

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

**C.M. NOS.7089, 25227 TO 25229 CII OF 2015 &
CIVIL REVISION NO.2359 OF 2015**

DATE OF DECISION: JANUARY 20, 2016

Kishori Lal and others

.....Petitioners

VERSUS

Satpal Singh Saini and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Parvinder Singh, Advocate,
for the petitioners.

Mr. Karn Singh Cheema, Advocate,
for respondent Nos.1 and 3.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.7089 CII of 2015

C.M. is allowed.

Exemption is granted from filing certified copies of documents,
Annexures P-1 to P-5 and P-7 to P-9 and true typed copies of documents,
Annexures P-1 to P-9 are taken on record.

C.M. No.25228 CII of 2015

C.M. is allowed.

Exemption is granted from filing certified copy of document
Annexure A-1 and true typed copy thereof is taken on record.

C.M. No.25229 CII of 2015

Prayer in this application is for impleading the legal representatives of Shano (petitioner No.2), who is stated to have died on 22.07.2015, leaving behind five legal heirs as detailed in Para 2 of the application. The death certificate of deceased Shano is annexed with present application as Annexure A-1. The application is supported by an affidavit.

Prayer made in the application is allowed subject to just exceptions and for the purpose of present litigation only. The legal heirs, as detailed in Para 2 of the application, are brought on record.

Amended memo of parties, appended alongwith the application, is taken on record. Registry is directed to place the same at an appropriate place of the file.

Civil Revision No.2359 of 2015

Challenge in this petition is to the order dated 02.02.2015 (Annexure P-6) passed by the Rent Controller, S.A.S. Nagar (Mohali), whereby application for amendment of the written statement filed by the petitioners stands dismissed.

It is the contention of learned counsel for the petitioners that the petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as “the Rent Act”) was filed by the respondents claiming themselves to be the landlords of House No.HE-296, Phase V, Mohali and by impleading the petitioners as respondents, alleging their status to be that of tenants under the respondents. The petitioners instructed their counsel to file written statement to the petition, asserting therein that they are the owners of the house in question and not the tenants as Kishori

Lal (petitioner No.1 therein) alongwith his brother Hari Ram jointly purchased the said house. A general power of attorney was executed in the name of Suman Devi wife of Hari Ram and since 1985, the family of the petitioners is residing in the house in question. The original owner was Gurdeep Kaur and she had entered into full and final agreement to sell dated 24.10.1983 and had given a general power of attorney in favour of Hari Ram. The instalments were being paid to the Punjab Urban Development Authority by the petitioners but the earlier counsel did not incorporate these facts in the pleadings. The petitioners came to know about this error in the pleadings, when their counsel asked them to tender provisional rent as assessed by the Rent Controller vide order dated 06.05.2014 on the next date of hearing i.e. 04.07.2014. The petitioners changed their counsel and immediately filed an application for amendment of the written statement by taking the abovesaid plea. However, the said application has been dismissed by the Rent Controller by passing a cryptic and non-speaking order dated 02.02.2015.

Counsel for the petitioner contends that the impugned order cannot sustain as the Courts are required to take a liberal view while considering the application for amendment of the written statement, especially when the petitioners have filed the application for amendment of the written statement with due diligence and at the earliest possible stage and in any case before the framing of issues. The trial has, thus, not commenced in the case. He also contends that the admission in favour of the respondents that he is the landlord of the petitioner-tenants, the ground on which the Rent Controller has dismissed the application, is erroneous and the same cannot be withdrawn as it would prejudice the cause of the

respondents. He further contends that the written statement, which was erroneously filed by the earlier counsel of the petitioners being without their instructions, cannot be said to be admission on the part of the respondents to be the landlords and, therefore, the question of withdrawing the admission cannot arise. He asserts that there would be no prejudice caused to the respondents and rather the petitioners would suffer due to the fault of their counsel and, thus, liberal approach should have been adopted by the Rent Controller while deciding the application for amendment of the written statement, especially when the case was at the pre-trial stage. Counsel has placed reliance upon various judgments passed by this Court as also the Hon'ble Supreme Court in support of his contention, which are reported as Sushil Kumar Jain Vs. Manoj Kumar & Anr., 2009 (8) JT 392, Panchdeo Narain Srivastava Vs. Km.Jyoti Sahay and another, 1983 AIR (SC) 462, Ambica Parshad Vs. Devi Mandir, Karnal through Sh.Sat Pal, 1986 (1) R.C.R. (Rent) 202, Ranjit Singh Vs. Dalbir Singh and another, 1989 (2) CurIJ (CCR) 710, Kundan Lal Vs. Bimla Rani and others, 1996 (2) R.C.R. (Rent) 450, Gautam Sarup Vs. Anand Sarup and others, 2006 (4) R.C.R. (Civil) 248 and Ramanand Vs. Sedhu and others, 2010 (2) R.C.R. (Civil) 31.

