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A No. 3753 of 2025 in C.S.Comm.Div)No.227 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24-11-2025

PRONOUNCED ON: 16-12-2025

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

A No. 3753 of 2025

IN

C.S(COMM DIV) NO. 227 OF 2024

1. Compagnie De Saint Gobain and
another
Tour Saint Gobain 12 Place de l Iris
92400 Courbevoie France Represented
by its Constituted Attorney Mr.Animesh
Saha having office at Floor No.7,
Sigapi Achi Building, 18/3 Rukmini
Lakshmipathy Road, Egmore,
Chennai-600 008

2. Saint Gobain India Private Limited
Represented by its Authorized
Signatory Mr.Animesh Saha, Floor No
7 Sigapi Achi Building 18 3 Rukmini
Lakshmipathy Road Egmore Chennai
600 008 Tamil Nadu India

Applicant(s)

Vs

1. Sakthi Sai Safety Glass India
A Partnership Firm Through its partner,
Mr.B.Ganesh, No.16, 17 and 18, Anna
Industrial, Gopal Nagar,



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Vadaperumbakkam, Madhavaram,
Chennai - 60 Tamil Nadu

2.Sakthi Sai Glass Traders
Through its partners Mr.B.Ganesh and
Mr.Karunakaran No 934 Old No 559
Poonamallee High Road Arumbakkam
Chennai 600106 Tamil Nadu

Respondent(s)

PRAYER

To allow the present application and take on record the Applicants'/Plaintiffs' replication to the written statement filed by the Respondents/Defendants.

For Applicant(s): M/S.M.S Bharath
Mr.Jacob Kurian (ms/08/1992)
Mr.Navod Prasannan
(1023-c/2010)
Manu Thomas George
(k/894/2019)
Reshma Rajagopal (4105/2018)
Krishan.V.S (kar/1199/2020)
Jayabharathi Ts (ms606/2022)
Ph: 9790840462

For Respondents: Mr.Ramesh Ganapathy

ORDER

The present application is filed to take on record the plaintiffs' replication to the written statement filed by the respondents/defendants.



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2. The applicants/plaintiffs contended that they have copy right for the mark “SAINT-GOBAIN”, which has been duly registered under the Trade Marks Act. The present application is filed on the ground that the respondents’/defendants’ submissions, which were made in the written statement are misleading, frivolous and requires rebuttal by the applicants/plaintiffs.

3. *Per contra*, Mr.Ramesh Ganapathy, learned counsel for the respondents/defendants submits that the applicants/plaintiffs have willfully suppressed several material facts in the plaint and therefore, only to fill the gap in the original pleadings, the plaintiffs have filed the present replication and it appears to be a tactical attempt to cure the deficiencies and omissions in their original pleadings. It is his further case that the applicants/plaintiffs had deliberately withheld those facts. The learned counsel made the following submissions with regard to suppression of facts by the plaintiffs:-

(a). The applicants/plaintiffs failed to plead that the respondents/defendants are not only the dealers for selling glass products, but they are also the dealers for selling their other products like wall papers, tape and windows using the “Saint Gobain” trade marks.



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There are several Dealership agreements, which still exist and the business relationship between the applicants/plaintiffs and the respondents/defendants has not come to an end at the time of filing the suit.

(b). The plaintiff had not disclosed the issue raised by the respondents/defendants in their reply to the cease and desist notice issued by the plaintiffs regarding the demand by the applicants/plaintiffs to procure glasses only from them for the new venture of the respondents/defendants namely “Masss glass India Private Limited”. The applicants/plaintiffs have orally permitted the respondents/defendants to use their trade mark despite the expiration of License Agreement and Co-Branding agreement. The defendants invited the plaintiffs to settle the issue amicably by participating in Mediation, however, no effort was taken by the plaintiff to resolve the issue.

(c). The applicants/plaintiffs had suppressed the fact that Saint Gobain Seva Engineering Limited is the company which has sold the “Saint Gobain Seva Furnace”, a machine through which the respondents/defendants are tempering the glasses.



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4. The specific case of the defendants is that these facts such as continuity of business relationship, prior oral permissions, the use of Furnace and contractual dispute resolution mechanism, were well within the knowledge of the plaintiffs at the time of filing the suit. However, the plaintiff has not stated anything in the plaint which amounts to suppression of fact. The applicants/plaintiffs have filed this application to overcome the lacuna in the plaint. He further contended that the Service Level Agreement between the parties does include a survival clause under Clause 18.10. The said clause is extracted hereunder:-

“18.10. Survival

The rights and obligations of the Parties that, by their nature, are continuing, or the provisions under which the interest of SGIPL persists, shall survive the termination or expiration of this Agreement.”

By referring to the above clause, the learned counsel for the defendants contended that the plaintiffs have withheld the material facts not only in the plaint, but also in the present replication.

5. In support of his claim, the learned counsel for the respondents/defendants relied upon the judgment of the Hon'ble Supreme Court



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in **Noorul Hassan Vs. Nahakpam Indrajit Singh and others** reported in (2024)

9 SCC 353. The relevant paragraphs are paragraphs 10, 12 and 33 and the same are extracted hereunder:-

“10. In Anant Construction (P) Ltd. v. Ram Niwas [Anant Construction (P) Ltd. v. Ram Niwas, 1994 SCC OnLine Del 615 : (1994) 31 DRJ 205] , the High Court of Delhi, in an exhaustive judgment authored by R.C. Lahoti, J. as his Lordship then was, dealt with the terms “replication” and “rejoinder”, as is commonly used for subsequent pleadings, as also as to when leave for filing subsequent pleading may be granted by the court. After referring to various legal texts including Corpus Juris Secundum, it was observed : (SCC OnLine Del paras 12-14)

“12. A more detailed rather exhaustive statement of law is to be found in Corpus Juris Secundum. It would be useful to extract and reproduce the following paragraphs:

‘A reply or replication is purely a defensive pleading, the office or function of which is to deny, or allege facts in avoidance of new matters alleged in the plea or answer and thereby join or make issue as to such new matters. (Para 184)

No reply or replication is necessary where the issues are completed by, and no new matter is set up, in the plea or answer. (Para 185 a.)

