

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

122

Civil Revision No.8507 of 2016 (O&M)

Date of Decision: December 16, 2016

Sudarshan Kumar

...Petitioner

Versus

Nand Kishore Mehra and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Anil Chawla, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Prayer in this petition is for setting aside the order dated 02.12.2016 passed by the Appellate Authority, Amritsar, whereby an application under Order VI Rule 17 read with Section 151 CPC filed by the petitioner (appellant therein) for amendment of the written statement, has been declined.

2. It is the contention of learned counsel for the petitioner that the shop which is being sought to be evicted from the petitioner has a frontage of 6 feet and the depth of 11 feet which cannot be said to be sufficient for the purpose of extending the chemist business and for running a Chinese eatery. He contends that the intention is by making an amendment to the written statement that it would be self-contradictory as the ground which has been taken i.e. the personal *bona fide* necessity of the respondent-landlord and his son cannot co-exist and the dimension of the shop in question is very small. This shows that it is not a *bona fide* necessity of the landlord but only an urge and desire to get the premises vacated by creating a ground. The amendment thus which is being sought to be made

cannot be said to be not permissible which would go into the root of the maintainability of the petition itself.

3. I have heard the submissions made by the counsel for the petitioner and with his assistance, have gone through the impugned order.

4. The amendment which is being sought in the written statement in para 3(ii) reads as follows:-

“That otherwise also, the ground taken by the applicants is self contradictory and in view of the size and dimensions of the shop in question which is very small one, which is self contradictory, is not legally available and shows the lack of bonafide on the part of the applicants/landlords”.

A perusal of the above would show that the purpose for which it is being sought to be incorporated by way of an amendment in the written statement would not be as is being projected by the petitioner, in fact it would be to take the different ground which could have been taken by the petitioner before the Rent Controller. As is apparent from the order dated 02.12.2016 that there were ample opportunities for the petitioner to file an appropriate application before the Rent Controller which has not been availed of and further the plea of the petitioner that the size and dimension of the shop in question which is 6 feet in breadth and 11 feet in depth cannot be said to be of such a nature which would not serve the need and purpose of the landlord, who is the master of his case as he has preferred the petition. Apart from that, it would not be out of way to mention here that the respondent-landlord admittedly is running his chemist shop in an adjacent shop to the demised premises and, therefore, has ample space for the said purpose. The amendment as is being sought to be made in the written statement is at a belated stage and not a *bona fide* exercise on the

part of the petitioner. The impugned order dated 02.12.2016 cannot be faulted with as it is in consonance with law.

5. The revision petition, therefore, stands dismissed.

6. It is added here that any observation made in the present order will not effect the merits of the case in any manner.

7. In the light of the dismissal of the petition, the application for stay i.e. CM No.25793-CII of 2016, stands disposed of as infructuous.

December 16, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No