

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

C.R. No. 5997 of 2016 (O & M)

Reserved on: 18.05.2017

Date of decision: 01.06.2017

Radhey Kishan

....Petitioner(s)

Versus

Satyanarain and another

...Respondent(s)

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

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

Mr. Arun Yadav, Advocate,
for the respondents.

G.S.SANDHAWALIA, J.

The petitioner-landlord challenges the order dated 19.08.2016 (Annexure P-1) whereby, his application for amendment of the eviction petition has been dismissed by the Rent Controller, Rewari. The reasoning given by the Rent Controller in support of the dismissal order is that the case was filed in the year 2011 and issues had been framed and evidence of both the parties had been concluded. The application had been filed at the stage of rebuttal evidence and in view of the proviso under Order 6 Rule 17 CPC on account of lack of diligence, the application could not be allowed. Further it was observed that in the eviction petition, it had been alleged that the respondents are tenants since 10.08.1978 and during the cross examination of the landlord, it had been stated that it had been purchased since then and the possession was of the tenant. By virtue of the proposed amendment, the date of physical possession of handing over was being shifted to 06.08.1979 and in view of the dispute having been raised on the

issue of relationship of landlord-tenant, the date of inception of the tenancy was very much relevant. Resultantly, it was held that the landlord wanted to fill up the lacuna which had been created in his pleadings and the evidence and the valuable right of the tenants would be effected who would be seriously prejudiced if such an amendment was allowed at that belated state.

Counsel for the petitioner has placed reliance upon the judgment in *Sohan Singh vs. Surjit Singh Grewal, 2016 (2) RCR (Rent) 278* in support of his arguments to submit that an error which had occurred due to inadvertence could be allowed to be corrected and it was innocuous and did not alter and change the nature of the suit.

The argument raised is that on account of an earlier eviction petition which was allowed on 06.08.1979 (Annexure P-4) having been filed by the petitioner's predecessor, the same has been necessitated since the said order has been placed on record by the opposite side.

A perusal of the pleadings inter se the parties would go on to show that in the eviction petition dated 11.08.2011, it had been pleaded that there was a sale deed dated 10.08.1978 and the respondents were tenants through an oral tenancy @ ₹2,000/- per month from the said date. Eviction was sought on account of non-payment from 01.01.2008 regarding the shop in question and apart from that on the ground of material alteration and bona fide requirement as such. In the application for amendment which was filed at the belated stage at the fag end of the trial, it was averred that the date of tenancy was sought to be amended which was on account of the fact that physical possession had been taken from Krishna Trading Company and possession had been handed over at that point of time and no prejudice as such would be caused if the said fact was allowed to be incorporated and no

evidence was required.

Resultantly, the same was opposed on the ground that there was a specific case that the tenancy was of the year 1978 and there were admissions that the shop was vacant at the time of the purchase and he denied that Krishna Trading Company was in occupation of the shop and that Matadeen, the father had got vacated the premises from the said tenant. Resultantly, U-turn was as such being made and the factum of the relationship not being admitted was also highlighted by the respondents and that it would change the nature of the petition and would result in de novo trial. A perusal of the order dated 06.08.1979 would go on to show that Krishna Trading Company had been ordered to be ejected in a petition filed by Brij Mohan and Smt. Balawati W/o Matadeen. It is in such circumstances it is apparent that the amendment is sought to be incorporated so that it is not in contradiction of the plea taken that the tenancy was in the year 1978 since enough evidence as such had come on record that the premises were occupied by Krishna Trading Company. The amendment is, thus, to this effect that the possession was handed over after the eviction order.

Counsel for the petitioner is well justified in submitting that it would help the Court to finally adjudicate upon the controversy in question and it is not that it would change the nature of the eviction petition which is based on the grounds of non-payment of rent, material impairment and on the ground of bona fide requirement. The petition was filed more than three decades after the alleged tenancy was created and in such circumstances, if there is a mistake which is regarding the exact date of the creation of tenancy which is now sought to be rectified would not as such mean that

any admission is being sought to be withdrawn. The issue no. 1 already stands framed inter se the parties whether their existed a relationship of landlord and tenant between the parties and by the proposed amendment as such the issue would not be effected as it would still have to be proved by the petitioner-landlord regarding the relationship as such on the basis of the evidence which has come on record in the form of oral statements and the evidence. The Apex Court in **Baldev Singh and others vs. Manohar Singh and another, 2006 (6) SCC 498** has held that a liberal view is to be taken for the amendment of the pleadings. The relevant observations read thus:-

“8. It is well settled by various decisions of this Court as well as the High Courts in India that Courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In this connection, reference can be made to a decision of the Privy Council in [Ma Shwe Mya v. Maung Mo Hnaung](#) (AIR 1922 P.C. 249) in which the Privy Council observed:

"All rules of courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit."

