

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

C.R. No. 1816 of 2017 (O & M)

Date of decision: 06.04.2017

Baljit Singh

....Petitioner(s)

Versus

Ajmer Singh and others

...Respondent(s)

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

Present: Mr. Vishal Aggarwal, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 7772-CII of 2017

Application for placing on record the written statement filed by respondents no. 5 and 6 as Annexure P-7 is allowed, subject to all just exceptions.

The same is taken on record.

C.R. No. 1816 of 2017

The present revision petition filed by the tenant is directed against the order dated 08.03.2017 (Annexure P-6) vide which, the application for amendment under Order 6 Rule 17 CPC filed by the petitioner who was respondent no. 3-Baljit Singh, has been dismissed. The reasoning which weighed with the Rent Controller was that as per the pleadings, a contrary plea as such was being taken that Surinder Singh and Inder Pal Singh were also partners in the firm who had subsequently retired. It is also noticed that the matter had been contested thoroughly and it had been pending for over a decade and would cause huge prejudice as such to

the petitioner if the plea of amendment is allowed at this stage since vide the amendment, it had been alleged that Surinder Singh and Inder Pal Singh were also partners in the firm and by their non-joinder, material error was occurred and the petition was not maintainable since all partners ought to have been made parties before the Court. However, liberty was also granted that legal objection regarding non-joinder of necessary parties could be raised on the basis of facts already pleaded and would be considered and decided by the Court. It was also noticed that the entire arguments had already been pleaded and on account of a newly appearing counsel, the present application had, thus, been made. It is pertinent to notice that in the eviction petition filed, the ejectment was sought on the ground that the tenancy of the premises in question was with respondents no. 1 and 2 namely M/s. N.S. Motors through its partner and Inderjit Singh who was son of Surinder Singh. Respondent no. 3, to whom the property had been let out, was none else but another son of Surinder Singh. It has been specifically alleged that he was occupying the property and was also receiving more rent which was payable to the landlord and without the written consent of the landlord, he was controlling and managing the business and the property had been opened and locked by him and, thus, specific averment as such was made for eviction on the ground of sub-letting apart from that ground. It is also relevant to notice that the tenants had taken the plea that the property had been let out to M/s. N.S. Motors and Inderjit Singh had signed the rent note. He had thereafter left the firm leaving behind the present petitioner as the sole proprietor who was also a partner of M/s. N.S. Motors. The liability to pay the rent was of the said partner and, therefore, it was pleaded that the relationship of landlord-tenant

existed between the landlords and the present petitioner. The petitioner, in his written statement, also took the same plea and, thus, tried to defend the position as such on the ground that he was the original tenant being a partner of M/s. N.S. Motors. As noticeable, the written statement filed by the present petitioner is dated 22.12.2005. When the case was at the fag end and at the last stage of arguments, the petitioner suddenly realized that his father and brother were also partners in the said firm and sought to file the application under Order 6 Rule 17 CPC. After a period of one decade, it was realized that other close relatives were also partners and resultantly, the amendment has been sought. The Court has also noticed that no due diligence as such has been pleaded.

A perusal of the application would go on to show that a bald averment has been made that despite due diligence, the said plea could not be taken before. This Court is at loss to understand as to what was the due diligence and in view of the fact that there is close relationship inter se the family members as to how the constitution of the firm was not known to the present petitioner. The attempt of amendment is obviously a desperate attempt at last when the eviction petition is at the fag end and obviously with the purpose to delay the proceedings. The judgment of the Apex Court relied upon in *M/s. Chhotelal Pyarelal vs. Shikharchand, 1984 (4) SCC 343* would be of no help. In the said case, the partnership had been sued without joining any partner and, therefore, the firm had approached the Apex Court as such which allowed the application. In such circumstances, the Apex Court in *Ajendraprasadji N. Pandey and another vs. Swami Keshavprakeshdasji N. and others, 2006 (12) SCC 1* has specifically held that once the evidence has started and in the absence of any due diligence,

amendment applications are not to be entertained. The relevant observations read as under:-

“40. Under the proviso no application for amendment shall be allowed after the trial has commenced, unless inspite of due diligence, the matter could not be raised before the commencement of trial. It is submitted, that after the trial of the case has commenced, no application of pleading shall be allowed unless the above requirement is satisfied. The amended Order VI Rule 17 was due to the recommendation of the Law Commission since Order 17 as it existed prior to the amendment was invoked by parties interested in delaying the trial. That to shorten the litigation and speed up disposal of suits, amendment was made by the [Amending Act](#), 1999, deleting Rule 17 from [the Code](#). This evoked much controversy/hesitation all over the country and also leading to boycott of Courts and, therefore, by Civil Procedure Code (Amendment} Act, 2002, provision has been restored by recognizing the power of the Court to grant amendment, however, with certain limitation which is contained in the new proviso added to the Rule. The details furnished below will go to show as to how the facts of the present case show that the matters which are sought to be raised by way of amendment by the appellants were well within their knowledge on their Court case, and manifests the absence of due diligence on the part of the appellants disentitling them to relief.

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54. In our opinion, the facts above-mentioned would also go to show that the appellants are lacking in bona fide in filing this special leave petition before this Court. It is also to be noticed that the High Court

has recorded relevant points in its elaborate judgment dated 05.10.2005 and have been dealt with despite the opposition of the contesting respondents that these pleas were not taken in the written statement. Under these circumstances, non-seeking of appropriate amendment at appropriate stage in the manner envisaged by law has dis-entitled the appellants to any relief. The amendment, in our view, also seeks to introduce a totally new and inconsistent case.

55. We have carefully perused the pleadings and grounds which are raised in the amendment application preferred by the appellants at Ex. 95. No facts are pleaded nor any grounds are raised in the amendment application to even remotely contend that despite exercise of due diligence these matters could not be raised by the appellants. Under these circumstances, the case is covered by proviso to Rule 17 of Order 6 and, therefore, the relief deserves to be denied. The grant of amendment at this belated stage when deposition and evidence of three witnesses is already over as well as the documentary evidence is already tendered, coupled with the fact that the appellants' application at Exh. 64 praying for recasting of the issues having been denied and the said order never having been challenged by the appellants, the grant of the present amendment as sought for at this stage of the proceedings would cause serious prejudice to the contesting respondents original plaintiffs and hence it is in the interest of justice that the amendment sought for be denied and the petition be dismissed."

The above facts would also go on to show that the amendment is not a bona fide amendment which is sought and, therefore, even the principles in ***Revajeetu Builders and Developers vs. Narayanaswamy &***

Sons and others, 2009 (10) SCC 84 would come into play that only bona fide amendments should be permitted. The relevant principles read thus:-

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

70. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala

fide, worthless and/or dishonest amendments.”

In such circumstances, this Court is of the opinion that no ground as such is made out to interfere in the well reasoned order passed by the Rent Controller and the present revision petition is dismissed in limine.

06.04.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No