

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

(297)

CR-6406-2019 (O&M)

Date of Decision : 11.05.2022

Smt. Rajnee Rani and Others

.....Petitioners

Versus

Shyama and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P.C. Chaudhary, Advocate for the petitioners.

Mr. Lalit Garg, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

This is a revision petition under Article 227 of the Constitution of India impugning the orders dated 19.12.2018 and 12.02.2019 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri whereby the two replications filed by the petitioners, though having permitted to be filed, but it has been stated in the impugned order dated 12.02.2019 that the same would not be part of the pleadings.

Mr. Lalit Garg, Advocate has entered appearance on behalf of respondent No.3 and filed his memorandum of appearance. Same is taken on record.

Learned counsel for the petitioners has contended that once replication is permitted to be filed it is to be treated as part of the pleadings as defined under Order 6 Rule 1 CPC. In support of his arguments, learned counsel for the petitioners has relied upon the following judgments :

1. K. Laxmanan Vs. Thekkayil Padmini & Ors. [2009(1) RCR (Civil) 389]
2. Rajesh Devan Vs. Soma Wati Aggarwal [2008(1) RCR (Civil) 411]
3. Hakam Singh Vs. Jagir Singh & Ors. [1991(2) RRR 170]
4. Ghanshyam Vs. Vikram & Ors. [2006(4) RCR (Civil) 334]
5. Surinder Kumar Singal Vs. Raj Kumar Singal & Anr. [2021(3) RCR (Civil) 145]
6. Seema Rani Vs. Kuldip Singh & Anr. [2018(5) RCR (Civil) 820]
7. Harbhajan Singh Bajwa Vs. Jasdev Singh [2015(5) RCR (Civil) 589]
8. Pritam Singh Vs. Jagdish Pal Singh [2001(4) RCR (Civil) 293]
9. Ajit Singh Vs. Punjab State Electricity Board [1998(2) RCR (Civil) 236]
10. Kalpana Vs. Hemendra Pratap Singh [2007(1) RCR (Civil) 365]

Per contra, learned counsel for the respondent No.3 would contend that on 19.12.2018 a statement had been made by the counsel for the petitioners that he did not wish to file a replication and hence the replication, if any, filed could not have been taken on the record.

Heard.

In the present case, no doubt a statement had been made as noticed in the order dated 19.12.2018 that no replication was to be filed but

subsequently the replications were filed as noticed in the order dated 12.02.2019. However, vide the impugned order dated 12.02.2019 it has been stated that the same would not become part of the pleadings.

The Supreme Court in the case of K. Laxmanan (*supra*) has held as under :

“31. Pleadings as we understand under the Code of Civil Procedure (for short the "Code") and as is defined under the provision of Rule 1 Order VI of the Code consist only of a plaint and a written statement. The respondents/plaintiff could have filed a replication in respect to the plea raised in the written statement, which if allowed by the court would have become the part of the pleadings, but mere non filing of a replication does not and could not mean that there has been admission of the facts pleaded in the written statement. The specific objection in the form of denial was raised in affidavits filed in respect of the injunction applications which were accepted on record by the Trial Court and moreover the acceptance on record of the said affidavit was neither challenged nor questioned by the present appellant.”

In the case of Rajesh Devan (*supra*) it has been held as under :

“19. Mr. V.K. Jain, learned senior counsel appearing on behalf of the plaintiff-respondent, contended that the findings recorded by the learned Courts below are

not open to challenge in the Regular Second Appeal. Learned senior counsel for the respondent contended that the factum of the shops in dispute having been constructed in March 1985 cannot be disputed in view of the Division Bench judgment of this Court in the case of Salig Ram and another v. Shiv Shankar and others, AIR 1971 Punjab and Haryana 437, wherein it has been held that the replication is part of the pleadings and anything which is specifically stated therein and for the first time, has to be controverted and if the same is not controverted and allowed to pass, it must be assumed that the plea raised in replication was accepted. The contention of the learned senior counsel for the plaintiff respondent was that in the replication the plaintiff had specifically mentioned that the building was constructed in March, 1985. There was no rebuttal to the said statement and, therefore, the findings of the learned Courts below are based on uncontroverted pleadings, which are not open to challenge.”

In the case of Hakam Singh (*supra*) it has been held as under :

“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/-.

Petition dismissed.”

In the case of Ghanshyam (*supra*) it has been held as under :

“6. The Trial Court has rejected the application of the plaintiff-petitioner for placing on record the replication only on the solitary ground that there is no provision in the Code which entitles the plaintiff to file application.

I have heard counsel for the parties.

Rule 9 Order 8 of the Code reads thus :

“9. Subsequent pleadings - No pleadings 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.”

A reading of the aforesaid provision makes it clear that

on leave being granted by the Court to file replication/rejoinder, the plaintiff can be permitted to file the replication/rejoinder.

7. Learned Single Bench of this Court in Hakam Singh's case (supra) has also held that replication can be filed by the plaintiff to the written statement under Order 8 Rule 9 of the Code.

8. Counsel for the petitioner had handed over a photocopy of the written statement filed by the defendant-respondents. A perusal of the written statement shows that the prayer of the plaintiff-petitioner for placing replication on record explaining the factual aspect on the basis of which the plea in the written statement had been taken is correct. Thus, it cannot be said that the replication is not essential for the just decision of the case. The reasoning of the trial Court is clearly unsustainable.

In view of the above, revision petition is allowed and the plaintiff-petitioner is allowed to place replication on record. The trial Court shall now proceed in accordance with law.

Petition allowed.”

In the present case, on 19.12.2018 the Tribunal recorded in it's order that *“It was stated that replication in this case is not be filed”*. On the

next date i.e. 12.02.2019 counsel for the petitioners filed two separate replications dated 12.02.2019. The Tribunal thereupon recorded in its order “*Learned counsel for petitioner submitted that replication to the written statement is not to be filed by respondents No.1 & 2 on the last date of hearing. Therefore, the present replication will not become part of pleadings. However, same be kept in the record of the file*”. Once the replications were permitted to be filed the same would be treated as the part of the pleadings. It is trite that once the Court permits the filing of a replication, the same would be treated as part of the record.

In view of the above, the present petition is allowed and the impugned order dated 12.02.2019 is set aside. The two replications dated 12.02.2019 filed by the petitioners shall be treated as part of the pleadings. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

May 11, 2022

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No