

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

116

Civil Revision No.4900 of 2015

Date of Decision:10.08.2015

Rajesh Kumar

....petitioner

Versus

Som Nath Garg

.....respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

Present: Mr.Ishan Gupta, Advocate
for the petitioner

ARUN PALLI, J.(ORAL):-

Vide order being assailed dated 01.07.2015 (Annexure P8), rendered by Rent Controller, Sangrur, prayer of the petitioner-tenant seeking amendment in the written statement has since been declined.

In an eviction petition filed by the respondent, he prayed for ejectment of the petitioner from the demised premises i.e. shop, on the grounds of non payment of rent and personal necessity. It is averred that the respondent happened to be the owner of a property consisting of a house and three shops and the demised premises is a part thereof. Respondent retired as AEE from the PSEB, Sangrur on 30.09.2000 and post superannuation set up a factory in the name and style of M/s Bath RCC Spun Pipe Industries,

Badbar as a sole proprietor. Subsequently, Smt.Poonam Gupta wife of his son namely Ajay Kumar Garg joined him as a partner. Vide dissolution deed dated 23.08.2010, the firm had dissolved and Poonam Gupta became the sole proprietor of the said factory. Owing to a family dispute, respondent-landlord transferred the property of the factory to his son vide transfer deed No.551 dated 15.06.2012. The demised premises was required by the respondent for his personal use and occupation as he intended to set up a departmental store. Other two shops shown as 'A' and 'B', which too were in possession of the tenants, separate applications were also being filed viz-a-viz those as well. It was maintained that the respondent would remove the intervening walls and construct a departmental store as one single unit. Particularly, as respondent was idle after having transferred the factory in favour of his daughter-in-law.

In short, in the written statement filed by the petitioner, claim of the respondent was denied. It was maintained that the story set out by the respondent in the eviction petition was concocted and was created only to get the premises vacated.

Vide a proposed amendment, what is sought to be pleaded by the petitioner is that the eviction petition has been filed by the respondent by preparing wrong documents. The fact, that came to light from the documents produced by the respondent, during the course of the evidence. In fact, the respondent had executed a Will on 21.01.2010, in favour of his son Ajay Kumar, his wife Ashri Devi and grandsons Shivam Bansal and Abhey Bansal, vide which numerous properties owned by the respondent including the demised

premises were bequeathed in their favour. However, subsequently, respondent cancelled the said Will as regards his son Ajay Kumar. Therefore, partial cancellation of the Will proves mala fide intent of the respondent. Further, respondent had also produced a transfer deed dated 15.06.2012, which was only qua the land but not in respect of any factory. Meaning thereby, respondent was still owner of the factory. And it was after closure of the evidence, the petitioner came to know that earlier the demised premises was rented out to Mr.Ghokki and the premises that was in possession of Rajesh Kumar was rented out to Bhan Chand. The respondent was bound to disclose these facts. Therefore, petitioner wanted to amend his written statement.

In response, it was maintained by the respondent that the application was filed to linger on the proceedings. The Will dated 21.01.2010 had been cancelled. The factory along with the land had already been transferred by the respondent and, in any case, petitioner had no concern as regards the execution or cancellation of Will.

On a consideration of the matter in issue, the learned Rent Controller declined the prayer for amendment and concluded:

“The respondent wants to amend the written reply filed to the eviction application by taking up a plea that the landlord/petitioner has concealed the material facts from the Court. The said application has been strongly opposed by the landlord/petitioner. The present application

was filed after the cross-examination of the landlord/petiioner. It is a well known fact that the evidence is to be led on the basis of pleadings and not the pleadings to be prepared on the basis of the evidence on record. During the evidence of the landlord/petitioner, certains facts and documents have come to the knowledge of the respondent. In case, the respondent has come to know about certain facts during the evidence of the petitioner, then he can prove the said facts with a view to contradict the case of the landlord/petitioner while leading his own defence evidence. In case, the respondent is of the view that the landlord/petitioner has committed fraud and has not disclosed the facts to the Court, then the Court can take the notice of the same while disposing of the case on merits. The present case is an eviction application of the demised premises. The Court is to evaluate the circumstances accordingly. In case, the respondent is of the view that certain facts have not been disclosed by the landlord/petitioner, then he may prove the same by leading his defence evidence, but he cannot be permitted to amend the pleadings as per the evidence produced on

the file.”

I have heard learned counsel for the petitioner and perused the record.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the revision petition is devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Petitioner purports to have acquired knowledge qua certain facts during the course of evidence of the respondent-landlord. In reference to the Will dated 21.01.2010 and the transfer deed dated 15.06.2012, what the petitioner appears to establish is that the need of the respondent to occupy the premises in question is not true, real and genuine. Even if that is so, that would hardly be a ground to seek amendment in the written statement. Concededly, the respondent had already led and closed his evidence. And petitioner must have even cross examined the respondent-landlord qua all such aspects that are crucial and came to his knowledge, subsequently. Petitioner is at liberty to adduce appropriate and suitable evidence to vitiate the case of the respondent and prove that the alleged need to occupy the premise is a farce. Likewise, if the respondent is indeed guilty of having committed any fraud, the petitioner shall be free even to substantiate the said plea. Apparently, the amendment is being sought to delay and derail the proceedings.

That being so, the petition lacks both merit as also bona fides. Thus, no interference is warranted in exercise of

revisional jurisdiction under Article 227 of the Constitution of India is warranted. The petition being devoid of merit is accordingly dismissed.

10.08.2015

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**(ARUN PALLI)
JUDGE**