

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.R. No. 8027 of 2014
Date of decision: 20.01.2015

Manjit Kaur

....Petitioner(s)

Versus

Jaskaran Singh

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. P.K. Ganga, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present revision petition is to the order dated 09.10.2014 (Annexure P-7) whereby, the Additional District Judge, Sirsa has rejected the application of the wife who was the respondent therein from denying the husband to place on record the replication.

The reason given by the trial Court is that the petition had been filed under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage on the ground of cruelty on the part of the respondent-wife. The said allegations were controverted by denying the allegations of cruelty and counter alleging cruelty at the hands of the husband on the ground that a child had not been born. The Court has referred to Order 7 Rule 9 CPC (sic Order 8 Rule 9 CPC) to hold that the pleadings subsequent to written statement can be given by way of defence by leave of the Court and thus held that by placing the replication on record, the wife has not been prejudiced in any manner. The onus to prove the ground of cruelty continues to be on the husband and the wife will have an opportunity to produce the evidence in rebuttal thereof. Resultantly, the application filed

by the husband has been allowed and the replication has been allowed to be taken on record.

A perusal of the written statement filed by the wife would go on to show that allegations were made that the husband had started demanding to solemnize his second marriage with Amandeep Kaur, the younger sister of the answering respondent and on that account, the husband used to beat the wife. It was further averred that Amandeep Kaur was not major and on account of that the marriage had taken place, the parents of the wife had not acceded to the request of the husband, due to which, he kept on quarreling with her.

In the replication, the husband has controverted the said allegations and taken up the plea that by reading such allegations he was further shocked and his sentiments had been hurt and thus, the wife has caused mental cruelty to the husband by casting such aspersion on the honesty and integrity of the petitioner. It has been alleged that Amandeep Kaur, the younger sister of the wife had always been treated as the younger sister as such.

Accordingly, keeping in view the background, the controversy involved; considering that the issue pertains to the divorce on the ground of cruelty and the fact that it is settled that replication is always part of the pleadings and even as per the High Court Rules & Orders in Volume 1 Chapter 1 Part E dealing with the written statements, set-off and counter-claims under Clause 3, it is provided that where defendant has filed written statement, the Court may call upon the plaintiff to file the written statement in reply. Under the provisions of Order 8 Rule 9 CPC also, it is provided that no pleadings subsequent to the written statement of the defendant other

than by way of defence to set off a counter claim shall be presented except by the leave of the Court and upon such grounds that the Court may think fit.

A Division Bench of this Court in ***Salig Ram and another vs. Shiv Shankar and others, AIR 1971 P&H 437*** has held that replication is part of the pleadings and if anything is specifically stated therein for the first time, it has to be controverted and if not controverted and allowed to pass, it must be assumed that the plea raised is accepted.

Similar observations flowed from another Division Bench of this Court in ***Jag Dutt vs. Smt. Savitri Devi, AIR 1977 (Punjab 68)***.

In ***Hakam Singh vs. Jagir Singh and others, 1991 CCC 408***, this Court while taking into consideration the provisions of Order 8 Rule 9 CPC, laid down the principles while allowing a defendant to file a rejoinder to the replication. The relevant observations read thus:-

“4. After giving my thoughtful consideration to the entire matter in the light of the submissions of the learned counsel for the parties, I, however, find that in making these submissions the learned counsel appears to be oblivious of the provisions of Order 8, Rule 9, Civil Procedure Code, which provide that in a given case the Court may upon such terms as it thinks fit require a written statement or additional written statement from any of the parties. This rule invests the Court with the widest possible discretion and enables it to accept a written statement or rejoinder at any stage of the trial. It is no doubt true that no replication can be filed by the plaintiff to a written statement as a matter of right, but once it is so permitted to be filed it becomes part of the pleadings and in a case in which written statement raises a counter claim or a set-off is pleaded

the plaintiff should normally be entitled to file a replication to the same. Similarly, in a case in which replication raises new pleas, which did not form part of the plaint, the defendant, to my mind, should be entitled to file an additional written statement or rejoinder to the same. It may be that in normal course the plaintiff cannot be allowed to raise a new plea in the replication yet if such a replication is allowed to become a part of the pleadings by the court then, in all fairness, the defendant too should be provided an opportunity to controvert the new pleas taken in the replication. As already pointed out, to permit or not to permit the filing of such a rejoinder, being clearly within the jurisdiction and discretion of the trial Court, the impugned order does not call for interference in revision. It is neither a case of failure or exceeding the exercise of jurisdiction nor of exercising a discretion unjustly or illegally. The petition is thus dismissed with costs which I determine at Rs. 500/-."

In such circumstances, the discretion which the trial Court has exercised by allowing the replication to be placed on record keeping in view the averments made by the written statement by the wife cannot be faulted with in any manner.

Accordingly, there is no scope for interference in the well reasoned order passed by the trial Court and the present revision petition is dismissed.

20.01.2015
shivani

(G.S. SANDHAWALIA)
JUDGE