

CR No. 1403 of 2016 (O&M)

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

CR No. 1403 of 2016 (O&M)

Date of Decision: March 10, 2016

Ran Singh

...Petitioner

Versus

Balbir Sharma

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Jagjeet Beniwal, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.4284-CII of 2016

Exemption is granted from filing certified copies of the annexures appended alongwith the main petition and the same are taken on record, subject to all just exceptions.

Application stands allowed.

CR No. 1403 of 2016

Challenge in this revision is to the order dated 03.02.2016 passed by the Civil Judge (Senior Division), Bhiwani, exercising the powers of Rent Controller, under the Haryana Urban (Control of Rent and Eviction), Act, 1973, whereby, an application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the written statement by incorporating the two facts i.e. the site plan annexed alongwith the eviction petition is not as per the existing position and

secondly that the water tank on the second floor was got constructed by the respondent-landlord himself and thereby damaged the walls himself and not the petitioner, stands rejected.

It is the contention of the learned counsel for the petitioner that the amendment to the pleadings can be permitted at any stage of the trial prior to the pronouncement of the judgment. He contends that even at the appellate stage, the amendment in the pleadings can be permitted. In support of this contention, he places reliance upon the judgment of the Supreme Court in **Abdul Rehman & another Vs. Mohd. Ruldu & others, 2012 (4) R.C.R. (Civil) 481.**

He contends that merely because the case is now fixed for evidence of the petitioner-tenant, cannot be a ground for not permitting the amendment. He further contends that just and reasonable grounds have been projected in the application as to why the amendment is being sought by the petitioner in the written statement, which have not been properly appreciated by the Court below and has proceeded to reject the same on hyper technical grounds. He submits that the interest of justice should be given paramount importance, which has been ignored and therefore, the impugned order cannot sustain and deserves to be set aside.

I have considered the submissions made by the learned counsel for the petitioner and with his able assistance, have gone through the impugned order but do not find any illegality in the same.

It is not in dispute that written statement was filed by the

petitioner, where he had taken a preliminary objection that the site plan appended alongwith the eviction petition, has not been supplied to him and therefore, he was not in a position to comment about the correctness or otherwise of the same. It is now, he has realized that the said site plan is not in consonance with the position as it exists on the spot and is far from ground realities. The contention with regard to the first amendment as has been sought i.e. the site plan annexed by the respondent alongwith the eviction petition, is not as per the existing position, cannot be accepted especially in the light of the fact that during the proceedings before the trial Court, no application has been moved by him in Court for getting a copy of the site plan. No objection has also been raised before the Court for non-supply of the site plan. The Draftsman, Shri Amir Chand Taneja, who had prepared the site plan, has been examined in the year 2011. The petitioner had cross-examined him. Similar is the position with regard to Shri Harbans Lal Juneja, Building Expert, who has been examined in the year 2012. Had he not been in possession of the report of the building expert and the photographs, the cross-examination could not have been done. The observations of the Court, therefore, that the assertion of the petitioner that he was not aware of the said site plan as he was not in possession thereof, thus, has rightly been discarded. It has rightly been observed that nothing stopped the petitioner from getting a copy of the site plan, photographs and report from the Court record for supply of the same.

The Court has accordingly come to a conclusion that there is no justifiable and reasonable grounds in the application for amendment and the same is filed with an intention to prolong the trial.

As regards the plea of the counsel for the petitioner that the second amendment with regard to the damage to the Southern wall on construction of the water tank on the second floor, the position remains the same. The contents of the application for amendment is bereft in details as to under what circumstances, the above-mentioned fact came to the knowledge of the petitioner or that it was not in his knowledge prior thereto. Although the judgments and decree as also the report have been placed on record at the time of arguments by the counsel but in the absence of any pleading in this regard in the application, the same has rightly been discarded as in the absence of the pleadings, the judgments cannot be of any help to the petitioner. In the amendment application, it has been stated by the petitioner that he had moved a complaint to the police on 28.07.2010 and 18.08.2010, which clearly shows that at least in the year 2010, he was aware of the correct facts but he chose to sit over the matter and therefore, at this belated stage, when the case is now fixed for evidence of the petitioner and that too, second last opportunity for concluding evidence, the intention of the petitioner is only to delay the trial.

The judgment as relied upon by the counsel for the petitioner cannot be of any help to the petitioner although the

principles laid down therein are without any dispute as per the law laid down by the Supreme Court. For amendment to the pleadings at any stage of the case, the primary requirement is *bona fide*, the just and reasonable, due diligence and due caution on the part of the person, who is seeking an amendment to the pleadings which in the given facts of the present case are not found to be *bona fide* nor does it justify the amendment at this belated stage.

In view of the above, finding no merit in the present revision petition, the same stands dismissed.

March 10, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**