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

Civil Revision No.1828 of 2016

Date of decision: 23.05.2017

The Citizen Urban Cooperative Bank Ltd.

...Petitioner

Versus

Dr. Virender Gupta

...Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Sudhir Pruthi, Advocate for the petitioner.

Mr. Varun Sharma, Advocate for the respondent.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present revision petition filed by the tenant under Article 227 of the Constitution of India is to the order dated 9.12.2015 whereby the Rent Controller, Jalandhar has allowed the application for amendment of the eviction petition deleting sub paras 3(i) and 3(ii) and adding sub paras 3(i), 3(ii) and 3(iii).

The reasoning given by the Court was that the events given in the application were subsequent in nature and no prejudice was going to be caused to the respondent and the case being at the initial stage and only the affidavit of one witness had been tendered in evidence. Accordingly, in view of law laid down by the Apex Court in **Revajeetu Builders & Developers Vs. Narayanaswamy & sons and others** (2009) 10 SCC 84 wherein it was held that the Court should not refuse bonafide, legitimate, honest and necessary amendments, the application was allowed.

Counsel for the petitioner has vehemently argued that the case has proceeded ahead and issues have been framed on 1.5.2017 and the trial

having commenced, the application under Order 6 Rule 17 CPC was not liable to be allowed and therefore, the order in question was not justified.

A perusal of eviction petition filed on 29.11.2010 would go on to show that eviction was sought by the respondent/landlord on the ground of bonafide requirement and the need set up for eviction was that wife of the landlord is presently a house-wife and is a graduate. The son of the petitioner was going to be major on 30.11.2010 and is studying in 12th class and the petitioner intended to settle him and to visualize a good future for his son, the premises were required for use of a departmental store to be run by his wife and son. It was also mentioned that the second floor of the building is in possession of Oriental Insurance Company and an application had also been filed to recover the physical possession of the entire building. The petitioner was pursuing his medical profession at Gurgaon and belonged to Jalandhar and had given detail of property and status of his family. He had three daughters out of which two were still unmarried.

In the application for amendment, change sought as such was that the son has joined a MBBS Course and now become a medical student of 2011 batch and was studying in Subharti Medical College (Swami Vivekanand Subharti University), Meerut (UP) and his duration of course was 4-1/2 years. Now because of changed circumstances, the need has also been changed and he wanted to establish a hospital in the premises in question for himself and his son. The petitioner has further mentioned that he is running his clinic in the residential premises at Gurgaon and the Haryana Urban Development Authority (HUDA) had banned the use of residential premises for running the Clinics and Nursing Homes in the

residential area and premises. Thus, a specific need was set up for use of premises by himself and his son. Apart from that additional ground was also taken that the premises had become unsafe and unfit and the building was in damaged condition and that the electric connection had been shifted in the name of the bank without the knowledge of the landlord and in connivance with the electricity department. The value and utility of the building had been impaired by changing the water supply system and installing Antenna on the terrace and a big diesel generating set had been installed in the common area which was not the part of tenancy and therefore eviction was also sought on the ground of material impairment of the value and utility.

The eviction petition was filed on 29.11.2010 and thus, it is apparent that during the period 2-1/2 years subsequent events had occurred which necessitated the amendment in July, 2013.

Counsel for the petitioner could not rebut the fact that a subsequent petition would be permissible on the same ground and therefore, keeping in view the law laid down in **Surinder Kaur Bakshi Vs. M/s Chopra Glass House and others** 2013(3) PLR 142 wherein it has held that subsequent events can be taken into consideration and need can be readjusted for a member of the family by including appropriate averments. The landlord thus should not be driven to file a separate petition and that the tenant would also not have to deal with a proposition to defend another case, the Rent Controller, Jalandhar was justified in allowing the amendment application by placing reliance upon **Revajeetu Builders & Developers's case (supra)** wherein it has been held that as long as the

material pleadings are not altered or substituted and not got rid off and the amendment is bonafide refusing amendment would lead to injustice.

In **Chander Kanta Bansal Vs. Rajinder Singh Anand 2008**

(4) SCR 748, the same principle was laid down by the Apex Court that multiplicity of proceedings shall be avoided and the power of amendment should be liberally exercised. The relevant para reads as under:-

“This rule was omitted by the Code of **Civil Procedure (Amendment) Act**, 1999. However, before the enforcement of the Code of **Civil Procedure (Amendment) Act**, 1999, the original rule was substituted and restored with an additional proviso. The proviso limits the power to allow amendment after the commencement of trial but grants discretion to the court to allow amendment if it feels that the party could not have raised the matter before the commencement of trial in spite of due diligence. It is true that the power to allow amendment should be liberally exercised. The liberal principles which guide the exercise of discretion in allowing the amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be granted, while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted upon the opposite party under pretence of amendment.”

A perusal of the amendment which was sought to be incorporated would go on to show that on account of son of the petitioner having been admitted in MBBS in Subharti Medical College, Meerut, the need set up at the initial stage that he intended to set up departmental store is no more and now the premises in question are required for establishing a hospital by the petitioner himself and his son. Therefore, the amendment which has been allowed by the Rent Controller, Jalandhar does not suffer

from any infirmity and illegality which would warrant interference by this Court and the order dated 9.1.20215 (Annexure P/5) passed by the Rent Controller, Jalandhar is upheld.

Accordingly, the present revision petition is dismissed.

May 23, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No