

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

**CR No.4401 of 2015(O&M)
Date of Decision : 4.8.2015**

Sukhdev Ram @ Sukhdev Sharma

.....Petitioner

Versus

Darshna Devi and ors.

.....Respondents

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Rajan Bansal, Advocate for the petitioner.

GURMIT RAM, J.

This revision petition is preferred by the petitioner herein (tenant) against the order dated 15.5.2015 passed by the learned Rent Controller, Bathinda vide which his application for permission to amend written statement has been declined.

2. As per the record, respondent No.1 herein has filed an application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short-*the Act*) for the eviction of the petitioner herein (tenant) and proforma respondents No.2 and 3 from shop No.6, part of building MC No.946 i.e. demised shop. During the pendency of the petition, the petitioner herein (tenant) filed an application under Order 6 Rule 17 CPC for permission to amend the written statement for taking additional legal objection “that the eviction application is bad for partial eviction”. Reply to this application was filed by the landlady.

3. The learned Rent Controller after hearing the learned

counsel for both the parties and going through the record as well dismissed this application vide the impugned order dated 15.5.2015.

4. Feeling aggrieved from this order, the petitioner – tenant has come up in the instant revision petition.

5. Learned counsel for the petitioner was heard and record as available on the file was also perused.

6. Learned counsel for the petitioner has contended that the learned Rent Controller has wrongly dismissed the instant application vide the impugned order. It is further his contention that it is settled law that a legal objection can be taken at any stage even at the belated stage. Then it is also his submission that the amendment sought in the written statement is purely legal one and no prejudice was likely to be caused to the landlady, if the same was allowed. The amendment proposed in written statement is also stated to be essential to decide the matter in controversy. Herein he has also referred to para No.2 of the eviction petition wherein it is alleged that the seven shops along with two rooms and stairs were leased out by the landlady vide a registered lease deed dated 15.9.1983 to respondents No.1 and 2 for 10 years.

7. In the light of the above averments made in para No.2 of the eviction petition, the counsel for the petitioner herein (tenant) has contended that seven shops along with two rooms and stairs were rented out vide the above-said single lease deed dated 15.9.1983 and as such the landlady cannot seek eviction of tenant from one or two shops out of the above-said seven shops and hence the alleged eviction petition is certainly bad on account of partial eviction. Then herein he has also

submitted that in case she(landlady) needs the eviction from the premises of the above-said shops, then she should have to file eviction petition against all the tenants in possession of the above-said entire premises i.e. seven shops and two rooms.

8. But in the case in hand, each shop is distinct and separate from other shops. Then it is also admitted by the learned counsel for the petitioner herein that the above-said seven shops are in possession of seven different tenants. In the case in hand, the landlady requires only one shop out of the above-said seven shops for her personal use and occupation. So as such her stand is found to be rather *bona fide* by opting eviction of one tenant only from one of the said shops without uprooting the remaining six tenants from the above-said shops. Each case has its own facts and the same is to be disposed of in the light of its own facts and on the basis of evidence of the parties. So the basic law that eviction petition is bad on account of partial eviction does not apply to the case in hand for the reasons above mentioned.

9. Then as per the record, this eviction petition was filed in September, 2010 and the instant application for permission to amend the written statement was filed in August, 2014 i.e. after a gap of about four years from the date of filing of this petition. It is nowhere mentioned in this application that the tenant had failed to take the proposed legal objection in his written statement despite his due diligence. Issues in this case as per the record have already been framed. The case is pending at the stage of recording the evidence of the petitioner-landlady. The learned Rent Controller has rightly relied upon the principle as laid down in the

case law *Ajendraprasadji N. Pande and anr. Versus Swami Keshavprakeshdasji N. and ors., 2007(1) R.C.R.(Civil) 481* while passing the impugned order.

10. In view of the above discussion, this revision petition is found to be meritless and as such the same stands dismissed and disposed of accordingly.

However, this order will have no effect on the merits of the main case which is stated to be pending before the learned Rent Controller.

4.8.2015
Brij

(GURMIT RAM)
JUDGE

1. To be referred to the Reporters or not? Yes/No
2. Whether the judgment should be reported in the Digest? Yes/No