

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.3258 of 2015
Date of decision: 10.08.2015

M/s Banwari Lal & Sons and another
... Petitioners
Versus
M/s Shivalik Construction & Estates Pvt. Ltd. and another
... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sudhir Mittal, Advocate for the petitioners.

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

ARUN PALLI J. (Oral)

Vide order being assailed dated 03.04.2015, passed by Rent Controller, Chandigarh, the prayer of the petitioners (tenant) for amendment in the written statement has since been declined.

Eviction of the petitioners is being sought from the ground floor, front portion of SCO No.1, Sector 7, Chandigarh, on account of personal necessity. In the written statement filed by the petitioners, the alleged need/requirement of the landlord is purported to be untrue and ingenuine. Vide a proposed amendment, what is sought to be pleaded by the petitioners, is that during the pendency of the eviction petition

it has come to their notice that landlord has let out the front portion of SCO No.1, Sector 7, Chandigarh, to M/s A. Purity Hospitality, pursuant to a registered lease deed dated 17.09.2010. And has even leased out the back portion of the demised premises through an agreement-cum-memo of understanding dated 01.01.2012. In response, it was maintained that the area that forms part of SCO No.1 had in fact fallen to the ownership of Tejinder Kaur, pursuant to a family settlement arrived at by the parties. And as regards the agreement dated 01.01.2012, it was pleaded in the eviction petition itself that the said portion was not suitable.

On a consideration of the matter in issue, learned Rent Controller concluded:

“7. It is pertinent to mention here that as already discussed above since the trial in the present petition has already commenced, therefore, it was incumbent upon the respondents to have satisfied the court as to the due diligence exercised by them in bringing on record the facts which they want to incorporate by way of present amendment application. The facts which the respondents want to bring on record by virtue of present application relate back to the year 2010 and 2012 but the present application has been filed by the respondents in the year 2015 and there is nothing on record to show as to why the respondents did not make any endeavor to bring these facts within the knowledge of the court earlier. Merely, a plea that they were not aware of the said facts earlier is not

sufficient to show the exercise of due diligence by the respondents. Moreover, from copy of lease deed dated 17.9.2010 which has been placed on record, it is established that the aforesaid lease deed has been entered into between lessor Gurpreet Singh and lessee M/s A. Purity Hospitality and in clause (A) at page 3 of the said lease deed it is specifically mentioned that the lessor of the said lease deed has become the owner of SCO No.1, Sector-7-A, Chandigarh by virtue of agreement between M/s Shivalik Constructions and late Smt. Tejinder Kaur. This corroborates the plea of the petitioner that the premises which are forming part of lease deed dated 17.9.2010 have not fallen into the share of the petitioner in the present petition but in the share of late Tejinder Kaur. Therefore any dealing of that property i.e. SCO No.1, Sector 7, Chandigarh by the other owner cannot be said to have any impact on the merits of the present petition. As regard the letting out of the back portion of the demised premises by the petitioner is concerned, the same is also not relevant because in the petition in hand the petitioner has specifically taken the plea that the premises which are in their occupation are not sufficient for the need and the landlord being the best judge of his own requirement, the tenant cannot be said to be have any terms and conditions dictated upon his landlord. Thus there being no merit in the application, the same stands dismissed. To come up on 29.4.2015 for evidence of respondent.”

Ex facie, what is sought to be pleaded by way of amendment is indeed a piece of evidence. Needless to assert,

law does not permit the evidence to be pleaded. Petitioner in its written statement has denied the alleged need/requirement of the landlord to occupy the premises. Thus, petitioners shall be at liberty to adduce suitable evidence to substantiate the said plea and prove that the alleged need/requirement lacks bonafides. Petitioners' claim to have acquired knowledge qua lease deed dated 17.09.2010 and agreement-cum-memorandum of understanding dated 01.01.2012 after filing of the written statement, could hardly be a ground to seek amendment in the pleadings. Further, petitioners must have cross-examined the respondent/landlord and its witnesses qua all these aspects before the respondent closed its evidence. Not just that, the eviction petition was filed in February, 2010. Petitioners filed the written statement on 20.03.2011. An application seeking amendment in the written statement was filed after almost four years of the filing of the written statement on 11.02.2015. And that too when the landlord had led and closed its evidence. The trial had already commenced. Apparently, the application lacked both i.e. merits and bonafides. And was moved only with a purpose to delay and derail the proceedings.

That being so, no interference is warranted in exercise of revisional jurisdiction under Article 227 of the

Constitution of India. Petition being devoid of merit is accordingly dismissed, in limine.

August 10, 2015
Rajan

(Arun Palli)
Judge