



A.No.6188 of 2024
in C.S.No.37 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 10.12.2024	Pronounced On: 16.12.2024
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THE HONOURABLE DR JUSTICE G. JAYACHANDRAN

A.No.6188 of 2024

in

C.S.No.37 of 2024

Mr.Suneel H.Shah,
S/o.(Late) Mr. Hirachand K.Shah,
Having Office at:
No. 88, NSC Bose Road,
Sowcarpet, Chennai - 600 079.

... Applicant/Plaintiff

/versus/

M/s.RAM CHARAN COMPANY PRIVATE LTD.,
A Company Registered under the Indian Companies Act,
Rep.by its Directors,
Mr. Divyesh A. Palicha & Mr. Kaushik A. Palicha,
No.505, 5th floor, Delta wing,
Raheja Towers, Old No.113-134, New No.177,
Anna Salai, Chennai - 600 002.
Respondent/Defendant

...

Prayer : This application is under Order XIV Rule 10 of the Original Side Rules read with Order 8 Rules 9 read with Section 151 of the C.P.C, 1908, to receive the reply statement filed along with this application.

For Applicant :

Mr.S.R.Rajagopalan, Senior Counsel,
for Mr.T.Srikanth

For Respondent :

Mr.Sanjay Pinto.



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ORDER

The regular Civil Suit No.37/2024 has been filed by the plaintiff, Mr.Suneel H. Shah, with a prayer to pass a money decree against the defendants, to pay a sum of Rs.1,07,55,350/- together with interest at the rate of 12% p.a on the principal amount of Rs.79,49,262/-, which is due and payable by the defendants in the course of money transaction.

2. The defendants have filed their written statement on 07/06/2024 in the Registry of the Original Side of the High Court. The delay of 65 days in filing the written statement was condoned and the statement was taken on file *vide* order dated 09/09/2024. On the same date, the plaint was amended at the instance of the plaintiff *vide* order passed in Application No:4565/2024.

3. The plaintiff had taken out the Application No.6188/2024 under Order XIV Rule 10 of Original Side Rules read with Order VIII, Rule 9 of C.P.C r/w 151 of C.P.C., seeking leave to receive the reply statement, stating that he need to rebut certain averments made in the written statement that are not factually correct.



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4. The Defendant/respondent has filed the counter, stating that the plaintiff wrenched out a disproportionate number of security cheques from the defendants and filed the suit without clarity about the precise cheque details. After filing of the written statement, the plaint got amended. After a crucial admission in the ongoing criminal prosecution in S.T.C.No.563/2022 on the file of the XIII Small Causes Court at Chennai, the plaintiff is trying to match the repayments with fabricated invoices to show conjured upon unpaid gold bills for alleged sales during the Covid-19 period in the year 2020.

5. According to the Learned Counsel for the respondent/defendant, the subsequent pleading in the form of reply statement is not legally tenable in view of the restriction under Order VIII, Rule 9 of C.P.C. In the written statement, the defendants have not made any counter-claim or set-off, therefore, the facts of the case does not warrant to grant leave to present the reply statement.

6. The Learned Counsel for the defendant further alleges that the plaintiff is unnecessarily protracting the proceedings with the ulterior motive of



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fixing the gaps in his plaint through the reply statement. Except on the two distinct circumstances, subsequent pleadings cannot be entertained, otherwise the intent of the legislators to have a cut off for pleadings will get defeated.

7. In response, the learned counsel for the applicant/plaintiff submits that the averments in the written statement are misleading and incorrect. The averments in the written statement giving a different version about the transaction between the plaintiff and the defendant, which warrants filing of subsequent pleadings by way of a reply statement to avoid the blame of allowing the incorrect statements go to un-controverted. Through the reply statement, no new facts other than the facts required to controvert the incorrect averments found in the written statement are made. The averments in the reply statement are not in variance with the plaint or in the nature of altering the basis of the plaint. It is filed to explain certain averments in the written statement are incorrect. The cause of action stated in the original plaint is not altered in any manner by this reply statement.



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Order VIII, Rule 9 of C.P.C., reads as below:-

"9. Subsequent pleadings.- No pleading 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."

8. This provision consists of two parts. The first part bars the filing of subsequent pleadings after filing of the written statement, except by way of defence in case of counter-claim or set-off pleaded in the written statement. In other cases, the plaintiff with the leave of the Court, file reply in a form of subsequent pleadings. The second part deals about the prerogative of the Court at any time, require a written statement or additional written statement from any of the parties and fix a time of not more than 30 days for presenting the same. The conjuncture “ but” used in between the two parts makes the intention of the legislator clear. Under Order VIII, Rule 9 of C.P.C., the parties are not totally prohibited from raising subsequent plea. The right of the plaintiff to file reply or rejoinder to defend a counter-claim or set-off in the written statement is



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automatic, whereas in other cases, except with the leave of the Court, the parties cannot file any subsequent pleadings. The second part of the provision is restricted to the filing of written statements or additional written statements. If the Court requires such subsequent pleading, can direct the parties to file written statement or additional written statement.

9. In this regard, it is profitable to refer the judgment of the Apex Court in *Noorul Hassan -vs- Nahakpam Indrajit Singh and others* reported in (2024) 9 SCC 353, wherein the Hon'ble Supreme Court, while applying Order VIII, Rule 9 of C.P.C in an Election Petition has observed that the Court is empowered to grant leave to receive subsequent pleadings, but same cannot be granted mechanically. The Court must consider while granting leave:- (i). replication is not needed to merely traverse facts pleaded in written statement; (ii) replication not a substitute for amendment; and (iii) new cause of action or plea inconsistent with plea in original petition cannot be permitted in replication.

10. In this judgment, the Hon'ble Supreme Court has relied upon and referred to the Delhi High Court judgment in *M/s.Anant Construction (P)*



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Ltd -vs- Shri Ram Niwas, wherein his Lordship R.C.Lahoti, J. (as he then was)

has summed up the scope of Order VIII, Rule 9 of C.P.C., as follows:-

(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) A replication to written statement is not to be filed nor permitted to be filed ordinarily, muchless 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.

(3) 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'.

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

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



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11. In the instant case, in the written statement, the defendant had not made any counter-claim or set-off, but had projected a version different from the version stated by the plaintiff in their pleadings. Particularly, the case of the defendant is that the cheques in dispute are security cheques and not backed by consideration. In the written statement, the defendant allege that the plaintiff had fudged and manipulated the account. In the reply statement, the plaintiff wants to place on record his version that the fudging and manipulation of accounts were made only by the defendant and not by the plaintiff.

12. In substance, the reply statement as subsequent pleadings does not change the cause of action or introduce new facts not referred in the written statement. Therefore, Order VIII, Rule 9 of C.P.C., cannot act as a bar to receive the reply statement to defend the written statement, which does not introduce a new plea unconnected to the written statement. However, it shall be subject to the right of the defendant to file rejoinder, if he so wishes.

13. As a result, Application No.6188 of 2024 to receive reply statement of the plaintiff is allowed. The defendant shall file re-joinder, if any, within 21 days from today.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery order made in
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