

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8291 OF 2022

1. Datta @ Dattatraya Dnyanu Methe,)
Age – 70 years, Occu. - Agriculturist,)
Residing at Shendur,)
Taluka – Kagal, District – Kolhapur.)
2. Anubai Bapu Methe,)
Age – 67 years, Occu. - Household,)
Residing at Shendur,)
Taluka – Kagal, District – Kolhapur.)
3. Maruti Bapu Methe,)
Age – 49 yrs, Occu. - Retired / Agriculturist)
Residing at Shendur,)
Taluka – Kagal, District – Kolhapur.)
4. Chandar Bapu Methe,)
Age – 47 years, Occu. - Agriculturist)
Residing at Shendur,)
Taluka – Kagal, District – Kolhapur.)
5. Mangal Bhiva Karpe,)
Age – 50 years, Occu. - Household)
Residing at Shendur,)
Taluka – Kagal, District – Kolhapur.)
6. Sujata Rajaram Shinde,)
Age – 45 years, Occu. - Household)
Residing at Akkol,)
Taluka – Chikodi, District – Belgao.)
7. Shivaji Pandu @ Pandurang Methe,)
Age – 55 years, Occu. - Agriculturist)
Residing at Shendur,)
Taluka – Kagal, District – Kolhapur.)
8. Anandi Baburao Patil,)
Age – 57 years, Occu. - Household)
Residing at Kurni,)
Taluka – Kagal, District – Kolhapur.)
9. Laxi Krushnat Patil,)
Age – 40 years, Occu. - Household)
Residing at Soundalga,)
Taluka – Chikkodi, District – Belgao.)

10. Indubai Dadu Patil,)
 Age – 71 years, Occu. - Household)
 Residing at Shankarvadi,)
 Taluka – Kagal, District – Kolhapur.) ...Petitioners

VERSUS

1. Sonabai Ganpati Methe)
 Age – 77 years, Occu. - Household)
 Residing at Sidhnorli,)
 Taluka – Kagal, District – Kolhapur)
 2. Circle Officer, Kagal,)
 Division Sidhnorli,)
 Taluka – Kagal, District – Kolhapur)
 3. Gaonkamgar Talathi,)
 Shendur, Taluka – Kagal,)
 District – Kolhapur.)
 4. The Collector,)
 Kolhapur, Taluka – Karvir,)
 District – Kolhapur.)
 5. Bhikabai @ Sampatti Ramdas Jagtap)
 Age – 40 years, Occu. - Household)
 Residing at Hatkanangale,)
 Shrinagar Vaitagwadi,)
 Taluka – Hatkanangale,)
 District – Kolhapur.) ... Respondents

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Mr. Sugandh B. Deshmukh, for Petitioners
 Mr. Sandeep S. Koregave, for Respondent Nos. 1 & 5.
 Mr. Sanjay D. Rayrikar, AGP for State – Respondent Nos. 2 to 4.

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CORAM: SANDEEP V. MARNE, J.

DATE : 21st FEBRUARY, 2023.

JUDGMENT:

1. Rule. Rule is made returnable forthwith and with the consent of the parties, called out for hearing.
2. Permissibility of filing rejoinder/replication by a Plaintiff to the written statement is the short issue which has attracted attention of this Court. The issue arises out of challenge set up by defendants to the Order dated 22nd October, 2022 passed by the trial court allowing Plaintiff's application seeking permission to file rejoinder.
3. Brief facts of the case are that Respondent No.1 is the Plaintiff in Regular Civil Suit No. 856 of 2017 filed before the 6th Jt. Civil Judge, Senior Division, Kolhapur *inter alia* seeking partition of the suit property. Plaintiff claims herself to be the wife of late Ganpati Methe. She has given genealogy of Methe family in the plaint claiming that her husband Ganpati is son of Dnyanu Methe and that therefore she is entitled to a share in the suit property.
4. The Defendants appeared in the suit and filed written statement *inter alia* contending that the Plaintiff is a stranger to Methe family and is not the wife of late Ganpati Methe. After filing of written statement by the Defendants, the Plaintiff filed application on 4th June, 2018 at Exh. 53 seeking permission of the Trial Court to file rejoinder, which was resisted by the Defendants by filing reply. By the order dated 22nd October 2019

impugned in the present petition, the Trial Court has proceeded to allow the application.

