

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

**Civil Revision No.5394 of 2016
Decided on : 26.04.2017**

Amarjit Singh and another

... Petitioners

Versus

Balbir Singh and others

... Respondents

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

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

Mr. Vijay Sharma, Advocate
for respondents No.1 to 3.

G.S. Sandhawalia, J. (Oral)

The present revision petition filed by the petitioners/landlord is directed against the order dated 09.08.2016 (Annexure P-1) passed by the Rent Controller, Patiala, whereby the application under Order 6 Rule 17 read with Section 151 CPC for amending the eviction petition has been dismissed.

Vide the proposed amendment, the landlord wanted to clarify that the other shop which is situated at Sirhind Road, Patiala and owned by him was in a area that was not suitable for the running the business of computer hardware and the tenanted premises were more suitable being situated in the heart and thickly populated area of Patiala City. The dispute pertains to the shop situated in Shere Punjab Market, Patiala forming part of Property No.82/1 and 82/2 which has been described in the head note and as per the site plan attached with the eviction petition.

The proposed amendment reads as under:-

“11. That neither petitioners nor son of petitioner No.1 namely Ishpreet Singh Sethi is occupying another shop in the urban area concern except one shop which is situated at Sirhind Road, Patiala. The said shop is not suitable for running the business of computer hardware as the same is sandwiched by various shops in which business of selling the non vegetarian items such as meat, chicken, mutton etc. is going on. Moreover, that shop is not suitable as it is situated on main schedule road and there is no parking space available for the said shop. However, son of the petitioner did started the business in Sirhind Road Patiala for another shop by taking the same on rent, but that area is not suitable for running the business and as such he shifted the same to Surya Complex Patiala where he suffered losses and closed the business over there. Thus, the petitioners require the premises for running the business for themselves and for their son as the said place is most suitable for the said business being situated in the heart and thickly populated area of Patiala city.”

A perusal of the eviction petition itself would go on to show that specific averments made in the paragraph 5 and 6 that the petitioners required the premises in question for son of petitioner No.1, namely, Ishpreet Singh Sethi. The necessary ingredients that they were not occupying any other non-residential building within the municipal limits of Patiala nor had vacated any such building as per the mandatory requirements, after the commencement of the Act had been pleaded in the petition dated 18.04.2013 (Annexure P-4).

The respondents had controverted the said averments by saying that the said paragraphs were wrong and there was a concealment

of the factum of a shop on main Sirhind Road, Patiala. The said shop had been sold about 2-3 years back and the factum had been concealed.

A clarification was made by the landlord in the rejoinder (sic; replication) filed on 05.02.2014 (Annexure P-6) to the written statement that it was a very small shop and had been given on rent, where sale of non-vegetarian products was going on.

It is not disputed that the issues were, thereafter, framed and the evidence of the landlord was closed on 19.02.2016. It is, thereafter, the application for amendment has been filed under Order 6 Rule 17 CPC on the ground that it would not change the nature of suit and to avoid legal complication in future.

A perusal of the said application would go on to show that no averment has been mentioned regarding the due diligence as such regarding why the delay had occurred. As noticed, it was the case of the tenant as such that there was another shop which was in the ownership as such and there was some concealment aspect. It was only in the replication that there was mention of the said shop and the purpose of its use.

Counsel for the respondent is well justified to point out from the cross-examination of the landlord conducted on 17.07.2015 prior to the moving of the application that sufficient material has come on record that there is an admission as such by the landlord regarding the ownership of the shop that was let out in the year 2012, which was prior to the filing of the petition on 18.04.2013.

Once necessary evidence has come on record in cross-examination, an effort to amend the pleadings and try to explain and justify the suitability of the tenanted premises under the pretext that the shop mentioned which was never made at the initial stage and rather it was mentioned that there was no such shop available or vacated would go on to show that the amendment as such is not bonafide.

The argument has now raised by the counsel for the petitioners that it had been already mentioned in the replication as such and, therefore, it was only to further clarify the issue has also been noticed by the Rent Controller. However, keeping in view the fact that the law is settled on this aspect that once due diligence has not been pleaded after the trial has commenced, the amendment cannot be allowed. The Apex Court in '*Ajendraprasadji N. Pande and another Vs. Swami Keshavprakeshdasji N. and others*' 2007 (1) RCR (Civil) 481 has held to this effect.

In the present case the above sequence of events would go on to show that before the evidence enough opportunities were there with the landlord and it would not be justified to permit the amendment now sought. The reasoning, thus, which has been given by the Rent Controller is justified that at this belated stage, the amendment is not justified. The petitioners have slept over the matter and filed the application at that stage and, thus, cannot be permitted to turn around and clarify their earlier stand. Certain benefits on account of the non pleading of the mandatory ingredients would necessarily flow to the tenant and in such

circumstances, once the amendments is not bonafide in nature, this Court would not permit the amendment to be made. Keeping in view the observations made by the Apex Court in the case of '**Revajeetu Builders & Developers Vs. Narayanaswamy & sons and others'** (2009) 10 SCC 84 wherein it has been laid down that a totally contrary stand cannot as such be permitted and, therefore, the order which has been passed by the Rent Controller is well justified and not suffering from any infirmity and does not warrant interference by this Court.

Accordingly, the present revision petition stands dismissed.

APRIL 26, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No