

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

257

**Civil Revision No.5637 of 2015(O & M)
Date of Decision:01.10.2015**

Sunil Kumar

....petitioner

Versus

Surinder 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: Ms.Alka Sarin, Advocate
for the petitioner

Mr.Rahul Sharma, Advocate
for the respondent

ARUN PALLI, J.(ORAL):-

Vide order being assailed dated 20.08.2015, rendered by Rent Controller, Yamuna Nagar, at Jagadhri, application moved by the petitioner-landlord under Order 6 Rule 17 CPC, seeking amendment in the eviction petition has since been dismissed. The conclusion arrived at by the Rent Controller in this regard, reads as thus:

“But, in the present case, alleged facts of previous litigation and property of applicant was specifically mentioned by the respondent in his pleading. It means respondent intentionally did not mention these facts in his pleading and present

application is just to fill up his lacuna. Applicant has also failed to prove his due diligence. Hence, finding of Sukhwinder Singh case (supra) is not applicable in the present case. Further, if present application is allowed then it will effect the defence of the respondent which he has taken in his evidence as well as pleadings. It is clear that an amendment of the pleading can be allowed at the stage of final argument but he has to fulfill the conditions of proviso of order 6 Rule 17 of the CPC. But in the present suit it is clear that all the alleged facts, in the present application, are within the knowledge of applicant as it is specifically mentioned in the written statement of respondent. Hence, applicant intentionally did not mention these facts in his plaint and now, he wanted to fill up the lacuna by filing present application which is not permissible in the eyes of law.

12. In view of the above said discussion, I am of the considered view that applicant has failed to prove that despite his due diligence he could not raise the matter before the Court. Hence, application for amendment of pleadings is hereby dismissed without cost.

All what is sought to be urged vide proposed

amendment is that in an earlier eviction petition preferred by the petitioner he had prayed for eviction for his own personal bona fide need. However, in the present eviction petition, he has sought ejection for the need/requirement of his son. Secondly, the petitioner, post death of his father, along with his brothers and sisters had inherited certain properties. Concededly, the eviction petition was filed on 08.12.2010. In the written statement filed by the respondent, the fact as regards the previous eviction petition as also that the petitioner along with other heirs of his father had since succeeded to certain properties in the local urban area, was duly pleaded. Both the parties have already led and concluded their respective evidence. Petitioner-landlord has already been cross-examined, in this regard. And respondent has also led an evidence on this aspect. Therefore, what is sought to be pleaded by way of proposed amendment has already been brought on record and the Court would take cognizance thereof, while passing the final order. The application seeking amendment of the eviction petition was moved on 11.08.2015, when the matter was fixed for rebuttal and arguments. Ex facie, the application was moved to improve upon his case by the petitioner and to fill up the lacunas.

That being so, no interference, in exercise of revisional jurisdiction under Article 227 of the Constitution of India is warranted. The petition being devoid of merit is accordingly dismissed.

01.10.2015

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(ARUN PALLI)
JUDGE