

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

C.R. No.814 of 2017 (O&M)

Date of Decision: 01.03.2017

Sarmukh Singh

....Petitioner

Versus

Arun Kumar

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Digvijay Nagpal, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned Order dated 11.01.2017 passed by the Additional Civil Judge (Senior Division), Samrala, whereby, the application filed by the petitioner under Order 21 Rule 37 of CPC has been dismissed.

Briefly, the facts of the case are that the respondent-decree holder filed an application for execution of decree dated 03.10.2009 against the petitioner/judgment debtor to which the petitioner filed objections. Thereafter, the respondent/decreed holder filed an application under Order 21 Rules 37 and 41 read with Section 151 of CPC for sending the petitioner/judgment debtor in civil prison till the recovery of decretal amount. The petitioner filed detailed reply to the said application and the respondent also filed rejoinder to reply to the application. Thereafter,

another application was also moved by the petitioner for seeking permission to file reply to the plea taken by respondent in the rejoinder. The respondent raised an objection to the application that the same has been moved to delay the execution proceedings. Said application filed by the petitioner was dismissed vide order dated 11.01.2017, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that the Executing Court has not taken into consideration the fact that the respondent-decree holder has clearly mentioned the new ground regarding the physical capacity of the petitioner to pay the decretal amount. Learned counsel also submits that the petitioner has no moveable and immovable property to satisfy the decretal amount. As per provisions of Order 21 Rule 37 of CPC, the proceedings can be initiated only in case, the judgment debtor has sufficient means to pay the decretal amount but he does not pay or does not disclose his means and sources, whereas, in the present case, the respondent himself has admitted that the petitioner has no moveable or immovable property in his name and the continuation of execution proceedings would be totally an abuse of process of law.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order dated 11.01.2017 and other documents on the file.

Admittedly, an application was filed by the petitioner for grant of permission to file an additional reply to some of the pleas of decree holder, which were raised in his rejoinder, beyond the pleadings of his application under Order 21 Rule 37 of CPC to show cause notice. It was mentioned in the application that the decree holder has raised a contention

in para No.3 of the preliminary objection of rejoinder that the objector/J.D is a able person and is fully competent to earn sufficient income by doing any business but this plea has not been taken by decree holder in his application under Order 21 Rule 37 of CPC and the same has also not been mentioned in the Show Cause Notice. As per claim of the petitioner in the application, this plea was raised by the decree holder for the first time in his rejoinder and there was no occasion to reply to his contention at the time of filing of his reply to the application under Order 21 Rule 37 CPC so it has become necessary in the interest of justice that the applicant-petitioner be provided an opportunity to file additional reply to the rejoinder of decree holder to rebut the contention mentioned in the rejoinder. Reply of the application was also filed by raising an objection that the application has been moved just to delay the execution proceedings. The application moved by the petitioner has been dismissed on the ground that it cannot be said to be a new ground as the decree-holder has only clarified the facts by filing reply to the plea taken by judgment debtor in his written reply to the application moved under Order 21 Rule 37 CPC. The relevant portion of the impugned order is reproduced as under :-

“ 4. Present execution has been filed by DH against JD Sarmukh Singh for the execution of judgment and decree dated 03.10.2009 whereby JD Sarmukh Singh has been held liable to pay an amount of ₹ 2,50,000/- along with interest. DH has filed application under Order 21 Rule 37 and 41 of CPC for sending the JD in civil imprisonment in case JD failed to disclose his assets. The detail reply to said application and to the show cause notice has been filed by JD Sarmukh Singh to which rejoinder was filed by the DH. Present application has been moved by the JD

to seek permission to file additional reply to the pleas taken by the DH in his rejoinder, submitting that new pleas have been taken by the DH in the rejoinder but to the mind of this Court no new plea as far as facts and circumstances of the present case are concerned, has been taken. In his rejoinder, the DH has only clarified the facts by filing reply to the pleas taken by the JD in his written reply to application under Order 21 Rule 37 CPC. No new pleas has been taken by the JD in the rejoinder and the present application seems to have been filed just to cause delay in the proceedings of the present execution. Accordingly, application in hand stands dismissed having no merit. Come up on 13.01.2017 for consideration on application under Order 21 Rule 37 and 41 CPC.”

