

Gurjant Singh Vs. Krishan Chander and Others

Gurjant Singh Vs. Krishan Chander and Others

SooperKanoon Citation : sooperkanoon.com/750837

Court : Rajasthan

Decided On : Mar-27-2000

Reported in : AIR2001Raj211; 2000(4)WLC266; 2000(2)WLN570

Judge : Dr. B.S. Chauhan, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 8, Rule 9 - Order 39, Rule 1; Representation of People Act, 1951 - Sections 81(3)

Appeal No. : S.B. Election Application No. 6 of 1999

Appellant : Gurjant Singh

Respondent : Krishan Chander and Others

Advocate for Def. : M.C. Bhoot, Adv.

Advocate for Pet/Ap. : L.R. Mehta and; H.S. Sandhu, Adv.

Judgement :
ORDER

Chauhan, J.

(1). In the instant case, respondent No. 1 was given time to file written statement to the election petition, vide order dated 11.1.2000 and the matter was directed to be listed on 21.2.2000. The written statement was filed and a copy of the same

was served upon the learned counsel for the election petitioner, but the Bar Association had resolved to observe strike on 24.2.2000, therefore, the matter was mentioned on 23.2.2000 that it would not be possible for the Advocates to appear on 24th Feb, therefore, the matter may be adjourned further and meanwhile, as written statement has been filed, petitioner may be given time to file rejoinder. It was requested and agreed that the order will be passed next day as the matter had not been on the board that day, not the file could be summoned.

(2). On 24.2.2000, though none of the lawyers appeared in the Court but the order was passed to list the matter on 16.3.2000 for further orders and meanwhile petitioner was allowed to file rejoinder. Rejoinder has been filed in detail and when the matter was listed on 16.3.2000, Mr. Bhoot, learned counsel for respondent No. 1, raised the objection regarding right of petitioner to file rejoinder. The matter was heard in length on 16.3.2000 and again on 23.3.2000. Though the leave had been granted on oral request of the learned counsel for petitioner and Mr. Bhoot was aware of it, but Considering the seriousness of the objection of Mr. Bhoot, both the parties were allowed to argue on merit.

(3). There is no dispute at the Bar to the extent that leave can be granted by the Court to file replication/rejoinder on an oral request of petitioner-plaintiff as held in a case reported in 1972(2) Mys. L.J. 328 (1), for the reason that the provisions of Order 8 Rule 9 C.P.C. do not require any written application. But the serious question which has been agitated by Mr. Bhoot is that leave can be granted only by application of mind by the Court provided it is satisfied that some new point has been raised in the written statement, which requires reply and it cannot be filed as is permitted to be filed in writ jurisdiction.

(4). Order 8 Rule 9 C.P.C. provides for subsequent pleadings, and reads as under:-

'No pleading subsequent to the written statement of the defendant, other than by way of defence to be 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.'

(5). Thus, the submission made by Mr. Bhoot is that the aforesaid provisions do not provide for a right of the plaintiff to file replication/rejoinder in a routine manner. However, Mr. Mehta, learned counsel for the petitioner, has submitted that in case a new fact is brought by the defendant-respondent in the written statement, the plain-tiff-petitioner may be allowed to file rejoinder.

(6). In *Shakoor & Ors. vs. Jaipur Development Authority & ors.* (2), this Court considered the application of the provisions of Order 8 Rule 9 even in a case of miscellaneous application under Order 39 rule 1, C.P.C. and held that undoubtedly the contingency of filing a rejoinder does not arise in every case because it could arise only in such cases where some new plea or fact is introduced by the defendant in his reply, only with the leave of the Court and the purpose of putting such an embargo is that plaintiff may not be permitted to introduce a pleading subsequently by a rejoinder. The procedure provided for a trial for the suit and miscellaneous proceedings is meant for finding out truth and to do justice. The procedure is always a hand-maid of justice and full opportunity should be given to the parties to bring forth their case before the Court, unless such procedure is specifically prohibited under the law and if Court is satisfied that subsequent pleadings should not be permitted, the plaintiff cannot be denied his right to file a rejoinder.

(7). In *Veerasekhara Varamarayar vs. Amirthavalliammal & Ors.* (3), the Division Bench of Madras High Court held that where the defendant brings the new facts in the written statement, the plaintiff must get a chance to file a rejoinder challenging the truth and binding nature of the allegations/averments made in the written statement. But law does not compel the plaintiff to file a replication/rejoinder and the plaintiff cannot be deemed to have admitted the same simply because he had not filed the rejoinder.

(8). In *Rohan Lal Choudhary vs. Prem Prakash Gupta* (4), the Patna High Court has taken the same view holding that the plaintiff is entitled to join issues with the defendant in respect to all those allegations which are made in the written statement and may lead evidence in rebuttal of those allegations notwithstanding the fact that he did not file any rejoinder.

