

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

Civil Revision No.5901 of 2014(O&M)

Date of decision: 20.04.2017

Sanjiv Gogna and another

...Petitioners

Versus

Babu Ram

...Respondent

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

Present: Mr. Vishal Aggarwal, Advocate for the petitioners.

Mr. Santosh Sharma, Advocate and
Mr. Sham Lal Bhalla, Advocate for respondent.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed against the order dated 26.5.2014 (Annexure P/3) whereby the Rent Controller, Ludhiana has declined the application for amendment of ejectment application filed under Order 6 Rule 17 read with Section 151 CPC.

The ground given for declining the application by the Rent Controller is that amendment application was filed when the case was fixed for petitioners' evidence and last opportunity had been granted to conclude the entire evidence. The ground set up for amendment that opening of marble craft gallery in the shop in question is to be done was held to be not bonafide as the said application was filed on the last date at the time of concluding of the entire evidence of the landlord. No subsequent event had happened for incorporating the proposed amendment and therefore, no due diligence was made out to allow the amendment. Accordingly, the same was dismissed and costs of ₹ 1000/- were imposed and case was fixed for evidence of the petitioners.

Counsel for the petitioners has submitted that the Rent Controller, Ludhiana has missed out the fact that the eviction petition was originally filed by the father of the petitioner no.1 and father-in-law of petitioner no.2. The ingredients which are now sought to be incorporated by way of amendment were on account of his death and were subsequent events and therefore bonafide requirement of petitioner no.2 could have been incorporated in a subsequent petition also. Therefore, order dated 26.5.2014 passed the Rent Controller, Ludhiana was not justified .

It was not disputed that the petition was instituted on 9.9.2009 initially by Chaman Lal on the ground of personal necessity apart from other grounds such as non payment of rent, arrears of rent, shop in question being unfit and unsafe for human habitation and the fact that there was nuisance as such. The issues were framed on 24.3.2011. The original landlord died on 30.3.2013. Resultantly, the present petitioners were brought on record as legal representatives. The requirement which was sought earlier and the amendment which is now sought to be pleaded read as under:-

“That the petitioners in bona fide need of the property as the petitioners are running their business of marble under the name and style of M/s S.K. Marble for which they need space for loading/unloading of the heavy vehicles. In case the property is not got vacated, then the vehicles are to be parked on the katcha path of the road. Some times, the vehicles lying parked on katcha path are checked by the officials of the Municipal Corporation and the petitioners have to pay the penalty for no fault on their part.”

Amendment sought.

“Sh. Chaman Lal father of the petitioner No.1 and father in law of the petitioner No.2 was the proprietor

of M/s S.K. Marbles and Granites. Shri chaman Lal has died and after his death the petitioner no.2 has become the proprietor of the said firm. The petitioner no.2 also wants to expand her business and as such she also wants to open a marble crafts gallery in the shop in dispute as there is no other place in the remaining part of the property to set up a marble craft gallery as separate accommodation is required for it and the shop in dispute which is on the main road is most suitable for that purpose to attract customers for the sale of marble crafts. Thus the shop in dispute is also required by the petitioners for running a marble craft.”

Counsel for the respondent on the other hand has referred to the zimini orders to show the conduct and as such matter that was kept pending and on repeated occasions evidence was not led and application was filed at a belated stage.

No doubt proceedings shows that there was delay as such in filing the application which was filed only on 18.3.2014. However, fact remains that ground for bonafide requirement of the legal representatives of the original landlord on account of death of original landlord was a subsequent event.

This Court in ***Mrs. Surinder Kaur Bakshi vs. M/s. Chopra Glass House and others, 2013 (3) PLR 142*** has held that liberal approach is to be taken where subsequent event has taken place and if there is no statutory bar as such and an independent case can be filed, then the amendment should be allowed. Relevant para of the judgment reads as under:-

“4. The law of taking note of the subsequent event came through essentially in rent control jurisdiction. Otherwise, the conventional understanding was that the case has to be

decided only on the facts at the time of institution of suit. A subsequent event is always a relevant issue more particularly while examining the personal necessity of the landlord. It is on the pretext that the necessity must exist not merely at the time of filing of the petition, it must subsist till an order of eviction is passed. This is allowed for situations where the landlord acquires some other property or he has let out a vacant possession of yet another item of property subsequent to the petition to examine the bona fides. In this case the subsequent event has been that the man who wanted to start a tuition centre and put the property for augmenting his income was no longer alive and therefore the need came to be readjusted for a member of the family by including appropriate averments in the petition. If this subsequent event were to be taken as relevant, then the only issue would be whether the petitioner must be allowed to prosecute the same petition with amendment incorporated or he should be driven to a separate petition. The issue of whether amendment should be allowed or not is also from a perspective of whether it will scuttle a needless multiplicity of proceedings. This has to be in turn in the context of whether there is any statutory bar regarding the plea, if any independent case were to be filed. If the legal representatives were to file a fresh petition with a new fact, then again the tenant could have a contention that he is needlessly made to defend yet another case but beyond that, this could be no plea that the petition is in any way barred.”

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 settled principle that amendment of pleadings is always to be liberally construed provided it is bonafide and no contrasting stand is taken.

Counsel for the respondent could not dispute the fact that the

petitioners could always file a fresh petition on the same cause of action.

The same would only result in unnecessary further litigation interse the parties.

In the present case, no prejudice as such would be caused to the respondent specially keeping in mind the fact that it would be always open to the petitioners-landlords to file a fresh petition with better particulars on the same cause of action.

Accordingly, the revision petition is allowed. The impugned order dated 26.05.2014 is quashed. The application for amendment is allowed, subject to payment of ₹ 5,000/- as costs, to be paid to the opposite side.

April 20, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No