

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

**Civil Revision No.8615 of 2014 (O&M)
Date of Decision: February 05, 2015.**

Prabh Dyal

.....PETITIONER(s).

VERSUS

Kanta Rani

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Jatinder Singla, Advocate
for the petitioner (s).

SURINDER GUPTA, J.(Oral)

Heard.

The respondent-landlord filed petition under Section 13 of East Punjab Urban Rent Restriction Act, 1949 seeking ejectment of revision petitioner from the demised premises, which is a shop situated at Patiala Gate Bazar, Sangrur, on the ground of non-payment of rent and personal bona fide necessity. The petition was filed in the year 2010 and is still pending before the Rent Controller.

The revision petitioner moved an application on 23.07.2014 (the date on the application, copy of which has been placed on file as Annexure P-3, is written as 30.05.2011) seeking permission to add following plea by way of amendment:-

“A) That the entire building including the demised shop was/is a 3 storied commercial building, since it was constructed long ago. There were/are two commercial rooms on 1st floor of the demised shop having verandah in between. The petitioner in order to get eviction order in a mala fide manner regarding the demised shop has demolished roofs of said 2 rooms few months ago during the pendency of this petition, to allege in case of necessity that the same had out lived, although the entire building including the said rooms and their roof etc. were in a fine position and the same were fit for use and the roofs of the said rooms have been removed wrongly and to cause loss to the demised shop and to get its ejectment in a mala fide manner.”

The application was declined by the Rent Controller with the observations that the amendment sought is not required to be incorporated in the reply and the point raised, do not call for adjudication, for the just decision of the case.

Learned counsel for the revision petitioner has argued that roof of two rooms have been demolished during the pendency of the petition, which were in fit condition for use and the *debris* has been removed from the spot. This has been done to cause loss to the demised shop and to get ejectment in a mala fide manner.

The respondent-landlord has sought the ejectment of the petitioner on the ground of personal bona fide necessity and not on the ground that premises has become unfit and unsafe for human habitation.

In reply to the application, respondent-landlord has taken the plea that one room on the first floor has fallen due to rain in the year 2010 and one room is still in existence. The revision petitioner earlier filed suit for permanent injunction bearing No.206 dated 22.09.2010 in respect of the building in dispute, which was dismissed.

On perusal of the order of learned Rent Controller, the plea taken by the landlady, seeking ejectment of revision petitioner under Section 13 of the Rent Act and the reply to the application filed by the respondent-landlord, it is evident that revision petitioner wants to travel beyond the scope of petition by seeking amendment as prayed for. It is not material as to what is the status of the building on the first and second floor of the demised premises, while deciding as to whether the demised premises is required by the respondent-landlord for his personal bona fide necessity. The amendment sought are neither necessary nor relevant for the purpose of determining the real question in controversy.

Learned counsel for the revision petitioner has relied upon the observations of Hon'ble Supreme Court in case of ***Rajesh Kumar Aggarwal & Ors Vs. K.K. Modi & Ors 2006 AIR (SC) 1647*** and of Co-ordinate Bench of this Court in case of ***Surjit Kaur and others Vs. Shanti Devi 2010(2) R.C.R. (Civil) 131***. There is no dispute about the

principle that amendments which are necessary for the purpose of determining the real question in controversy between the parties should be allowed at any stage of the case. Hon'ble Supreme Court in case of ***Rajesh Kumar Aggarwal & Ors Vs. K.K. Modi & Ors (supra)*** has observed:-

“16. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.”

As already discussed, the amendment sought is not relevant for deciding the matter in controversy in the ejectment petition. The observations in above referred case, in no manner, help the revision petitioner.

Learned counsel for the revision petitioner further submits

that rooms on first floor of demised shop, roof of which have been demolished, are commercial and can be utilized by the respondent for his commercial needs. The property is also situated in commercial area of Sangrur.

The above facts are beyond the scope of amendment sought by the revision petitioner and as such, are not required to be discussed at this stage. The revision petitioner may address this argument before the Rent Controller at relevant stage.

This revision petition has no merits. Dismissed.

However, nothing observed here-in-above shall have any bearing on the decision of the petition on merits.

February 05, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE