

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

Civil Revision No.4515 of 2016

Reserved on: 14.02.2017

Decided on : 08.03.2017

M/s Shoe Palace and others

... Petitioners

Versus

Sham Lal and others

... Respondents

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

Present : Mr. J.S. Mehndiratta, Advocate
for the petitioners.

Mr. Sandeep Khunger, Advocate
for the respondents.

G.S. Sandhawalia, J.

The present revision petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 11.07.2016 (Annexure P-9) passed by the Rent Controller, SAS Nagar, Mohali, whereby the petitioners-tenants application for amendment to the written statement has been dismissed.

The reasoning given in the said order is that the subsequent event has not been proved and even if taken on record, on the face of it, it would not be a relevant issue for determining the question in controversy before the Rent Controller. The agreement which was sought to be brought on record dated 22.09.1995 did not bear the signatures of landlords and thus the said agreement was lacked authenticity. In an earlier set of litigation, whereby the witnesses were sought to be recalled, this Court had adversely commented upon the said event on 10.03.2016.

Resultantly, it was held that the subsequent event which was sought to be created was not existing as such and even if the proposed amendment was taken, on the face of it, the same was not relevant.

Counsel for the petitioner has accordingly relied upon the judgments of the Apex Court in '**Joginder Pal and another Vs. Krishan Bala**' 2007 (1) PLR 530, '**Ram Kumar Barnwal Vs. Ram Lakhan**' 2007 (5) SCC 660, '**Ashok Kumar Vs. Mohinder Pal Singh and another**' 2008 (1) RCR 772, '**Surjit Kaur and others Vs. Shanti Devi**' 2011 (1) RCR (Civil) 131 and '**Mrs. Surinder Kaur Bakshi Vs. M/s Chopra Glass House and others**' 2013 (3) PLR 142 to submit that the agreement dated 22.09.2015 whereby the respondent-landlord had agreed to sell the property in question was a subsequent event and, therefore, the amendment of the written statement should be allowed. He submitted that the bonafide requirement as such was one of the grounds for ejectment and the same was doubted in view of the fact that the landlord wanted to sell the property and, therefore, the factum of agreement was relevant.

Counsel for the respondents on the other hand has relied upon the judgment of the Apex Court in '**Vidyabai and others Vs. Padmalatha and another**' 2009 (1) RCR (Civil) 763 to submit that the amendment was not necessary to decide the real question *inter se* the parties and the conduct of the tenant was as such and the purpose was to delay the proceedings.

The ejectment application had been filed on 27.09.2012. The

evidence had been closed, thereafter, the application for recalling of the witnesses had been filed, which was dismissed by the Rent Controller on 09.11.2015 and the said order had been upheld by this Court in ***Civil Revision No.7883 of 2015 on 10.03.2016***. The issue had been raked up earlier and it had been held that the landlord had never signed the agreement to sell and, therefore, the deposit of cheques in the account of the landlord and then conveniently stopping the payment was of no consequence as the said cheques had never been cleared. The status of the tenant had never been morphed from being a tenant in possession to being an intended vendee in possession. Resultantly, it was pleaded that the amendment was not bonafide and the application for amendment had rightly been dismissed. The reliance was accordingly placed upon Order 6 Rule 17 as amended to contend that the amendment at this stage was not permissible.

A perusal of the paper-book would go on to show that it was pleaded by the respondent-landlord that he had become co-owner of the SCO No.24, Phase-I, SAS Nagar Mohali through a sale deed dated 05.07.2001. The tenants were already in possession through Kamlesh Kaur who was the proprietor of M/s Shoe Palace. The tenant had attorned in favour of the petitioners and started paying the rent. Thereafter, the rear court-yard had been given to the said tenant and, thereafter the son had been included in the business and the proprietorship had been converted into a partnership. The terms of the tenancy had been re-settled in the year 2007 and rent was thus being paid.

The premises were required for bonafide requirement by the landlords for their own use and occupation. They were in medicine business and they were on rented premises and the need of the son of the landlord No.1 and 2 and the brother of the husband of landlord No.3 was put forward. The ground floor being most conducive for running the business and, therefore, the premises were required for use and occupation of Satpal Garg and Abhinav Garg. Apart from that material alteration was also alleged which led to violations of the bye-laws of the Punjab Urban Development Authority and GAMADA.

