IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No.20126-CII of 2015 in/and
Civil Revision No.4845 of 2015
Date of Decision: September 29, 2015

Gupta Cloth Store & others

...Petitioners

Versus

Smt. Krishna Devgan

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. V.K. Sandhir, Advocate
for the petitioners.

Mr. B.B. Bagga, Advocate
for the respondent.

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AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.20126-CII of 2015

Prayer in this application is for preponement of the date of hearing of the main case.

Notice of motion.

Mr. B.B. Bagga, Advocate, accepts notice and states that he has no objection to the preponement of the date of hearing of the main case.

In the light of the statement made by the counsel for the non-applicant/respondent, the hearing of the main case is prepone to today and the same is taken on board for final disposal.

Application stands disposed of.

Civil Revision No.4845 of 2015

Challenge in this petition is to the order dated 04.05.2015 (Anneuxre P-1) passed by the Appellate Authority, Amritsar, vide which, an application under Order 6 Rule 17 read with Section 151 of the Civil Procedure Code (For brevity 'the CPC') moved by the petitioners who are appellant-tenants before the Appellate Authority, Amritsar, has been dismissed, whereby, permission was sought to incorporate the amendment to the effect that Vikas Devgan, son of the respondent-landlady, resident of Flat B-403, Shree Ram Sahana Apartments, Bangalore, derived income of ₹18,63,350/- for the year ending on 31.03.2013 as per his income tax return dated 26.07.2013 and the salary to the tune of ₹16,50,062/- for the year ending on 31.03.2012 as per his income tax return dated 15.07.2012. This was sought to be incorporated with an intention to show that he was earning much more than income what was being projected in the proposal for starting a project of electronic business according to the report Ex.A-3. Loan of ₹30,00,000/- was sought to be obtained and the projected profit was ₹5,00,000/- per annum which was a sheer falsehood and neither *bona fide* nor tenable and, therefore, would go to a long way to dislodge the ground of *bona fide* necessity of the respondent-landlady for settling her son in the demised premises at

Amritsar i.e. shop.

2. It is the contention of the learned counsel for the petitioner-tenants that as per the provisions contained under Order 6 Rule 17 of the CPC, amendment could be sought at any stage of the proceedings which would include the appellate stage as well and it cannot be restricted only to the stage where trial has not commenced. He contends that the petitioners were not aware of the gross/total salary of the son of the respondent-landlady and, therefore, with great difficulty, they have obtained the income tax returns submitted by him, under the Right to Information Act, 2005, after collecting the details from his company at Bangalore, where he is working. These are official documents and, therefore, it being necessary for proper adjudication of the matter, requires to be taken into consideration by the Court for coming to the correct conclusion for determining the real question in controversy. His contention is that the real question in the controversy between the parties is the *bona fide* necessity of the respondent-landlady and her son where the son is already earning more than three times of the projected income and, thus, would not like to come to Amritsar to start such a business as it would not be profitable to him. His further contention is that no specific denial has come forth with regard to the factual assertion made in para 8 of the application for amendment and, therefore, it can safely be said that the respondent are admitting the

averments made therein with regard to the factum of the income of the son of the respondent-landlady. He has placed reliance upon the judgment of the Supreme Court in **Rajesh Kumar Aggarwal & others Vs. K.K. Modi & others, 2006 (2) R.C.R. (Civil) 577** to contend that the amendment as is being sought could be granted by the Court. Reliance has also been placed upon the judgment of the Supreme Court in **Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & others, 2010 (1) R.C.R. (Civil) 27** where the Hon'ble Supreme Court has referred to certain factors to be taken into consideration while dealing with the application for amendment and placing reliance thereon. He has asserted that the said factors are clearly made out in the application for amendment which has been moved by the petitioners. Prayer has, thus, been made for allowing the present revision petition by setting aside the impugned order.

3. On the other hand, counsel for the respondent contends that at this belated stage when the appeal was fixed for arguments and the counsel had sought an adjournment to prepare the case for the said purpose, application for amendment of the written statement was moved. This was intentionally done to delay the decision in the appeal and ultimately the process of eviction as the Rent Controller has already passed an order of eviction which has been challenged

by the petitioners before the Appellate Authority, Amritsar. His submission is that the income of the son of the respondent-landlady would not be essential for the decision of the matter as the personal necessity is not dependent upon the income but primarily, it is the requirement of the landlady and her son whom she wants to settle in Amritsar. The very basis of the order impugned is relatable to the same and, therefore, the same is in accordance with law which does not call for any interference. In support of this contention, he has placed reliance upon the judgment of Hon'ble Supreme Court in **J. Samuel & others Vs. Gattu Mahesh & others, (2012) 2, Supreme Court Cases 300**.

4. I have considered the submissions made by the counsel for the parties and with their assistance, gone through the impugned order and the judgments referred to by them.

5. The principles of law as has been laid down by the Hon'ble Supreme Court in two judgments on which the learned counsel for the petitioner-tenants has placed reliance cannot be disputed and, therefore, are binding, however, the factors which have been referred to in the judgment of *Ravajeetu Builders & Developers'* case (supra) have to be applied by considering the facts and circumstances of each case and they cannot be blindly pushed and thrust in all situations. It would not be out of way to mention here that

the said case was one where the amendment was sought at the very initial stage of the matter and the Court had, therefore, proceeded to decide the same accordingly. Similar was the position in *Rajesh Kumar Aggarwal & others'* case (supra). In the present case, the application has been moved for amendment of the written statement at the belated stage and that too, at the fag-end of the appeal when the matter is fixed for arguments and the counsel, as a matter of fact, sought time to argue the case.

6. That apart, information which is now being sought to be brought on record by way of pleadings and the documents by amendment, cannot be said to be such, which could not have been earlier procured by due diligence and produced at the time when the case was pending before the Rent Controller. In any case, the said information which is in the form of the income tax returns submitted by the son of the respondent-landlady do not go into the basics of the issue which is pending before the Court nor can it be said of such a nature on which the determination of the real question would be dependent or would be of such a nature as would be the requirement of the Court to finally decide the *lis* between the parties. The issue is the *bona fide* requirement of the respondent-landlady and for settlement of her son in the shop in question which cannot be co-related with the income of the son of the landlady as it will have no effect thereon.

7. The presumptions and assumptions on which the petitioners are asserting it to be necessity for the final adjudication of the matter is misconceived. The order passed by the Appellate Authority, dated 04.05.2015 is in accordance with law which does not call for any interference.

8. The revision petition, therefore, stands dismissed.

CM No.15473-CII and 15474-CII of 2015

In view of the order passed in the revision petition, the applications also stand dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

September 29, 2015
Harish