

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 5585 of 2016 (O&M)
Date of Decision : 05.12.2016

Mohd. Sabar

....Petitioner

Versus

Mohd. Arshad

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

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

Mr. Jai Bhagwan, Advocate
for the respondent.

Surinder Gupta, J.

This is revision petition by Mohd. Sabar, whose application seeking amendment of application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 was dismissed by Rent Controller, Malerkotla.

2. Revision-petitioner sought ejectment of the respondent from two shops as fully described in headnote of the ejectment petition on the ground of non-payment of rent and his personal *bona fide* necessity. In order to explain his personal *bona fide* necessity, revision-petitioner intended to add at the end of para 3 of the petition explanation as to what business he wants to start in the demised premises as follows:-

“That the petitioner shall run the business of preparing and selling tea, snacks (Samosa, Pakora etc.) and shall also sell confectionary items including biscuits, toffees, ice-cream and sitting arrangement shall also be made, so that the customers can sit and enjoy snacks and other refreshments. For the above-said business, provision is to be made for 'bhathi',

display units for confectionary items, goods, separate counter for 'samosa', 'pakora', counter and cash counter for the petitioner, space for five to seven tables alongwith chair (4 each per table) for the seating of customers, washing area of utensils including a separate kitchenette provision for washbasin, area for freezer for cold drinks and ice-cream etc. For this the shops in dispute and the shop under the tenancy of Mohd. Ramzan needs to be vacated and thereafter amalgamated, so that the entire area can be utilized for the above-said purpose.”

3. Learned counsel for the revision-petitioner has argued that in para 4 of the petition, revision-petitioner by mistake has mentioned that he is in possession of other property within municipal limits of Malerkotla while he intended to plead that he is not in possession of other property within municipal limits of Malerkotla. Para 4 of the petition is sought to be amended by adding word “not” in the first line.

4. Learned Rent Controller declined the amendment with the observations as follows:-

“5.Now the petitioner wants to mention the nature of his business i.e. business of preparing tea and snacks etc. alongwith confectionary items such as biscuits, toffees etc. During the course of cross-examination petitioner categorically admitted that he has not mentioned the nature of his business in his original petition. He also admitted that he has not filed the present petition for starting business of preparing

tea etc. Therefore, original petition of the petitioner is totally silent about the nature of business which petitioner wanted to start after getting the demised shop vacated. Ld. counsel for respondent has cross-examined the petitioner on this point alone and during the course of cross-examination certain admissions came on record. It is settled preposition of law that provisions of Order 6 Rule 17 CPC cannot be allowed in order to withdraw the admission made by witness during his/her cross-examination.”

5. It was further observed that revision-petitioner cannot be allowed to fill up lacuna caused on account of admission made in the pleadings and statements.

6. I have heard learned counsel for parties and perused the paper-book with their assistance.

7. Learned counsel for the revision-petitioner has argued that revision-petitioner wants to elucidate the plea already taken in the petition without changing nature of the petition or adding a new plea. The amendment sought in para 4 is only a clerical mistake, which can be rectified.

8. Learned counsel for the respondent has argued that the revision-petitioner did not mention in the petition about business he intends to start in the demised premises after ejectment of the respondent. The plea now sought to be added at this stage is just an after thought to fill up lacuna in the grounds for ejectment already raised.

9. On giving a careful thought to submissions of learned counsel

for parties and on perusal of order passed by learned Rent Controller, I find that the same suffers from legal infirmity and requires to be set aside. Firstly, the revision-petitioner has sought amendment of para 4 to explain the type of business he intends to start in the demised premises. A landlord is not required to tell as to what business he has to start in the premises. He could decide the type of business after the possession of premises is delivered to him. Suppose, a landlord intends to start a shoe shop, a confectionary shop or a cloth merchant shop in premises sought to be got vacated from a tenant, but after getting the possession he finds that the shoe business, confectionary business or cloth merchant business are not viable in the changed circumstances, he may think to start a business that is viable at that point of time. The business thought to be started at the time of filing of petition may not be viable because of the changed circumstances and market conditions after final decision of the ejectment petition. In case of **Mattulal vs. Radhe Lal, 1974 (2) SCC 365**, Hon'ble Apex Court has observed in para 13 as follows:-

