

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

**CR-6817-2019 (O&M)
Date of decision: 30.10.2019**

Surinder Kumar Singal

...Petitioner

Versus

Mr. Raj Kumar Singal and another

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Anil Kumar Aggarwal, Advocate,
for the petitioner.

Ritu Bahri, J.

Challenge in this petition is to the order dated 30.09.2019 (Annexure P-1) passed by the Civil Judge (Junior Division), Chandigarh, whereby application filed by plaintiff-petitioner for placing on record replication, has been dismissed.

Learned counsel for the petitioner has referred to the zimni order dated 28.05.2019, whereby after filing of the written statement, case was adjourned to 26.07.2019 for filing of replication, if any, and for proposed issues. Thereafter, on 26.07.2019, case was adjourned to 06.09.2019 as the Presiding Officer was on leave. On 06.09.2019 replication was not filed, however, issues were framed by the trial Court. Thereafter, on the next date of hearing i.e. 30.09.2019, plaintiff-petitioner moved an application for placing on record replication. This application has been dismissed on the same day vide impugned order dated 30.09.2019 (Annexure P-1) on the ground that the trial is at the stage of recording of evidence of plaintiff.

Learned counsel for the petitioner has referred to the judgments

passed by this Court in Harbhajan Singh Bajwa vs. Jasdev Singh, 2015 (5) RCR (Civil) 589 and Seema Rani vs. Kuldip Singh and another, 2018 (1) Law Herald 894 on the proposition that even, if, issues are framed, replication can be taken on record. At best, it would be a case of irregularity in the procedure.

In the case of Harbhajan Singh Bajwa (supra), while considering the above said issue, in para no.26, the Court observed as under:-

“26. Therefore, from the above, I find that no illegality has been committed by the Court below while passing the impugned order. However, from the perusal of the order, it is clear that earlier it was written that the case be fixed for replication and issues, but the issues were framed on the same day without asking for the replication. Therefore, it is observed that an opportunity to file replication should be given to the plaintiff and if on filing of the replication, the Court feels that any fresh issue arises, then the Court would be at liberty to frame any fresh issue.”

Thereafter, in Seema Rani's case (supra), revision petition was filed challenging the order, whereby an application for filing replication had been allowed by the trial Court. The said revision was dismissed by observing that issues were framed on 14.08.2017 and thereafter, the case was fixed for evidence of plaintiff. At the stage of evidence of plaintiff, application to file replication was allowed vide order dated 21.09.2017. It was observed that merely pleadings had been completed and no irregularity was committed in allowing such application at the later stage.

Keeping in view the above two judgments, in the facts of the present case, this Court is of the view that immediately after framing of issues on 06.09.2019, plaintiff-petitioner moved an application to place on record replication and this application has been wrongly dismissed by the trial Court vide impugned order dated 30.09.2019 (Annexure P-1). Hence, the impugned order is liable to be set aside.

Resultantly, the impugned order dated 30.09.2019 (Annexure P-1) is set aside and replication is allowed to be placed on record. After taking on record the replication, trial Court will proceed further in accordance with law.

30.10.2019
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No