

CR No.5207 of 2014 (O&M)

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

CR No.5207 of 2014 (O&M)

Date of Decision: January 29, 2016

Vinod Kumar

...Petitioner

Versus

Gurdev Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Mandeep Singh Sachdev, Advocate
for the petitioner.

Mr. Harsh Banger, Advocate
for the respondents.

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.15745-CII of 2014

Exemption is granted from filing certified copies of
impugned order dated 31.03.2014 as also of Annexures P-1 to P-5
and the same are taken on record, subject to all just exceptions.

Application stands disposed of.

CM No.15747-CII of 2014

Prayer in this application is for condonation of delay of 39
days in filing the revision petition.

The reason as given in the application for delay is that
after passing of the impugned order dated 31.03.2014, certified copy
of the same was applied on 01.04.2014, which was delivered on

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25.04.2014. Thereafter, the counsel was consulted as to whether the revision petition should be filed or not? Thereafter, it was finally decided that the revision petition indeed was to be filed and accordingly, was filed, which has resulted in the delay of 39 days in filing the present revision petition.

Counsel for the applicant-petitioner states that the delay is not intentionally nor deliberately, rather *bona fide* and therefore, the present application may be allowed.

Counsel for the non-applicant-respondents, on the other hand, states that the delay in filing the revision petition is not *bona fide* and it is with an intention to delay the proceedings before the trial Court.

Having considered the submissions made by the learned counsel for the parties, I am of the considered view that the delay of 9 days in filing the revision petition was *bona fide* and it has been explained fully.

In view of the above, the present application is allowed which is duly supported by the affidavit of the applicant-petitioner. Delay of 39 days in filing the revision petition stands condoned.

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Notice of motion.

2. Mr. Harsh Bungar, Advocate, accepts notice on behalf of the respondents.

3. A petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the '1949 Act'), was filed by the respondent-landlords against the petitioner-tenant. In the said petition, leave to contest the petition was granted. A written statement was filed by the petitioner-tenant, in which, apart from the other objections, an objection was taken that the address of the property in question and that of the petitioner therein is totally wrong. The documents attached alongwith the petition do not pertain to the property in question which renders the present petition liable to be dismissed. These objections were being sought to be taken care of, an application under Order 6 Rule 17 of the Civil Procedure Code (For short 'the CPC') for amendment of the petition was filed by the respondent-landlords.

4. During the pendency of the said application, an application under Order 23 Rule 1 (3) of the CPC was filed praying for permission to withdraw the petition with liberty to file a fresh one as there was certain technical defects which have crept in inadvertently, because of mixing up the cases of five petitions which were filed on the same day, which cannot be cured by way of amendment. The reply to the said application was filed by the petitioner-tenant, wherein, the said plea was opposed on various grounds, out of which, one was that no material defects have been mentioned in the application giving the facts therein which would

render the application liable to be dismissed without disclosure thereof. An objection was also taken that an application under Order 6 Rule 17 of the CPC for amendment of the petition was pending and the objections as have been taken in the written statement are being taken care of by way of the said amendment application. A plea was taken by the respondent-landlords that the technical defects cannot be removed or cured even if the application under Order 6 Rule 17 of the CPC is allowed.

5. Learned Rent Controller proceeded to decide the said application vide order dated 31.03.2014, where, it has referred to the grounds taken in the objections that the petition is suffering from many defects which even could not be removed by filing an application for amendment. It was also argued that the defects have come into existence because of the counsel, who had filed the petition and now the counsel has been changed. The defect has arisen when it has come to the notice of the petitioner that these technical defects which cannot be taken care of or cured by way of amendment. Assertion has also been made that no prejudice would be caused to the petitioner-tenant. The Court proceeded to decide the application in favour of the respondent-landlords by giving them permission to withdraw the petition with liberty to file a fresh one so that the matter can be adjudicated properly without causing any injustice to either parties. This order has been impugned in the

present revision petition.

6. It is the contention of the learned counsel for the petitioner that in the application which has been filed under Order 23 Rule 1(3) of the CPC, no technical defects have been pointed out nor any factual assertion in this regard has been mentioned. What has been mentioned in the application is that there are certain technical defects which cannot be cured by way of amendment application which has been filed. He contends that without the factual background with regard to the technical defects and the nature thereof having been detailed in the application, the said application could not have been allowed by the Court. He further contends that the Rent Controller while recording its satisfaction has not mentioned anything in this regard as to how and why the present application is to be allowed. The satisfaction also has not been clearly mentioned and the basis for the same is also missing. His further contention is that when an application under Order 6 Rule 17 of the CPC for amendment of the petition for overcoming the objections as raised in the written statement, has been filed which was pending to cure the defects, if any, in the pleadings, the present application for withdrawal of the petition with liberty to file a fresh one, could not have been filed nor it could be allowed by the Court below. To support this contention, he has placed reliance upon the judgment of the Supreme Court in **K.S. Bhoopathy Vs. Kokila 2000 (3) R.C.R.**

(Civil) 195 as also the judgment of Bombay High Court in Veerbhadrapa Vs. Mahalingappa and others 2010 (8) R.C.R. (Civil) 1992.