The same issue was there before the Kerala High Court in case ***Baby vs Sebastian 2007(4) CivCC 638***. In said judgment, the term “Pleadings” have been defined as including written statement, rejoinder as well as filing of additional written statement. Para no.5 of the said judgment is reproduced as under :-

“ 5. “Pleadings” have been defined in the Code under Order 6 Rule 1 to mean “plaint or written statement”. Order 8 Rule 9 deals with pleadings subsequent to plaint and written statement. “Subsequent pleadings” can be either by the plaintiff or by the defendant. The view of the learned Subordinate Judge that subsequent pleadings under Order 8 Rule 9 are contemplated from the side of the defendant only when he raises pleas of set off or counter-claim is clearly erroneous. What Rule 9 provides is only that no pleadings subsequent to the written statement of the defendant other than by way of defence to set off or counter-claim shall be presented

except with the leave of the court. It is thus clear that the reference to set off or counter-claim under Rule 9 Order 8 is reference to subsequent pleadings raised by the plaintiff and not to subsequent pleadings raised by the defendant. As far as subsequent pleadings raised by the defendant are concerned and for any subsequent pleadings from the plaintiff other than those by way of defence to the pleas of set off and counter-claim, what is necessary is that the leave of the court shall be obtained. Additional pleadings raised by the defendants subsequent to the written statement originally filed by them under Order 8 Rule 1 of the Code are often referred to as additional written statements. Filing of additional written statement may be necessitated for the purpose of introducing new contentions or for clarifying or elaborating on the contentions already raised. That need not necessarily be for raising pleas of set off or counter-claim, since having regard to the rules of limitation applicable to pleas of set off and counter-claim, defendant may have to raise such pleas at the earliest opportunity itself.”

By relying upon various judgments, it has been clarified as to when reply to the replication is required and when the rejoinder is filed. Para no.6 of said judgment is reproduced as under :-

*“6. It was submitted at the Bar that written statement raising a defence to the plea of set off or counter-claim is often referred to as “rejoinder”. I do not think so. In fact, S. Sankarasubban, J. had occasion, in **Sunil & Vasanth v. Tata Ceramics Ltd. (1999(1) KLT 61)**, to deal with various types of pleadings which are raised by parties in actual practice though the Code of Civil Procedure envisages only plaints and written statements as pleadings. His Lordship observed, relying on **Kochukesavan Nair v.***

*Gouri Amma (1967 KLT 257), that the word “replication” is the plaintiff's answer to the defendant's pleas through his written statement (which need not necessarily be one raising a plea of set off or counter-claim) and “rejoinder” is the defendant's answer to the plaintiff's replication. His Lordship in fact noticed that the judgment of another learned udge of this Court, K.P. Balanarayana Marar, J., in **Sujir Keshav Nayak v. Sujir Ganesh Nayak)1991(2) KLJ 37** had deprecated the practice of filing replications since, according to that learned Judge, filing of replications was not contemplated by the Code of Civil Procedure. Nevertheless, Sankarasubban, J. preferred to follow the judgment in Kochukesavan Nair's case (supra) on the view that the said decision had almost become stare decisis and on the reason that the decision of K.P. Balanarayana Marar, J. in Sujir Keshav Nayak's case (supra) was reversed by the Supreme Court, though on other points.”*

Admittedly, the practice of filing replications by plaintiff to the answering defendants' pleas in their written statements and of filing of rejoinder by defendants by way of answer to the contentions raised by plaintiffs through their replications is in vogue in various parts of the State. In common law pleading also, the word “replication” is generally used, which means reply made to the defendant's plea and “rejoinder” is used in general sense pleadings to refer to the second pleading of the defendant, being his answer to the plaintiff's replication. In language the words replication and rejoinder are almost synonymous. One thing is clear that replication cannot be filed as a matter of right or course. It is to be filed when it is necessary under Order 8 Rule 9 CPC. It is necessary, in case, the Courts understand all pleadings subsequent to the original plaint and written

statement filed in the suit, by whatever name it is called. It may be termed as “subsequent pleadings” governed by Order 8 Rule 9 CPC. It cannot also be said that additional contentions sought to be raised through the additional written statement are totally irrelevant for adjudication of the issues in the suit. It is for the Court to see as to whether additional reply is necessary to be filed by reverting the contentions raised in the rejoinder.

In the present case, the petitioner has moved an application to file additional reply to the pleas taken by the decree holder in his rejoinder submitting that new pleas have been taken by decree holder in the rejoinder, whereas, on perusal of stand taken in the rejoinder, simply it is a clarification of the facts by filing reply to the plea taken by judgment debtor in the written reply to the application under Order 21 Rule 37 of CPC. It cannot be said that a new plea has been taken by the judgment debtor in his rejoinder. By considering all these facts, the application moved by the petitioner was rightly dismissed.

Accordingly, I find no merit in the contentions raised by learned counsel for the petitioner and as such, the revision petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

01.03.2017

gupreet

Whether speaking/reasoned

Yes

Whether Reportable

No