

GAHC010039622026



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/59/2026

SMT. ANITA DEURI AND ANR
W/O LATE PADMA KANTA DEURI, R/O CHANDMARI, R.G. BARUA ROAD,
HOUSE NO. 286, GUWAHATI-781003, DIST- KAMRUP (M), ASSAM

2: SMT. JONAKI BORO
D/O BHABEN KAKATI
R/O CHANDMARI
R.G. BARUA ROAD
HOUSE NO. 286
GUWAHATI-781003
DIST- KAMRUP (M)
ASSA

VERSUS

HIRANYA BHARALI AND 2 ORS
S/O LATE PURNA CH. BHARALI, R/O BOLORAM BORA ROAD, HAPPY
VILLA, UZANABAZR, DIST- KAMRUP (M), ASSAM, PIN-781003

2:GAURI BURGOHAIN
D/O LATE PURNA CH. BHARALI
R/O BOLORAM BORA ROAD
HAPPY VILLA
UZANABAZR
DIST- KAMRUP (M)
ASSAM
PIN-781003

3:ADRIYA BHARALI
D/O LATE MUKUT BHARALI
R/O BOLORAM BORA ROAD
HAPPY VILLA
UZANABAZR
DIST- KAMRUP (M)

ASSAM
PIN-78100

Advocate for the Petitioner : MR. A C SARMA, MR B DEORI,MR G BHARADWAJ

Advocate for the Respondent : ,

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER**

27.02.2026

Heard Mr. A.C. Sarma, learned Senior Counsel assisted by Mr. G. Bharadwaj, learned counsel for the petitioners.

2. In this petition, under Article 227 of the Constitution of India, the petitioners have challenged the order dated 05.01.2026, passed by the learned Civil Judge (Jr. Division) No.2, Kamrup(M), Guwahati, in Misc.(J) Case No.151/2023, arising out of Title Suit No.450/2022.

3. Mr. Sarma submits that the petitioners herein are the defendants in Title Suit No.450/2022. He also submits that in the Title Suit No.450/2022, the petitioners have filed their written objection and counter claim and against the counter claim filed by the petitioners herein, the respondents/plaintiffs filed written statement. Mr. Sarma further submits that while filing the written statement in the counter claim, the respondents herein also filed written statement against the written statement under the head 'True Facts' filed by the petitioners herein, which they are not legally entitled to. Thereafter, the petitioners have filed a petition before the learned Trial Court under Order VI Rule 16 CPC for deleting the written statement filed by the respondents herein in the written statement filed by the petitioners. But, the learned Trial Court has misunderstood the provision of Order VI Rule 16 of the Code of Civil Procedure

and rejected the petition vide impugned order.

4. Mr. Sarma further submits that under Order VI Rule 16(c) of the CPC, filing of written statement against the written statement filed by the petitioners herein is nothing but an abuse of the process of law and as such, the same ought to have been deleted by the learned Trial Court, but the same was dismissed and on such count, the impugned order dated 05.01.2026 suffers from material irregularity requiring interference of this Court and therefore, it is contended to allow the same.

5. Having heard the submission of Mr. Sarma, learned Senior Counsel for the petitioners, this Court has carefully gone through the petition and the documents placed on record and also perused the impugned order dated 05.01.2026.

6. From the contention being made in this petition and also from the submission advanced by Mr. Sharma, the core issue, to be addressed in this petition is-

Can the plaintiff file written statement against the written statement filed by the defendant, although he can very well file written statement against the counter claim of the defendant?

7. It is to be noted here that under Order VIII Rule 9 of the Code of Civil Procedure (CPC), 1908, no pleading subsequent to the defendant's written statement is allowed except by court leave, and only specifically for defense to a set-off (Rule 6) or counter-claim (Rule 6A). It is well settled that the defendant's written statement (Order VIII Rule 1) is his defense to the plaint, and the plaintiff does not file a routine reply to it. Order VIII Rule 6A(3) explicitly permits the plaintiff to file a written statement in answer to the defendant's counter-

claim within a court-fixed period. Rule 6G states that written statement rules apply to such plaintiff replies against counter-claims. However, Order VIII Rule 9 allows the court to require or permit additional written statements from any party, but only on terms and within 30 days, typically for new facts (Rule 8). Without counter-claim, set-off, or court permission, the plaintiff cannot file further pleadings against the defense alone.

8. However, with leave of the court the plaintiff may file a 'replication' in response to the new facts and grounds alleged by the defendant in its written statement, to which the defendant has the right to respond by way of a 'rejoinder'. The terms 'replication' and 'rejoinder' (though judicially recognized) are not used in the CPC; it uses only 'written statement' and 'subsequent pleadings'.

8.1. A replication is filed by the plaintiff. It is the plaintiff's answer or reply to the defendant's plea or answer. The plaintiff has a right to file written statement by way of defence to a set-off or counter-claim. For filing a pleading by the plaintiff or defendant, subsequent to the written statement of a defendant leave of the Court is necessary. The Court can at any time require a written statement or additional written statement from any of the parties.

8.2. To understand the terms 'replication' and 'rejoinder' we may gainfully refer to the Black's Law Dictionary, 6th Edn., wherein 'replication' is defines as pleading in common law made by the plaintiff in an answer to the defendant's plea; and a rejoinder as a second pleading in common law on the part of the defendant being his answer to the plaintiff's replication.

8.3. The Wharton's Law Lexicon (14th Edn) defines 'replication' as a term for a plaintiff s answer to a defendant s plea; and rejoinder is defined as a defendant s answer to the plaintiff s reply.

9. In the case of **MSM Sharma v. Sri Krishna Sinha**, AIR 1959 SC 395, Hon'ble Supreme Court has held that "A mere denial of defendant's case by plaintiff needs no replication. The plaintiff can rely on rule of implied or assumed traverse and joinder of issue."

9.1. The same proposition is reiterated in the case of **Sheikh Noorul Hassan vs. Nahakpam Indrajit Singh**, reported in (2024) 9 SCC 353. In the said case Hon'ble Supreme Court has dealt with filing of subsequent pleading as under:-

9. Before we deal with the aforesaid issue, it would be useful to refer to the provisions of CPC in relation to pleadings. Order 6 Rule 1CPC declares that pleading shall mean a plaint and a written statement. Rule 9 of Order 8 specifically edicts that no pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counterclaim shall be presented except by the leave of the court. Though, however, the court may at any time require a written statement or additional written statement.

10. In *Anant Construction (P) Ltd. v. Ram Niwas*, 1994 SCC OnLine Del 615, the High Court of Delhi, in an exhaustive judgment authored by R.C. Lahoti, J. as his Lordship then was, dealt with the terms "replication" and "rejoinder", as is commonly used for subsequent pleadings, as also as to when leave for filing subsequent pleading may be granted by the court. After referring to various legal texts including *Corpus Juris Secundum*, it was observed : (SCC OnLine Del paras 12-14)

"12. A more detailed rather exhaustive statement of law is to be found in *Corpus Juris Secundum*. It would be useful to extract and reproduce the following paragraphs:

'A reply or replication is purely a defensive pleading, the office or function of which is to deny, or allege facts in avoidance of new matters alleged in the plea or answer and thereby join or make issue

as to such new matters. (Para 184)

No reply or replication is necessary where the issues are completed by, and no new matter is set up, in the plea or answer. (Para 185 a.)

At common law a replication is necessary where a plea introduces new matter and concludes with a verification; but under the codes, practice acts, or rules of civil procedure of a number of States *a reply to new defensive matter is not necessary or is necessary only when ordered by the court*. A reply to a counterclaim is generally necessary; but under some code provisions no reply or replication is required in any case. [Para 185 b.(1)]

The discretion which the court possesses, under some codes or practice acts, to direct the plaintiff, on the defendant's application, *to reply to new matter alleged as a defence by way of avoidance* will be exercised in favour of granting the application where the new matter, if true, will constitute a defence to the action and granting the order will prevent surprise and be of substantial advantage to the defendant without prejudice to the plaintiff. [Para 185 b(ii)]

A replication, however, is unknown in the practice of a few State and in some States is not permitted. So too, under a statute providing that there shall be no reply except in enumerated situations, a reply is not permissible in a case not within one of the exceptions. Indeed, generally, in jurisdictions wherein pleading is governed by statutory provisions, *plaintiff has no right to file a reply when a reply is not required by statute or order of court and a reply filed in a case where no reply is required is to be treated as a nullity*, unless, and to the extent that, it constitutes an admission by plaintiff, as discussed infra Para 204.

