

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

C.R. No. 5212 of 2016 (O & M)

Date of decision:02.02.2017

Pankaj Narang

....Petitioner(s)

Versus

Dharampal Aggarwal

...Respondent(s)

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

Present: Mr. V.K. Sandhir, Advocate,
for the petitioner.

Mr. Rajinder Sharma, Advocate,
for the respondent.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present revision petition by the petitioner-tenant is to the order dated 29.07.2016, passed by the Rent Controller, Amritsar whereby, the application for amendment of the written statement under Order 6 Rule 17 CPC has been declined. The reasoning given by the Rent Controller in the impugned order is that the respondent had tendered the rent for the tenanted premises and, therefore, has admitted the relationship of landlord-tenant. Therefore, the plea taken that the petition was not maintainable and bad for non-joinder of parties was an effort to wriggle out of an earlier admission. It was further held that even if the wife was a co-owner, the landlord could always file petition for eviction of property and it was not mandatory that all the co-owners should join the proceedings. It was held that the proposed amendment regarding non-joining of necessary parties was not essential for the adjudication of the case and merely on account of the fact that counsel had been changed, would not

be a ground for allowing the application.

Counsel for the petitioner has submitted that the case was at an initial stage when the application was filed and issues had also not been framed the Rent Controller was in error in refusing the application for amendment. It is submitted that the amendment sought as such was which would help the Court to adjudicate upon the controversy in question effectively and settle all the disputes inter se the parties and, thus, there has been irregularity and illegality while passing the order, which is not justifiable.

On the other hand, counsel for the respondent has justified the order and submitted that it was always open to the tenant as such to have taken these grounds at the initial stage.

A perusal of the impugned order and the application for amendment would go on to show that the Rent Controller has not even taken into consideration the exact grounds on which the amendment was being sought and has only been prejudiced by the fact that the proposed amendment was for non-joinder of parties and, therefore, there was an effort being made to wriggle out of the admission made earlier.

The amendment application would go on to show that the plea sought to be taken was that the landlord, alongwith his wife Smt. Raj Rani Aggarwal, who had died 4-5 years back, was the owner of the property as per the sale deed dated 27.08.2003 and the respondents had been paying the rent in the name of the wife of the petitioner and, therefore, without impleading other legal representatives, the petition did not lie.

It is not disputed that the claim is regarding arrears of rent @

₹400/- per month from 01.04.2011 till date. In such circumstances, the

amendment sought was not to wriggle out of the relationship as such but only to clarify the fact that the payment had been made to the wife. Therefore, even if the provisional rent had been tendered, the tenant would only want that there should be adjudication whether he is liable for eviction on this ground and whether he was liable to be refunded the provisional rent which he had tendered. Similarly, eviction had been sought for the need of the grand son and the amendment was sought that the grand son was not dependent and he was already running a business of Karyana and Dry Fruit in Majith Mandi being the sole proprietor of his business and was well settled. The landlord was 85 years old and himself running his business of Karyana and Dry Fruit in the name of M/s. Dharam Pal and Sons at Dal Mandi, near Majith Mandi and, therefore, the need was not bona fide. Thus, the amendment was only to elaborate the defence taken and to highlight the lack of bona fide on the part of the landlord.

Similarly, amendment was sought regarding the strength and value of the demised premises which supposedly required reconstruction. The plea taken was that since the petitioner himself was running the business in the demised premises it could not be said that the premises had lost its strength and value.

Similarly, objection was sought to be raised qua the plea of sub tenancy and the parting of possession and residing at a separate flat whereby, the tenant had sought to clarify that he had purchased the flat owing to his family requirement as the children were growing up.

As noticed, all these factors have not even been touched by the Rent Controller while passing the impugned order. Thus, the justification as such given while rejecting the application cannot be accepted. The Apex

Court in ***Sushil Kumar Jain vs. Manoj Kumar and another, 2009 (14) SCC 38*** has held that amendment of the written statement sought before the commencement of the trial and any admission made can also be explained by amendment of written statement by taking inconsistent pleas. An elaboration sought could be explained by amending the written statement by taking inconsistent pleas by substituting or altering the defence taken in the written statement.

The principles were laid down by the Apex Court in ***Revajeetu Builders and Developers vs. Narayanaswamy and Sons and others, 2009 (10) SCC 84*** and in the present case, the same have not been kept in mind by the Rent Controller. They 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 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.”

Resultantly, keeping in view the same, this Court is of the opinion that the order is not justified. Accordingly, the present revision petition is allowed. The order dated 29.07.2016 is set aside. The Rent Controller, Amritsar will permit the amendment, as proposed. It will be open to the landlord to file his replication to the same and controvert it in accordance with law.

02.02.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No