

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

Sr. No.105

C.R. No.294 of 2016

Date of decision: 06.11.2017

Sudershan Sharma

....Petitioner

versus

Kavita Gupta

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Lalit Pathak, Advocate
for the petitioner.

Mr. Sanjay Gupta, Advocate
for the respondent.

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DEEPAK SIBAL, J. (Oral)

Through an eviction petition filed under Section 13 of the East Punjab Urban Rent Restrictions Act, 1949, the respondent-landlord sought the eviction of the petitioner from Shop No. PS-986/406, Sector-6 situated at Town Road, Kharar (for short the 'tenanted premises'). Eviction was sought on the ground that the petitioner was in arrears of rent as also for the reason that the respondent needed the tenanted premises for her own use. On 01.11.2010, the petitioner filed his written statement and thereafter, the proceedings continued before the Rent Controller. However, at the fag end of the proceedings, on 26.11.2015, the petitioner filed an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short the 'Code') seeking amendment of his written statement which through the order

impugned in the present petition was declined.

Learned counsel for the petitioner submits that the sought amendment was crucial for the adjudication of the dispute and that the same had occasioned on the passing of order dated 21.10.2015 by the Presiding Officer, Pre Lok Adalat, Kharar, in which one Kulwant Singh had vacated a shop and handed over the keys of the same to the respondent.

The above submissions of learned counsel for the petitioner do not deserve a favourable consideration.

Order 6 Rule 17 of the Code reads as under:-

"17. Amendment of pleadings.-

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

As per the afore-quoted provision of the Code, the Court, at any stage of the proceedings, may allow either party to alter or amend their pleadings in such manner and on such terms as may be just and all such amendments shall be allowed by the Court as may be necessary for the purpose of determining the real questions in controversy between the

parties. As per the proviso, no application for amendment is to be allowed after the commencement of the trial, unless the Court is convinced that in spite of due diligence, the party seeking the amendment could not raise the matter before the commencement of the trial.

Thus, the application seeking amendment is to be allowed only after the Court is convinced that the sought amendments are necessary for the purpose for determining the real question in controversy between the parties and that in spite of due diligence the party seeking the amendment could not raise the issue sought to be raised through the amendment before the commencement of the trial. For the Court to arrive at the afore conclusions, it is but necessary that all the facts on the basis of which the amendment is sought are specifically pleaded. Vague averments possibly cannot lead the Court to arrive at any conclusion.

In para No.5 (B) of the eviction petition filed by the respondent it had specifically been impleaded by her that she needed the demised premises for her own use as also to settle her son who had recently attained majority. In the written statement filed by the petitioner on 01.11.2010, in reply to Para No.5 (B) of the eviction petition it had been stated as under:-

“5(B). That this para of the petition is totally wrong hence denied. It is pertinent to mention here that the petitioner is already having 4 shops in the limits of Municipal Committee, Kharar and also a first floor of the Jewellery shop which is also vacate which she can use for her purpose and one another shop adjoining to the shop of the petitioner and respondent is also there which is also on rent to the Rohit Traders and one another

shop which is situated at Anaj Mandi Kharar has given on rent. All these properties can be used for the commercial as far as for her personal use by the petitioner. The petitioner also have her own shop i.e. Jewellery Shop.”

(The above reply to para No.5 (B) by the petitioner has been extracted from a photocopy of the written statement supplied in Court by learned counsel for the petitioner which is ordered to be taken on record as Mark 'A'.)

As noted earlier, after the filing of the written statement by the petitioner in November 2010, the eviction proceedings continued and only after 5 years, in November 2015, did the petitioner file an application under Order 6 Rule 17 of the Code in which he sought to incorporate to the following amendment.

“4. That the amendments in written statement the applicant/respondent wants to do are as follow:-

a. That the applicant/respondent wants to amend the para of 5-B of his written statement which is reply to the petitioner i.e. “ that the petitioner has another vacant shop in his possession within the revenue limits of the Kharar and which is also very near to the shop of the petitioner and also situated alongwith the shop of the respondent and which fulfills all the requirements of the petitioner regarding her necessity.”

The afore-quoted amendment sought to be made by the petitioner in his written statement is found to be absolutely vague. It has been averred that the respondent-landlord had another vacant shop in his

possession within the revenue limits of Kharar. Neither the specifics of the alleged vacant shop have been given nor as to when such shop had been vacated have been spelt out. The averments made by the petitioner further go on to state that the shop which is referred to in the amendment application is very near to the shop of the landlord and is also situated alongwith the shop of the petitioner. Here again, no specifics with regard to the location of the imaginary shop are found. Had the shop been so close to the shop of the respondent-landlord as also adjacent to the tenanted premises, then the address of the shop with regard to its location should have been given. The same are found missing. The reference to the order dated 21.10.2015 passed by the Pre Lok Adalat, Kharar, which is relied upon by learned counsel for the petitioner is also found missing from the amendment application. Even otherwise, order dated 21.10.2015 also does not reveal the identity of shop or premises to which it pertains. Even the grounds of revision filed before this Court do not contain any details with regard to which is the shop which was vacated by some other tenant of the respondent-landlord.

In view of the vague pleadings at the behest of the petitioner in his amendment application, it is virtually impossible to reach to a conclusion whether the amendment is necessary to decide the controversy between the parties or that in spite of due diligence the same could not be pleaded by the petitioner before the commencement of the eviction proceedings.

In view of the above, no error is found in the impugned order passed by the Rent Controller-cum-Civil Judge (Junior Division) Kharar, warranting any interference.

Dismissed.

(DEEPAK SIBAL)
JUDGE

November 06, 2017

Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No