The petition was opposed by the present petitioners on the ground that as Satpal Garg was living separately and having separate family, the landlord had no concern whatsoever with the said family. Reference had been made to the lease deed dated 01.08.1996, whereby the entire ground floor had been rented out. The sale deed dated 02.05.2001 also showed the said fact and the tenants were there in the back yard, since 1984. Rent had been initially paid @ ₹3,000/- per month which was increased to ₹11,800/- per month till resale of the property in May, 2001. Pressure was being put for increase of rent and same had been increased to ₹26595/- per month in the year 2010 and rent had already been paid ₹35,730/- per month. The allegations of personal bonafide requirement was denied with the plea that Satpal Garg was running his business in SCO No.32, Phase-I, independently. He never shifted his business in the premises in question to the first floor and second floor which had been rented out after completing its construction

to different persons by dividing the same into cabins. Therefore, the malafide intention as such was there and that the need was not genuine and bonafide. The petitioners had no concern with Satpal Garg and were just using his name as a tool for bonafide necessity for eviction. The allegations of impairment were denied on the ground that all the alterations and changes were made by the previous owner and they had occupied the building as per the same structure.

It was not disputed that in August, 2015 on account of three witnesses being cross-examined the evidence of the landlord was closed and, thereafter, the application came to be filed for recalling the witnesses which was dismissed on 09.11.2015. The order was challenged by the petitioners in **Civil Revision No.7883 of 2015**. This Court held that the Court has the right to recall any witness and party cannot seek cross-examination by recall under Order 18 Rule 17 of the CPC as a matter of right. Resultantly, the order was upheld and the revision petition was dismissed holding that the same was not liable to be set aside, in view of the fact that the cheques as such had never been cleared. The argument that witnesses had to be asked the factum of the said cheques whereby ₹ 40lakhs had been deposited was rejected. The relevant part of the order dated 10.03.2016 read as under:-

“Once the judicial consensus is that power of the Court to recall a witness and personally put questions to him or to permit a party to put questions is referable to the facts of each case, it would be apposite to peruse the reasons why the petitioner is seeking to recall the witnesses. As per counsel for the petitioner, after the filing of the petition and after the amendment made, the respondent had entered into an

agreement to sell and had taken cheques in the amount of ` 40 lacs from the petitioner and these questions had to be put to the witness. On the other hand, counsel for the respondent states that this is a ruse of counsel for the petitioner because his client never entered into an agreement to sell and what the petitioner did was to deposit cheques in the account of the landlord and then very conveniently stopped the payment. As per the learned counsel, if the agreement to sell had been executed and if the respondent had presented the cheques and the same had been cleared, the petitioner's claim would have become much stronger because he would have then morphed from being a tenant in possession to being an intended vendee in possession and that would have displaced the whole case of the landlord. Counsel for the petitioner has also admitted that the respondent had never actually signed the agreement to sell. In these circumstances, I am not able to persuade myself that the order passed by the Rent Controller is so vitiated as to be liable for interference in the extraordinary revisional jurisdiction of this Court. Consequently, this petition is dismissed."

In spite of the rejection of the abovesaid claim for recall of the witnesses, the application was filed for amendment, thereafter, on 28.03.2016. It was alleged that on account of the agreement as such entered into between the parties, the landlord had agreed to sell the property for ₹2.60 crores of the entire ground floor with basement rights and prior negotiation had started on 26.07.2014. The agreement had been prepared on 22.09.2015 and the cheques had been deposited by the landlords but since they did not sign the agreement, the payment was stopped by intimating the bank and the respondent could not encash the said cheques. Various details were given as to how jewellers transferred the money in the accounts of the tenants which had been used for the purpose of issuing the cheques. Reference also made to the recording of a C.D of Ram Lal Garg and Kalawat Garg which had been recorded in the mobile phone of Inderbir Singh son of Kamlesh Kaur.

The application was opposed on the ground that it was another effort to delay the finalization of the proceedings. The tenants wanted to make a U-turn and that no payment had ever been received from the respondents and it was manipulation by the respondent. The petitioner had never offered the property for sale. The allegations of the voice recording was alleged to be manipulated and adopted by the respondents by misusing the technology and agreement which was alleged to be signed could not be held a binding upon the petitioners. No agreement to sell had ever come into existence and there was no occasion to receive the cheques. The case was listed for respondent evidence and frivolous applications have been filed. The cheques had been presented since they had knowledge about the bank accounts and themselves stopped the payments and these unilateral acts would not be termed as an agreement to sell. The telephone call was on account of the premises in question which did not fructify and the payment was unjust and illegal.