5. Appearing for the Petitioner Mr. Deshmukh the learned counsel would submit that there is no provision in the Code of Civil Procedure **(Code)** under which a Plaintiff can file rejoinder after filing of written statement. That pleading in the suit stands completed with filing of written statement and that therefore the Plaintiff cannot be permitted to file any further pleadings in the form of rejoinder. Referring to the provisions of Order 8, Rule 9 of the Code Mr. Deshmukh would contend that Plaintiff's application does not come within the purview 'subsequent pleadings'. That even otherwise no case was made out by her for grant of permission to file subsequent pleadings.

6. *Per contra*, Mr. Koregave the learned counsel appearing for Respondent Nos.1 and 5 would oppose the petition and support the order passed by the Trial Court. He would submit that the Defendants raised a new plea in the written statement denying Plaintiff's marriage with late Ganpati Methe and that therefore it has become essential for her to deal with the said contention by filing a rejoinder. He would rely upon judgment of the Delhi High Court in **Anant Construction (P) Ltd. Vs. Ram Niwas**, 1994 (31) DRJ 205.

7. Rival contentions of the parties now fall for my consideration.

8. There is no specific provision under the Code which enables filing of a rejoinder by the Plaintiff. In normal circumstances, pleading in a suit are completed by filing of written statement by the Defendant. The Only provision under which pleadings subsequent to filing of written statement can be found is under the provisions of under Order 8, Rule 9 of the Code, which reads thus:

9. Subsequent pleadings.

No pleading subsequent to the written statement of a defendant other than by way of defence to a 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 for presenting the same.

9. Even under the provisions of Order 8, Rule 9 the word 'rejoinder' is not used. The subsequent pleadings under Order 8, Rule 9 are commonly referred to as 'replication'. Thus, under Order 8, Rule 9 subsequent pleadings / replication can be filed in the following eventualities:

- i) When required by Law;
- ii) That a counter claim is raised or set off is pleaded by Defendant;
- iii) When the court directs or permits replication being filed.

10. In the event of non-filing of counterclaim or set off, the additional written statement can be filed when it is felt necessary by the Court. Thus,

filing of subsequent pleadings is not to be resorted to in a routine manner and only in exceptional circumstances, the Court may require either party to file additional written statement. This is more so as the parties have right to seek amendment of pleadings under Order 6 Rule 17 if any pleading is left out due to inadvertence. Therefore, replications or rejoinders cannot be filed in a routine manner. It is only when the Court arrives at a conclusion that it need elucidation on any point that it may direct parties to file subsequent pleadings under Order 8 Rule 9 of the Code.

11. Now I turn to the facts of the present case to examine whether the Court could have been otherwise permitted filing of replication by Plaintiff. In the plaint, the Plaintiff has specifically averred in paragraph No.3 that she is wife of late Ganpati. Defendants, in their written statement, denied the said relation claiming the Plaintiff to be stranger to the family. Thus pleadings by both the sides on the issue whether the Plaintiff is wife of late Ganpati or not are already on record. The trial court is in a position to decide that issue on the basis of pleadings filed by the parties. Mere denial by Defendants of relationship of Plaintiff with late Ganpati Methe would not require filing of replication by Plaintiff. The Plaintiff has already set up a case in the plaint that she is wife of late Ganpati. She will have to prove this assertion by adducing evidence. The Defendants on the other hand claim the Plaintiff to

be stranger to the family and they will have to prove their assertion by adducing evidence. In these circumstances it is incomprehensible as to why it is necessary for the Plaintiff to file any replication.

12. Perusal of Plaintiff's application seeking permission to file rejoinder would indicate that the only reason cited by her seeking permission to file rejoinder is denial of relationship between Plaintiff and late Ganpati by Defendants. As observed above, there are already pleadings on record about this aspect and the parties will have to lead evidence in support of their respective contentions. There is yet another factor which appears have to glossed over by the Trial Court while deciding Plaintiff's application. The Plaintiff did not tender rejoinder which she proposes be filed alongwith her application at Exh.53. She merely sought permission to file rejoinder. The Trial Court therefore, is not in a position to know the exact contents of the proposed rejoinder. Be that as it may. The application discloses sole reason of denial of the relationship between Plaintiff and late Ganpati for seeking permission to file rejoinder. Since the Plaintiff has already averred in the plaint that she is wife of late Ganpati, she need not to file any further pleadings in that regard.