(9). In *M/s. Ajanta Enterprises vs. Bimla Charan Chatterjee & Anr.* (5), this Court held that it is not permissible to file a rejoinder to all allegations made in the written statement and the rejoinder or replica can be filed with the permission of the Court only if the defendant has raised a plea of new facts and, thus, permission must be granted after taking into consideration all the facts and circumstances of the case, especially the pleas which have been raised in the written statement. In the garb of submitting a rejoinder, a plaintiff cannot be allowed to introduce new pleas in his plaint so as to alter the basis of his plaint. In a rejoinder, plaintiff may simply explain if certain additional facts have been taken in the written statement but he cannot be allowed to come forward with an entirely new case in the rejoinder. The original pleas cannot be permitted to be altered under the garb of filing a rejoinder. Rejoinder/replication cannot be permitted for introducing pleas which are not consistent with the earlier pleas.

(10). In *State of Rajasthan vs. Mohammed Ikbāl* (6), this Court considered its earlier judgments in *M/s. Ajanta Enterprises (supra)* and *M/s. Gannon Dunkerley & Co. Ltd. vs. Steel Authority of India Ltd.* (7), and held that the plaintiff cannot be allowed to introduce new pleas under the garb of filing rejoinder, so as to alter the basis of his plaint. In rejoinder, plaintiff has a right to explain only the additional facts incorporated by the defendant in his written statement. In rejoinder, plaintiff cannot be permitted to come forward with an entirely new case or raise inconsistent pleas so as to alter his original cause of action.

(11). In *Ishwar Lal & Anr. vs. Ashok & Anr.* (8), this Court held that rejoinder-affidavit can be filed only with leave of the court and it is a matter of judicial discretion vested in the trial court which should be exercised only if there are cogent reasons to allow the plaintiff to file rejoinder to the written statement. In *Saiyed Sirajul Hasan vs. Sh. Syed Murtaza Ali Khan Bahadur & Ors.* (9), the Delhi High Court had held that rejoinder cannot be filed as a matter of right and it is an absolute discretion of the Court to grant leave to present a fresh pleading. A party seeking permission under Order 8 Rule 9 has to provide 'cogent reason for permission' to file additional plea.

(12). In M/s. Anant Construction (P) Ltd. v. Ram Niwas (10), the Delhi High Court held that a replication to written statement cannot be filed, not can be permitted to be filed ordinarily much less in routine. The Court has a discretion to permit replication and after scrutinizing the plaint and the written statement, if it comes to the conclusion that the plaintiff can be permitted to join specific pleadings to a case, specifically and newly raised in the written statement, and such a need arises for the plaintiff introducing a plea by way of 'confession and avoidance.' The Court further held that a mere denial of the defendant's case by the plaintiff need no replication for the reason that he can safely rely on rules of implied or assumed traverse and joinder of issue.

(13). Thus, in the sum and substance, the plaintiff cannot be permitted to raise a new plea under the garb of filing rejoinder- affidavit, or take a plea inconsistent to the pleas taken by him in the petition, nor the rejoinder can be filed as a matter of right, even the Court can grant leave only after applying its mind on the pleas taken in the plaint and the written statement.

(14). Before the instant case could be examined in view of the aforesaid legal proposition, Mr. Mehta, learned counsel for the petitioner, submitted that petitioner may be permitted to file rejoinder only of pleadings with respect to Annex. F and G. of the Election Petition as replied in the written statement. Rest of the rejoinder, which runs to 50 pages, may be straight-way rejected.

(15). Thus, the controversy remains limited only with respect to the pleadings in Annex. F and G. In para 15 of the written statement, respondent No. 1 has taken the plea of non-admissibility of the documents as such and regarding verification. The same cannot be held to be raising a new factual plea. Para 16 of the written statement again refers to inadmissibility of documents contained in Annex. F which contains round-wise result sheets. The same also does not raise any new fact. In para 18 of the written statement, it has been submitted that documents showing the round-wise counting (Annex.F) was not prepared by the official concerned with the election, rather the same was 'prepared by the Statistical Department who prepare the sheets as and when it receives the round-wise figures of counting. In fact, these papers 007 (F) are the Proforma of the Statistics Department for the

purpose of feeding data into the computer. In para 19 of the written statement, again the same averments have been made as are made in para 18 above. In para 13 and 14 of the rejoinder, there has been denial of the averments made in para 18 and 19 of the written statement which amounts to raising new facts and the rejoinder may be permitted only to the extent of para No. 18 and 19 so far Annex. F is concerned.

(16). In para 22 of the written statement, it has been submitted that petitioner has purposely suppressed the identity of the counting agents who had prepared the documents contained in Annex. G and the documents therein are false and fabricated documents. In para 17 of rejoinder, the same has been denied. Further, as reference has been made in para 22 also with respect to the proceedings that documents were not supplied as per the requirement of the provisions of Sec. 81 (3) of the Representation of People Act, 1951, and the earlier dispute which had been decided by this Court and ultimately went to the Hon'ble Supreme Court, actually do not relate to a new factual plea. Thus, the same is rejected.

(17). Thus, in view of the above, the rejoinder is permitted to be filed only to the extent of para 18 and 19. Ordered accordingly.

(18). List this case on 03.4.2000 for filing Admission/Denial of documents at 2:00 p.m.