

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No. 3965 of 2017 (O & M)

Date of decision: 31.05.2017

The Director, Department of Horticulture, Government of Punjab and others

....Petitioner(s)

Versus

Khalsa College Charitable Society

...Respondent(s)

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

Present: Mr. J.S. Bhullar, DAG, Punjab,
for the petitioners.

G.S.SANDHAWALIA, J. (Oral)

The State challenges the order dated 21.02.2017 (Annexure P-6) whereby, the application under Order 6 Rule 17 CPC for amendment of the written statement has been rejected. By virtue of the proposed amendment, the issue of title was sought to be raised by the State on the ground that the tenanted premises were situated in Khasra No. 121 and not in Khasra No. 220 and, therefore, the respondent was not owner of the building in question.

The Rent Controller dismissed the application on the ground that there was an admission regarding the factum of relationship of landlord-tenant and also of taking possession of the premises on rent and, therefore, by virtue of the said amendment, the tenant would have no right to question the title of the landlord. Reliance was placed upon judgment of the Apex Court in *BKN Pillai vs. P. Pillai and another, 2000 (1) RCR (Civil) 511* to hold that the nature of the dispute cannot not be changed

drastically. The trial had already commenced and the petitioner had already concluded his evidence and the matter was fixed for evidence of the present petitioner-tenant. The relevant observations reads as under:-

“The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The Courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite part on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.”

Counsel for the State has vehemently submitted that the

application should have been allowed since the issue of title as such was being raised and, therefore, the Rent Controller was in error.

The said argument is only to be noticed and rejected. The petition was filed for eviction on the grounds of bona fide requirement by the respondent-landlord who had alleged that the property had been taken on rent from April, 2005 and there was an increase clause also. The petitioner-State in its written statement had challenged the bona fide aspect as to whether the respondent-college had the pre-requisites for the purpose of expansion. However, it is pertinent to notice that expansion was for the purpose of starting Khalsa Medical College. It was, however, mentioned that it was admitted that they were regularly paying the rent of the demised premises to the landlord and there was no breach of rent agreement. It has further been mentioned that as per condition no. 2 of the rent agreement (copy of which was enclosed with the reply to eviction petition as Annexure R-12), the petitioner was required to spent one month's rent for maintenance of the premises once in a year but it has not been done so. It is, thus, apparent that the aspect of the relationship inter se of landlord-tenant was admitted and it was on this basis they had come into possession.

By virtue of the amendment, plea is being taken that the property belongs to Provincial Government and, therefore, the rent had been wrongly received by concealing the true and actual facts regarding the ownership of the premises. Thus, a material admission as such regarding the relationship aspect was sought to be changed through the proposed amendment. The same cannot be permitted since it is settled by the Apex Court that the proposed amendment should be bona fide and not mala fide and the parties cannot be allowed to take a somersault and change their

stance. The proposed amendment is one such kind of example which cannot be termed as a bona fide amendment.

In *Revajeetu Builders & Developers Vs. Narayanaswamy & Sons and others, 2009 (10) SCC 84*, it has been held by the Apex Court that where the amendment is not bona fide and a mala fide attempt to wriggle out of an admission made, then it is not to be permitted. The relevant observations read thus:-

“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 fundamentally 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.

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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.”

Accordingly, finding no merit in the present revision petition, the same is dismissed limine.

31.05.2017
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(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No