

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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(1) CR No.6223 of 2015 (O&M)

Parveen KumarPetitioner
Versus
Dayanand ...Respondent

CR No.66 of 2016

DayanandPetitioner
Versus
Parveen Kumar ...Respondent

Date of decision:30.03.2017

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

Present: Mr.Munish Gupta, Advocate, for the tenant.

Mr.Naresh Kumar, Advocate, for
Mr.S.K.Yadav, Advocate, for the landlord.

G.S. SANDHAWALIA, J. (Oral)

The cross revision petitions are filed against the order of the Rent Controller, Narnaul, in which, the tenant and the landlord are common. In ejectment application No.14, the amendment under Order 6 Rule 17 CPC has been allowed on 31.07.2015, subject to payment of costs of Rs.4000/-, to the extent that the mandatory ingredients have been allowed to be incorporated at a belated stage, which the tenant-Parveen Kumar challenges in CR-6623-2015. In CR-66-2016, in rent petition No.13, another Rent Controller at Narnaul had declined the application on 08.12.2015, on the ground that the amendment cannot be allowed once the trial has commenced and there was no due diligence, as such and therefore, the mandatory ingredients had not been incorporated and would change the nature of the suit and prejudice would be caused to the tenant.

Counsel for the tenant submits that the amendment, at the

belated stage, was not justified and accordingly, supported the other order, whereby the amendment had been declined.

On the other hand, counsel for the landlord submits that the order dated 31.07.2015 was not justified and that costs could be imposed to compensate the other side, for the inconvenience caused to the tenant.

It is settled principle that a liberal view has to be taken on the application for amendment of pleadings. The case has to be decided on merits and to adjudicate as to what is the actual dispute between the parties and one party is not to be given benefit only on account of technicalities. The issue of the mandatory pleadings of the ingredients has been dealt with in **Sukhwinder Singh Vs. Darshan Lal 2014 (4) PLR 257** wherein the judgment of the Full Bench in **Shri Banke Ram Vs. Smt. Sarasvati Devi 1977 PLR 112** was duly considered. It was, accordingly, held that the tenant can be duly compensated and the order denying the amendment, was set aside, by allowing the revision petition. A similar view was taken by this Court in **CR-1305-2012** titled *Smt. Pushpa Devi Vs. Ashok Kumar*, decided on 28.02.2012, wherein the case was at the rebuttal stage. Relevant observations read as under:

“It is only the requirement of law which is sought to be incorporated in the pleadings to ensure that the petition is not dismissed on a technical ground. Evidence would have already come on record as to whether there is any other property in possession of the landlady or her son, on the basis of which, the case has to be decided on merits. It is a settled principle that the rules of procedure are handmaids of justice and cannot come in the way on

account of technicalities as held in *Ram Piari vs. Collector, Sub Division Abohar, 1993 (3) PLR 36*. That recently, this Court in *Shankar Lal vs. Madan Lal and others, 2011 (1) RCR (Rent) 139*, after taking into consideration the observations of Full Bench of this Court in *Banke Ram's case (supra)*, has held that the ingredients of Section 13(3) are mandatory and no specific performa is required. It is always open to the parties to plead the ingredients in any form given under the Act and the landlord can prove the said ingredients in evidence and if it is shown that no prejudice is caused to the tenants on account of the non-pleadings of the ingredients, the petition cannot be rejected.

3. Keeping in view this fact, no harm would be caused to the tenant if the said amendment is allowed in the pleadings to avoid dismissal on technical ground. Reliance is also placed upon the judgment of this Court rendered in *Banwari Lal vs. Ram Parkash and another, 2009(2) RCR (Rent) 160*. The relevant paragraph of the judgment read as under:-

"12. I find no force in the contention raised by the learned counsel for the petitioner, though, it is always open to the parties to plead the ingredients of Section 13(3) of the Act in any form given under the Act and it is also settled that landlord can always to prove the said ingredients in evidence and if it is shown that no prejudice is caused to the tenant on account of non-pleading of ingredients of Section 13(3) of the Act, then petition cannot be rejected. However, it is also held that the ingredients of Section 13(3) are mandatory in nature though no specific performa is required to be given."

Keeping in view the above, this Court is of the opinion that the order in eviction petition No.14 dated 31.07.2015 is liable to be upheld and the revision petition against the said order (CR-6623-2015) merits dismissal. Similarly, the order passed by the Rent Controller on 08.12.2015 in ejectment application No.13 is not sustainable, as a very technical view has been taken, as such, by the Rent Controller and accordingly, the revision petition against the said order (CR-66-2016) is allowed and the order dated 08.12.2015 is set aside, subject to payment of Rs.10,000/- as costs. The amendment sought is, accordingly, allowed. Needless to say that the tenant will have the right to file amended written statements.

30.03.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*