

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 6742 of 2017 (O&M)

Date of decision: 28.11.2017

Ashoka Kumar

...Petitioner

Vs.

Asha Rani

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Navkesh Singh Goraya, Advocate for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

1. I do not think that any useful purpose will be served by tinkering with the impugned order dated 19.07.2017 declining the tenant's application under Order 6 Rule 17 of the CPC seeking permission to amend his written statement. The amendment was proposed by the tenant based on an admission by the landlady during her cross-examination that other than the properties mentioned in the eviction petition she had also commercial property in Pakhowal Road, Ludhiana. Since this property is not mentioned in the petition nor in the affidavit Ex. PA tendered by way of examination-in-chief, the tenant can always make use of it in his defence on the ground of bona fide to recover possession of the demised premises and build a case of concealment of material facts, which issue, if raised, can be debated at the time of hearing before the Rent Controller.

2. The prayer in this petition can, after all, as a result of an admission suffered in the oral testimony of the respondent can still be achieved, one way or the other, by a piercing argument or a contention based on such admission, which admission in testimony, is amongst the best pieces

of evidence. The worth of the plea is for the trial court to evaluate and consider in its final order.

3. In these future and not so unpredictable circumstances, the application under Order 6 Rule 17 of the CPC was rightly rejected by the learned Rent Controller. But I dare say, the rejection of the application and this petition would not erase the admissions made in cross-examination and whatever they are worth as to their evidentiary worth, which domain would be for the learned Rent Controller to examine, determine and opine and not for this Court to express any opinion at this stage so as not to cause any prejudice the parties. The consideration is left open.

4. In the main, and on hearing counsel on the myriad facets emerging at the hearing, I believe no cogent or conclusive reason or firm ground is made out for interference in the impugned order in the restrictive revisional jurisdiction, where two of the rent authorities below have spent valuable time in weighing the evidence, pro and contra, in a rent matter and arriving at conclusions after appreciating their nuances. The liberty of defence is preserved *de hors* dismissal of the petition at the final hearing of the eviction petition.

5. Accordingly, the civil revision petition is dismissed with one window left open for forensic debate as remaining arguable in terms of this order before the trial court.

[RAJIV NARAIN RAINA]
JUDGE

28.11.2017

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Whether speaking/reasoned: **Yes**

Whether Reportable: **No**