On the other hand, counsel for the respondents has referred to the pleadings of the case, which have been placed on record as also the rejoinder to the written statement filed on behalf of the respondents to contend that there is a categoric admission on the part of the petitioners that they are the tenants and the respondents are the landlords. What is disputed in the case is the quantum of rent and the fact that they had taken the demised premises on rent from Smt.Gurdeep Kaur, their landlady, and they

were not aware as to when the respondents have purchased the same from her as no notice qua purchase of said house by them from Smt.Gurdeep Kaur was ever served on them. It has also been admitted that the petitioners have been residing in a single storey house consisting of two rooms, kitchen, combined latrine/bathroom and that they had constructed one small room of their own in the year 1992 with the consent of the then landlady, Smt.Gurdeep Kaur. This has been stated by them to assert that the demised premises have not been taken by the petitioners from the respondents on rent. What has been emphasized by counsel for the respondents is that neither the ownership of the demised premises of the respondents nor the status of the petitioners as tenants in the demised premises is disputed. He, thus, contends that if the amendment, as has been sought, is permitted at this stage, it would change the total complexion of the pleadings and they cannot be permitted to withdraw their admission or take a plea altering their defence altogether, although they may explain their stand by amendment. He has in fact challenged the stand of the respondents about their ownership by asserting that as per their own pleadings, the house was purchased by them from Smt.Gurdeep Kaur in the year 1985 and since then he and his family are residing in the said premises, which fact cannot be correct as the petitioners were residing in Assam and general power of attorney was given in the name of Suman Devi. He also asserts that Suman Devi had sold the house in dispute to one Gurinder Pal Tondon, who further sold the same to the respondents. Counsel, thus, contends that the order impugned, being in accordance with law, does not call for any interference.

I have considered the submissions made by learned counsel for the parties and with their assistance have gone through the pleadings and

the impugned order.

The basic plea, which has been taken by counsel for the petitioners, is that the fault was that of the counsel who had been initially engaged by the petitioners as the written statement was not prepared by him as per their instructions and the correct stand was not projected therein. Plea has also been taken that they came to know about their admission as tenants only when the order dated 06.05.2014 as passed by the Rent Controller came to their notice. The said plea cannot be accepted. Even the plea that they had come to know about the ownership of the house to be that of the respondents, when they moved an application on 10.12.2014 for furnishing better particulars and a copy of transfer of house by GMADA was received, cannot be accepted as they had nowhere denied their status as tenants in the disputed property. In fact the petitioners are seeking to change their status by way of said application from that of tenants to the owners of the house, which would amount to withdrawal of admission already made in the written statement. In result, this would take away the right accrued in favour of the respondents, which cannot be allowed.

The petitioners have tried to take shelter of their counsel to wriggle out of their admission in the written statement filed and it appears to be a ploy on their part to delay the proceedings before the trial Court. Still further, the parties were aware of the fact that the Rent Controller was proceeding to assess the provisional rent and had the petitioners been vigilant enough and exercised due diligence, they would have immediately taken appropriate steps at that very stage to amend the written statement. However, they slept over the matter till the provisional rent was assessed by the Rent Controller. Thereafter they have taken a 'U' turn with an intention

to delay the proceedings by changing their stand and status from that of the tenants to the owners of the demised premises. It is not pleaded that the written statement was signed by them without reading the same or that they were not made to understand the contents thereof. Their specific stand is that the written statement has been prepared by the counsel contrary to the instructions given by them, which cannot be accepted. If such a plea is permitted/accepted, that would open a flood gate for the parties to change their stand at every stage of the case, which would not be in the interest of justice. The order, as passed by the Rent Controller, thus, cannot be faulted with.

In any case, the plea of the petitioners that they became owners of the demised premises in the year 1985 cannot be accepted as their pleadings are self contradictory as it is their own assertion that they had constructed one small room of their own in the year 1992 with the consent of the landlady, Smt.Gurdeep Kaur. Had they become owners of the house, there was no necessity to take her permission to construct a room. The plea in the pleadings appears to be false and not bonafide.

So far as the principles as laid down in the judgments relied upon by the learned counsel for the petitioners are concerned, the same cannot be disputed but keeping in view the fact that change in the stand in the written statement by the petitioners by way of amendment is not bonafide and due diligence has not been exercised by them, the said judgments cannot be pressed into service in their favour.

In view of the above discussion, there is no merit in the present petition and the same stands dismissed.

Since the main petition stands dismissed, C.M. No.25227 CII

CIVIL REVISION NO.2359 OF 2015 (O&M)

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of 2015 for staying the further proceedings before the Rent Controller,
S.A.S.Nagar (Mohali), is also dismissed.

**January 20, 2016
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**(AUGUSTINE GEORGE MASIH)
JUDGE**