

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

Civil Revision No.4348 of 2015(O&M)

Date of decision: 20.04.2017

Inderjit Singh

...Petitioner

Versus

Bhag Singh Sodhi

...Respondent

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

Present: Mr. Akshay Kumar Jindal, Advocate for the petitioner.

Mr. Naresh Jain, Advocate for

Mr. Manish Jain, Advocate for respondent.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed against the order dated 27.5.2015 passed by the Appellate Authority, Ambala whereby application under Order 6 Rule 17 of the CPC filed by the tenant for amendment of the written statement has been dismissed.

Through the said application filed during pendency of the appeal, preliminary objection was sought to be taken that it was a case of partial eviction and therefore, the amendment was required. The ground taken was that there was a basement in the premises in question and eviction was only sought from the shop in question.

The Rent Controller, Ambala noticed that eviction was with regard to rented premises bearing no.119/1, Standard Hotel Building, Opposite Vijay Rattan Chowk, Ambala Cantt. which was let out at the rate of ₹ 400/- per month which fact had been admitted in the written statement. The issues had been framed and the parties had concluded their evidence and the eviction petition had been allowed on 30.9.2014 (Annexure P/3).

The appeal was filed on 29.10.2014 and when the appeal was fixed for arguments, the present application for amendment of written statement was filed on the ground there would be partial eviction. Resultantly, it was held to be a delaying tactic to prolong the decision of the appeal and the same was dismissed vide impugned order dated 27.5.2015.

Counsel for the petitioner submits that the legal right has accrued as such and the amendment should be allowed by incorporating the same in the written statement and liberal view has to be taken in case of amendment of the pleadings especially that of the written statement.

On the other hand, counsel for the landlord opposed the said prayer and defended the order passed by the Appellate Authority, Ambala.

A perusal of eviction order dated 30.9.2014 (Annexure P/3) would go on to show that it is well justified. It is not disputed that there was any rent note as such in which factum of basement has been mentioned which had also been let out separately. The premises as such once being numbered and site plan having been proved on record as Ex. P/12, therefore, eviction was to be ordered from the premises which had been described in the ejectment petition and duly proved by bringing the site plan on record.

It is not the case that the tenant was not aware that there was basement which was in his possession or that the same had a separate entrance and a separate municipal number. The proceedings remained pending before the Rent Controller, Ambala for almost two years as it was instituted on 30.11.2012 and same was decided on 30.9.2014. Counsel for the respondent has pointed out that the written statement was filed way back in April, 2013 but no such objection was raised.

Similarly, thereafter, the appeal as noticed was filed on 29.10.2014 and the Appellate Authority, Ambala has rightly commented upon that the application for amendment was filed at the fag end when the appeal was fixed for arguments.

The Apex Court in *Ajendraprasadji N. Pande & Another vs. Swami Keshavprakeshdasji N. and others, 2006 (12) SCC 1* specifically held that there has to be due diligence keeping in view the proviso of Order 6 Rule 17.

A perusal of the application for amendment does not show that any such fact was pleaded. Therefore, once at the appellate stage application for amendment was filed without giving any reason why the said plea had not been taken earlier, the application is not liable to be allowed. Even otherwise, this Court is of the opinion that that once the ejectment from the complete premises as such was prayed for and ordered, no ground is made out to allow the amendment.

In such circumstances, keeping in view the above discussion, the amendment as such sought cannot be considered bona fide and legitimate and suffering from lack of due diligence. Resultantly, this Court is of the opinion that the order dated 27.05.2015 which has been passed by the Appellate Authority, Ambala is well justified and is accordingly upheld and the present revision petition is dismissed.

April 20, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No