

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.6805 of 2016

Date of decision: 17.05.2017

Manjit Singh

....Petitioner

Versus

Amrik Singh & another

...Respondents

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

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

Mr.V.K.Sandhir, Advocate, for the respondents.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present revision petition, by the petitioner-landlord, is to the order dated 06.09.2016 (Annexure P1), vide which the Rent Controller, Amritsar has declined the amendment application in the eviction petition, on the ground that there were no subsequent events during the pendency, which would permit the Court to allow the petitioner to amend the eviction petition. Further, it has been noticed that an application has been filed after the cross-examination of the landlord wherein he had admitted the factum of possession of all the shops in the building in question and being in possession of another shop which was lying vacant, during that period. There was also admission regarding running of chess-board business in a rented shop and allotment of the ration depot in the name of Rupinder Kaur, were noticed. Resultantly, it was held that it could not be concluded that inspite of due diligence, the issue could not be raised before the commencement of the trial.

A perusal of the eviction petition would go on to show that initially, when it was filed on 19.08.2010, eviction was sought on the ground of non-payment of rent, house tax and also on the ground of *bona fide* requirement of the son-Gurinder Singh. It was averred that he wanted

to start business of departmental store in the building where there were 6 shops. In the reply filed by the respondents, no such plea was taken regarding the availability or possession of other shops with the landlord.

During the pendency of the proceedings, admittedly, an application for amendment was filed on account of the fact that his another son-Parvinder Singh had died on 13.05.2013 and therefore, the requirement was also for the grandson-Harkirat Singh, son of Parvinder Singh, who was also dependent upon the landlord. In view of the amendment being allowed, the amended petition was taken on record and the applicant deposed in the Court, by filing his affidavit dated 11.08.2015 and he was duly cross-examined on 25.08.2015.

No doubt, in the cross-examination, it has come across that there are 2 shops in his possession and one is the PCO-STD booth, which is not working and the shop is lying closed. The adjacent shop run in the name of Satguru Medical Store, which was got vacated in the year 2014, during the pendency of the eviction petition, by filing a case and was also in his possession. It has further come in cross-examination that his son-Gurinder Singh did not make any effort to run any business in the said STD-PCO shop, during the past 10 years and no effort was being made to run the business in the shops vacated from the Satguru Medical store. Thereafter, the present application for amendment dated 02.09.2015 came to be filed.

In the present application for amendment, an addition was sought wherein details were sought to be incorporated regarding the

property owned by the petitioner. Mention was, accordingly, made of a ration depot at Chowk Pragdass, Amritsar, apart from the shop which was forming part of the same building and was lying vacant and closed, which had also come forth in the cross-examination. Similarly, the shop vacated from Satguru Medical Store was also sought to be incorporated and to give details whether it had been vacated during the pendency of the case, through Court orders. The requirement of the shop not being suitable and sufficient for the son and the grandson, for opening of the departmental store, was also sought to be added. The factum of running a business earlier of chess-board in Gali Bar Wali, Tarn Taran Road, Amritsar along with his deceased son, Parvinder Singh started in the year 2013 and the factum of vacation of the shop on the pressure of the said landlord was sought to be added. Rupinder Kaur, the wife of the deceased son having been allotted a ration depot on 12.03.2012 and the fact that she had no business was also sought to be incorporated along with the averments regarding the mandatory ingredients of not possessing or having vacated any other premises by the applicant along with his 4 sons and the grandsons.

The said application was opposed by taking the plea that the petitioner was a habitual litigant and was filing ejectment applications against all his tenants after small intervals for the last 17-18 years. The facts were well within the knowledge and he never opted to make those amendments. Earlier, another petition against Balwinder Singh was dismissed on the same grounds that the Court had observed that the

applicant had suppressed the facts and therefore, mere change of counsels would not be a ground to allow the amendment and that the amendment was within his knowledge.

Counsel for the respondent has, accordingly, submitted that there was *mala fide* intention on the part of the petitioner-landlord and therefore, the application for amendment has been rightly dismissed. Reliance has been placed upon *Ajendraprasadji N.Pande & another Vs. Swami Keshavprakeshdasji N. & others 2006 (12) SCC 1*, and *Amar Singh s/o Boor Singh now deceased through his Lrs Vs. Pritam Singh & others 2017 (1) RCR (Civil) 320*, to contend that once the trial has started, amendment application should not be allowed.

Counsel for the petitioner, on the other hand, submitted that on account of subsequent events, the amendment should have been allowed. Reliance has been placed upon the judgments in *Mahila Ramkali Devi & others Vs. Nandram (D) thr. LRs. & others 2015 (5) RCR (Civil) 562*, *Balbir Singh Vs. Rakesh Kumar 2013 (2) PLR 177*, *Mrs. Surinder Kaur Bakshi Vs. M/s Chopra Glass House & others 2013 (3) PLR 142*, *Nawal Kishore Vs. Jatinder 2014 (13) RCR (Civil) 1633*, *Phul Pati Vs. Bhim Singh & another 2016 (4) Law Herald 3692*.

After hearing counsel for the parties, this Court is of the opinion that the order passed by the Rent Controller is not justified. The principle under Order 6 Rule 17 CPC as held in the above-said authorities is that the issues in controversy should be well thrashed out and finally adjudicated.

No doubt there is a lapse on account of the petitioner whereby the mandatory ingredients, as such, were not incorporated in the rent petition filed initially, but the fact remains that in the written statement also, no such plea was taken that the landlord was in possession of some other accommodation. A perusal of the eviction petition filed would go on to show that there was mention that there were 6 shops and the landlord needed the demised premises along with the other shops. No doubt it has come across in the cross-examination that there was one shop available and vacant prior to the filing of the petition. However, it is also his case that the shop-M/s Satguru Medical Store was got vacated during the pendency of the petition. Resultantly, a subsequent event has occurred.

The controversy, as noticed, is *inter se* whether the availability of sufficient accommodation is there with the landlord. The Court is to decide on the aspect whether the eviction petition is *bona fide* or not. Now, by virtue of the proposed amendment, all the details of the properties would come on record and the Rent Controller, as such, would be in a better position to decide as to what was the availability of the accommodation with the landlord on the date of filing the petition and whether any subsequent accommodation has come in his possession and it would only help the Court decide on the said issue and the objection which has been raised by the tenant. Therefore, the proposed amendment would only help the Court in the final adjudication of the case.

The due diligence and subsequent events, are important

aspects. It was mentioned that the ration depot was also allotted on 12.03.2012, which was after the institution of the eviction petition. The date of eviction of the tenant of M/s Satguru Medical Store would also be a relevant factor and all these would come on record for the Rent Controller to decide the case on merits. It is settled principle that at the stage of amendment, the Court is not decide on merits. It is also pertinent to notice that the case is at the stage of the landlord's evidence.

In such circumstances, this Court is of the opinion that the amendment which has been declined is not justified. No prejudice, as such, would be caused to the tenant even if the amendment is allowed. It will always be open to the Rent Controller to notice as to what had been concealed and whether there was sufficient accommodation available. The respondent-tenant can always be compensated by payment of costs due to the casual attitude of the petitioner-landlord in pursuing the litigation which has delayed the proceedings, though it is to his own detriment but harassment has been caused to the tenant, for which, he can be duly compensated.

Accordingly, the present revision petition is allowed, the order dated 06.09.2016 (Annexure P1) is set aside and the proposed amendment is allowed, subject to payment of costs of Rs.15,000/-, to be paid to the opposite side.

17.05.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No