

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

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CR No.6722 of 2016

Date of decision: 03.02.2017

Virinder Nayyar

....Petitioner

Versus

Jatinder Singh

...Respondent

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

Present: Mr.Ashok Jindal, Advocate, for the petitioner.

Mr.Divanshu Jain, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present revision petition is to the order dated 02.09.2016 (Annexure P1), whereby the Rent Controller, Chandigarh has declined the amendment of the written statement filed by the petitioner-tenant.

The amendment which was sought in the application was that the petitioner had stated that he owned 40% share in the Industrial Shed No.73, Industrial Area, Phase I, Chandigarh and the same was already on rent and not suitable for the occupation of the petitioner. This aspect was sought to be faulted by taking the plea that there was a lease deed with M/s Joshi Auto Wheels Pvt. Ltd., which was produced by the landlord, during the cross-examination that there was 50% share in the said shed and the said lease deed was a created and fake document. The plea which was, thus, sought to be taken is that the possession which was handed-over to M/s Joshi Autos to carry out renovation on 25.06.2015, was never done and they were in possession of plot No.33, Industrial Area, Phase I, Chandigarh, as tenant of Ravi Jain and Rishab Jain. The landlord was in occupation of shed No.73 and therefore, could start their business as the other co-owners had never objected to the same.

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The Rent Controller, Chandigarh dismissed the application on the ground that the same had been filed after the cross-examination of the landlord and therefore, the trial had commenced. Nothing had been mentioned as to under what circumstances the applicant had knowledge that it was a fake document and as per the lease deed and therefore, to substantiate the same, plea had already been taken by the applicant and that the application was filed for the sole purpose of delaying the proceedings.

The reasoning which was given by the Rent Controller, while passing the impugned order, is not justified. It is to be noticed that the evidence of the petitioner was still going on and it is pertinent to notice that the petition is of the year 2015 and thus, to say that there was an attempt to delay on the part of the tenant, is against the record. It is apparent that the application was filed once the cross-examination of the landlord was done on 04.09.2015. Reply to the said application was filed on 24.01.2016 (Annexure R4). The plea taken by the landlord, in his eviction petition, which is qua property described as Semi-Industrial shed No.40, Sector 15-D, Chandigarh, which he requires for his *bona fide* use and occupation, since he was retiring on 21.02.2016. The industrial shed No.73 was alleged to be in ownership and of having 40% share which was stated to be already on rent at the time of filing the petition, on 27.02.2015. During the cross-examination on 04.09.2015, it has come that the property was vacated by La Tech Exports Pvt. Ltd. in the month of June, 2015, which is during the pendency of the eviction petition. In the cross-examination, it had come that the premises had been let out to M/s Joshi

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Autos and a registered lease deed dated 30.06.2015 was executed. The amendment, which is, accordingly, sought is that the said sale deed was only a fake document, which was created for the purposes of leading evidence. It is, thus, a matter of fact that the lease deed, as such, was registered during the pendency of the proceedings and therefore, is a subsequent event. It is further pertinent to notice that the defence of the petitioner-tenant is that on an earlier occasion, the mother of the landlord had filed a petition on the ground of *bona fide* necessity, which had been dismissed. It is not disputed that by virtue of a family transfer deed dated 12.06.2014, the property was transferred on 30.01.2015 in favour of the landlord and the petition was filed on 27.02.2015. It has further come out during the course of arguments that a legal notice has been served upon M/s Joshi Autos for not complying with the terms of the lease deed as renovation are not being done. These cumulative factors would go on to show that the tenant is contesting the issue of *bona fide* requirement and therefore, the amendment which is sought would only facilitate and help the Court to adjudicate upon the issues and come to appropriate conclusion that the requirement was *bona fide* or not. The principles have been laid down in **Ravajeetu Builders & Developers Vs. Narayanaswamy & Sons (2009) 10 SCC 84**, which read as under:

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

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- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
- (2) Whether the application for amendment is bona fide or mala fide?
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

70. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

Counsel for the respondent-landlord has sought to justify that the property which has been leased out is a larger property and is in joint possession and ownership.

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These aspects are not to be commented, at this stage, by this Court, since it is for the Rent Controller to adjudicate upon all the issues, at the time of deciding the petition and the petitioner-tenant would be prejudiced if the amendment is not allowed.

In view of the above discussion, the order dated 02.09.2016 (Annexure P1) in the opinion of this Court, is not justified and the same is set aside and the present revision petition is allowed. Petitioner-tenant is allowed to make the necessary amendments in the written statement, filed before the Rent Controller, Chandigarh.

February 3rd, 2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*