

**ORDER ON I.A.NO.9**

The defendant filed I.A.No.9 under Order VIII Rule 9 read with Section 151 of CPC for seeking leave to file the application accompanying application to the rejoinder of the plaintiff dated 21.05.2024 to meet the interest of justice.

In enclosed affidavit defendant has taken contention that the plaintiff has filed rejoinder with the counter claim on 21.05.2024 wherein the plaintiff company has pleaded certain new facts regarding the clauses of the supply agreement and other transaction concerning the parties to the suit. In view of the same, the defendant is constrained to file replication along with this application. Hence, prayed to allow the application and relied the judgment of Hon'ble Apex Court in Noorul Hassan V/s Nahakpam Indrajit Singh & Ors. Reported in (2024) 9SCC 353.

The plaintiff has filed detailed objection stating that the application is not maintainable in the eyes of law as plaintiff has not taken any new facts and plaintiff has filed rejoinder for counter claim filed by the defendant. As per the observations of the Hon'ble Apex Court the replication is not needed to the nearly travels facts pleaded in the written statement. Replication is not substitute for an amended a new cause of action or plea in consistent with the plea taken in the original plaint is not to be permitted in the replication.

Hence, plaintiff relied decision of **Hon'ble Delhi High Court in M/s Anant Constructions Pvt. Ltd., V/s Sriram Nivas 1994 SCC onLine Del 6159**. Hence, prayed to dismiss the application.

I have heard both sides and perused the affidavit along with objections. The Hon'ble Delhi High Court observed in para no.24(1) as under -

***24(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.***

In the present suit the plaintiff filed the plaint and defendant filed the counter claim. After the counter claim the plaintiff filed rejoinder by assigning few new facts in the present suit for that the defendant is filing the replication to the rejoinder of the plaintiff as per the para no.24(4) &

24(5) of the M/s Anant Construction Pvt. Ltd. (supra) it is held as under

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***24(4) 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; and (iii) when the court directs or permits a replication being filed.***

***24(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.'***

In the present suit the plaintiff has raised the question that the defendant claiming the damages is barred by limitation. The plaintiff is relied the statement provided in the counter claim is hit by limitation. The contract between the parties was formalized according to the plaintiff on 21.11.2019 as per document no.2 of plaint prior to the execution agreement the defendant and plaintiff used to have an informal relationship and the defendant is used to sell the products of the plaintiff as a dealer. The such version have been taken by the plaintiff in the rejoinder. Therefore, there is a need of filing the replication as per the ratio laid down by the Hon'ble High Court of Delhi in Anant Construction (P) Limited (Supra) para no.24(4) and 24(5). The Hon'ble Apex Court in Noorul Hassan (Supra) where mentioned in para nos.13 and 14 about the replication is not to be permitted to refile ordinarily much less in routine. Therefore, in view of the above observation the defendant has made the grounds to allow I.A.No.9. Accordingly, I.A.No.9 is allowed and replication filed by the defendant is taken on record.

For Inspection of Documents, Statement of Admissions and Denials by 21.08.2025.

**(VIDYADHAR SHIRAHATTI)**  
**LXXXII A.C.C. & S.J., Bengaluru.**