9. Keeping this principle in mind, let us now consider the provisions relating to amendment of

pleadings. Order 6 Rule 17 of the Code of Civil Procedure deals with amendment of pleadings which provides that 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. A bare perusal of this provision, it is pellucid that Order 6 Rule 17 of the Code of Civil Procedure consists of two parts. The first part is that the Court may at any stage of the proceedings allow either party to amend his pleadings and the second part is that such amendment shall be made for the purpose of determining the real controversies raised between the parties. Therefore, in view of the provisions made under Order 6 Rule 17 of the CPC it cannot be doubted that wide power and unfettered discretion has been conferred on the Court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the Court just and proper. While dealing with the prayer for amendment, it would also be necessary to keep in mind that the Court shall allow amendment of pleadings if it finds that delay in disposal of Suit can be avoided and that the suit can be disposed of expeditiously. By the Code of Civil Procedure (Amendment) Act, 2002 a proviso has been added to Order 6 Rule 17 which restricts the Courts from permitting an amendment to be allowed in the pleadings either of the parties, if at the time of filing an application for amendment, the trial has already commenced. However, Court may allow amendment if it is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. So far as proviso to

Order 6 Rule 17 of the Code of Civil Procedure is concerned, we shall deal with it later.”

Counsel for the petitioner is well justified in placing reliance upon *Sohan Singh's case (supra)* also and further bringing to the notice of this Court that vide order of even date i.e. 19.08.2016, the Rent Controller had allowed the application for additional evidence of the respondents-tenants to bring on record the ejectment order dated 06.08.1979 vide which Krishna Trading Company was ordered to be evicted. The Rent Controller allowed the same on the ground that these documents would be helpful to reach to a just and proper decision of this case and since it was only to place on record certified copies and the landlord could be compensated by way of costs which were imposed of ₹1,000/-. The petitioner had challenged the said order in C.R. No. 5998 of 2016 which was listed alongwith the present case at the initial stage but was got dismissed as withdrawn on 14.09.2016 while notice of motion was issued in the present case.

Counsel thus, submits that on the one hand this principle had been applied by the Rent Controller that it would help in decision of the case but it had denied this relief to the petitioner on the other hand and it was only on account of the application for additional evidence having been filed on 12.01.2016, the subsequent application for amendment had been filed on 28.01.2016.

The Apex Court in *M/s. Estralla Rubber vs. Dass Estate (Pvt.) Ltd., 2001 (3) CCC 663* has held that delay is no ground to deny amendment as long as it is not mala fide. Relevant observations read thus:-

“8. It is fairly settled in law that the amendment of pleadings under Order 6, Rule 17 is to be allowed if such an amendment is required for proper

and effective adjudication of controversy between the parties and to avoid multiplicity of judicial proceedings, subject to certain conditions such as allowing amendment should not result in injustice to the other side; normally a clear admission made conferring certain right on a plaintiff is not allowed to be withdrawn by way of amendment by a defendant resulting in prejudice to such a right of plaintiff, depending on facts and circumstances of a given case. In certain situations a time barred claim cannot be allowed to be raised by proposing an amendment to take away valuable accrued right of a party. However, mere delay in making an amendment application itself is not enough to refuse amendment, as the delay can be compensated in terms of money. Amendment is to be allowed when it does not cost serious prejudice to the opposite side. This Court in recent judgment in [B.K. Narayana Pillai vs. Parameswaran Pillai and another](#) [(2000) 1 SCC 712], after referring to number of decisions, in para 3 has stated, thus: -

"3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can

be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation."

In para 4 of the same judgment this Court has quoted the following passage from the judgment in A.K. Gupta and Sons Ltd. Vs. Damodar Vally Corporation 1966 (1) SCR 796: -

"The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: Weldon v. Neal (1887) 19 QBD 394 : 56 LJ QB 621. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: [See Charan Das v. Amir Khan](#), AIR 1921 PC 50 : ILR 48 Cal 110 and L.J. Leach and Co. Ltd. V. Jardine Skinner and Co. AIR 1957 SC 357 :1957 SCR 438."

This Court in the same judgment further observed that the principles applicable to the amendment of the plaint are equally applicable to the amendment of the written statement and that the courts are more generous in allowing amendment of the written statement as the question of prejudice is less likely to operate in that event. It is further stated that the defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment

the other side should not be subjected to serious injustice and that any admission made in favour of the plaintiff conferring right on him is not withdrawn.”

Similar is the position whereby, principles have been laid down by the Apex Court in ***Revajeetu Builders and Developers vs. Narayanaswamy & Sons and others, 2009 (10) SCC 84.***

In view of the argument raised that Annexure P-4 has been brought on record to show that the earlier tenant had been evicted only in 1979, the amendment is sought to be made and it would not cause any serious prejudice to the tenant and the other side can be duly compensated with costs.

Resultantly, the present revision petition is allowed and the impugned order dated 19.08.2016 (Annexure P-1) is set aside and the Rent Controller shall allow the proposed amendment to be brought on record, subject to payment of costs of ₹5,000/-, to be paid to the respondents.

01.06.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No