

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 76 of 2015

Date of decision : January 07, 2015

Balbir Sharma

... Petitioner

vs.

Gulshan Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Jatin Hans, Advocate
for the petitioner.

Surinder Gupta, J

1. The revision petitioner filed a petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short, 'the Act'), seeking eviction of respondents from demised premises on the ground of non payment of rent; sub-letting; personal bona-fide necessity. The petition was filed in April, 2010 and after framing of issues, parties completed evidence and the case was fixed for arguments. At the stage of arguments, landlord-petitioner came up with application for amendment to introduce a plea that respondents have converted the shop in dispute into a go-down thereby diminishing its value and utility. The seeking of amendment at the stage of arguments has been justified with the submission that due to typographical mistake, this ground was omitted to be mentioned in original petition.

2. The tenant-respondent contested the application, *inter alia*, pleading that allowing the application will start *do novo* trail. The respondent-tenant has alleged that he has using the demised premises from the very beginning as go-down and as such there is no change of user of demised premises. Rent Controller relying on the observations of Hon'ble Supreme Court in case of *Vidyabai and others vs. Padmalata and another, 2009 (1) Law Herald (SC) 540* dismissed the application. One of the reason which weighed before Rent Controller was that while answering the plea of tenant in written reply that he is using demised premises as go-down, the

landlord-revision petition has specifically denied that demised premises is a go-down.

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

4. The revision petitioner has carefully drafted his petition under Section 13 of 'the Act' taking all the grounds available to him to seek ejectment of tenant-respondent. He could not be unaware when respondent in the written statement had specifically pleaded that from the very beginning of tenancy he had been using the shop as go-down for storing books as he is running a book depot under the name and style of M/s Vidya Mandir. Again in para No.6 on merits, this plea was reiterated that the demised premises is a go-down and not a shop. In replication, the landlord-revision petitioner contested and controverted the plea taken by tenant-respondent. The Rent Controller has examined the plea seeking ejectment in proper prospective and has committed no error of law or fact while reaching the conclusion that plea as raised in the application seeking amendment is not made out and the application has also been filed at a very belated stage. In case ***Vidyabai and others (supra)*** Hon'ble Supreme Court has observed that it is the primary duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. The plea of tenant-respondent from the very beginning is that he is using the demised premises as go-down and the landlord-revision petitioner had controverted this plea. Had there been any typographical mistake, landlord/petitioner would have grabbed the opportunity when respondent pleaded that the demised premises was go-down to rectify the mistake. It is amply clear that there was no mistake, rather, the revision petitioner, at the fag end of the case, has attempted to coin a new plea which could help him in seeking ejectment of respondent from demised premises. At the final stage, after conclusion of evidence, petition was fixed for arguments and allowing of this application will start a *de novo* trial.

5. Learned counsel for petitioner has referred to observations of a Coordinate Bench of this Court in case ***Dr. Balwant Singh vs. Shri Pritam Singh 1980 (1) R.C.R. (Rent) 115*** and has argued that amendment can be allowed at any stage of the case.

6. Perusal of above citation shows that the tenant in that case had changed the nature of his business during the pendency of ejectment petition compelling the landlord to apply for amendment and to have a new ground added. In this case, the revision petitioner was aware from the very beginning that the demised premises was being used as go-down. The observations in the above case are in no manner applicable to the facts of the present case.

7. As a sequel of my above discussion, this revision petition has no merits and is dismissed.

January 07, 2015

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(Surinder Gupta)
Judge