

31 CS No. 503/20

Sardar Mehnga Singh Talwar @ M.S. Talwar Vs. Surinder Singh & Ors.

11.03.2022

Present: Sh. Imran Khan, Ld. Counsel for plaintiff.
Sh. Rakesh Chandan Agarwal, Ld. Counsel for defendants.

Arguments heard on the application filed on behalf of defendants
u/Sec. 141 CPC r/w Sec. 151 CPC.

Put up for orders/clarification, at 4.00 p.m. today.

(VIJAY KUMAR JHA)
Addl. District Judge-02 (East)
Karkardooma Courts/11.03.2022

At 4.00 p.m.

Present: None either physically or virtually.

By this order, I shall dispose of the application dated 29.10.2021,
filed on behalf of the defendants u/Sec. 141 r/w Sec. 151 CPC.

The plaintiff has filed the suit for recovery of damages against the defendants. Written Statement by the defendants was filed on 04.02.2021 (There is a mistake in the stamping in the written statement, the date of filing has been mentioned as 04.02.2022). The plaintiff filed the replication to the Written Statement of the defendants on 23.06.2021 and the only grievance for which the redressal has been sought by way of the present application on behalf of the defendants, is that along with the replication, the plaintiff has filed certain documents; which were not filed by the initially with the plaint and therefore, on behalf of the defendants, it is prayed in the instant application

that an order/direction be passed for not taking the documents filed along with replication, on record.

Heard. Perused the record.

In catena of judgments, it has been held that replication is a part of pleading [See **Anant Construction (P) Ltd. v. Ram Niwas 1994(4) AD (Delhi) 185**; **S.P. Sehgal v. Smt. Vidya Kaul, AIR 1990 (Delhi) 117**]. If the replication is part of the pleading it implies that the same rules which are applicable for plaint (Provisions of Order 6 & 7 of CPC), are applicable for the replication as well and if any documents can be filed along with the original plaint, documents can be filed even along with the replication. The Hon'ble Delhi High Court in **Praveen Saini Vs. Ritu Kapoor, 2018 (246) DLT 709** has observed:

“13. The argument urged on behalf of the counsel for the appellant/defendant that the trial court could not have referred to the criminal complaint which was filed with the replication, inasmuch as, this criminal complaint was not filed with the plaint but only subsequently filed with the replication, is an argument in my opinion only of desperation. The provision of filing of documents are procedural and it is not disputed that documents can be filed as of right till framing of issues by virtue of Order 13 Rule 1 CPC. Of course permission of the court would have to be taken if the documents are not filed with the plaint, however, in this case the permission granted by the court has to be taken as having been impliedly given because the trial court has duly considered the document being the criminal complaint filed by the appellant/defendant against the respondents/plaintiffs, and therefore this technical argument urged on behalf of the appellant/defendant that the trial court could not have looked into the criminal complaint filed by the appellant/defendant is rejected.”

In the light of discussion herein above, the Court is of the opinion the relief as sought by the defendant in the application in hand cannot be granted. The reliance placed upon by the counsel for the plaintiff in the judgment as has been referred to in the application is misplaced. The

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documents as filed by the plaintiff along with the replication shall be part of the record and permission of the Court to take it on record shall be deemed to have been given. There is no merit in the application in hand, accordingly the same is dismissed.

Application stands disposed of. There is no order as to costs.

Put up for admission/denial and framing of issues for
31.05.2022.

(VIJAY KUMAR JHA)

Addl. District Judge-02 (East)
Karkardooma Courts/11.03.2022