

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : April 21, 2016

1. CR No. 5031 of 2015 (O&M)
2. CR No.5033 of 2015 (O&M)

Raj Kumar Sharma vs Raj Kumar and others

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Sherry K Singla, Advocate
for the petitioner.

Mr. Vijay Sharma, Advocate
for the respondents.

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

Ajay Tewari, J (Oral)

This order shall dispose of CR Nos.5031 and 5033 of 2015 as they both arise from the same eviction petition.

Counsel for the petitioner states that in case CR No.5033 of 2015 is allowed, he would not press CR No.5031 of 2015 as the same would be rendered infructuous.

Brief facts are that the petitioner filed petition for ejectment of the respondents on the grounds of non-payment of rent, personal necessity and material alterations having been carried out in the demised premises.

The petitioner also pleaded that he did not vacate any other shop within the

Municipal area of Patiala after coming into force of the East Punjab Urban Rent Restriction Act, 1949. The respondents took the objection in the written statement that the rate of rent and the exact period for which the petitioner claimed the arrears were not been disclosed.

The petitioner filed replication in which he gave all the necessary details. The respondents thereafter moved an application under Order 6 Rule 16 of the CPC for striking off the details which had been given in the replication on the ground that the same had not been mentioned in the eviction petition. That application has been allowed and against the same, the petitioner has filed CR No.5031 of 2015. The petitioner also filed an application under Order 6 Rule 17 of the CPC wherein he sought to amend the eviction petition to incorporate the rate of rent and the period for which the same was outstanding. He also sought an amendment to plead that apart from not having vacated any shop, he did not own any other non-residential property in the urban area concerned. He also sought a third amendment which counsel for the petitioner states that he would not press. That application having been dismissed, the petitioner has filed CR No.5033 of 2015.

As regards the first two amendments, counsel for the petitioner has argued that the same should be allowed since even issues have not been struck. He has further argued that the judgment relied upon by the Court below viz Sunil and others v. Jai Prakash and another, 2013(1) PLR 465 pertained to a case where the trial had commenced.

Counsel for the respondents has relied upon Ajendraprasadji N. Pande & Another v. Swami Keshavprakeshdasji N & others, 2007(1)

RCR (Civil) 481. However, a perusal of the same reveals that issues had been settled therein and the main reason which weighed with the Courts was the fact that the trial had commenced and, therefore, amendment could not be allowed in view of the proviso.

In my opinion, argument raised by counsel for the petitioner carries more weight. No doubt, there is negligence but once trial is at initial stage and even issues have not been struck, the interest of justice would be better served if the amendment application is partly allowed. In the circumstances, CR No.5033 of 2015 is allowed, the impugned order dated 26.5.2015 is set aside and the first two amendments, mentioned above, are allowed to be incorporated in the eviction petition subject to payment of costs of ₹ 10,000/-.

In view of the above, counsel for the petitioner states that CR No.5031 of 2015 has been rendered infructuous and the same may be dismissed as such.

Ordered accordingly.

(AJAY TEWARI)
JUDGE

April 21, 2016
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