

In lieu of order sheet
Present
Smt. T.Debnath
Civil Judge, (Sr. Div)
West Tripura, Agartala.
Court No.1

Case No. CM(J) 97 /2022
MS 10 of 2021

23.05.2023

Ld. Counsel Smt. S. Deb Gupta is present for the plaintiff petitioner.

Ld. Addl. G.P. Mr. P. Sahu has filed hazira for the defendant OP Nos. 1 to 3.

This is an petition under Order VIII, Rule 9, CPC. By filing this petition, the plaintiff petitioner has prayed for leave to file replication against the written statement filed by the defendants.

No written objection is filed by the defendants against the instant petition but the Ld Addl GP and neither has he appeared today for hearing and raised any verbal objection .

No further opportunity is allowed to the Ld Addl GP to take part in hearing.

Heard the Ld Counsel for the plaintiff petitioner.

Ld. Counsel for the plaintiff petitioner submitted that the defendants have filed written statement and have raised some the claims in the written statement which has made it necessary for the plaintiff to file replication in explanation of those claims .

The Ld Counsel further submitted that by filing replication, the plaintiff intends to state that the defendant No. 2 is the drawing and disbursing officer who disbursed Rs. 50000/- in favour of one Sri Samir Ghosh , Proprietor of Sound Sana who gave sound system in 2nd Mohanpur Book Fair, 2018. The petitioner provided decorator items and furniture's in the book fair premises and submitted a bill amounting to Rs. 8,60,350/-.

Ld. Counsel for the plaintiff petitioner further submitted that if the petition filed by the plaintiff is not allowed than the plaintiff will be highly prejudiced as the plaintiff's case rests upon the claim

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that the work was done by the plaintiff on the proposal of the defendant No. 2.

Considered the submission of Ld. Counsel for the petitioner.

Order VIII, Rule 9, CPC provides for subsequent pleadings which reads as under:-

“ No pleading subsequent to the written statement of a defendant other than by way of defence to be set off or counterclaim shall be presented except by the leave of the Court and upon such permission as the Court thinks fit, but the Court may at any time require a written statement or additional written statement or additional written statement from any of the parties and fix a time for presenting the same.”

In Veerasekhara Varamarayar Vs Amirtha- valliammal and Ors (AIR 1975, Madras 54), the Hon’ble Madras High Court held that, “ where the defendant brings new facts in the written statement, the plaintiff must get a chance to file rejoinder challenging the truth of the averments made in the written statement.”

In M.K. Gupta Vs Kripal Singh reported in 1998 (2002) DLT 683, the Hon’ble High Court of Delhi has held that replication cannot be filed by the plaintiff except by way of defence to set off as a matter of right, but with the leave of the Court it can be presented. Once the Court allows the plaintiff to present the replication it shall become part of the pleading. Similar opinion was expressed by the Hon’ble Delhi High Court in Saiyed Sirajul Hasan Vs SH. Syed Murtaza Ali Khan Bahadur and Ors, reported in ILR Delhi 401, wherein the Hon’ble High Court of Delhi has held that the party seeking any order under Order VIII, rule 9, CPC has to provide

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cogent reason for permission.

From the above decisions, it appears that filing replication is not completely barred under the Code of Civil Procedure. Replication can be filed under Order VIII, Rule 9, CPC by the plaintiff to explain any new fact arising in the written statement, but only with the permission of the Court.

In the present case on scrutiny of the plaint as well as the written statement filed by the defendants, I am satisfied that the claims made by the defendants in their written statement, necessitates filing of replication by the plaintiff to explain such facts. Therefore, the prayer of the plaintiff under Order VIII, Rule 9, CPC is hereby allowed.

This misc case is thus disposed on without contest.

Make necessary entry in the Trial Register.

As dictated

(Smt. T.Debnath)
Civil Judge (Sr.Divn)
West Tripura: Agartala
(Court No. 1)