

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

C.R. No. 5210 of 2014
Date of decision: 11.01.2017

Shri Behari Lal Charitable Trust, Ambala Cantt.Petitioner(s)

Versus

Shiv Batra and another ...Respondent(s)

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

Present: Mr. Sanjay Jain, Advocate,
for the petitioner.

Mr. S.M. Sharma, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition has been preferred by the landlord challenging the impugned order dated 24.07.2014 (Annexure P-1) declining of the amendment of the ejectment application by the Rent Controller.

The reasoning given by the Court is that the petitioner has failed to specify any date, month or year regarding the raising of the height of the wall and, therefore, the petitioner cannot amend his petition in order to turn the clock back and to start a *de novo* trial. It has also been noticed that the petitioner had submitted that no new evidence is required to be led to prove the said fact but no such undertaking had been given by the respondents-tenants. Proviso to Order 6 Rule 17 CPC was also referred that the trial had commenced and, therefore, the matter could not be raised after the commencement of the trial. The case having been fixed at the rebuttal evidence and the evidence having been concluded led to the denial of

amendment.

In the opinion of this Court, the reasoning given by the Rent Controller is not justified in any manner and the order is not liable to be sustained. The petitioner had filed an application for ejectment from the demised premises way back on 16.11.2004. From the pleadings, it is apparent that one Pankaj Kumar, Advocate, was appointed as Local Commissioner to inspect the rented premises and he had submitted a report dated 22.12.2004 that the height of the Hall No. 1 was 6' 9" and the ejectment was on that basis that there was demolition of the old lintel and the raising of a new lintel of a new wall by placing a new lintel.

It is pertinent to notice that the petitioner-landlord had also filed an application that an expert witness should examine the premises and prepare a site plan regarding the unauthorized construction in the premises in question by the tenant. The application was dismissed by the Rent Controller and which was allowed by this Court on 26.07.2010 (Annexure P-4) in C.R. No. 2058 of 2010 for inspection by the expert. It is apparent that after the building experts had given their report which showed that the wall of the hall was 10' 6", the application was filed on 28.03.2011 (Annexure P-2) wherein, the plea taken was that only the pleading had to be mentioned in para no. 4(h) and no evidence was required to be led as the parties had already led their evidence. The relevant part of the application for amendment whereby the said plea was taken reads as under:-

“9) That the petitioner wants to add following para i.e. para no. 4(h) in the petition:

“4(h) That after filing of the petition the respondents have raised height of the roof of Hall No. 1 from 6' 9" to 10' 6" by demolishing old lintel and

raising walls and placing new lintel above that.”

10) That no new evidence is required to be led to prove the above fact as both the parties have led their evidence and from the evidence of both the parties it is clear that the above additions and alterations have been made by the respondents in the tenancy premises after filing of the present petition and the above said amendment is very much essential and necessary for the just decision of the petition.”

The application was objected by filing the reply on 29.03.2011 (Annexure P-3) and the plea taken by the tenants was that it would result in a *de novo* trial and would cause prejudice to the respondents. The factum that the amendment was essential or necessary for the just decision of the petition was also denied. Resultantly, as noticed that the application, for the reasons given, was rejected.

The finding that it would amount to a *de novo* trial is, thus, against the specific stand of the landlord itself. The evidence has already come on record both in the form of the report of the Local Commissioner dated 22.12.2004 and the subsequent building experts in pursuance of the orders passed by this Court on 26.07.2010 (Annexure P-4). The undertaking recorded by the landlord has already been given in the application for amendment which has been reproduced above. The prejudice, if any, that is to be caused as noticed is not to the tenant in any manner. The trial has been pending since 16.11.2004 and at an earlier occasion, the Executive Officer of the Municipal Corporation, Ambala had been impleaded vide order dated 19.03.2012 alongwith the Estate Officer and this Court had set aside the order on 08.05.2014 (Annexure P-5) on the ground that the landlord had not sought any relief against them and on the

principle of *dominus litus*. During the intervening period, the proceedings had been adjourned sine die also. Therefore, to say that the tenant would be prejudiced in any manner would be totally contrary as the proceedings have continued to linger on for the last more than a decade.

The petitioner is seeking the eviction on the ground of material alteration having been made leading to the impairment and value of the building and he only seeks to place on record the correct position which is existing on the site. If during this period of litigation, the tenant has further materially altered the premises, it would be within the legal right of the landlord to bring the necessary facts to the notice of the Court. It would not be fair in such circumstances to relegate him to a fresh cause of action and deny him an opportunity to bring these facts to the notice of the Court only on the account that it is a subsequent event.

Even otherwise, this aspect has been examined by this Court in ***Mrs. Surinder Kaur Bakshi vs. M/s. Chopra Glass House and others, 2013 (3) PLR 142*** wherein, it has been held that if there is no statutory bar as such and an independent case can be filed, then the amendment should be allowed. Similarly, in ***M/s. Estralla Rubber vs. Dass Estate (Pvt.) Ltd. 2001 (2) RCR 393***, the Apex Court held that amendment can be allowed if no serious prejudice is caused to the opposite party and no accrued right is taken away. It is a settled principle that amendment of plaint/ejectment petition has to be liberally construed.

In the present case, as noticed, the amendment is only on the ground that the alteration had taken place during the trial and, therefore, the bar which the Rent Controller has self imposed that since the trial had commenced was without any justification.

Accordingly, the revision petition is allowed. The impugned order dated 24.07.2014 (Annexure P-1) is quashed. The application for amendment is allowed. The respondent will have his right to file the response to the same. However, it is made clear that the landlord will not be entitled to lead any fresh evidence qua this aspect as it is his categorical stand that he will not lead such evidence.

11.01.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No