

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

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**CR No.6451 of 2016
Date of decision: 06.02.2017**

Pawan Kumar

....Petitioner

Versus

Gajinder Singh

...Respondent

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

Present: Mr.Parambir Singh, Advocate, for the petitioner.

Mr.Namit Gautam, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral)

Petitioner-tenant is aggrieved against the order dated 25.07.2016 (Annexure P6) whereby the application for amendment of the written statement has been rejected.

The amendment sought was only as to whether the property fell within the Municipal limits of the Corporation or not and whether it fell within the revenue estate of Village Gill-2, Ludhiana and therefore, whether the provisions of the East Punjab Rent Restriction Act, 1949 would be applicable or not. The same reads as under:

“I) At the end of the preliminary objections, the following paras be allowed to be added as paras No.1-A and 1-B:-

“I-A:- the property does not fall in the limits of Municipal Corporation, Ludhiana and falls within the revenue estate of Village Gill-2, Tehsil and District Ludhiana bearing khasra No.1580 khata No.1898/2565 as per Jamabandi for the year 2000-2001. As such, the provisions of East Punjab Urban Rent Restriction Act are not applicable in the present case. This court has got no jurisdiction to entertain the present petition being rural land.

“I-B:- the petitioner has concealed material facts from this Court.”

II) On Merits of the written statement be allowed to be substituted with the following para:-

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“4:- the petition is wrong and denied. The property does not fall in the limits of Municipal Corporation, Ludhiana and falls within the revenue estate of Village Gill-2, Tehsil and District Ludhiana. As such, the provisions of East Punjab Rent Restriction Act are not applicable in the present case. This court has got no jurisdiction to entertain the present petition being rural land.”

The same has been denied on the ground that the trial had commenced and therefore, the issue regarding the maintainability of the suit had already been framed vide order dated 24.07.2013 and the burden to prove the same was upon the petitioner. He could lead evidence regarding the non-maintainability on account of lack of jurisdiction and therefore, the fact that the case was at the respondent's evidence, the application filed was dismissed.

In the opinion of this Court, the impugned order is not justified. The amendment sought would have only helped the Rent Controller to come to a conclusion to decide the rent application and settle the dispute *inter se* the parties and adjudicate upon the same in proper manner. The issue of jurisdiction goes to the root of the matter and in case it is found that the property is not within the Municipal limits, the petition itself would not be maintainable. In such circumstances, the landlord could be compensated with payment of costs on account of not pleading in a proper manner to the plea which was taken in the ejectment application, the answer to which was that it was a legal issue. At a later stage, it would stand in the way of the petitioner that there was no specific plea, as such, taken, on the ground that the evidence is to be led on the basis of the pleadings.

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In such circumstances, the impugned order is not sustainable and the present revision petition is allowed and the order dated 25.07.2016 (Annexure P6) is, hereby, set aside. The petitioner-tenant is allowed to make amendment in the written statement, as prayed for, subject to payment of Rs.5000/- as costs, payable to the landlord. It is made clear that the respondent-landlord will have the right to rebut the evidence, which is yet to be brought on record.

February 6th, 2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*