

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Civil Revision No.4564 of 2014

Date of Decision:21.04.2015

M/s Basic Developers Pvt.Ltd.

.....Petitioner

Versus

Sheo Narain @ Shiv Narain & others

.....Respondents

CORAM: HON'BLE MR. JUSTICE K.KANNAN.

- 1. Whether Reporters of local papers may be allowed to see the judgment?Yes**
- 2. To be referred to the Reporters or not?Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

**Present: Mr.P.R.Yadav, Advocate,
for the petitioner.**

**Mr.Chetan Mittal, Senior Advocate,
with Mr.Harsh Bungar, Advocate,
for respondent No.6.**

K.KANNAN, J.(oral)

1. The application for filing replication filed by the plaintiff was dismissed on the ground that the issues have been framed. The issues in this case have been framed on 28.01.2014 and when it was posted for trial for 28.02.2014, the plaintiff took time and filed an application on 15.03.2014. This according to the court below was not competent.

2. I find the order of the court below to be shockingly wrong. Order 8 Rule 9 CPC which provides for additional pleadings to be brought is applied for a case of written statement of a defendant that could be filed only with the leave of the court. All the provisions under

Order 8 relate to the duty of the court in filing written statement, set-off or counter-claim, all of which relate to the defences. The only situation where the defendants' statements could be taken as a plaint is when the defendants set-up a case or counter-claim, in which case the counter-claim will be treated as a plaint and the reply filed by the plaintiff will be taken to be the statement and all the trappings of pleadings under Order 6 CPC will apply. Stricto sensu, the replication filed does not fall under Order 8 Rule 9 CPC. Indeed, there is no particular compulsion for a plaintiff to even file replication to deny what is ascertained in the written statement. The effect of not filing the statement specifically denying the averment to the plaint is contained under Order 8 Rules 3, 4 and 5 CPC. If the plaint is not specifically denied, it shall be taken as admitted under Order 8 Rule 5 CPC. There is no provision anywhere under Order 6 or Order 7 CPC casting any obligation for the plaintiff to deny specifically anything what is stated in the written statement otherwise than when a counter-claim is made and it is not denied. The counter-claim will be treated as a plaint by the defendant and the provision of Order 8 Rule 5 CPC will apply by the plaintiff himself, if he does not deny the counter-claim. This is not the case when a written statement is filed. In **Veerasekhara Varmarayar Versus Amirthavalliammal and others,** AIR 1975(Madras) 51, the plaintiff had filed a suit for partition impeaching some sales by father. The purchaser had filed a statement defending the purchases as wrought by family necessity and for discharge of debts. The plaintiff did not file any rejoinder to deny the debts. The effect of non-filing of rejoinder was considered by the court in the

following expressions:-

“Undoubtedly the appellant has appended a list to the written statement wherein he has given the details of the debts alleged to be due by the family. Equally it is true that the plaintiffs could have filed a rejoinder challenging the truth and binding nature of these debts. But law does not compel them to file such a rejoinder. At the same time, once the appellant had pleaded the existence and the binding nature of these debts, it was for him to establish the same and it could not be contended that the plaintiffs must be deemed to have admitted the same simply because they had not filed a rejoinder.”

3. It is needless to state that even without filing a replication, the plaintiff can rely on principles of law relating to the burden of proof under Sections 101 to 109 of the Evidence Act and look up to the defendant to prove what he asserts without even joining issues by rejoinder or replication. If he chooses, however, to file a replication, the court should be liberal in exercising its discretion, especially when the court finds that it is deliberately delayed and an attempt is made to prolong the proceedings. Such delays always may be compensated in terms of costs and denial of the very right to prefer replication will mean denial of an opportunity to join issues. We must take note of the existing reality that no case is decided within five years by the trial court. If the court takes considerable time for disposal on account of innumerable facts on which the parties have no control, it will be travesty of justice to put spokes on the party's attempt to put pleadings in place on every substantial point that is contentious and for which adjudication is required to be made.

4. Learned counsel appearing on behalf of the respondent cites before me the decision taken by my brother Judge in **Harjeet Singh and**

another Versus Paramjit Singh and others, 2014(4) PLR 605, that a replication filed after the issues are framed cannot be entertained. It is too dangerous a proposition of law to gain acceptance. I have brought out the relevant provisions and the points of law involved only to ensure that a similar error does not occur in our subordinate courts. For the delay that could have entailed by the plaintiff in availing himself an attempt to stall the trial by moving an application for replication, I award Rs.5,000/- as costs to be paid by the plaintiff to the contesting defendant. The order passed is set aside and the revision petition is allowed. The replication is directed to be taken on record and the trial to proceed in accordance with law.

5. Revision petition is disposed of accordingly.

April 21, 2015
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(K.KANNAN)
JUDGE