

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 18.08.2017****CR No.5477 of 2017**

Smt. Kailash Kaur

...Petitioner

Vs.

Raman Kumar Mahajan

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. M.K.Dogra, Advocate,
for the petitioner.**RAJIV NARAIN RAINA, J. (ORAL)**

1. There is no doubt if the amendment sought by the tenant to the written statement prevails, then the nature of the fact prayed for introduction in the pleadings asserting that landlord had inducted a tenant during the pendency of the eviction proceedings would require letting in evidence in proof of facts and an opportunity to the parties made available for them to prove or disprove the case on new matter. That opportunity appears to have been lost to the petitioner, and if ignored, it will start a trial within a trial without availing the right to test the order dated 15.12.2016 allowing the tenant's amendment to his written statement.

2. The challenge to the order dated 15.12.2016 allowing the amendment was firstly blunted in Civil Revision No.1416 of 2017 filed by the landlord/petitioner herein for setting aside the same upon a Court query put to counsel on 09.03.2017 for the petitioner to answer as to whether the

lower appellate authority intends to record evidence in view of the amendment in the reply allowed by the tenant. Thereupon, the matter was adjourned to 29.03.2017 but in the interregnum the Appellate Authority, Amritsar under the Rent Control Act passed an order dated 18.03.2017 adjourning the case for arguments and fixing 25.04.2017, as the next date.

3. A reading of the order dated 18.03.2017 appears to mean that evidence would not be permitted to be adduced on the new point canvassed. In view of that order, the revision was withdrawn by the petitioner-landlord sanguine that no evidence would be allowed to be produced on new matter.

4. On returning to the Appellate Authority, the landlord is presently faced with an order dated 10.07.2017 passed by the learned Additional District Judge -cum- Appellate Authority, Amritsar (Rent) granting two opportunities to the tenant to lead evidence and had adjourned the case to 26.07.2017 for recording of evidence at the risk and responsibility of the tenant. This has taken the petitioner by surprise.

5. In this petition, the order dated 10.07.2017 is under challenge. No exception can be taken to the order passed on 10.07.2017 because it is inherent in the nature of the amendment permitted that leave would have to be granted to the tenant to produce his evidence to support his ground. But in this contention Mr. M.K.Dogra for the petitioner-landlord appears to be correct in urging that the landlord would lose his opportunity to call in question the order allowing the application under Order 6 Rule 17 CPC for amendment of the written statement. That right appears to be a valuable one available to the petitioner in law and he deserves to be put back to the position obtaining within the period of limitation required for bringing a challenge to the order dated 15.12.2016, allowing the amendment although

the earlier revision was withdrawn without the Court expressing opinion on the merits of the controversy.

6. It is well settled in law that an act of the Court will injure no one; a principle which is supported by the maxim, *actus curiae neminem gravabit* and thus, the petitioner has to be put back where the fault occurred in the situation created by the first moot order dated 18.03.2017.

7. Accordingly, the instant petition is partially accepted. The impugned order dated 10.07.2017 will have no effect till such time as the landlord has had an opportunity to question the order allowing the amendment in fresh proceedings. Accordingly, in exercise of inherent powers and in order to serve the ends of justice, the order dated 18.03.2017 questioned in the earlier revision is revived to accommodate proposed challenge thereto by ignoring the proceedings in Civil Revision No.1416 of 2017, and thereby, keeping the entire issue open in the revisional jurisdiction of this Court, in case a revision is filed, in which case, all pleas remain open.

8. No vested right can be held to have accrued to the tenant to hear him in the making of this order ex parte. The right to challenge both the orders is inherent in the landlord-petitioner and to that extent he must succeed. The first and second interlocutory orders are apparently inconsistent with each other when passed by different judicial officers and therefore require reconciliation. However, no opinion on the validity or legality of the orders is expressed herein.

18.08.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>