

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5053 of 2015
Date of decision: 11.08.2015

Krishan Chand Thakur

... Petitioner

Versus

Tapinder Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Ajaivir Singh, Advocate for the petitioner.

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 09.07.2015 (Annexure P5), passed by the Rent Controller, Chandigarh, the prayer of the respondent-landlord for amendment in the eviction petition has since been granted. Thus, the tenant being aggrieved against the said order is before this court.

In an eviction petition filed by the respondent-landlord, he claimed to be a co-owner of SCO No.49, Sector 28C, Chandigarh, pursuant to a transfer deed dated 28.03.2013, executed by its previous owners Sh. Jaskiran Singh Bajwa son of Sh. Joginder Singh and Smt. Jagmohan Kaur wife of Sh. Jaskiran Singh. Petitioner is a tenant in the demised premises, which consists of a rear covered verandah on the ground floor, entire first floor and the second floor of

the said SCO. As the respondent-landlord had become the owner of half share in the said property, and he required the demised premises for the personal use and occupation of his wife, eviction of the petitioner is being sought. It was maintained that wife of the petitioner intended to start a boutique as also the business of artificial jewellery. The front ground floor portion of the said SCO was purportedly occupied by the father of the landlord, who is running a construction company from the said portion. And by way of amendment in the eviction petition, what is sought to be pleaded is that even the respondent-landlord requires/needs the premises for his own personal use, but as his mother Smt. Jagmohan Kaur had already filed an eviction petition qua SCF No.15, Sector 19D, Chandigarh, for the necessity of the respondent-landlord and his brother, the eviction was sought only to meet the requirement of his wife. However, the said petition has since been dismissed by the Rent Controller on 31.10.2014. Though, the co-owners of the said premises have obtained possession of the said SCF i.e. No.15, Sector 19D, Chandigarh, pursuant to some compromise, but they refused to deliver possession thereof to the respondent. Particularly, when mother of the respondent had already transferred her share in SCO No.49, Sector 28C, Chandigarh, in the name of the respondent. In these changed circumstances, what was sought to be pleaded

by way of amendment in paragraph 5 of the eviction petition is:

“5. That the petitioner requires the premises in question for his own bona fide need and occupation and that for the need of his wife. The petitioner has already got vacated the ground floor which was in occupation of his father and has already opened his office of E-Retailing under the name of Noisy Rock for the sale of various goods. The petitioner requires the first floor for expanding his office and requires the second floor for of the personal necessity of his wife for running boutique or any other permissible trade in that regard as allowed by the Estate Office and as per rules and regulations of Chandigarh Administration. That the Petitioner nor his wife is occupying any other commercial premises in the urban area of Chandigarh nor has ever vacated any such premises after the commencement of the Act in the said Urban Area.”

In response, petitioner-tenant opposed the prayer for amendment. It was pleaded that the proposed amendment was just an afterthought and an attempt on the part of the respondent to hoodwink the court. Further, the co-owners of SCF No.15, Sector 19D, Chandigarh, were just the family members of the respondent. And the proposed amendment would serve no purpose.

On a consideration of the matter in issue, learned Rent Controller granted the amendment prayed for, as the eviction petition was still at its preliminary stage and only the issues were framed. And as parties were yet to lead their

evidence, court was required to take a liberal view while considering the prayer for amendment in the pleadings. It would be apposite to refer the conclusion recorded by the Rent Controller and the same reads as thus:

“5. The present case is still at its preliminary stage where only issues have been framed however no affidavit has been tendered till date. In such a situation, where the case is still at preliminary stage, a liberal view is required to be taken by the court while deciding this application for amendment. This petition has been filed by petitioner for personal necessity of his wife. It is an admitted fact that the earlier rent petition filed by the mother of petitioner ‘for the personal necessity of petitioner and his brother’ has been dismissed by the Rent Controller vide order dated 31.10.2014. Therefore the present application has been filed to incorporate the personal necessity of the petitioner alongwith that of his wife. In the case titled as “*Vidya Bai and others v. Padam Latha*” 2009(1) R.C.R. (Civil 763)” it was held by Hon’ble Supreme Court that the trial only commences once an affidavit is filed by the witness in lieu of examination-in-chief. This means that in the present case, trial has not commenced because affidavit has not been tendered by the witness. Even otherwise the rent petition has been dismissed on 31.10.2014 therefore the said fact could not have been added at the time of filing of petition because the earlier rent petition was pending at that time where the personal necessity of the present petitioner was already pleaded. Therefore this application deserves to be allowed.

5. The Ld. counsel for the respondent has raised argument that this amendment will change the nature of petition. This court is not satisfied with this argument of Ld. Counsel for respondent. The present petition has been filed on the ground of personal necessity and the petitioner wants to add his necessity alongwith the necessity of his wife. By doing so the nature of this petition is not going to be effected as still it would be a rent petition on the ground of personal necessity only. Therefore this argument of Ld. Counsel for the respondent is totally devoid of any merit and baseless. Once this amendment is allowed, ample opportunity would be granted to the respondent for filing of amended reply and also he will have the right to test the credibility of the petitioner's witnesses with the tool of cross-examination. Therefore this court is of the considered view that if this application is not allowed then an irreparable loss would be caused to the petitioner which will result in mis-carriage of justice. Moreover the hardship if any caused to the respondent can be compensated with adequate cost. Therefore, the application filed by the petitioner is hereby allowed subject to payment of cost of Rs. 1000/- to the opposite party."

I have heard learned counsel for the petitioner and perused the paper book.

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

Ex facie, the eviction of the petitioner from the demised premises was sought on account of personal necessity, as wife of the respondent intended to start a boutique and a business of artificial jewellery. And vide an amendment that has been granted, the respondent has additionally pleaded even his personal need and requirement to occupy a portion of the premises. He purports to have already occupied a front portion on the ground floor that was purportedly in possession of his father. Thus, it is now sought to be pleaded that he requires the first floor for expanding his office and the second floor for the personal necessity of his wife. Apparently, vide an amendment in question, the respondent has simply sought to plead even his own personal need and requirement, which of course shall have to be proved. Likewise, petitioner too shall be at liberty to adduce suitable evidence and show that the alleged need was untrue, unreal and lacked bonafides. On the contrary, as observed by the Rent Controller, if the amendment prayed for is not granted, respondent shall stand deprived even to set up a case for himself. In any case, no prejudice is caused to the petitioner as a result of the amendment that has been granted. Petitioner is at liberty to file an amended written statement, take a suitable defence, lead evidence to vitiate the case set out by the respondent. Further, petitioner would be free to cross-examine the respondent and his witness vis-à-vis all vital

aspects. Concededly, the matter is still at a preliminary stage and the evidence of the parties was yet to be recorded. And as observed by the Rent Controller, the Hon'ble Supreme Court in Vidya Bai and others v. Padam Latha, 2009(1) RCR 763, has held that the trial only commences once an affidavit is filed by the witness in lieu of examination-in-chief. Thus, in the matter in hand trial was yet to commence, as no affidavit is tendered in evidence by the respondent. Learned counsel for the petitioner could not point out as to how the conclusion arrived at by the Rent Controller was either contrary to the position on record or was erroneous in law.

In the wake of the position, as set out above, no interference is warranted, in the discretion that has rightly been exercised by the Rent Controller. Petition being devoid of merit is accordingly dismissed.

August 11, 2015
Rajan

(Arun Palli)
Judge