

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

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CM Nos.10431-CII, 14713-CII of 2016 in/and
Civil Revision No.1855 of 2016

Date of Decision: August 05, 2016

M/s Bata India Limited and another

...Petitioners

Versus

Ganga Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Amit Parashar, Advocate
for the applicants-petitioners.

Mr. Rajinder Goyal, Advocate
for the respondents.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.10431-CII of 2016

Prayer in this application is for preponement of the hearing of the main revision petition as also the application i.e. CM No.14713-CII of 2016, which are listed for hearing on 13.09.2016 and 02.09.2016 respectively.

For the reasons mentioned in the application which is duly supported by the affidavit of applicant-petitioner-Shri Munish Chhabra, Shop Manager, Bata Shoe Store, the present application is allowed.

Hearing of CM No.14713-CII of 2016 and the main revision petition is preponed and the same are taken on board for consideration.

CM No.14713-CII of 2016

In the light of the order passed in CM No.10431-CII of 2016, the present application has been rendered infructuous.

Disposed of as such.

CR No.1855 of 2016

Challenge in this revision petition is to the order dated 15.12.2015 passed by the Rent Controller, Chandigarh, whereby an application preferred by the applicants-petitioners under Order VI Rule 17 CPC for amendment of the written statement was declined by the Court primarily on the ground that the same could not be allowed after the commencement of the trial unless there is due diligence which the applicants-petitioners have failed to satisfy the Court. The Court has further stated that the application has been moved at a very late stage when the case was fixed for evidence of the applicants-petitioners.

2. It is the contention of learned counsel for the petitioners that through the application for amendment of the written statement, the petitioners only intend to bring on record certain facts and developments which too are primarily based upon documents which have come into existence after the filing of the written statement which was filed by the petitioners on 29.11.2012. The developments which have been referred to and the documents which have been intended to be brought on record are of the year 2013 and 2014. His further contention is that it is more of a supportive assertion than the primary change into the basic stand taken in the written statement. The pleas which have been taken in the written statement which is being sought to be amended are to substantiate that the

personal necessity of the respondents-landlords is not made out. He, thus, contends that the amendment should have been allowed as it would not, in any manner, call for framing of any additional issue or for leading additional evidence apart from what has been asserted in the amendment which is being proposed. He, thus, contends that the order passed by the Rent Controller which states that due diligence should have been exercised by the petitioners in moving an application at an earliest date, especially when now it is fixed for the evidence of the petitioners as these developments were not to the knowledge of the petitioners and the application has been moved at a stage when it came to the knowledge of the petitioners is not sustainable. He, thus, prays that the present revision petition may be allowed by permitting the amendment to the written statement and setting aside the impugned order.

3. On the other hand, learned counsel for the respondents-landlords, submits that the documents which are now being intended to be placed on record, were very much to the knowledge of the petitioners and it has intentionally been moved at this belated stage firstly to delay the proceedings and further it is not a *bona fide* exercise on the part of the petitioners in approaching the Court by way of amendment. He further states that the said documents, even if taken into consideration, are an *inter se* dispute between the landlords which have no bearing with regard to the ultimate claim of the respondents for requirement of personal necessity on the basis of which the eviction is being sought. Assertion has also been made that the cross-examination of the respondents' witnesses had taken

place in the year 2014 but these documents were never put to them. It, therefore, appears that the approach of the petitioners is not *bona fide* and it is primarily with an intention to delay the proceedings before the Rent Controller and conclusion thereof. Prayer has, thus, been made for upholding the impugned order and dismissing the revision petition.

4. I have considered the submissions made by learned counsel for the parties and with their able assistance, have gone through the pleadings, as has been placed on record as also the impugned order.

5. It is not in dispute that the written statement was filed by the petitioners on 29.11.2012. The amendment which is being sought by the petitioners pertains to the period subsequent thereto and that too primarily based upon documents which the petitioner intends to bring on record in the part of the pleadings and evidence to support his denial of the requirement of the premises for personal necessity. It is also not in dispute that with this amendment being allowed, there would be no need to frame any further issue and in any case, the counsel for the petitioners has so asserted that it would not be required nor would he press for framing of any additional issue. If that be so, the evidence need not be led afresh except for permitting the respondents to lead their evidence to substantiate the pleadings, as has been made in the proposed amendment to the written statement. It obviously goes without saying that an opportunity would be given to the respondents-landlords if they intend to rebut the same by leading rebuttal evidence.

6. In view of the above, it is apparent that there has been an error

on the part of the Rent Controller in proceeding on the assumption that the petitioners are intending to delay the proceedings and had moved an application intentionally at a belated stage and in case the application is allowed, it would not in any manner, prejudice either of the parties. In the proposed amendments in the written statement by and large the documents have been admitted by the respondents in their reply to the application.

7. In view of the above, the present revision petition is allowed.

8. The impugned order dated 15.12.2015 passed by the Rent Controller, Chandigarh, is set aside.

9. The amendment to the written statement as proposed is allowed and the amended written statement is taken on record. The respondents may file replication, if so desired.

10. Since the rent petition is of the year 2012, the petitioners are given two opportunities to lead the remaining evidence, especially in pursuance to the amendment which has been allowed to the written statement and similarly one opportunity to the respondent-landlord to lead any evidence in rebuttal, if so desired.

11. The Court shall, thereafter, proceed to conclude the proceedings in accordance with law.

August 05, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No