

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

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**Civil Revision No.5049 of 2015(O & M)
Date of Decision:11.08.2015**

Kartik Jain and others

....petitioners

Versus

Ashok Kumar

.....respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not? YES**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Nitish Garg, Advocate
for the petitioners

ARUN PALLI, J.(ORAL):-

Vide order being assailed dated 14.07.2015 (Annexure P4), rendered by Rent Controller, Bathinda, prayer of the petitioners (tenants) seeking amendment in the written statement has since been rejected.

Respondent (landlord) sought eviction of the petitioners from the demised premises i.e.shop bearing MC No.4950/3, Affim Wali Gali, Bathinda, on multiple grounds i.e.non payment of rent, premises had become unfit and unsafe for human habitation as also for personal necessity. It was maintained that earlier the shop in question was owned by Om Parkash son of Ram Chand son of Chhajju Ram and said Om Parkash was the real brother of the father of the respondent (landlord). And vide a registered gift deed No.15520 dated 29.03.2005 Om Parkash son of Ram Chand

bequeathed the demised premises in favour of the respondent (landlord). A photocopy of the gift deed was appended with the eviction petition and it was maintained that the original shall be produced in due course. In the written statement filed by the petitioners, the very relationship of landlord and tenant between the parties was denied. However, vide an application dated 27.04.2015 (Annexure P3), petitioners sought to amend the written statement and concede that there does exist a relationship between the parties.

On a consideration of the matter in issue, learned Rent Controller, concluded that initially the tenant denied the relationship between the parties and now when the matter was fixed for evidence of the landlord (respondent herein), an application was moved to set out a completely conflicting stand. Further, as the relationship between the parties was denied, even the provisional rent was not assessed before framing of the issues. The conclusion arrived at by the Rent Controller, reads as thus:

The ratio of judgement relied upon by counsel for respondent is not applicable to the facts and circumstances of the present case. In this case, respondents have denied the relationship of landlord and tenant in between the parties. The case was fixed for evidence of petitioner. Respondents moved this application. This Court is of the view that once the respondents have denied the relationship of landlord and tenant in between the parties, so the provisional rent was

not assessed before framing of issues. At this stage, no ground is made out to allow the respondents to get the written reply amended. This Court is of the view that the respondents want to delay the proceedings of the case. Hence, application in hand is dismissed.

I have heard learned counsel for the petitioners and perused the paper book. All that has been urged by the learned counsel for the petitioners is that proceedings are still at the initial stage and evidence of the respondent (landlord) is yet to commence and thus, the proposed amendment ought to have been granted.

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

Concededly, the eviction petition was filed on 19.02.2014. Respondent (landlord), who happened to be the son of the real brother of the original owner/landlord namely Om Parkash pleaded in his eviction petition that pursuant to a registered gift deed dated 29.03.2005, the demised premises had since been bequeathed in his favour. Copy of the gift deed was appended with the eviction petition and it was maintained that original shall be produced. Despite that being so, in the written statement filed by the petitioners, the gift deed was alleged to be a forged and fabricated

document. The relationship of a landlord and tenant between the parties was denied. Issues were accordingly framed by the Rent Controller and the matter was posted for the evidence of the respondent. It is at that stage, after almost a year of the filing of the written statement, an application seeking amendment in the written statement was moved by the petitioners. And the justification that is being rendered is that at the time of filing of the written statement, the petitioners had not verified the veracity of the gift deed and therefore, the petitioners denied the relationship with the respondent. Ex facie, the explanation that is being put forth lacks bona fides. Copy of the gift deed was already on record. Petitioners were fully conscious of the claim of the respondent(landlord) and thus, had an adequate opportunity to take an appropriate defence. They, intentionally chose to plead that gift deed was a fabricated document. And there was no relationship of landlord and tenant between the parties. As a result, no order as regards assessment of provisional rent could be passed by the Rent Controller. Therefore, the application for amendment, when the issues had already been framed and matter was fixed for evidence of the respondent, was apparently an attempt to delay and derail the proceedings. Ex facie, vide a proposed amendment, petitioners intend to simply abandon the stand that was originally set out in the written statement and plead absolutely to the contrary. Amendment that is being sought lacks bona fides and was thus, rightly declined by the Rent Controller.

That being so, no interference is warranted by this

Court under Article 227 of the Constitution of India. The petition being devoid of merit is accordingly, dismissed.

11.08.2015
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(ARUN PALLI)
JUDGE