7. On the other hand, learned counsel for the respondents asserts that the defects as have been pointed out by the petitioner-tenant in his written statement could not be cured by way of amendment of the pleadings. He asserts that there were some documents which have been appended alongwith the petition which were inadvertently attached but should have been attached with the other petition as there were five petitions filed on the same day together. Apart from that, inadvertently, the details of the property which is in possession of the petitioner-tenant has also been mentioned wrongly which cannot be cured by way of the amendment. An assertion has also been made that no prejudice would be caused to the petitioner-tenant in the light of the fact that the case was at the initial stage and only the written statement had been filed by the petitioner-tenant. He has further supported the impugned order passed by the Rent Controller dated 31.03.2014 by stating that the discretion as available with the Court has been exercised with due diligence and fulfilling the parameters of the statute. He further states that the Rent Controller had no option but to allow the prayer made in the application and could not allow the prayer in part by merely granting him permission to withdraw and not granting him

permission to file a fresh one.

8. Counsel for the respondent places reliance upon the judgment of this Court in **Smt. Kapila Sharda Vs. Smt.Dhanpati Devi & others, 2015 (4) R.C.R. (Civil) 736** to contend that where there is a mistake in the drafting of the suit, which defect is not curable, that resort to Order 23 Rule 1(3) of the CPC for filing the fresh suit on the same cause of action is permissible and the Court should grant the same.

9. Apart from this, learned counsel for the respondents has asserted that the petitioner has not been pursuing the present revision petition despite it having been filed in the year 2014 but now, knowing fully well that the fresh petition has been filed in the light of the order impugned here, wherein leave to contest has been granted to the petitioner and the trial is proceeding where the evidence of the respondent-landlords is in progress, this petition is being pressed.

10. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the impugned order as also the other pleadings in the matter.

11. The objections which have been taken in the written statement to the petition, which has been filed by the respondents under Section 13-B of the 1949 Act, are relatable to the fact that the description of the property is not correct and that the documents attached with the petition supporting the claim in the petition pertain

to some other petition which was filed alongwith the other four petitions for eviction of other tenants within the same premises. It is not in dispute that an application under Order 6 Rule 17 of the CPC has been filed for amendment of the plaint which was pending when the application under Order 23 Rule 1 (3) of the CPC was filed. In this application under Order 23 Rule 1 (3) of the CPC, an objection with regard to the maintainability of the said application and non-discloser of the technical defects, which according to the petitioner crept in the eviction petition, which cannot be cured by amendment having not been mentioned, has been taken.

12. The Rent Controller while passing the impugned order dated 31.03.2014 has only referred to the fact that there are certain defects which cannot be removed by filing an application for amendment.

13. On perusal of the application under Order 23 Rule 1 (3) of the CPC filed by the respondent-landlords, it is apparent that there is no factual averments made in support of the fact that there are some technical defects in the pleadings. In the absence of any factual averments to that effect and merely at the asking of the applicant-respondent-landlords, the same could not have been accepted by the Court as the application must disclose the technical defects in the pleadings which cannot be cured by any other means including the amendment application. In the present case, there being such an

absence, the Rent Controller while proceeding with the matter, has not given any consideration to this aspect and its effect nor has it been pointed out in the order as to what would be the technical defects which would render the petition liable to be dismissed which leaves no option but to permit the withdrawal of the petition with liberty to file a fresh one. The order impugned is totally silent in this regard and had only referred to the aspect with regard to the plea that there are certain technical defects in the pleadings.

14. As regards the sufficiency of facts which a Court has to see so as to satisfy itself, there is nothing in the order which would really point out to the same, if not in the application but in the order. There being no mention of the same, the impugned order cannot sustain and therefore, is set aside.

15. As regards the contention of the learned counsel for the respondents about the conduct of the petitioner in delaying the proceedings in the present revision petition, suffice it to say that the orders which have been passed by this Court on various occasions do not indicate so, in fact, on some of the occasions, the case could not be taken up for hearing and on some occasions, it was on the request of the counsel for the petitioner or of the respondents on the basis of which the case was adjourned. The assertion of the counsel for the respondents, therefore, with regard to the matter having been delayed intentionally by the petitioner cannot be accepted.

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16. At this stage, counsel for the respondent-landlords asserts that the petition for eviction was initially filed in the year 2008 and therefore, the Rent Controller may be directed to expedite the proceedings in the light of the order which has been passed today which would have the effect of revival of the proceedings before the Rent Controller at the stage when the application was filed under Order 23 Rule 1 (3) of the CPC.

17. Keeping in view this assertion of the counsel for the respondents, it is observed that the Rent Controller may put an effort to decide the rent petition as early as possible.

CM No.15746-CII of 2014 &
CM No.26702-CII of 2015

In view of the order passed in the main revision petition, no separate order is required to be passed in these applications as the same have been rendered infructuous.

Disposed of as such.

January 29, 2016
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE