

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 29th April, 2008

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Date of Decision: 28th May, 2008

+ CM(M) 444/2008 & CM No. 5297/2008

PREM CHAND Petitioner
! Through : Mr. R.D. Sharma with
Ms.Vandana Bedi, Advocates.

versus

\$ SUBHASH CHAND SAINI & ORS. Respondent
^ Through : None.

*** CORAM:**
HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether the reporters of local papers may be allowed to see the judgment?
2. Whether the judgment be referred to the reporter or not?yes
3. Whether the judgment should be reported in the digest? yes

Veena Birbal, J.

1. Present petition is directed against the impugned order passed by Ld. Additional Rent Controller dated 12.02.2008 allowing the application of respondent/landlord for amendment of eviction petition which was originally filed on the ground of non-payment of rent.

2. Respondent/landlord has filed a petition under Section 14(1)(a) of Delhi Rent Control Act, (hereinafter referred to as

“the Act”) against petitioner/tenant seeking eviction of the tenanted premises. It is stated that the tenanted premises is situated in slum area. Before filing petition, respondent/landlord obtained permission from competent authority (Slum) vide order dated 07.07.2005. After obtaining the permission, a petition under Section 14(1)(a) of DRC Act was filed. During the pendency of the said eviction petition, respondent/landlord moved an application under Order 6 Rule 17 read with Section 151 CPC praying for amendment of the eviction petition by adding alleged ground of sub-letting of the tenanted premises by petitioner/tenant to one Sh. Raju and thus prayed eviction on the ground of sub-letting also. The said amendment application was opposed by the petitioner/landlord on the ground that there is no sub-letting as is alleged and that the case is at the stage of respondent/landlord’s evidence and as such, it was not the stage to seek amendment.

3. Learned ARC by observing that the alleged ground of sub-letting was a subsequent event and had come to the knowledge of the respondent/landlord only after filing of the eviction petition and that respondent/tenant has tendered affidavit of one witness in evidence who is yet to be cross-examined,

allowed the amendment application. Aggrieved with the same, present petition is filed.

4. Learned counsel for petitioner/tenant has contended that amendment of existing eviction petition is not permissible as the alleged ground of sub-letting was a fresh cause of action and respondent ought to have filed a separate eviction petition. It is further contended that learned ARC bypassed the provisions of Order 6 Rule 17 of CPC. It is contended that by the Code of Civil Procedure Amendment Act, 22 of 2002, a proviso has been added to Order 6 Rule 17 of CPC by which no application for amendment shall be allowed after the trial has commenced unless court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial. In support of his contention, learned counsel has relied upon the following judgments : ***Salem Advocate Bar Association, Tamil Nadu v. Union of India*** reported in AIR 2005 Supreme Court 3353 and ***Ajendraprasadji N. Pande & Anr. v. Swami Keshavprakeshdasji N. & Ors.*** reported in AIR 2007 Supreme Court 806.

5. As far as contention of petitioner that alleged ground of

subletting should not have been allowed as it is a new cause of action and respondent/landlord ought to have filed a separate petition, this particular point is well settled in view of the Full Bench Judgment of this court in the case of ***Abnash Kaur vs. Dr. Avinash Nayyor & Ors.*** reported in 10(1974) DLT 270 wherein it is held that there is no inflexible rule that a cause of action arising subsequent to the filing of petition for eviction cannot be added in the petition by way of amendment. The relevant para of the judgment is reproduced below :

“(24). In the light of the above discussion, we answer the question referred to us in the affirmative and hold that the Controller has the power and jurisdiction to allow an amendment to add a new ground of eviction which has arisen subsequent to the filing of the eviction petition and which is different from the ground on which the eviction petition has been filed. The Civil Miscellaneous (Main) Petition will now go back to the learned Single Judge for disposal in accordance with the opinion expressed by us on the reference-”

In ***Gyan Chand Jain vs. Standard Pharmaceuticals (P) Ltd. & Ors.*** reported in 58(1995) DLT 797 wherein also landlord had filed petition on the ground of non-payment of rent and thereafter application seeking amendment of the petition was filed so as to take the ground of eviction under Clause (b) to the same proviso, i.e. Subletting. The learned ARC had rejected

the amendment application. When the said order was challenged before this Court, relying on the judgment of Full Bench of this court referred above, the decision of learned ARC was set aside and amendment of eviction petition filed by the landlord was allowed.

In view of above discussion, the contention raised has no force and is rejected.

6. The other contention of petitioner/tenant is that the trial has already commenced as such under the Proviso to Order 6 Rule 17 of CPC, learned ARC ought not have allowed the amendment of plaint. In this connection it may be seen that Code of Civil Procedure (Amendment) Act 22 of 2002 does not bar the amendment but a proviso has been added to Order 6 Rule 17 to prevent the application for amendment being allowed after the trial has commenced unless court comes to conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. It is categorically stated in the amendment application that petitioner/tenant has sub-let the tenanted premises during the pendency of the present petition and respondent/landlord had come to know the same during the pendency of petition, as such need for

amendment has been there.

Learned ARC has also noted that the alleged ground of sub-letting is a subsequent event. It may be also noted that only respondent/landlord has tendered evidence of one witness which is yet to be cross-examined. Under these circumstances, learned ARC has rightly allowed the amendment application.

Even in ***Salem Advocate Bar Association, Tamil Nadu v. Union of India*** reported in AIR 2005 Supreme Court 3353, it is held that if amendment application is filed after commencement of trial, it has to be shown that inspite of due diligence such amendment could not have been sought earlier. The objective is to prevent frivolous applications which are filed to delay the trial.

In the present case, petitioner has categorically stated that he has come to know of alleged subletting after filing the eviction petition. There is nothing to show that petitioner is trying to delay the trial. Further, by allowing amendment, no prejudice is being caused to the petitioner/tenant as landlord will have to prove his case on merits and respondent will be getting full opportunity to defend himself.

7. The judgments referred by the learned counsel for

petitioner are of no help to him.

8. In view of above discussion, the present petition stands dismissed.

VEENA BIRBAL,J

May 28, 2008
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