

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

C.R. No. 475 of 2016 (O & M)

Reserved on: 17.05.2017

Date of decision: 01.06.2017

Agrim and others

....Petitioner(s)

Versus

Satish Kumar Thareja

...Respondent(s)

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

Present: Mr. S.S. Dinarpur, Advocate,  
for the petitioners.

Mr. Pawan Kumar, Sr. Advocate,  
with Mr. R.K. Aggarwal, Advocate,  
for the respondent.

**G.S.SANDHAWALIA, J.**

The petitioner-landlord challenges the order dated 13.01.2016 (Annexure P-3) whereby, the Rent Controller, Yamunanagar at Jagadhari has dismissed the application of the landlords for amendment of the eviction petition on the ground that the applicants wanted to add certain properties which they had knowledge of at the beginning of the proceedings and it was not a case of a subsequent event. The case was at the final stage after having recorded evidence of both the parties and would lead to the fresh de novo trial and there was concealment of material facts.

Counsel for the petitioners has accordingly argued that the eviction petition was instituted on 01.05.2012 on the ground of non-payment of rent and bona fide requirement of the grand sons of petitioner no. 3 namely petitioners no. 1 and 2 who were going to complete their education. The mandatory ingredients as such that the grand mother did not

own any such premises which could be utilized by the grand sons had been met under Haryana Urban (Control of Rent & Eviction) Act, 1973 (in short 'the Act'). The amendment which was proposed was that she had entered into an agreement dated 21.12.1986 with one Naresh Chander Kohli with regard to one shop having three storeys on plot no. 9 but the sale deed had not been executed. There was litigation with regard to the shop and a suit for specific performance of the agreement had also been initiated and similarly, details of one of the grand sons of the petitioner no. 3 owning two shops bearing Nos. 109 and 110 situated at District Sub Centre, HUDA at Yamunanagar had also been sought to be incorporated on the ground that the property was not suitable for running the business by the petitioners as it was located at such a place where there was no chance of running the business. The property in question was located on the main road and surrounded by various educational institutions and, thus, was most suitable.

Counsel accordingly submits that the amendment would help the Court adjudicate on the issue and the details of the other properties noted, which were the mandatory ingredients under the Act, could be incorporated as such and a liberal view of the amendment of the pleadings should be taken.

Senior counsel, Mr. Pawan Kumar, on the other hand, has opposed the revision petition on the ground that there was material concealment and by virtue of the proposed amendment, an effort is being made to overcome the lacuna regarding the mandatory ingredients which were to be pleaded. The evidence had come on record to show that petitioner no. 3 was in actual possession of other properties which factum has been concealed and, therefore, it was not a bona fide amendment and

should not be allowed.

A perusal of the eviction petition filed, as noticed, would go on to show that the need of the grand sons was set up and thereafter also, the specific averment was made that the grand mother did not own any such premises and that she had not vacated any such premises within the urban area. The same had been opposed in the written statement by taking the plea that she was having huge commercial property in her name within the municipal limits. It is further pleaded that the father of the two boys namely Madhusuman had purchased the property on 21.02.2012 in a *benami* manner in the name of his sons and they were all living together. The said person was having huge commercial property and was lying vacant. He was not in a position to seek ejectment under law and he had purchased the property when the respondents were already tenants at the time of sale of the property and was having vacant commercial property in his possession. Wife of Madhusuman namely Neena was also owner of huge commercial property which was being leased out and due signs for offering the property had been put up.

As noticed, the application for amendment was filed on 30.12.2015 and the case at that point was at a final stage and the petitioners' evidence had been closed on 11.12.2013, which would be clear from the reply filed by the respondent. In the application, nothing had been mentioned as to what was the due diligence as such which is a necessary ingredient of the provisions of Order 6 Rule 17 CPC once the application is filed at a belated stage after the trial had started. In the application, it was further pleaded that Kamlawati-petitioner no. 3 had tried to get her name deleted as applicant no. 3 but the Court had dismissed the same on

19.05.2015. The said prayer had been based on the ground that she had transferred the property on 11.11.2014 and resultantly, grave prejudice would be caused to the valuable rights of the tenants if the application was allowed which was with the mala fide intention and to achieve ulterior motive.

Counsel for the respondent is well justified in pointing out from the cross examination of Madhusuman, the father of petitioners no. 1 and 2 who had appeared as Power of Attorney of petitioner no. 3 of his mother and had been cross examined to the extent that there was a triple storey building regarding which there is a dispute of specific performance which was in possession of petitioner no. 3. Copy of the judgment and decree dated 31.08.2016, which is after passing of the impugned order, was also shown to this Court to show that the suit for possession (symbolic) had been filed way back on 15.01.2013 for enforcing the agreement to sell dated 23.12.1998 and to get the sale deed registered and to do all necessary acts. A perusal of the said judgment would go on to show that it was the case of petitioner no. 3 that she was put in possession of the suit property under the agreement to sell as a prospective vendee which was on 23.12.1998 and since then, she was in possession of the same. Thus, it is apparent that there has been concealment writ large while filing the eviction petition by petitioner no. 3, who has tried to conceal the factum of the ownership and the possession of other commercial property, which was a mandatory ingredient and which has now been sought to be incorporated at a belated stage. Reference to the cross examination of the power of Attorney which was done on 11.11.2013 goes on to show that the said facts were elicited and have come on record.

In such circumstances, the Rent Controller is well justified in coming to a conclusion that there was concealment of material facts and it would also lead to fresh de novo trial and the applicants were having knowledge of the properties right from the beginning and, therefore, the proposed amendment was not justified. As noticed, there was also lack of due diligence and in ***Ajendraprasadji N. Pandey and another vs. Swami Keshavprakeshdasji N. and others, 2006 (12) SCC 1***, it has been held that where amendment is sought at a belated stage, the same cannot be permitted in the absence of any pleadings regarding due diligence.

Similarly in ***Revajeetu Builders & Developers Vs. Narayanaswamy & Sons and others, 2009 (10) SCC 84***, it has been held 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.”*

In such circumstances, the Rent Controller was well justified in declining the amendment and the said order cannot be faulted on any account and deserves to be upheld. Accordingly, the present revision petition is dismissed. Anything said herein is only for the purpose of deciding the present revision petition and will not prejudice the case of the parties at the time of final decision.

01.06.2017  
shivani

(G.S. SANDHAWALIA)  
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No