

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

**Civil Revision No.2806 of 2017
Decided on : 24.05.2017**

Raj Kumar

... Petitioner

Versus

Seema Malhan and another

... Respondents

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

Present : Ms. Jigyasa Tanwar, Advocate
for the petitioner.

Mr. Tarunveer Vashisht, Advocate
for the respondents.

G.S. Sandhawalia, J. (Oral)

The present revision petition under Article 227 of the Constitution of India has been filed by the tenant and is directed against the order dated 07.03.2017 (Annexure P-1), whereby the application for amendment under Order 6 Rule 17 CPC of the written statement has been dismissed.

The reasoning given by the Rent Controller is that no due diligence has been shown by the tenant as the matter was not raised before the commencement of the trial and the payment of costs is not a panacea for all grievances. The amendment which was sought could be looked into, since it was in the form of a deposition of one of the witnesses, namely, PW-2 Seema Ohri and it should not be made a ground to allow the application, as it was not essential to decide the real controversy between the parties.

The said reasoning cannot be held to be justified in any manner, which was sought by the counsel for the respondent on the ground that there

was a lack of diligence, since the statement of the witness was recorded on 09.03.2015 and the application was filed at a belated stage after 2 years. The Rent Controller has noticed the principles laid down by the Apex Court in ***Revajeetu Builders & Developers Vs. Narayanaswamy & sons and others (2009) 10 SCC 84***, but in spite of that disallowed the amendment.

A perusal of the said principles would go on to show that if there is no prejudice caused to the other side and costs can be imposed, the amendment is to be allowed. The amendment should not in principle alter and substitute the cause of action on the basis of which the original lis was raised and all amendments should be allowed which are necessary for determination of the real controversy.

The amendment, thus, which is proposed is only to bring on record the alternative accommodation which was alleged to have come on record, which was held by the landlords. In the application filed, it was pleaded that as per the disclosure from the statement of PW-2 Seema Ohri, one more shop has been vacated from Reliance Communication in December, 2014 and in such circumstances, the amendment was being sought.

The reasoning given by the Court, in such circumstances, is not justified, wherein it has been held that there is no due diligence and the matter should have been raised before the commencement of trial.

This Court in ***Mrs. Surinder Kaur Bakshi vs. M/s. Chopra Glass House and others, 2013 (3) PLR 142*** has held that liberal

approach is to be taken where subsequent events have taken place and if there is no statutory bar as such, then the amendment should be allowed.

Relevant para of the judgment reads as under:-

“4. The law of taking note of the subsequent event came through essentially in rent control jurisdiction. Otherwise, the conventional understanding was that the case has to be decided only on the facts at the time of institution of suit. A subsequent event is always a relevant issue more particularly while examining the personal necessity of the landlord. It is on the pretext that the necessity must exist not merely at the time of filing of the petition, it must subsist till an order of eviction is passed. This is allowed for situations where the landlord acquires some other property or he has let out a vacant possession of yet another item of property subsequent to the petition to examine the bona fides. In this case the subsequent event has been that the man who wanted to start a tuition centre and put the property for augmenting his income was no longer alive and therefore the need came to be readjusted for a member of the family by including appropriate averments in the petition. If this subsequent event were to be taken as relevant, then the only issue would be whether the petitioner must be allowed to prosecute the same petition with amendment incorporated or he should be driven to a separate petition. The issue of whether amendment should be allowed or not is also from a perspective of whether it will scuttle a needless multiplicity of proceedings. This has to be in turn in the context of whether there is any statutory bar regarding the plea, if any independent case were to be filed. If the legal representatives were to file a fresh petition with a new fact, then again the tenant could have a contention that he is needlessly made to defend yet another case but beyond

that, this could be no plea that the petition is in any way barred.”

Accordingly, keeping in view the above, the revision petition is allowed. The impugned order dated 07.03.2017 (Annexure P-1) is set aside and the proposed amendment is allowed, subject to payment of ₹5,000/- as costs.

Keeping in view the fact that, the eviction petition was filed in the year 2011 and for bonafide requirement, the Rent Controller shall make efforts to dispose of the petition expeditiously.

MAY 24, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No