

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.113

Civil Revision No.4809 of 2017
Date of decision: 26.07.2017

Sham Sunder (now deceased) through LRs

....Petitioners

versus

Ram Parkash

....Respondent

CORAM HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Abhinav Gupta, Advocate
for the petitioners.

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DEEPAK SIBAL, J. (Oral)

Through the order under challenge, the Rent Controller, Bathinda has rejected the application filed by the petitioner under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (for short the 'Code') seeking therein to amend the written statement filed by him.

Way back in the year 2012, through an eviction petition filed on the grounds of non-payment of rent and personal necessity, the respondent-landlord had sought the eviction of the petitioners-tenants from one shop forming part of building MC No.4628-C, Dev Samaj Chowk, Bhatinda (for short the 'shop in question').

It is not disputed that to the above-referred eviction petition, the petitioners filed their written statement on 12.08.2013. However, about 03 years and 09 months later, after the landlord had led his entire evidence,

an application dated 02.05.2017 was moved by the petitioners-tenants seeking amendment of their written statement. The landlord resisted such application through a written reply and after consideration of the matter, through the impugned order dated 10.07.2017, the Rent Controller rejected the petitioners' application with costs by holding as under:-

“The respondent has claimed that the possession of the upper floor of demised premises was with some Orchestra group and same was demolished by the applicant overnight and all these things have happened after filing of written statement by the respondent. The respondent has not mentioned any date, month or year as to when he came to know regarding this fact. Perusal of this file shows that the written statement was filed by the respondent on 12.08.2013 and the present application has been filed after lapse of about four years. So, there is a considerable delay on the part of respondent. The lackadaisical approach of the respondent is not required to be rewarded. The trial of this case has already commenced and even evidence of the applicant-landlord is completed. Now, when the case was fixed for evidence of the respondent, the respondent has come with this application. All these circumstances show that the object of the respondent is vexation or delaying the proceedings. As is often pointed out, “delay is known defence tactic”. To my mind, it is only a delay tactics adopted by the respondent and that there is no bona fide reason for allowing the application.

Therefore, keeping in view the above discussion, I am of the view that the respondent has moved the present application without any sound reason and just to delay or derail the trial. Moreover, it

would amount to de-novo of trial which would prolong to justice to the defendant. Hence, the present application is, hereby, dismissed being without merits with cost of Rs.500/-. Case stands adjourned to 17.07.2017 for evidence of the respondent.”

Learned counsel for the petitioners has submitted that through their amendment application the petitioners had sought to incorporate in their originally filed written statement the factum of the landlord being guilty of concealment of certain facts. The landlord had projected that the building where the shop in question was located was a single storey building but in fact the building was a double storey building, the first floor of which had been got vacated by the landlord and then demolished. A fact that the landlord had another property in Bathinda was also sought to be incorporated.

Learned counsel for the petitioners further stated that in case the amendment sought by the petitioners was allowed, the landlord would not be recalled for further examination and thus, there would be no further delay in the proceedings.

Order 6 Rule 17 of the Code, reads as under:-

ORDER VI
Pleadings Generally

“17. 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.”
(emphasis supplied).

A reading of the proviso to Order 6 Rule 17 of the Code, as extracted above, leaves no manner of doubt that after the trial has commenced, no application seeking amendment can be allowed unless the Court comes to a definite conclusion that in spite of due diligence, the party seeking such amendment could not have been raised the matter which is sought to be incorporated through an amendment before the commencement of the trial.

In the light of the above provision, when the application filed by the petitioner seeking amendment is perused, the same is found lacking with regard to any averment therein as to when did the landlord allegedly demolish the first floor of the building which as per the petitioners was in the possession of some Orchestra Party. The fact as to when the above event came to the knowledge of the petitioners is also found missing. There is also no explanation found on the record on behalf of the petitioners as to why the present application was filed after a delay of 03 years and 09 months of the filing of his written statement and that too, after the landlord had already led his entire evidence. Pleadings with regard to the issue that the landlord had another property in Nai Basti, Bathinda are also found to be vague as no details and description of the property has been given. Undisputedly, the shop in question is a commercial property. The amendment application does not reveal whether the other property owned by the landlord is a commercial or residential property. Even otherwise the landlord in his reply to the application has submitted that such property does

exist but the same is a residential property. No rebuttal to the same was filed by the petitioner.

The argument of the learned counsel for the petitioners that in case the amendment as prayed for is allowed, the petitioners would not recall the landlord for further examination also needs to be considered only to be rejected simply for the reason that once the application filed by the petitioner is found lacking with regard to the necessary ingredients as required under Order 6 Rule 17 of the Code, there is no question of even considering the above offer made on behalf of the petitioners.

In view of the above, no merit is found in the present petition and the same is hereby dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

July 26, 2017

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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No