

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

C.R. No. 4577 of 2016 (O & M)

Date of decision: 15.03.2017

Gobind Gupta

....Petitioner(s)

Versus

Ritu Chopra

...Respondent(s)

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

Present: Ms. Parminder Kaur, Advocate,
for Mr. Hitesh Pandit, Advocate,
for the petitioner.

Mr. Vaibhav Sehgal, Advocate,
for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition has been filed by the tenant-petitioner under Article 227 of the Constitution of India against the order dated 12.05.2016 (Annexure P-3) passed by the Rent Controller, Ludhiana whereby, the application under Order 6 Rule 17 CPC for amendment of the written statement has been dismissed.

The reasoning given by the Rent Controller in the impugned order primarily is that the issues were framed on 06.02.2016 and thereafter 3 witnesses had been examined in chief. The cross examination was being deferred and ultimately on 29.04.2016, the application had been filed for amendment. Resultantly, keeping in view the proviso under Order 6 Rule 17 CPC, it was held that there was no due diligence that the said pleadings could not have been incorporated in the written statement at the initial stage.

The facts were duly in the knowledge of the respondent and nothing had been stated as regarding the due diligence aspect. Resultantly, reliance was

placed upon judgment of the Apex Court in ***Vidyabai and others vs. Padamalatha and another, 2009 (1) RCR (Civil) 763*** and ***J. Samuel and others vs. Gattu Mahesh and others, 2012 (1) RCR (Civil) 903***. It was, thus, held that the proviso was couched in a mandatory form and the Court was not to allow the application unless the conditions precedent were satisfied.

Counsel for the petitioner has vehemently argued that in another set of litigation, the same Rent Controller, vide order dated 12.05.2016 (Annexure P-6), had allowed the amendment application which was filed. She resultantly relied upon the judgments of the Apex Court in ***Surender Kumar Sharma vs. Makhan Singh, 2009 (10) SCC 626; Mahila Ramkali Devi and others vs. Nandram (D) through L.Rs. and others, 2015 (5) RCR (Civil) 562*** and judgment of this Court in ***C.R. No. 4637 of 2015, Amar Singh vs. Nirmal Singh and another*** decided on 11.04.2016 in support of her case to submit that the law of amendment is liberal and, therefore, the order of the Rent Controller is not justified.

On the other hand, counsel for the respondent has submitted that reliance upon *Vidyabai's case (supra)* and *J. Samuel's case (supra)* was justified. He has also placed reliance upon the earlier judgment of the Apex Court in ***Ajendraprasadji N. Pande & Another vs. Swami Keshavprakeshdasji N. and others, 2006 (12) SCC 1*** to submit that once the trial has commenced and the issues had been settled, the amendment could not be allowed in the absence of any due diligence pointed out.

A perusal of the pleadings inter se the parties would go on to show that petition was filed for eviction from the property which is a garage forming part of Property No. B-IV-686, Mali Ganj, Ludhiana. It was the

case of the landlady that the paternal grand father was the owner and he was a practising doctor. The present petitioner was a compounder with him and continued occupying the said clinic after his death on 25.09.1984. He had left behind a registered Will dated 17.08.1984 in favour of his daughter-in-law Veena Chopra. The petitioner-tenant continued attending the said clinic as a licensee of Veena Chopra and she expired on 08.10.2012 leaving behind the registered Will in favour of the landlady and she became the exclusive owner of the property. Thereafter, the rent was settled between the landlady and the tenant @ ₹18,000/- per month of the clinic portion, for which separate ejectment petition has been filed in which the amendment has been allowed. Since there was an old association, she did not insist regarding the payment of arrears of rent. She had also let out the garage which was the disputed property @ ₹5,000/- per month w.e.f. 01.07.2014 and a rent note was also executed. The garage was shown as a shop since it was the part of the residential house and there is an access between the said portion and the remaining portion of the house. The landlady was residing in Chandigarh at that point of time. She, thus, filed a petition on the grounds of bona fide necessity as being Manager (Administrator and Facilities) in the IndusInd Bank, Pakhowal Road, Ludhiana. Earlier, on account of shifting to Chandigarh, she did not feel the necessity of the garage. Now, on her transfer back to Ludhiana, she was being compelled to park her car in front of the property and required the premises as such being a woman and there was no other parking place. She was being harassed as such at the time when the car was being parked at the odd hours by the police etc.

In the written statement filed by the petitioner-tenant, the

factum that he was working as a compounder with the grand father of the landlady was admitted. The shop had been let out at a monthly rent of ₹200/- by Dr. Maghi Ram Chopra and he had been paying the rent and after his death, to Smt. Veena Chopra and after her death, to the present landlady-respondent. The fact that he had continued occupying the premises as a licensee was denied. The rate of rent of the other shop also was denied. It was admitted that the rent from ₹200/- was increased to ₹3,000/- w.e.f. March 2015 and it was paid upto August 2015. The rent note was stated to be inadmissible in evidence and the shop was a part of the residential house was denied. It was, however, also mentioned that in the rent note there was a mention of the presence of the shop and the rent note was got prepared by the landlady. The relationship also of the landlord-tenant was admitted. On the basis of these pleadings, only two issues were framed on 06.02.2016 i.e. whether the property in dispute was required by the petitioner for personal use and occupation and secondly whether the petition was not maintainable.

As noticed, the evidence was tendered on the next date i.e. on 04.03.2016 and on 3 occasions, the landlady was present alongwith two other witnesses on 21.03.2016 and 30.03.2016. She also appeared on 19.04.2016 when the counsel was changed. It is at that stage the application for amendment was filed.

