

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.376 of 2015 (O&M)
Date of decision: 17.04.2017

Avtar Singh

....Petitioner

Versus

Jawand Singh

...Respondent

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

Present: Mr.Jaideep Verma, Advocate, for the petitioner.

Mr.Aditya Dassaur, Advocate, for
Mr.C.L.Verma, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral)

The present revision petition is directed against the order dated 20.11.2013 (Annexure P9), passed by the Rent Controller, Ludhiana, whereby the amendment of the written statement, filed by the petitioner-tenant, had been denied.

The application, filed under Order 6 Rule 17, seeking amendment in the written statement is to the effect that the necessary parties in the rent note were Late Kartar Singh and Late Mohan Singh along with the petitioner, as per the rent note dated 26.01.1977 and therefore, it was bad for non-joinder of necessary parties.

The Rent Controller dismissed the application on the ground that the issues have been framed and trial has commenced and therefore, in the absence of due diligence, it was held that once the issues were settled, amendment could not be permitted. Reliance was placed upon the judgment of the Apex Court in Kailash Vs. Nanhku (2005) 4 SCC 480 and Vidya Bhai & others Vs. Padam Lath & others 2009 (1) RCR (Civil) 763 to come to the said conclusion.

A perusal of the paperbook would go on to show that in the petition filed by the respondent, it had been clearly mentioned that there was a rent note dated 26.01.1977, on the basis of which, the eviction petition was filed on 19.07.2012, on the ground of non-payment of rent and for the personal and *bona fide* use of the grandson of the landlord.

In the written statement filed (Annexure P5), no such objection was raised that there were other persons who were necessary parties. The application for amendment under Order 6 Rule 17 was dated 27.09.2013 (Annexure P7), which was duly opposed by the respondent that it is only on account to delay the proceedings. The said person had signed in the presence of the marginal witnesses and that they were not tenants. It was further averred that the counsel had inspected the documents on the application for production of the documents and therefore, he had already the knowledge of the rent note and therefore, can't take the plea at the belated stage.

A perusal of the application also would go on to show that nowhere it has been mentioned that who are the other legal heirs of Late Kartar Singh and Late Mohan Singh, who is none else but the father and the brother of the present petitioner, respectively and the relationship, as such, was a close one. The petitioner was well aware regarding the fact that the eviction petition was based on the rent note. The Rent Controller was, thus, right in holding that there was no due diligence, as such, once the issues had been framed and the evidence had started and at that stage, the amendment could not be allowed.

Counsel for the petitioner has submitted that a liberal view is to be taken in the case of amendment of the written statement and placed reliance upon **Abdul Rehman & another Vs. Mohd. Ruldu & others 2012 (11) SCC 341** and that the said amendment would not change the nature of the relief sought.

Another factor which is to be noticed against the petitioner is that the impugned order was passed on 20.11.2013 and the revision petition was never instituted under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act') and has been filed on 08.01.2015, beyond the prescribed period of 90 days, by preferring a petition under Article 227 of the Constitution of India, to overcome the issue of limitation and for the delay of 1 ½ years, no sufficient cause has been shown. The factual matrix, thus, only goes on to show that only dilatory tactics have been adopted by the petitioner to delay the trial.

In **Muni Lal Vs. M/s Yashpal Rai Parshotam Lal Soni 1993 (1) PLR 323**, it was held that though there is no period of limitation prescribed for filing revision under the Act, but it still must be filed within reasonable time. Reliance can also be placed upon the judgment in **Smt. Rama Talwar Vs. Smt. Maya Devi 1991 (2) PLR 109**. Resultantly, the said principles would also apply to the present case.

Even otherwise, counsel for the petitioner, as such, could not explain as to why the other legal heirs were not mentioned in the application which were necessary and which was his duty as it is a close relationship *inter se* the parties. It is, in such circumstances, this Court is

constrained to hold that the application for amendment is not a *bona fide* claim for the proper adjudication of the case and is only an attempt by the tenant to delay the proceedings. The Apex Court in *Ajendraprasadji N.Pande & another Vs. Swami Keshavrakeshdasji N. & others 2006 (12) SCC 1* has specifically held that due diligence is the necessary requirement, especially once the trial has started. Relevant observations read as under:

“54. In our opinion, the facts above-mentioned would also go to show that the appellants are lacking in bona fide in filing this special leave petition before this Court. It is also to be noticed that the High Court has recorded relevant points in its elaborate judgment dated 05.10.2005 and have been dealt with despite the opposition of the contesting respondents that these pleas were not taken in the written statement. Under these circumstances, non-seeking of appropriate amendment at appropriate stage in the manner envisaged by law has dis-entitled the appellants to any relief. The amendment, in our view, also seeks to introduce a totally new and inconsistent case.

55. We have carefully perused the pleadings and grounds which are raised in the amendment application preferred by the appellants at Ex. 95. No facts are pleaded nor any grounds are raised in the amendment application to even remotely contend that despite exercise of due diligence these matters could not be raised by the appellants. Under these circumstances, the case is covered by proviso to Rule 17 of Order 6 and, therefore, the relief deserves to be denied. The grant of amendment at this belated stage when deposition and evidence of three witnesses is already over as well as the documentary evidence is already tendered, coupled with the fact that the appellants' application at Exh. 64 praying for recasting of the issues

having been denied and the said order never having been challenged by the appellants, the grant of the present amendment as sought for at this stage of the proceedings would cause serious prejudice to the contesting respondents original plaintiffs and hence it is in the interest of justice that the amendment sought for be denied and the petition be dismissed.

56. An argument was advanced by Mr. Parasaran that affidavit filed under Order 18 Rule 4 constitutes Examination- in-Chief. The marginal note of order 18 rule 4 reads recording of evidence. The submission is that after the amendments made in 1999 and 2002 filing of an affidavit which is treated as examination in chief falls within the amendment of phrase recording of evidence.

57. It is submitted that the date of settlement of issues is the date of commencement of trial. [Kailash vs. Nankhu & Ors. (supra)] Either treating the date of settlement of issues as date of commencement of trial or treating the filing of affidavit which is treated as examination in chief as date of commencement of trial, the matter will fall under proviso to order 6 Rule 17 CPC. The defendant has, therefore, to prove that in spite of due diligence, he could not have raised the matter before the commencement of trial. We have already referred to the dates and events very elaborately mentioned in the counter affidavit which proves lack of due diligence on the part of the defendant Nos. 1 and 2 (appellants).”

Similarly, in Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & others 2009 (10) SCC 84 it has been held by the Apex Court that where the Court feels that the amendment is not *bona fide* in nature and is only an attempt to abuse the process of the Court, the same shall not be permitted.

In **Abdul Rehman** (supra), the Apex Court noticed that specific stand had been taken in the written statement of the defendants regarding sale deeds executed. The plaints were, accordingly, sought to be amended and considering the date of the sale deed and the date on which the application was filed, it was recorded that the reliefs claimed were not barred and no prejudice would be caused if the amendment is allowed, to avoid multiplicity of litigation, which is not the case herein.

Accordingly, keeping in view the above background, this Court is of the opinion that the present revision petition does not fall in that bracket and indulgence by this Court, is not to be granted, in such cases. Resultantly, the present revision petition is hereby dismissed.

17.04.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No