

Civil Revision No.4613 of 2015(O&M) & other connected petitions

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

1. **Civil Misc. No.5121-CII of 2016 in/and**
Civil Revision No.4613 of 2015
Date of decision: 08.2.2017

Sohan Lal Bagga

...Petitioner

Versus

Mohd. Sayeed

...Respondent

2. **Civil Misc. No.5122-CII of 2016 in/and**
Civil Revision No.4617 of 2015

Sohan Lal Bagga

...Petitioner

Versus

Mohd. Rizwan

...Respondent

3. **Civil Misc. No.5113-CII of 2016 in/and**
Civil Revision No.4647 of 2015

Sohan Lal Bagga

...Petitioner

Versus

Sanjay Saxena and others

...Respondents

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

Present: Mr. Ramesh Kumar Bamal, Advocate for the petitioner
in all the three petitions.

Mr. Harsh Manocha, Advocate for the respondent(s)
in all the three petitions.

G.S.SANDHAWALIA, J. (Oral)

CM No.5121-CII of 2016 in CR No.4613 of 2015,
CM No.5122-CII of 2016 in CR No.4617 of 2015 and
CM No.5113-CII of 2016 in CR No.4647 of 2015.

Counsel for the applicant-petitioner does not wish to press the
present Civil Misc. Applications and prays that the same may be dismissed

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as not pressed.

Ordered accordingly.

Main Cases

This order shall dispose of Civil Revision Nos.4613, 4617 and 4647 of 2015 as common questions of fact and law are involved in these petitions.

In all these three petitions, the petitioner-landlord challenges similar orders dated 21.5.2015 passed by the Rent Controller, Chandigarh whereby applications for amendment of the ejectment applications have been declined.

The tenanted premises are bearing shop Nos. 1421/5, 1421/6 and 1421/7 and part of the same building situated in village Burail, Sector 45-C, Chandigarh. The petitioner-landlord had sought amendment whereby the details were mentioned as to requirement of premises in question for which of the family members who could be settled in the rented premises. It is not disputed that the petitions were filed on the ground of personal necessity apart from arrears of rent and non payment of same. Initially also under the ground of bonafide personal necessity it was mentioned that the petitioner-landlord intended to settle both his sons and make a partition between them in respect of his property and according to family settlement, he had to make material alterations.

Vide amendment which is now proposed, the details were mentioned as to what his sons were doing and details of family members and how the property was proposed to be utilized. The prayer for amendment has been declined by the Rent Controller, Chandigarh at the

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stage when it was fixed for evidence of the petitioner on the ground that issues had been framed. Since there was failure on the part of counsel earlier and the facts were in the knowledge of the petitioner-landlord at the time of filing the ejectment applications it was held that the applications for amendment were not liable to be allowed.

The reasoning as such given by the Rent Controller, Chandigarh is patently against the settled principles. The landlord was only elaborating his ground of bonafide requirement. The said amendment would only help the Rent Controller to come to a valid conclusion as to whether the requirement was justified in the facts and circumstances of the case and was bonafide in nature. Even otherwise, it is settled principle that liberal view has to be taken in case of amendment as long it does not change or alter the nature of the case. Even the evidence had not yet commenced and the tenants would not liable to be prejudiced in any manner if the amendment was to be allowed and the tenants could have been compensated with costs.

Reference can be made to the judgments of the Apex Court in the case of **Lakha Ram Sharma Vs. M/s Balar Marketing Pvt. Ltd. 2008 (17) SCC 671** wherein it has been held that the question of *bona fide* necessity is to be examined on merits by the Rent Controller. In the present case and at this stage, it would not be fair to debar the landlords from taking the clarificatory pleas which they have sought to raise in the application for amendment. The principles of amendment have been laid down by the Apex Court on the issue of clarification and after the commencement of trial in **Rajesh Kumar Aggarwal & others Vs. K.K.Modi & others 2006 (4)**

SCC 385 wherein it has been held that the real question in the controversy between the parties is to be adjudicated upon. Relevant portion reads as under:

“This rule declares that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The proviso enacts that no application for amendment should 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 for which amendment is sought before the commencement of the trial.

13. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

14. Order 6 Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

15. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be

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prayed for in the new suit cannot be permitted to be incorporated in the pending suit.”

Similar observations were made in **Sushil Kumar Jain Vs. Manoj Kumar & another** 2009 (14) SCC 38 wherein it was held that if the applicants were only seeking to clarify the earlier stand, then such amendment could be allowed even by taking inconsistent pleas of substituted and alternative defence.

The amendment sought thus was as per the law laid down by the Apex Court in **Revajeetu Builders & Developers Vs. Narayanaswamy & sons and others** (2009) 10 SCC 84 wherein it was held that as long as the material pleadings are not altered or substituted and not got rid off and the amendment is bonafide refusing amendment would lead to injustice. The principles laid down read 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 fraudulently 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

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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.”

Similarly in **Ramesh Kumar Agarwal Vs. Rajmala Exports Pvt. Ltd. and others** 2012 (3) SCR 992, the same view has been taken wherein the amendment was allowed and it was held that the Court should not take hyper technical approach and liberal approach should be the general rule specially where other side could be compensated with costs. In the said case the plaintiff wanted to explain how the money was paid though the averments had already been made.

In **Abdul Rehman & another Vs. Mohd. Ruldu & others** 2012 (11) SCC 341 wherein the object of the amendment was kept in mind and it was held as under:

“7) It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a

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conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

8) The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in [J. Samuel and Others vs. Gattu Mahesh and Others](#), (2012) 2 SCC 300 and [Rameshkumar Agarwal vs. Rajmala Exports Pvt. Ltd. and Others](#), (2012) 5 SCC 337. Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment.”

Accordingly, all the three present petitions are allowed.

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Impugned orders dated 21.5.2015 passed by the Rent Controller, Chandigarh are set aside. The petitioner-landlord shall pay ₹ 2000/- per tenant as costs for unnecessarily dragging them in litigation to this Court.

A photocopy of this order be placed on record of each connected case file.

February 08, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No