13. Reliance of Mr. Mr. Koregave on the judgment of Delhi High Court in the case of **Anant Construction** (*Supra*) is of no assistance to the case of

the Plaintiff. In that judgment the Delhi High Court has held as under.

14. A replication is not to be permitted to be filed ordinarily, muchless in routine. A replication is permissible only in three situations: (1) when required by law; (2) when a counter claim is raised by the defendant; (3) when the Court directs or permits a replication being filed. The court may direct filing of a replication when the court having scrutinised the plaint and the written statement feels the necessity of asking the plaintiff to join specific pleadings to a case specifically and newly raised by the defendant in the written statement. The plaintiff may also feel the necessity of joining additional pleading to put forth his positive case in reply to the defendant's case but he shall have to seek the leave of the court by presenting the proposed replication along with an application seeking leave to file the same. The court having applied its mind to the leave sought for, may grant or refuse the leave. Ordinarily the necessity of doing so would arise only for 'confession and avoidance'.

24. To sum up:

(1) 'replication' and 'rejoinder' have well defined meanings. Replication is a pleading by plaintiff in answer to defendant's plea. 'Rejoinder' is a second pleading by defendant in answer to plaintiff's reply i.e. replication.

(2) To reach the avowed goal of expeditious disposal, all interlocutory applications are supposed to be disposed of soon on their filing. A delivery of copy of the I.A. to the counsel for opposite party is a notice of application. Reply, if any, may be filed in between, if the time gap was reasonable enough enabling reply being filed.

(3) I.As. which do not involve adjudication of substantive rights of parties and/or which do not require investigation or inquiry into facts are not supposed to be contested by filing written reply and certainly not by filing replication.

(4) A replication to written statement is not to be filed nor permitted to be filed ordinarily, much less in routine. A replication is permissible in three situations, (i) when required by law; (ii) when a counter claim is raised or set off is pleaded by defendant (iii) when the court directs or permits a replication being filed.

(5) Court would direct or permit replication being filed when having scrutinised plaint and written statement the need of plaintiff joining specific pleading to a case specifically and newly raised in written statement is felt. Such a need arises for the plaintiff introducing a plea by way of 'confession and avoidance.'

(6) A plaintiff seeking leave of the court has to present before it the proposed replication. On applying its mind, the court may grant or refuse the leave.

(7) A mere denial of defendant's case by plaintiff needs no replication. The plaintiff can rely on rule of implied or assumed traverse and joinder of issue.

(8) Subsequent pleadings are not substitute for amendment in original pleadings.

(9) A plea inconsistent with the pleas taken in original pleadings cannot be permitted to be taken in subsequent pleadings.

(10) A plea which is foundation of plaintiff's case or essentially a part of causes of action of plaintiff, in absence whereof the suit will be liable to be dismissed or the plaint liable to be rejected cannot be introduced for the first time by way of replication. .Appreciation is placed on record of useful assistance rendered by Shri Ishwar Sahai Sr Advocate and Ms Ritu Bhalla advocate both from civil side of High Court Bar who brought to the notice of the court quite a few aspects relevant to the issues at hand.

(emphasis supplied)

14. As observed above the plaintiff did not present the proposed rejoinder along with her application and in absence thereof, it was impossible for the Court to know what exactly is sought to be pleaded in proposed rejoinder. As held in **Anant Construction** (*Supra*), plaintiff seeking leave of the court has to present before it the proposed replication and on applying its mind, the court may grant or refuse the leave. The Trial Court has thus erred in granting leave to file rejoinder without the same being presented before it.

15. I have already arrived at a conclusion that filing of replication by the Plaintiff in the present case is not warranted on account of averments already present in the plaint. The Trial Court has erred in allowing Plaintiff's application for seeking permission to file rejoinder.

16. The writ petition therefore succeeds. Order dated 22nd October, 2019 passed by the 6th Jt. Civil Judge, Senior Division, Kolhapur on application at Exh.53 filed in R.C.S. No.856 of 2017 is set aside and Plaintiff's application at Exh. 53 stands rejected. Writ Petition is allowed. Rule is made absolute.

(SANDEEP V. MARNE, J.)