At common law a replication is necessary where a plea introduces new matter and concludes with a verification; but under the codes, practice acts, or rules of civil procedure of a number of States a reply to new defensive matter is not necessary or is necessary only when ordered by the court. A reply to a counterclaim is generally necessary; but under some code provisions no reply or replication is required in any case. [Para 185 b.(1)]

The discretion which the court possesses, under some codes or practice acts, to direct the plaintiff, on the defendant's application, to reply to new matter alleged as a defence by way of avoidance will be exercised in favour of granting the application where the new matter, if true, will constitute a defence to the action and granting the order will prevent surprise and be of substantial advantage to the defendant without prejudice to the plaintiff. [Para 185 b(ii)]

A replication, however, is unknown in the practice of a few State and in some States is not permitted. So too, under a statute providing that there shall be no reply except in enumerated situations, a reply is not permissible in a case not within one of the exceptions. Indeed, generally, in jurisdictions wherein pleading is governed by statutory provisions, plaintiff has no right to



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file a reply when a reply is not required by statute or order of court and a reply filed in a case where no reply is required is to be treated as a nullity, unless, and to the extent that, it constitutes an admission by plaintiff, as discussed infra Para 204.

Under the common law system of pleading, plaintiff may, at his election, file a replication to a special plea setting up an affirmative defence. On the other hand, it is proper to reject a replication to pleas which merely traverse allegations of the declaration and set up no new matter. Where the plea concludes to the contrary, plaintiff cannot reply with any new matter but must either accept it by a similitur or demur. So a good special traverse can be answered only by joining issue thereon and not by filing a replication.’ (Para 191)

13. Decided cases in India use the term “rejoinder” loosely for a reply or replication filed by the plaintiff in answer to the defendant's plea. Strictly speaking a reply filed by the plaintiff (when permissible) is a replication. A pleading filed by the defendant subsequent to replication is a rejoinder.

14. A replication is not to be permitted to be filed ordinarily, much less in routine. A replication is permissible only in three situations : (1) when required by law; (2) when a counterclaim 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”.

12. Finally, the Court summed up its conclusions as under : (Anant Construction case [Anant Construction (P) Ltd. v. Ram Niwas, 1994 SCC OnLine Del 615 : (1994) 31 DRJ 205] , SCC OnLine Del para 24)

“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 IA to the counsel for opposite party is a notice of application. Reply, if any,



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may be filed in between, if the time gap was reasonable enough, enabling reply being filed.

(3) IAs 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 counterclaim is raised or set-off is pleaded by defendant; and
- (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 plea 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 cause 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.”

33. *It is clear from above that the non-disclosure of bank accounts, alleged in the election petition, was sought to be explained by the returned candidate in his written statement. The replication only sought to meet that explanation. Similarly, the reply in the written statement in respect of other material facts pleaded in the election petition was sought to be dealt with, by way of explanation, in the replication. The replication does not seek to incorporate any new material facts or a new cause of action to question the election. It only seeks to explain the averments made in the written statement. Thus, in our view, leave to file replication was justified and well within the discretionary jurisdiction of the High Court.”*



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6. It is appropriate to extract Order VIII Rule 9 of CPC:-

“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.”

7. There is substantial force in the arguments advanced by the learned counsel for the respondents/defendants that the present replication is filed only to fill up the lacuna in the plaint.

8. In the aforesaid judgment, the Delhi High Court has specifically pointed out the circumstances during which replication can be filed. At the risk of repetition, the same is reproduced hereunder for the sake of clarity:

“(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; and

(iii) when the court directs or permits a replication being filed.”



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9. The observations of the Delhi High Court was endorsed by the Hon'ble Supreme Court in the judgment cited supra. The Hon'ble Supreme Court had clarified that, by filing a replication, the plaintiff should not seek to incorporate any new material facts or a new cause of action. Filing of replication to written statement is permissible, only when the defendant has specifically and newly raised a case in the written statement and there is a need for the plaintiff to include a specific pleading as a reply to the same.

10. In clear terms, the above judgment has clarified that mere denial of defendant's case by the plaintiff needs no replication. A bare reading of the replication filed by the plaintiff along with the present application would show that the plaintiff has merely denied the case of the defendant and elaborated their case. In the replication, the plaintiff has not pointed out any new claim made by the defendant for the first time in the written statement to establish the need for filing a replication by the plaintiff.

11. As rightly contended, the replication has been filed by the applicants/plaintiffs only to include the facts, which were not specifically pleaded in the plaint and to merely deny the case of the defendant, which is



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impermissible as per law laid down by the Hon'ble Supreme Court. In view of the above, the replication filed by the plaintiffs cannot be taken on record.

12. Accordingly, the present application is dismissed. There shall be no order as to costs.

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Index: Yes
Speaking order
Internet: Yes
Neutral Citation : Yes

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N.SENTHILKUMAR J.

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