Under the common law system of pleading, plaintiff may, at his election, *file a replication to a special plea setting up an affirmative defence*. On the other hand, it is proper to reject a replication to pleas

which merely traverse allegations of the declaration and set up no new matter. Where the plea concludes to the contrary, plaintiff cannot reply with any new matter but must either accept it by a similitur or demur. So a good special traverse can be answered only by joining issue thereon and not by filing a replication.' (Para 191)

13. Decided cases in India use the term "rejoinder" loosely for a reply or replication filed by the plaintiff in answer to the defendant's plea. Strictly speaking a reply filed by the plaintiff (when permissible) is a replication. A pleading filed by the defendant subsequent to replication is a rejoinder.

14. A replication is not to be permitted to be filed ordinarily, much less in routine. A replication is permissible only in three situations : (1) when required by law; (2) when a counterclaim is raised by the defendant; (3) when the court directs or permits a replication being filed. The court may direct filing of a replication when the court having scrutinised the plaint and the written statement feels the necessity of asking the plaintiff to join specific pleadings to a case specifically and newly raised by the defendant in the written statement. The plaintiff may also feel the necessity of joining additional pleading to put forth his positive case in reply to the defendant's case but he shall have to seek the leave of the court by presenting the proposed replication along with an application seeking leave to file the same. The court having applied its mind to the leave sought for, may grant or refuse the leave. Ordinarily the necessity of doing so would arise only for "confession and avoidance".

(emphasis supplied)

11. Having observed so, a distinction between a plea requiring amendment of the plaint and a plea sought to be introduced by way of a replication was noticed as under:
(Anant Construction case [Anant Construction (P)

Ltd. v. Ram Niwas, 1994 SCC OnLine Del 615.

“17. A distinction between a plea requiring amendment of the plaint and a plea sought to be introduced by replication shall have to be kept in view. A plea which essentially constitutes the foundation of a claim made by the plaintiff or which is essentially a part of plaintiff's cause of action cannot be introduced through a replication. As already stated replication is always a defensive pleading in nature. It is by way of confession and avoidance or explanation of a plea raised in defence. It will be useful to quote from *Halsbury's Laws of England* (Vol. 36, Para 62, p. 48):

‘62. *Necessity for amendment.*—The fact that a party may not raise any new ground of claim, or include in his pleadings any allegation or fact inconsistent with his previous pleadings, has been considered elsewhere. In order to raise such a new ground of claim, or to include any such allegation, amendment of the original pleading is essential.’

17.1. In *M.S.M. Sharma v. Sri Krishna Sinha* [*M.S.M. Sharma v. Sri Krishna Sinha*, 1958 SCC OnLine SC 11 : AIR 1959 SC 395] , their Lordships refused to consider a plea raised in rejoinder for the first time, observing : (SCC OnLine SC para 33)

33. ... The case of bias of the Chief Minister (Respondent 2) has not been made anywhere in the petition and we do not think it would be right to permit the petitioner to raise this question, for it depends on facts which were not mentioned in the petition but were put forward in a rejoinder to which the respondents had no opportunity to reply.’ ”

12. Finally, the Court summed up its conclusions as under: (*Anant Construction case* [*Anant Construction (P) Ltd. v. Ram Niwas*, 1994 SCC OnLine Del 615.

“24. To sum up:

(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.

(2) To reach the avowed goal of expeditious disposal, all interlocutory applications are supposed to be disposed of soon on their filing. A delivery of copy of the IA to the counsel for opposite party is a notice of application. Reply, if any, may be filed in between, if the time gap was reasonable enough, enabling reply being filed.

(3) IAs which do not involve adjudication of substantive rights of parties and/or which do not require investigation or inquiry into facts are not supposed to be contested by filing written reply and certainly not by filing replication.

(4) *A replication to written statement is not to be filed nor permitted to be filed ordinarily, much less in routine. A replication is permissible in three situations:*

- (i) when required by law;*
- (ii) when a counterclaim is raised or set-off is pleaded by defendant; and*
- (iii) when the court directs or permits a replication being filed.*

(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".*

(6) *A plaintiff seeking leave of the court has to present before it the proposed replication. On applying its mind the court may grant or refuse the leave.*

(7) *A mere denial of defendant's case by plaintiff needs no replication. The plaintiff can rely on rule of implied or assumed traverse and joinder of issue.*

(8) *Subsequent pleadings are not substitute for*

amendment in original pleadings.

(9) A plea inconsistent with the plea taken in original pleadings cannot be permitted to be taken in subsequent pleadings.

