

10.7.2023.

**Orders on Rejoinder filed by the plaintiff**

The plaintiff has filed rejoinder denying the written statement averments.

The defendant No.2 has filed objections to said rejoinder and contended that the plaintiff and defendant No.1 have filed this collusive suit to blackmail the defendant No.2 and to extract money from him. He has denied the contents of the rejoinder. Hence prays to reject the rejoinder.

Perused the records. Heard arguments.

The learned counsel for the plaintiff has argued that as per Order 8 Rule 8 and 9 of CPC he is entitled to file rejoinder.

At this stage it is useful to refer the provisions of Order 8 Rule 8 and 9 of CPC, which reads as under:

*8. New Ground of defence- Any ground of defence which has arisen after the institution of the suit or the presentation of the a written statement claiming a set-off (or counter claim) may be raised by the defendant or plaintiff, as the case may be, in his written statement.*

*9. Subsequent Pleadings:- No pleading subsequent to the written statement of a defendant other than by way of defence to a 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.*

The learned counsel for the defendant No.2 has argued that if at all the plaintiff intended to bring on record the contents of the rejoinder then she could do so by seeking an amendment of the plaint in

accordance with law.

On careful perusal of the provisions of Order 8 Rule 8 and 9 of CPC it becomes clear that the plaintiff cannot be permitted to file additional pleadings by way of rejoinder. This view of mine is supported by the decision of the Hon'ble High Court of Karnataka in the case of Mr.Glen Fredric Picardo Vs. Mr.Rodney Picardo, since deceased by L.Rs and another reported in ILR 2010 Kar.4622, wherein the Hon'ble High Court held as under:

*Code of Civil Procedure, 1908- Order 8 Rule 9-Subsequent pleadings-Intention of Legislature Replication by the plaintiff to the written statement permissibility.*

*A plain reading of Rule 9 Under Order VIII does not provide for a reply by the plaintiff, subsequent to the written statement of a defendant, other than by way of defence to a set off or counter-claim, with the leave of the court and upon such terms as the court thinks fit. However, the said provision enables the court to call upon a party to file a written statement or an additional written statement within a fixed time. If, in the written statement filed by the defendant there were to be a set off or counter-claim, the plaintiff who stands in the position of a defendant insofar as the claim with regard to either the set-off or counter-claim, is required to be granted leave to file a written statement. The intention of legislature in enacting Rule 9 is to meet the said situation and not to enable the plaintiff to file subsequent pleading by way of a replication.*

*Further held: The pleadings would be complete with the filing of the plaint, written statement or additional written statement or a set-off or any counter-claim with the leave of the Court. Any addition or deletion to the said pleadings can be by way of an amendment being permitted under Rule 17 of Order VI CPC and not by granting leave to file replication. For amendment of pleadings, the permission of the court is required to be obtained, as is clear from the words contained in Rule 17 of the Order VI CPC. In the said view of the matter, the Trial court is right in recording the filing that when once the defendant places his defence by way of a written statement, there is no provision to file a replication to the written*

*statement-Code of Civil Procedure, 1908- Order 1 Rule 6-Pleadings-Meaning of Order 6 Rule 17- Amendment of pleadings Discussed.*

In view of the above principle of law it becomes clear that the plaintiff cannot be permitted to file additional pleadings by way of rejoinder. Hence the following:

**ORDER**

The additional pleadings filed by the plaintiff by way of rejoinder is hereby rejected.

Senior Civil Judge, Sedam.

This court has gone through the entire pleadings of the parties and the issues framed by this court on 29.10.2022. On perusal of the same it is found that after framing the issues the defendant No.1 has filed his written statement. Therefore additional issues arise. Therefore acting U/O 14 Rule 5 of CPC this court has framed additional issues and pronounced the same in the open court.

For plaintiff evidence call on 20.7.2023.

Senior Civil Judge, Sedam.