“13. The respondent, however, contended that the finding of the Additional District Judge that the respondent did not bona fide require the Lohia Bazar shop for the purpose of starting new business as a dealer in iron and steel, materials was vitiated, firstly because he erroneously assumed that unless the respondent showed that he had made preparations for starting this new business, such as making arrangements for capital investment, approaching Iron & Steel Controller for the required permits, etc., it could not be said that the

respondent bona fide required the Lohia Bazar shop for such new business, and secondly because he relied wrongly and unjustifiably on the fact that the respondent had asked for possession of the whole of the Lohia Bazar shop and not merely a portion of it. Now there can be no doubt that these two circumstances relied upon by the Additional District Judge were wholly irrelevant. It is difficult to imagine how the respondent could be expected to make preparations for starting the new business unless there was a reasonable prospect of his being able to obtain possession of the Lohia Bazar shop in the near future. It is a common but unfortunate failing of our judicial system that a litigation takes an inordinately long time in reaching a final conclusion and then also it is uncertain as to how it will end and with what result and unless the respondent could be reasonably sure that he would within a short time be able to obtain possession of the Lohia Bazar shop and start a new business, it would be too much to expect from him that he should make preparations for starting the new business. Indeed, from a commercial and practical point of view, it would be foolish on his part to make arrangements for investment of capital, obtaining of permits and receipt of stock of iron and steel materials when he would not know whether he would at all be able to get possession of the

Lohia Bazar shop, and if so, when and after how many years.....”

10. In case of **Kay Iron Works (P) Ltd. vs. Molar Mal, Timber Merchant, through LRs, 1998 (2) RCR (Rent) 404**, a Bench of this Court observed as follows:-

“9.In the petition, details of what business is to be carried out were not to be mentioned. It was sufficient to plead that the rented land was required for business purposes. As to what business is to be carried out is a matter of details. In this case, even these details were given in the replication which are part of the pleadings. There is no contradiction between the pleadings in the application and the replication. The learned Appellate Authority was not correct in observing that a new case has been set up in the replication. The further finding that the premises could only be got vacated for the same purpose for which it was let out can only mean that the purpose for which it was let out was business. The same can be got vacated for purpose of business. Same purpose does not mean the same business. The authority cited by the learned counsel for the petitioner (**Attar Singh vs. Inder Kumar, MANU/SC/0250/1966**) is a complete answer to this proposition. Even the authority relied upon by the learned Appellate Authority **Mahant Bachan Dass vs. Amarjit Singh, 1977 R.L.R. 634**, relies upon the same authority of the Apex Court as

*cited by the learned counsel for the petitioner. The learned Appellate Authority has not properly interpreted the import of the judgment in **Mahant Bachan Dass's case (supra).***”

11. A landlord is not under liability to disclose as to what business he has to start while seeking ejectment. However, as a matter of abundant precautions, revision-petitioner has sought to disclose as to what type of business he intends to do in the shop after getting its possession from the respondent. He is only elucidating the grounds taken by him and neither altering nor filling up any lacuna.

12. Learned counsel for the respondent in support of his submission has relied on the observations of this Court in case of **Arjun Chand vs. Smt. Shama Joshi, 2011 (2) Rent LR 55 (P&H)**. In that case, a landlord sought amendment to change his plea regarding nature of business his son intended to start in the shop and to plead ingredient of Section 13 of East Punjab Urban Rent Restriction Act, required to set up plea of *bona fide* need of her son for demised premises. He has also referred to observations in case of **Kamaljit Singh vs. Smt. Swarn Arora, 1998 (2) PLJ 321 (P&H)**, where the amendment of plaint was disallowed as plaintiff intended to fill in certain lacunae and **Bhagwana vs. Godha and others, 1969 Cur LJ 998 (P&H)**, wherein it was observed that power to amend pleadings cannot be allowed to set up a new case. The observations made in above referred cases are not applicable to facts and circumstances of present case because neither the revision-petitioner is setting up a new case nor he is filling up lacuna. He is only explaining as to what business he intends to start, despite the fact that he is not duty bound to explain the

same. The amendment sought in para 4 is merely a clerical mistake, rectification of which has been wrongly declined by learned Rent Controller.

13. In view of my above discussion, this revision petition has merit and is allowed. Order passed by learned Rent Controller declining the application seeking amendment of petition is set aside. Application seeking amendment of ejectment petition filed by revision-petitioner before the Rent Controller is allowed. Learned Rent Controller is directed to proceed further with the petition in accordance with law after allowing the revision-petitioner to file amended petition.

December 05, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No