

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

CIVIL REVISION NO.5302 OF 2016

DATE OF DECISION: NOVEMBER 23, 2016

Dalip Singh

.....Petitioner

VERSUS

Bhupinder Nagpal

....Respondent

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

Present: Mr. R. C. Chaudhary, Advocate,
for the petitioner.

None for the respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this petition is to the order dated 18.07.2016 passed by the Rent Controller, Mohali, whereby the application under Order 6 Rule 17 read with Section 151 C.P.C. preferred by the respondent-landlord for amendment of the eviction petition by adding Para 12A in the petition has been accepted.

It is the contention of learned counsel for the petitioner that earlier the Rent Controller had dismissed the eviction petition preferred by the respondent-landlord vide order dated 22.12.2012 as he had failed to plead the necessary requirement as envisaged by Section 13(3)(a)(ii)(i)(b) (c) of East Punjab Urban Rent Restriction Act, 1949 (for short, “the 1949 Act”), appeal against which was dismissed by the Appellate Authority on

11.09.2014. Civil Revision No.8631 of 2014 (Bhupinder Nagpal Vs. Dalip

Singh) was preferred by the respondent-landlord, in which the orders passed by the authorities below were set-aside and the matter was remitted back to the Rent Controller for taking a fresh decision on the eviction petition preferred by the respondent strictly in accordance with law. In the earlier part of the order, it was recorded that it was a conceded position that ejection petition was not examined on merits and the landlord was non-suited on the short ground that he had failed to plead that he was in occupation of another accommodation in the same local urban area. He contends that there is nothing on record, which would indicate that liberty was granted to the respondent-landlord to amend the ejectment petition. That apart, the factum which is being sought to be incorporated under Section 12 of the 1949 Act by adding Para 12A in the plaint, was to the knowledge of the respondent-landlord prior to the filing of the petition and, therefore, should have been incorporated in the eviction petition at the very outset. No justifiable ground has been given in the application for preferring such an application at this belated stage. He, thus, contends that the order dated 18.07.2016 passed by the Rent Controller, Mohali, cannot sustain and deserves to be set-aside.

Despite service and case having been called twice, none has chosen to appear for the respondent-landlord.

I have heard counsel for the petitioner and have gone through the impugned order as also the order dated 27.11.2015 passed by this Court in Bhupinder Nagpal's case (supra) as also the amended eviction petition, which has been placed on record as Annexure P-3.

On considering the same, this Court is of the opinion that the impugned order cannot sustain as it is a settled proposition of law that

lacuna in the pleadings cannot be filled up, especially when there is no justifiable reason as to why it was earlier incorporated when the eviction petition was filed. It is apparent and cannot be disputed by the landlord that he was not only the owner of the demised premises but was also owner in possession of another booth in the same municipal area, which is now being sought to be incorporated by adding Para 12A to the plaint. This amendment would adversely effect the claim of the petitioner as the evidence has been led by both the parties and the case has been remanded by this Court for fresh decision on the basis of pleadings and the evidence on record.

In view of the above, the present revision petition is allowed. Order dated 18.07.2016 passed by the Rent Controller under Order 6 Rule 17 read with Section 151 C.P.C. for amendment of the petition preferred by the respondent-landlord is hereby set-aside. The application for amendment of the respondent-landlord also stands dismissed.

November 23, 2016
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(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No