

Civil Revision No.586 of 2015

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

Civil Revision No.586 of 2015

Date of Decision: May 04, 2016

Hazari Lal & another

...Petitioners

Versus

Anil Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Vinod Kumar Kaushal, Advocate
for the petitioners.

Mr. Rajesh Kumar Dadwal, Advocate
for the respondent.

AUGUSTINE GEORGE MASI, J. (Oral):

Challenge in this revision is to the order dated 11.12.2014 passed by the Civil Judge (Senior Division), Hoshiarpur, whereby, an application for amendment of the plaint under Order 6 Rule 17 read with Section 151 of the CPC, has been allowed permitting the amendment as has been prayed for, according to which, in line 4 of para 2 of the plaint, word 'clinic' was sought to be deleted and replaced by the words 'photograph business'. It has further been prayed that word 'medical clinic' before the word 'and' and after the word 'this', in line 7 of para 2, to be replaced by 'photograph business'. The second prayer is with regard to the deletion of word 'every year' after the word 'rent' in line 5 of para 3 of the plaint.

2. It is the contention of the learned counsel for the

petitioners that by way of the amendment, the respondent has virtually withdrawn his admissions in the plaint which he has made, which cannot be permitted. He contends that the petitioner himself has specifically incorporated the words 'medical clinic' and 'clinic' which have now been sought to be replaced by words 'photograph business' and similarly, he has mentioned that there would be an increase of 10% in rent every year in para 3 of the plaint which is now being sought to be deleted, which cannot be permitted as this would affect the rights of the petitioners to claim 10% increase in rent every year. He, thus, contends that the impugned order cannot sustain and deserves to be set aside.

3. On the other hand, counsel for the respondent has referred to the plaint dated 13.08.2012 which has been appended with the petition as Annexure P-2 and with reference to para 1, he has stated that the material fact with regard to the shop being run by the respondent is mentioned in this para where it is clearly mentioned that he is running a photography studio under the name and style of 'Damini Studio' since the year 1999. It is an inadvertent and typographical mistake which has crept in lines 4 and 7 of para 2 of the plaint where it was mentioned as clinic and medical clinic respectively. The said aspect is being sought to be corrected as a matter of fact. As regards the amendment in para 3 of the plaint is concerned, he contends that it was wrongly mentioned that the rent

would be enhanced at the rate of 10% every year, in fact, in the rent deed, there is no such clause. The contents as mentioned in the rent deed dated 08.12.1998 (Annexure P-8) are that in case, the respondent want to retain the premises, there would be an increase of 10% rent. The words 'every year' are not mentioned in the said rent deed. He, on this basis, contends that what is being sought to be amended is merely the factual aspect and no admission as such has been withdrawn by the respondent. He, thus, contends that the amendment as has been allowed being at the initial stage of the case, is *bona fide* and based upon the correct factual position as it exists and therefore, does not call for any interference by this Court.

4. 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 pleadings.

5. As is apparent from the contents of the pleadings and the plaint copy whereof has been appended as Annexure P-2, the factual assertion is mentioned in para 1 is in variance with para 2 of the plaint. As per the contents of para 1, respondent is, in fact, running a photography studio under the name and style of 'Damini Studio' which aspect cannot be said to be co-relatable to the contents of para 2, where it is mentioned that the plaintiff has established his clinic and is earning his livelihood from this medical clinic, which is now being sought to be corrected as 'photography studio' and

photograph business. The said assertion, therefore, is correct as it appears to be typographical error on the part of the counsel who had drafted the plaint.

6. As regards the amendment in para 3 with regard to the deletion of words 'every year', the same when seen in the context of the rent deed dated 08.12.1998 (Annexure P-8), there is no specific mention thereof. What has been said therein is that after stipulated period, if the respondent want to retain the shop then, he would be bound to increase the rent at the rate of 10% and execute a new rent deed. There is no mention of an increase of 10% every year, rather, it states that the fresh rent deed will have to be entered into where the increase in rent would mandatorily be 10%. The amendment, therefore, as sought by the respondent, cannot be said to be not justified as it is based on facts on record and required/necessary for effective adjudication of the *lis*. The impugned order, being in accordance with law, do not call for any interference by this Court.

7. The present revision petition, therefore, stands dismissed.

8. It may, however, be observed that any observation made in this order shall have no bearing upon the merits of this case or any other proceedings which are pending before any other Court.

May 04, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**