

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

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**CR No.4277 of 2016 (O&M)
Date of decision: 21.03.2017**

L.D.Bhatia

...Petitioner

Versus

Sunil Kumar

...Respondent

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

Present: Mr.Vivek Goyal, Advocate, for the petitioner.

Mr.Madan Gupta, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral)

The present revision petition, filed by the petitioner-landlord, is directed against the order dated 28.09.2015 (Annexure P1) whereby the application for amendment of the rent petition, wherein the rent @ Rs.10,000/- was claimed as per 10% increase clause and the amount of arrears claimed was enhanced from Rs.88,000/- to Rs.2,40,000/-, has been dismissed.

The Rent Controller, Kurukshetra, vide the impugned order, has held that the nature of the suit would be changed and once the agreement was within the knowledge of the landlord and how, because of oversight, he failed to introduce the terms of the same in the plaint, was not explainable. It was further held that the amendment would not help the Court in affective adjudication of the case in controversy. It was held that there was negligence on the part of the petitioner, which would affect the interest of the respondent which had generated in his favour in the present proceedings. Resultantly, the application under Order 6 Rule 17 CPC was dismissed.

The said reasoning, on the face of it, cannot be accepted. A perusal of the eviction petition would go on to show that the claim was based on the rent agreement dated 02.05.2003, which has now been appended as Annexure P2/A.

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Rent was, accordingly, claimed @ Rs.4000/- per month from 02.06.2005 to 01.06.2008. It was also mentioned that on earlier occasions, rent had been assessed @ Rs.4000/- per month, the litigation of which was finalized.

Counsel for the respondent, on the other hand, has tried to take advantage of the pleadings of the petitioner that once *inter se* the landlord and the tenant, rent was claimed @ Rs.4000/-, it was not open for him to claim for enhancement of the rent, in subsequent proceedings.

A perusal of the rent note would go on to show that there was an enhancement clause in the rent note, which reads as under:

“1. That the rent is mutually settled at Rs.4,000/- per month exclusive of House tax, water and Electricity Charges.

XXXX

XXXX

XXXX

5. That duration of this agreement is for 11 months but likely to be extended by increasing 10% of the rent further period equal to original period on the fresh terms and conditions as will be mutually agreed to.”

The factum of the said rent note had been denied, as such, by the tenant in his reply and the rent had been claimed to be @ Rs.900/-. It is not disputed that the case is at the initial stage when the application was filed and issues had not been framed. The enhancement clause would go on to show that it could be enforced after 11 months. Once the issue before the Court is regarding the rate of rent and the rent note has also been relied upon, which was part and parcel for the adjudication of the Court and which was to be done at the initial stage itself, initially, therefore, the observation of the Court that the amendment will not be relevant for the adjudication of the dispute, is without any basis. It is settled principle that law pertaining to amendment is liberal,

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especially once it is prayed for at the initial stage. On account of the negligence of the petitioner or his counsel in incorporating the enhancement clause and whether the same is admissible or not, is the matter of controversy which the Rent Controller is to decide. In such circumstances, the Rent Controller shut out the amendment of pleadings, as such, at the initial stage, which is not permissible. However, keeping in view the fact that the lapse is on the part of the landlord, the present revision petition is allowed, by setting aside the impugned order dated 28.09.2015 (Annexure P1), subject to payment of Rs.10,000/- as costs. The application under Order 6 Rule 17, thus, stands allowed.

Present revision petition stands allowed in the above-said terms.

21.03.2017
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*