

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

(216)

**Civil Revision No.3300 of 2014 (O&M)
Decided on : 26.05.2017**

Raman Kumar

... Petitioner

Versus

Jai Kant Jindal and others

... Respondents

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

Present: Mr. Jastej Singh Arora, Advocate
for the petitioner.

Mr. Robin Dutt, Advocate
for the respondent No.1.

G.S. Sandhawalia, J. (Oral)

The present revision petition under Article 227 of Constitution of India has been filed by the petitioner-tenant is directed against the order dated 10.10.2013 (Annexure P-1), whereby the application under Order 6 Rule 17 CPC of the respondent/landlord has been allowed and he has been allowed to make intensive amendments in the ejectment application which is seriously objected to by the counsel for the petitioner. The ground argued is that there is substantial change in the main eviction petition and it was done at a belated stage once the trial had commenced and it would amount to filling up the lacuna as such. Resultantly, the order impugned passed by the Rent Controller, Yamuna Nagar at Jagadhri is challenged.

Counsel for the respondent on the other hands submits that it would only help adjudicating on the real controversy and the other side has been duly compensated by payment of ₹2,000/- as costs and the delay if any

would be detriment to the respondent/landlord. It is, accordingly, submitted that the amendment would only help the Court to come to the conclusion as such as to what was the real controversy between the parties.

A perusal of the paper-book would go on to show that the eviction petition was filed on 22.05.2010 (Annexure P-2) of the premises which were described in the petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (hereinafter referred to as 'the Act') and were consisting of Shed, Godown and Office. The measurements were given of all sides specifically but municipal number was not given. Similarly the boundaries were also given regarding the adjoining properties on the north, south, east and west. The properties were stated to be part of Khasra No.786/444, 106, 445 and that part of these Khasras have been merged in Khasra No.34 of Abadi situated with revenue estate of Mamida HB No.416, Tehsil Jagadhri, District Yamuna Nagar.

The specific case of the respondent/landlord was that Balwant Rai, the father of the landlord was the owner of the property, which was approximately 3010 square yards and had been rented out to the petitioner-tenant through Satpal Malhotra on 10.09.1957 @ ₹600/- per year. After the death of original landlord, Balwant Rai in the year 1984, it was stated that he had become owner of the property as other L.Rs. had relinquished their share vide release deed dated 26.06.2009.

The original tenant had died leaving behind the present petitioner who

was running M/s Raman Saw Mills and who had paid the rent upto 1984. The landlord had gone abroad for business and other brothers also were settled abroad and therefore, there was non-payment of rent. Resultantly, eviction was sought on the grounds of sub-letting and arrears of rent.

The petition was contested by the petitioner-tenant on the ground that there is no relationship of landlord and tenant and it was also denied the Balwant Rai was the owner of the property or that there was any rent note dated 10.09.1957 between the landlord and Satpal Malhotra, who had no concern with the firm. It was stated that M/s Raman Saw Mills is owned and possessed by Smt. Veena Kapoor, Raman Kapoor, Aman Kapoor and Kirat Kapoor and there was no relationship of landlord and tenant as such with the respondent and as per the assessment register M/s Raman Saw Mills, the petitioner was the owner in possession since 1969-1970. Smt. Veena Kapoor had introduced Aman Kapoor and Kirat Kapoor as partners and she had retired from the firm. Reference was also made to one Civil Court decree dated 28.01.2010 regarding the partnership constitution of M/s Raman Saw Mills and electricity connections and licences etc. It was denied that any rent was ever paid to the petitioner or to his father and land had been occupied by the present petitioner and there were no other tenants of the respondent.

It is not disputed that evidence was led on the said pleadings after the issues had been framed *inter se* the parties. As noticed the petitioner has denied the relationship of landlord and tenant and also set up his ownership. The application for amendment dated 03.01.2013

(Annexure P-4) was, accordingly, filed stating that the proposed amendment was essential for determining the real question in controversy between the parties. It was specifically mentioned that since there was a old relationship of landlord and tenant of 55 years, since 1957, the record could not be traced and after searching old records from thousands of files a big portion of records being in Urdu some clarification of the facts had been got. Resultantly, the amendment was sought in the heading that the Municipal Committee House Tax Assessment Number mentioned B-III-105, B-III-106 and B-III-107 and the building which was rented out to the present petitioner was B-III-106. The factum of the landlord being the adopted son of late Kanshi Ram and the real son of Balwant Rai Ji was sought to be pleaded and that Balwant Rai Ji was the sole owner vide Tabadalanama Registration No.676 dated 09.06.1955, which was registered in the office of Sub-Registrar, Jagadhari on the basis of which he had become owner of the land. He had thereafter given the property on rent to the Proprietor of M/s Raman Saw Mills, as per the rent note, which was already referred to in the main petition. The factum of rent being paid by M/s Raman Saw Mills regarding property No.B-III-106 in the Municipal Records @ ₹600/- per year and, thereafter, @ ₹1,500/- was also averred and the fact that the part of the property had been given on rent to M/s Pyare Ram Joginder Pal.

It is pertinent to notice that even in boundaries given in the initial eviction petition property of M/s Pyare Ram Joginder Pal was mentioned on the southern side of the tenanted premises. It was stated

that the said property was B-III-105 and situated in the south-west of the tenanted premises. Other details of purchase by Balwant Rai Ji through various sale deeds of 1955 and 1970 were also sought to be incorporated and details that the tenancy was of 18 tenants were there, which were got vacated from Court or by other tenants.

It is, thus, apparent that from the proposed amendments the details of the properties owned by the father of the landlord and which were rented not only to the other tenants was sought to be incorporated in support of the claim for eviction and to bolster the plea that there was a relationship of landlord and tenant and to counter the defence which had been taken by the tenant that he was owner of the property and there was no relationship of landlord and tenant.

In such circumstances, the parties are at logger heads as to whether there is any relationship *inter se* and the eviction petition can be allowed on the ground of subletting and for non-payment of rent and the Court by allowing the amendment though after the trial had commenced has not acted with any illegality or irregularity.

It is settled principle that the purpose of Order 6 Rule 17 CPC is for determining the real question in controversy between the parties and the Courts have to be liberal and if due diligence is made out and even if the trial has started, the amendment can be allowed. Reference can be made to the judgment of the Apex Court passed in **'Abdul Rehman and another Vs. Mohd. Ruldu and others'** AIR 2012 **SC (Civil) 2831** to this effect. The relevant portion reads as under:-

“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.”

Here as noticed a specific averment was made that it was a old property rented out, which was purchased in the year 1955 and leased out in the year 1957, whereas the eviction petition was filed in the year 2010, after half a century. The landlord had gone abroad and the documents were in Urdu, which were subsequently traced and, therefore, the proposed amendment was sought to be made and would also be covered under the definition of due diligence as provided in the proviso of Order 6 Rule 17 CPC.

Accordingly, the Rent Controller was well justified in allowing the amendment and no fault can be found, since the petitioner has been duly compensated by payment of costs. Even otherwise the detriment of delay in the trial would only be to the respondent/landlord and, therefore, the petitioner who is alleged to be a tenant cannot as such claim any right to that extent or he had has been prejudiced in any manner.

Resultantly, the order passed by the Rent Controller is well justified, which does not warrant any interference by this Court under the

revisional jurisdiction. Accordingly, the present revision petition is dismissed.

MAY 26, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>