ACTING CHIEF JUSTICE

FR/NFR

Sushil