The provisions of Order VI Rule 17 CPC after amendment read as under:-

“Amendment of pleadings-- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

A perusal of the above would go on to show that though amendment can be allowed at any stage but once trial had started due diligence has to be pleaded. Courts have held time and again that subsequent events which have occurred and intention can be noted which was also laid down in the judgment of ***Ram Kumar Barnwal (supra)***. In the said case the claim for amendment of the appellant owner was that he had been evicted from the tenanted premises where he carrying on his business and, therefore, the amendment should be allowed. The writ petition had been dismissed by the High Court granting liberty to the appellant to file fresh release application. It was, accordingly, held that subsequent events can be taken note of and therefore, the release application had been filed more a quarter of century back. Therefore, by the impugned order the High Court would prolong the litigation instead of shortening it. It was in such circumstances, the order was set aside and the matter was remanded to the High Court for fresh consideration.

The facts in the present case are as noticed on a different premises altogether. Allegations of malafides have been levelled regarding the conduct as such of the tenant as to the filing of the application as they were only delaying the proceedings and had also filed an application for secondary evidence regarding their partnership as such for the purpose of delaying their evidence which had also been dismissed by the Rent Controller, thereafter on 03.10.2016.

The judgment in ***S.K. Bakshi (supra)*** is also pertaining to the amendment which was allowed in favour of the landlord on the ground

that the grandson of the deceased landlord required the property for himself and if the fresh petition could be filed on the same cause of action and once subsequent events had been happened, it would be imperative to allow the amendment and scuttle a needless multiplicity of proceedings.

Thus, it would not be applicable in the facts and circumstances of the present case.

Similarly, in the case of *Surjit Kaur (supra)*, the tenant was allowed to amend the written statement because another shop of the landlord had become vacant and was available to the landlord, whereas in the case of *Ashok Kumar (supra)* it was held that amendment was not sought with malafide intention, since the tenants had pleaded that the landlord has shifted his family to Kapurthala and resultantly, the amendments were allowed.

In the judgment passed in *Joginder Pal (supra)* it was held that the subsequent events which come into existence after the filing of the written statement should be allowed, if relevant to be incorporated.

The Apex Court in '*Revajeetu Builders & Developers Vs. Narayanaswamy & sons and others*' 2009 (10) SCC 84 has held that where a contrary stand has been taken and the amendment is not bonafide, the same is not to be permitted. The frivolous applications changing the cause of action and stance totally thus were frowned upon. The principles were laid down as under:-

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.”

In the present case as noticed the alleged events though might be subsequent but admittedly there is no agreement which has been signed as such on the basis of which the petitioners can seek any claim as such of the respondents having entered into an agreement to sell on the basis of which cheques were deposited in the accounts of the landlord. This Court has already noticed the argument of the counsel for the tenant on an earlier occasion that only if the payments had been made the status of the tenant would have changed as such into a prospective buyer and, therefore much could have been said about the lack of bonafides of the landlord. The stoppage of the cheques as such is a relevant consideration which holds this Court to take the view earlier by a Coordinate Bench that the exercise as such of amendment on the basis of the alleged

agreement is not a bonafide exercise. It was only an attempt as such to further complicate the proceedings by raising disputed questions as such and by shattering the presumption of the bonafide necessity of the landlord.

The amendment as such does not fall amongst the ones which is permissible as per the principles laid down by the Apex Court in the above facts and circumstances and, therefore, the argument which is raised is not justified. The sole question as such before the Rent Controller is whether eviction is to be done on the basis of the personal requirement as alleged and on the ground of material impairment and the issue of setting up the defence that he is a proposed purchaser is a question alien to the controversy. Neither any proceedings as such have been launched on the basis of the said agreement which also cannot be done as admittedly there were no signatures of the landlords on the alleged agreement and, therefore, no contract as such came into force.

In such circumstances, the Rent Controller has rightly come to the conclusion that the amendment sought is not justified in the facts and circumstances. Resultantly, keeping in view the above discussion, the present revision petition is dismissed.

MARCH 08, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No