A perusal of the application for amendment would go on to show that various other pleadings have now been sought to be incorporated, regarding the legal notice dated 23.07.2015 sent earlier regarding the requirement of the shops for establishing a part time coaching center and the combining of both the shops. Various other objections regarding concealment of construction of properties in the possession of the landlady

and not the correct site plan were pleaded apart from pendency of some civil suit and a dispute was sought to be raised that there was litigation inter se the landlady and the brother and she did not have title apart from that two separate ejectment petitions against the same tenant were not maintainable.

The proposed amendment reads thus:-

“1. That the petitioner has filed this petition out of greed. There is no need of the petitioner on the following ground:-

(a) She has not come to the court with clean hands and she is guilty of concealment of facts having effect on the merits of the case. It is pertinent to mention here that before filing this false petition, the petitioner had sent a legal notice dated 23/7/2015 signed by her whereby she took the plea that she requires both the shops for establishing a part time coaching centre in both the shops. Copy attached. She had also taken plea in that notice that she wants to combine both the shops in one unit and wants to renovate the same for establishing a part time coaching centre, whereas, all together different and false ground has been taken in the petitions.

(b) The petitioner has also concealed about the construction of the properties in her possession and she has also not filed correct site plan of the property in question as well as of the properties alleged in the petition. The petitioner already is in possession of accommodation more than her needs.

(c) The present petition has been filed out of vendetta and as a counter blast to the civil suit for permanent injunction filed by the respondent titled “Gobind Gupta Versus Ritu Chopra” dated 18/6/2015.

(d) She has not intentionally made her brother Aditya Chopra as a party to the present petition and

thus the petition is bad for non-joinder of the necessary parties. The petitioner has concealed about the litigation i.e. civil suits pending in between the petitioner and her brother Aditya Chopra on the day of filing the present false petition, which are pending in the court of Ms Mehak Sabharwal, CJ, JD, Ludhiana.

(e) The petitioner has no locus standi to claim the ground of bonafide necessity. She has no right to file this petition until and unless she proves her title by way of probate of alleged Wills claimed in the present petition.

(f) The petition is bade for partial ejectment. Separate two ejectment petitions against same tenant regarding the tenancy in same building are not legally maintainable. Thus, the petitioner is estopped by her own act and conduct from filing the present petition.”

The same were objected to on the ground that merely on account of change of counsel, amendments were not to be allowed. The landlady was being harassed by taking these pleas. Since issues had been framed and evidence had been led, amendment could be allowed. Mere filing of civil suit did not debar the petitioner from filing the petition. The facts were available to the respondent at the time when the written statement was being prepared and, therefore, there was no due diligence.

A perusal of the other order allowing amendment on 12.05.2016 would go on to show that the other petition was filed regarding the eviction of the clinic portion which also forms part of Property No. B-IV-686, Mali Ganj, Ludhiana. The Rent Controller, in that case, had allowed the amendment on the ground that the matter was pending for assessment of provisional rent and the trial was yet to commence and the permission was, thus, granted to file the amended written statement. In the

present case, the facts as noticed, are totally different and, therefore, reliance by the counsel on the other order is not justified. Rather, it would go on to show that the Rent Controller has duly applied his mind to the facts and circumstances and to the legal position as such to allow amendment in one case and deny in the other in view of the settled position of law. The Apex Court in *Ajendraprasadji N. Pande's case (supra)* held as under:-

“40. Under the proviso no application for amendment shall be allowed after the trial has commenced, unless inspite of due diligence, the matter could not be raised before the commencement of trial. It is submitted, that after the trial of the case has commenced, no application of pleading shall be allowed unless the above requirement is satisfied. The amended Order VI Rule 17 was due to the recommendation of the Law Commission since Order 17 as it existed prior to the amendment was invoked by parties interested in delaying the trial. That to shorten the litigation and speed up disposal of suits, amendment was made by the [Amending Act, 1999](#), deleting Rule 17 from [the Code](#). This evoked much controversy/hesitation all over the country and also leading to boycott of Courts and, therefore, by Civil Procedure Code (Amendment) Act, 2002, provision has been restored by recognizing the power of the Court to grant amendment, however, with certain limitation which is contained in the new proviso added to the Rule. The details furnished below will go to show as to how the facts of the present case show that the matters which are sought to be raised by way of amendment by the appellants were well within their knowledge on their Court case, and manifests the absence of due diligence on the part of the appellants disentitling them to relief.

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51. *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.*

52. *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."*

As noticed, a civil suit also was pending inter se the parties. The factum of the dispute inter se the family members was also apparently well known and now is sought to be incorporated in the pleadings and, thus, an effort is being made to wriggle out of the admissions of the relationship of the landlord-tenant inter se the parties. The Rent Controller is only to decide the issue of the personal necessity which has to be thrashed out and pleadings have been discussed in detail above and, therefore, by trying to incorporate the additional pleadings, the attempt of the tenant cannot be considered to be bona fide as such.

The principles which have been laid down by the Apex Court in ***Revajeetu Builders and Developers vs. Narayanaswamy & Sons and others, 2009 (10) SCC 84*** would, thus, come into play that whether the amendment is bona fide, legitimate and if a somersault is being taken to get out of the earlier admissions, then the courts could not permit the amendment. The said principles 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.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

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.”

In such circumstances, keeping in view the above discussion, the judgments which have been relied upon by the petitioner would not be applicable keeping in view 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 12.05.2016 (Annexure P-3) which is passed by the Rent Controller is well justified and is accordingly upheld and the present revision petition is dismissed.

15.03.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No