(10) A plea which is foundation of plaintiff's case or essentially a part of cause of action of plaintiff, in absence whereof the suit will be liable to be dismissed or the plaint liable to be rejected, cannot be introduced for the first time by way of replication."

(emphasis supplied)

10. Thereafter, Hon'ble Supreme Court has, in para No.23, held as under:-

"23. Replication, though not a pleading as per Rule 1 of Order 6, is permissible with the leave of the court under Order 8 Rule 9 CPC, which gives a right to file a reply in defence to set-off or counterclaim set up in the written statement. However, if filing of replication is allowed by the court, it can be utilised for the purposes of culling out issues. But mere non-filing of a replication would not mean that there has been admission of the facts pleaded in the written statement (see *K. Laxmanan v. Thekkayil Padmini*, (2009) 1 SCC 354, para 29."

11. Thus, it is well settled that a replication to written statement is not to be filed nor permitted to be filed ordinarily, much less in routine. However, a replication is permissible in three situations:

- (i) when required by law;
- (ii) when a counterclaim is raised or set-off is pleaded by defendant;
and
- (iii) when the court directs or permits a replication being filed.

Besides, the 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.

12. Thus, the issue, so formulated in para No.6 of this order, has to be answered in above terms.

13. It is also well settled that under Rule 16(C) of Order VI, the court has the power to order to strike out any matter in a pleading or part of the pleading when the same demonstrated to be abuse of the process of the court. While dealing with the Rule 16(C) of the Code of Civil Procedure in the case of **K.K. Modi vs. K.N. Modi & Ors.** reported in **1998 (3) SCC 573** Hon'ble Supreme Court has held as under:-

“Under Order 6 Rule 16, the Court may, at any state of the proceeding, order to be struck out, inter alia, any matter in any pleading which is otherwise an abuse of the process of the court. Mulla in his treatise on [the Code of Civil Procedure](#). (15th Edition, Volume II, page 1179 note 7) has stated that power under clause (c) of Order 6 Rule 16 of the Code is confined to cases where the abuse of the process of the Court is manifest from the pleadings; and that this power is unlike the power under Section 151 where under Courts have inherent power to strike out pleadings or to stay or dismiss proceedings which are an abuse of their process. In the present case the High Court has held the suit to be an abuse of the process of Court on the basis of what is stated in the plaint.

The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraph 18/19/33 (page 344) explains the phrase "abuse of the process of the court" thus: "This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will

prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation..... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose consideration of public policy and the interests of justice may be very material."

14. In the instant case it appears that the petitioners herein have filed written statement cum counter claim in the title suit filed by the respondents and from paragraph Nos.22 to 50, the petitioners had mentioned the true facts in their written statement and thereafter, from paragraph Nos.51 to 56, they have pleaded counter claim. And it also appears from the written statement filed by the respondents herein that they have filed their written statement against the counter claim from paragraph Nos.51 to 56. But, besides filing written statement against the counter claim from paragraph Nos.51 to 56, they have also filed written statement against the "True Facts", which are being mentioned from paragraph Nos.22 to 50 of the written statement.

15.1. Since in the case in hand the petitioners, as defendant in Title Suit, have filed counter-claim, the respondents/plaintiffs are definitely entitled to file written statement against the counter-claim of the petitioners.

15.2. And from para No.54 of the written statement so filed by the petitioners herein, it appears that the petitioners herein craved the leave to refer to the statement made in the written statement in support of their counter-claim. If the petitioners herein have relied upon the statement made in the written statement from paragraph Nos. 22 to 50, in support of the counter-claim so made in the written statement from paragraph Nos. 51 to 56, as a

logical corollary the respondents/defendants herein accrues the right to file written statement against the written statement in para No. 22 to 50.

15.3. In that view of the matter, filing of the written statement against the written statement of the petitioners cannot be said to be an abuse of the process of the Court as provided in Order VI Rule 16(C) CPC. And that being so, no fault can be found with the impugned order dated 05.01.2026, by which the learned trial court had rejected the petition No.926/2023, filed under Order VI Rule 16(C) CPC to strike out the aforementioned portion of pleading from the written statement filed by the respondents herein.

16. Under the aforementioned facts and circumstances, this Court finds no merit in this petition and accordingly the same stands dismissed at the motion state itself.

17. In terms of above, this civil revision petition stands disposed of.

JUDGE

Comparing Assistant