

CR No. 6172 of 2016 & connected case

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

CR No. 6172 of 2016

Date of Decision: September 20, 2016

Asha Rani

...Petitioner

Versus

Jangir Chand

...Respondent

(2)

CR No. 6187 of 2016

Date of Decision: September 20, 2016

M/s York Hotel & Restaurant

...Petitioner

Versus

Jangir Chand

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Arun Bansal, Advocate
for the petitioner(s).

AUGUSTINE GEORGE MASIH, J. :

By this order, I propose to dispose of CR No.6172 of 2016, titled as 'Asha Rani Vs. Jangir Chand' and CR No.6187 of 2016, titled as 'M/s York Hotel & Restaurant Vs. Jangir Chand', whereby, orders dated 19.07.2016 passed by the Rent Controller, Bathinda, are under challenge vide which applications moved by the petitioners under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'CPC') for amendment of the written statements, have been dismissed.

Counsel for the petitioners stated that there are similar facts and pleadings involved in both the cases and the parties to the litigation are also primarily the same as also the demised premises.

It is the contention of the learned counsel for the petitioner that the application for amendment of the written statement has been dismissed by the Rent Controller without properly appreciating the ambit and scope of the provision as incorporated under Order 6 Rule 17 of CPC. He contends that the plea which is being sought to be taken by amendment of the written statement is purely illegal as there is no relationship of landlord and tenant between the parties especially in the light of the fact that respondent-Jangir Chand, in a previous litigation with Ashok Kumar, husband of Asha Rani-petitioner, had admitted himself to be the partner of M/s York Hotel & Restaurant to the extent of 1/3rd share. If he is a partner of the predecessor-in-interest of the petitioner in M/s York Hotel & Restaurant, the respondent cannot maintain an application for eviction against the petitioner. His further contention is that mere delay in filing an application for amendment of the written statement cannot be pressed into service for rejecting such an application especially when the interest of justice requires such amendment to be allowed, may be at a belated stage. Prayer has, thus, been made for setting aside the impugned order passed by the Rent Controller, dated 19.07.2016 and to allow the amendment in the written statement, as prayed for.

I have considered the submissions made by the learned counsel for the petitioner and have gone through the impugned order dated

19.07.2016 but do not find myself in a position to accept the amendment which is being sought to be projected in the written statement by moving application under Order 6 Rule 17 of CPC.

The facts in the case are not in dispute that the eviction petition was filed on 15.04.2015 and the reply to the same was filed on 08.07.2015. Thereafter the evidence was being led when the application for amendment has been filed under Order 6 Rule 17 of CPC by the petitioner on 04.02.2016, wherein, denial of relationship of landlord and tenant is being pleaded on the ground of there being a relationship of partner in the firm with regard to 1/3rd share, which is purported to be of the respondent. This cannot be accepted as in an earlier eviction petition which has been preferred by the respondent being eviction application No.8 dated 20.03.2002, where eviction of Ashok Kumar, husband of petitioner Asha Rani was sought, a compromise was entered into in the Lok Adalat on 27.08.2011. As per the said compromise, arrears of rent amounting to ₹ 1,35,000/- in cash was paid and a post dated cheque No.810869 dated 28.09.2011 for ₹ 50,000/- was issued in favour of the respondent, which was dishonoured. This is a categoric admission by the predecessor-in-interest of the petitioner that the demised premises was on rent and Jangir Singh-respondent was the landlord of the premises and not the partner. That apart, in the written statement which has been filed earlier in this case, petitioner admitted the relationship of landlord and tenant and not a word was uttered about the respondent being a partner in the firm with regard to 1/3rd share. It has further been admitted that the rent upto October, 2012 has been paid to

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the respondent by the petitioner. This clearly shows that there is a relationship of landlord and tenant between the parties.

No doubt, the petitioner may be entitled to take alternate plea without resiling from any positive admission in the pleadings earlier taken but there should not be a prejudice to the other party. That apart, the basic principle still remains that a party must move such an application not at the belated stage but with a *bona fide* intention and after exercising due diligence. Present is a case where the same is lacking. Nothing has come on record that the petitioner was not aware of the earlier litigation between the parties and the stand taken by them. As a matter of fact, M/s York Hotel & Restaurant, petitioner in CR No.6187 of 2016 was itself a party to the earlier litigation and therefore, could not take a plea of being not aware of the earlier stand taken by the respondent as has been alleged.

The reasoning assigned by the Rent Controller while dismissing the application under Order 6 Rule 17 of CPC fulfills the mandate of the statute as also the law settled upto the Supreme Court, which does not call for any interference by this Court in exercise of its revisional jurisdiction.

In view of the above, finding no merit in these revision petitions, the same stand dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

September 20, 2016
Harish

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No