

C.R. No.1936 of 2017 (O&M)

Gurpreet Kaur
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high court

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

C.R. No.1936 of 2017 (O&M)

Date of Decision: 17.03.2017

V.K. Jain and another

....Petitioners

Versus

Naresh Kumar Juneja and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Adarsh Jain, Advocate
for the petitioners.

DAYA CHAUDHARY, J.

The present revision petition has been filed to challenge the impugned order dated 19.01.2017 passed by the Rent Controller, U.T. Chandigarh, whereby, the application for amendment of eviction petition, allowing incorporation of additional facts to seek ejection by alleging bona-fide necessity of the sons and seeking eviction from additional premises, has been allowed.

Briefly, the facts of the case as made out by the petitioners are that landlord respondents No.1 to 4 executed a registered rent agreement dated 31.12.1995 in favour of the petitioners for letting out second floor of S.C.O. No.371-372, Sector 35-B Chandigarh from 01.05.1996 on monthly rent. There was a stipulation for construction of cabins and subletting of a part of the premises as cabins, with permission to the petitioners to execute agreement with the sub-lettees. As per terms and conditions of the agreement, the tenancy could be terminated by the tenants only by giving two months' notice. Petitioners constructed cabins and under registered rent

agreement inducted sub-lettees, who were also arrayed as proforma respondents. Landlord respondents No.1 to 4 filed rent petition dated 16.12.2011 seeking eviction of the premises on the ground of personal necessity for setting up and for expansion of business.

Written statement to the petition was filed, wherein, certain objections like that the premises were not required for personal use as the landlord was having several other properties also, were raised. Replication to the written statement was also filed by the landlord. Thereafter, the landlord-respondents filed application for seeking amendment of the petition, which was allowed vide order dated 19.01.2017, which is subject matter of challenge in the present petition.

Learned counsel for the petitioners submits that the eviction petition is of the year 2011 and the application for amendment has been filed after a period of five years and the same is not maintainable. It is also the argument of learned counsel for the petitioners that the landlord is already owning several other properties and the amendment sought in the application is not only to delay the proceedings but to create an additional evidence as well. By this amendment, not only the nature of the petition will be changed but fresh issues will also have to be framed. At the end, learned counsel for the petitioners submits that the impugned order is not only illegal but unsustainable in the eye of law.

Heard the arguments of learned counsel for the petitioners and have also perused the impugned order as well as other documents available on the file.

Facts relating to entering into an agreement of rent between the parties; filing eviction petition by the landlord and filing written statement

subsequently and rejoinder thereof are not disputed.

The rent petition under Section 13 of the East Punjab Urban Rent Restriction Act has been filed on the ground that there is contravention of the terms and conditions of the lease deed dated 31.12.1995. Certain alterations have been made by the tenant without permission of the landlord. During pendency of the rent petition, an application was moved for seeking amendment on the ground that the premises, in dispute, are required for personal necessity for running of business by the sons of the landlord, which has been allowed. Petitioners required second floor of the premises for their personal use as they wanted to settle their sons and expand their business. It cannot be said at this stage that the sons of the landlord are not carrying out any business or it could be taken as a ground for eviction to settle their sons in the business. The petition is at the initial stage and no evidence has been led. It is a matter of evidence, which is to be seen during trial. The relevant portion of the impugned order dated 19.01.2017 passed by Rent Controller, Chandigarh, is reproduced as under :-

“6. By moving the present application, the petitioner seeks to amend the petition in order to take plea of bonafide personal necessity of their sons. It is the case of petitioner no.1 and 2 that they have an alternate site i.e SCO No.131-132, Sector 17-C, Chandigarh at their disposal for shifting their business. Now, they want to settle their respective sons in the demised premises and on that count they need the same. Perusal of the record shows that in the present petition plea of bonafide personal necessity was taken by the petitioners but that was regarding their need as well as need of their children. Now the petitioners are claiming the amendment in the petition to incorporate the exclusive needs of their children. Certainly, the facts pleaded by the petitioner are

subsequent even. Moreover, this fact is admitted by respondent No.4, 5, 11, 12 in para no.2 of their reply wherein they admit that facts pleaded are subsequent but they simply countered by alleging that they are false and have no bearing on the merits of the case. Contents of the application are duly supported by an affidavit of the petitioner. No doubt, amendment in the pleadings after commencement of trial can only be allowed if the party seeking such amendment despite due diligence could not seek the same at an earlier stage. Seeking the aforesaid amendment by the petitioner at an earlier stage is beyond contemplation as the facts pleaded are certainly subsequent event. So far as the plea of the respondent no.4, 5, 11 and 12 that Hon'ble High Court had held that the plea of personal necessity is not available to the petitioner is concerned. It is observed that it is not tenable as no where in its order dated 29.11.2016, the Hon'ble High Court has held that such plea would not be available with the petitioner in this petition. The relevant extract of the aforesaid order are reproduced below :-

“ That being so, the plea, as has been sought to be taken by the petitioner for treating it as a preliminary issue by framing the issue of maintainability of the eviction petition on the grounds of clauses 3, 4 & 5 of the Rent Deed, would not be available to the petitioner, especially when there are other grounds also which entitle the landlord to seek eviction of the tenant from the demised premises.”

Undisputedly, the amendment in the pleadings can be allowed after commencement of trial, if the purpose is not to misuse the process of law. Personal necessity is a ground for eviction of the premises as also the violation of terms and conditions of the rent deed. There is no bar that the

landlord cannot raise more than one ground. The evidence of the parties is yet to commence and no prejudice is going to be caused to the other party. Moreover, the application has been allowed subject to costs. The amendment can be allowed at any stage of the proceedings either to alter or to amend the pleadings in such a manner, which may be termed as just and proper and necessary for purpose of determining the real controversy, in dispute, between the parties. It is also a settled position of law that the application for amendment can be allowed subject to certain conditions that nature of proceedings are not going to be changed and by amendment, new cause of action is not going to be introduced or interest of the party is not going to be prejudiced in any manner. The amendment can be refused only when the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which cannot be compensated with costs.

In view of the facts and circumstances as mentioned above, neither the nature of suit is going to be changed nor any prejudice is going to be caused to the other party, the petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

17.03.2017
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

No