

CR-5409-2014 (O&M)

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

**CR-5409-2014 (O&M).
Decided on: April 9, 2015.**

Harbhajan Kaur and another

..... Petitioner

Versus

Kuldeep Kaur

..... Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Diwan S. Adlakha, Advocate,
for the petitioners.**

**Mr.Nitin Kant Setia, Advocate,
for the respondent.**

M.M.S. BEDI, J (ORAL).

The landlords have preferred this revision petition against order, Annexure P6, dated 8.7.2014, dismissing application of the petitioners under Order VI Rule 17 CPC seeking to amend the ejectment petition claiming that the amendment is essential and necessary for the just and proper adjudication of the controversy involved in the ejectment petition.

Through the application for amendment filed under Order VI Rule 17 CPC, the landlords sought to incorporate a plea that the landlords are also owners of five other shops in addition to

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the shop in dispute. The said fact could not be inadvertently mentioned in the application.

The tenant-respondent contested the application on the ground that the petitioners have already led their evidence to the effect that they do not have any other shop in their names. The necessary ingredients of provisions of Section 13 (3) (ii) of the East Punjab Urban Rent Restriction Act, 1949, have not been pleaded and proved. The application is also contested on the ground that by permitting the amendment inconsistent pleadings should not be permitted to be taken on record and that the defence raised by the tenant-respondent that the petitioners, as a matter of fact, are owners of five other shops regarding which ejectment petitions have already been filed, would be defeated.

I have heard the learned counsel for the parties. Counsel for the petitioners relies upon the judgments in **Ashwani Kumar Aggarwal Vs. Shanti Lal, 2008 (2) RCR (Civil) 452; Jaswir Singh Jawanda and another Vs. Suraj Parkash, 2008 (1) LAR 292; and Sukhwinder Singh Vs. Darshan Lal, 2014 (3) Law Herald (P&H) 2211**, in support of his contention that the amendment of pleadings could be introduced to rectify the pleadings to bring forth the actual position of facts and law and amendment can be allowed when no prejudice is going to be caused to the other party.

Counsel for the petitioners vehemently urged that in **Ashwani Kumar Aggarwal's case (supra)**, it has been laid down

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that all the amendments which are helpful in effectively deciding the controversy between the parties must be allowed liberally to avoid delay and multiplicity of litigation. The only exception is that the party cannot be allowed to change the cause of action and basic nature of the suit nor an inconsistent plea can be taken by way of amendment. If the amendment can be allowed without any prejudice to the other party even delay will not be a bar for allowing amendments.

He also laid emphasis on the observations in **Jaswir Singh Jawanda and another's case (supra)** wherein the landlord at belated stage sought to amend the ejectment petition to incorporate a plea that the landlord had not got vacated any premises before. The said amendment was permitted on the ground that amendment sought was of legal nature and the supporting facts were already on record.

Counsel for the respondent relies upon the judgments in **Amarjit Singh Vs. Sandia Sood, 2014 (2) RCR (Civil) 649;** and **Jangir Singh Vs. Mohinder Kaur and others, PLR (1993-2) 513** in support of the contention that benefit accrued to a party due to pleadings cannot be negated by allowing amendment.

He also relied on **Prabhu Niwas and another Vs. Laxmi Narain and others, 2006 (2) ALJ 716**, where a fact known 20 years ago was not permitted to be incorporated by amendment.

Counsel for the respondent also relied upon **Suryakanta Iswar Lokare Vs. Annapurna Nilkanth Shende and**

another 2014 (2) BCR 644, wherein written statement was not permitted to be amended where it was held unnecessary for adjudication of dispute and no due diligence having been established to have been exercised.

Mistri Piara Lal Vs. Surinder Nath, 2014 (1) RCR (Rent) 223, was also cited by the counsel for the respondent. The said judgment is not applicable to the facts of this case. In this case the High Court upheld the ejectment of tenant on the ground of personal necessity rejecting the arguments that ingredients of personal necessity could not be said to have been pleaded as amendment had been sought at belated stage and would relate back to the date of filing of petition.

I have heard the learned counsel for the parties and carefully gone through the case law cited in context to the preposition involved. Vide impugned order the petitioners have not been permitted to amend the ejectment application to incorporate the plea that the petitioners have five other shops besides the shop in dispute. This plea if permitted to be taken on record would not cause any prejudice to the tenant- respondent as plea of the respondent- tenant is not being prejudiced by amendment rather it would vindicate the plea of tenant- respondent to be appreciated at the final arguments. The attempt of the Court should always be to secure the truth and to advance the cause of justice. If any mistake in pleading a fact is caused, parties can be permitted to amend the pleadings especially

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when the party seeking amendment does not want to lead any additional evidence.

The counsel for the petitioners has submitted that the petitioners would not seek production of additional evidence. In view of said circumstances, the present revision petition is allowed as the amendment will not cause any prejudice to the tenant-respondent and the petitioners do not intend to lead any additional evidence in case the amendment is allowed. Costs of Rs.5000/- is imposed on the petitioners-landlords. The petitioners will pay the costs on next date of hearing. It will be open to the tenant- respondent to file written statement and lead evidence.

April 9, 2015.
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(M.M.S. BEDI)
JUDGE