

CR No. 7272 of 2016 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 7272 of 2016 (O&M)

Date of Decision: November 17, 2016

Tarun Kumar

...Petitioner

Versus

Preeto

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. A.P.S. Sandhu, Advocate
for the petitioner.

Mr. Anil Chawla, Advocate
for the respondent.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.22105-CII of 2016

Application stands allowed, as prayed for.

Typed copies of Annexures P-1 to P-5 are taken on record,
subject to all just exceptions.

CR No. 7272 of 2016

Challenge in this revision petition is to the order dated
27.09.2016 (Annexure P-5) passed by the Rent Controller, Amritsar,
whereby, an application 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 statement with regard to deletion of word 'but' mentioned in 5th
line from bottom of page 3 in sub-para (ii) of para 2 of the reply on merits in
the written statement and for addition of 'and it is also denied that' in the

written statement after deletion of word 'but', has been dismissed on the ground that the application has been filed with an intention to delay the proceedings of the ejectment petition and it is at the fag-end of the trial that such an application has been moved.

It is the contention of the learned counsel for the petitioner that when the proposed amendment is read in consonance with preliminary objection No.5 in the written statement where it is asserted as a matter of fact that the petitioner had never changed the user of the demised shop and is himself running a Karyana Store, the amendment as is being sought would not change the nature of the pleadings nor will it amount to withdrawing any admission on his part rather it would be in consonance with the pleadings when read as a whole in a written statement. He further states that the delay itself cannot be a ground for dismissal of the application especially when he does not intend to lead any evidence after the amendment in the written statement if allowed. Prayer has, thus, been made for setting aside the impugned order dated 27.09.2016 passed by the Rent Controller, Amritsar.

On the other hand, learned counsel for the respondent asserts that the evidence which has been led by the petitioner before the Rent Controller is in consonance with the pleadings in the written statement as made in sub-para (ii) of para 2. He contends that now the petitioner is changing the stand altogether by asserting that he is carrying out the business of Karyana, whereas, what is meant by him in the earlier part of the sentence thereof is that he is not running the business of Karyana Store

under the name and style of Arora Karyana Store, rather he is running a business of internet, Photostat and mobile repair, mobile shop etc. He, thus, contends that with the addition as has been sought to be made by deleting the word 'but' would totally change the nature of the pleadings and would amount to removing the admission on the part of the petitioner which is not permissible in law especially at the stage when cross-examination of the last witness of the petitioner is left. He, thus, contends that the impugned order passed by the Rent Controller, Amritsar, dated 27.09.2016, being in consonance with the pleadings does not call for any interference by this Court.

I have considered the submissions made by the counsel for the parties and with their able assistance have gone through the pleadings as well as the impugned order placed on record.

A perusal of para 5 of the preliminary objections to the written statement, which has been filed by the petitioner, it is clear that as a matter of fact, the respondent has asserted himself to be running the Karyana Store and denied the factum that he had changed the user of the demised shop. When this is read in consonance with sub-para (ii) of para 2 of the written statement, what has been specifically denied in second line is that he had not taken the shop in question for the purpose of Karyana Store to be run under the name and style of Arora Karyana Store. What is meant by the petitioner is that the shop was not given to him in the name and style of Arora Karyana Store. With reference to para 5 in the preliminary objections, the word 'but' subsequent thereto appears to be unaligned and

what has been said to be substituted with i.e. 'and it is also denied that' would be in consonance with the pleadings when read as a whole. The plea, therefore, as taken by the petitioner appears to be fully justified which does not appear to in any manner effect either any admission or denial on his part in the pleadings. It would not be out of way to mention here that the counsel for the petitioner has specifically stated that he would not lead any evidence in support of the amendment in the written statement which is being sought, if the same is allowed.

It is a settled preposition in law that the pleadings can be amended at any stage of the case and even at the appellate stage in case the same is done with a *bona fide* reason and in exercise of due diligence. In the present case, it appears to be so and the requirement of the statute has been fulfilled by the petitioner. The reason, primarily as assigned by the Rent Controller is an effort and intention of the petitioner to delay the proceedings in the eviction petition, which fear has been taken care of by the statement of the counsel for the petitioner that he would not lead any further evidence in support of his assertion in case of amendment being allowed. Counsel for the parties agree that the cross-examination of the last witness of the petitioner is slated for 21.11.2016. If that be so and keeping in view the above, there would not be any delay on the part of the petitioner qua the proceedings pending before the Rent Controller.

For the above mentioned reasons, the present revision petition is allowed subject to ₹ 10,000/- as costs to be paid to the respondent on 21.11.2016, the date fixed before the Rent Controller. The impugned order

dated 27.09.2016 (Annexure P-5) is hereby set aside and the amendment as sought by the petitioner by replacing the word 'but' with 'and it is also denied that' mentioned in 5th line from bottom at page 3 of the written statement on merits in sub-para (ii) of para 2, is allowed. The amended written statement be taken on record.

Any opinion expressed by this Court in this order on the pleadings will have no bearing upon the merits of the case.

Copy of this order be given *dasti* to the counsel for the parties under the signatures of the Bench Secretary of this Court.

November 17, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No