

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

**Civil Revision No.3475 of 2016
Decided on : 28.03.2017**

Charan Kaur and another

... Petitioners

Versus

Hindustan Sanitary Wares

... Respondent

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

Present : Mr. A.S. Grewal, Advocate
for the petitioners.

Mr. Jagdish Marwaha, Advocate
for the respondent.

G.S. Sandhawalia, J. (Oral)

The present revision petition has been filed by the landlords against the order dated 15.03.2016 (Annexure P-5), whereby the application under Order 6 Rule 17 CPC has been dismissed on the ground that the case was at the belated stage and issued had been framed on 10.09.2013 and the evidence has been closed of the landlords. The application having been moved at the belated stage on the ground that the new counsel has been engaged and there is a mistake as such and, therefore, the same was held not be a good ground to allow the amendment.

Mr.Marwaha has vehemently submitted that there was no due diligence and the amendment has rightly been declined.

It is pertinent to mention that the amendment which is to be incorporated is only to the extent the correct name of the tenant. The petition has been filed against the Hindustan Sanitary Wares through its proprietor.

It is not disputed that the tenants raised an objection that the

tenancy was with Hindustan Sanitary and Hardware Stores through their partners, who are now sought to be incorporated in the memo of parties by virtue of amendment. Nor it is the case of the respondent that the terms of the tenancy had been reduced into writing and in spite of that incorrect details had been given. Even otherwise the landlady as such would only stand to loose if the eviction proceedings cannot be taken to their logical end.

The reply was filed way back on 18.07.2013 (Annexure P-2) The issues were framed on 10.09.2013. The fact remains that there has been lack of diligence as such by the landlady and in spite of the fact that a specific issue as such has been raised that there was non-joinder of necessary parties and the maintainability as such. But the Court cannot loose sight of the fact that the provisions of Order 6 Rule 17 CPC provide for adjudication for the real controversy which is *inter se* the parties. Thus, it is not disputed that the respondents as such are tenants and, therefore, the Court while dismissing the application has only shied away from adjudication on the issue in a proper perspective while denying the amendment. Only on account of technical lacuna, it is not for the Courts to dismiss and avoid deciding the meat of the matter, which is the main issue in controversy. The argument which is now raised that the case was at a advanced stage and evidence had been closed by order on 04.02.2015, thus, would not stand in good stead.

The judgments which are thus being relied upon as such by the counsel for the respondent in '**Kapila Sharda Vs. Dhanpati Devi and**

others' 2015 (4) RCR (Civil) 736, '*Gurinder Singh Vs. Gulzar Singh and another*' 2015 (5) RCR (Civil) 609, '*Akki Oswal Trust (Regd.) and others Vs. M/s Jainson Hosiery Industries and another*' 2014 (2) RCR (Rent) 485, '*Anguri Devi and others Vs. Vikas Bajaj*' 2015 (5) RCR (Civil) 646, '*Meera Ben Vs. Amritlal and another*' 2015 (7) RCR (Civil) 835, '*Ajmer Singh VS. Girdhala and others*' 2014 (1) PLJ 223, '*Nachattar Singh Vs. Sushil Kumar and others*' 2016 (5) RCR (Civil) 289, '*Navneet Singla Vs. Haryana Urban Development Authority and others*' 2016 (3) RCR (Civil) 1049, '*Ajendraprasadji N. Pande and another Vs. Swami Keshavprakeshdasji N. and others*' 2007 (1) RCR (Civil) 481, '*Shamshad Begum Vs. Mohd. Hassan Murtaza and others*' 2016 (5) RCR (Civil) 987, '*Jameel Mohd. Vs. Durgesh and others*' 2014 (12) RCR (Civil) 445, '*Conception Fernandes Vs. Tasneem Shaikh*' 2014 (6) BCR 179, '*Manoj Kumar Vs. Rajinder Singh Sawhney and others*' 2015 (5) RCR (Civil) 763, '*Shashi Kant Pandey Vs. Mithilesh Kumar @ Ganga Devi and others*' 2014 (14) RCR (Civil) 564 and '*Santlal Vs. Ramkewal and others*' 2014 (107) ALR 615 would not really take the respondent a long away.

A liberal view has to be taken regarding the law pertaining to amendment and that is what the Apex Court has held by laying down the principles in '*Revajeetu Builders & Developers Vs. Narayanaswamy & sons and others*' (2009) 10 SCC 84. It cannot be disputed that by virtue of amendment that the landlord is not trying to take a contrary stand from the earlier stand taken or trying to wriggle out of any admission made.

The principles laid down in the said judgment read as under:-

“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 fraudulently 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 '*Abdul Rehman & another Vs. Mohd. Ruldu & others*'

2012 (11) SCC 341, the object of the amendment was kept in mind and it was held as under:

“7) It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the

proceeding for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

8) The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in [J. Samuel and Others vs. Gattu Mahesh and Others](#), (2012) 2 SCC 300 and [Rameshkumar Agarwal vs. Rajmala Exports Pvt. Ltd. and Others](#), (2012) 5 SCC 337. Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment.”

It is also to be noticed that the lapse and the delay if any would be detrimental to the landlord where eviction is sought on the ground of personal necessity and more than six years has passed, since the petition was instituted. In such circumstances, the tenant can be duly compensated and accordingly costs of ₹10,000/- are imposed upon the landlords. Accordingly, the application is allowed. The tenant will file the reply accordingly.

In such circumstances, the revision petition is allowed and the impugned order dated 15.03.2016 (Annexure P-5) does not stand in the test of judicial scrutiny. Accordingly, the same is set aside.

MARCH 28, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No