

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

C.R. No. 7414 of 2016 (O & M)

Date of decision: 15.02.2017

Akhtari Begum (deceased) through L.Rs.

....Petitioner(s)

Versus

Javed and others

...Respondent(s)

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

Present: Mr. Mohd. Yousaf, Advocate,
for the petitioner.

Mr. Abhinav Gupta, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed against the order dated 12.10.2016 (Annexure P-5) passed by the Rent Controller, Malerkotla whereby, the application for amendment of the landlord of his ejectment application has been dismissed. The reasoning given by the Rent Controller was that the mandatory requirements were not mentioned. It was specifically mentioned that the petitioner did not possess any other shop nor he had vacated any other shop and a defence had been taken by the respondents-tenants and the same had been reiterated by filing a replication and, therefore, the amendment is not liable to be allowed. It was further mentioned that it was not disclosed as to what narration is to be added by incorporating Para No. 9A or what was the amendment as such.

Counsel for the petitioners has submitted that as per the provisions of the East Punjab Urban Rent Restriction Act, 1949 (in short

'the Act'), it is a mandatory requirement to plead the necessary ingredients. The application was filed after the death of the mother, who had originally filed the petition and, therefore, it would only help the Court to come to a correct decision on merits as such and adjudicate upon the issue in controversy. The tenants would not be prejudiced in any manner, by such amendment.

On the other hand, Mr. Gupta has submitted that there is considerable delay in as much as the rent application was filed in the year 2012 and thereafter, the issues were framed on 15.05.2015 and the application was only filed on 13.10.2015 (Annexure P3). He has relied upon judgments in *Arjun Chand vs. Smt. Shama Joshi, 2011 (2) Rent LR 55* and in *Mamta Rani and another vs. Daya Wanti, 2014 (69) RCR (Civil) 832* and another judgment of the Apex Court in *J. Samuel and others vs. Gattu Mahesh and others, 2012 (2) SCC 300* in support of his case. Counsel further submits that necessary ingredients had already been pleaded.

The argument of the counsel for the petitioners is liable to be accepted. In the present case, as noticed, Smt. Akhtari Begum had filed the petition initially in the year 2012 and she expired on 25.08.2012. Thereafter, the legal representatives were brought on record and the application came to be filed on 13.10.2015. A perusal of the amendment application would go on to show that the amendment which was sought was that Anwar Khan did not possess any other shop in the urban area concerned nor he had vacated any other shop. A perusal of the petition would go on to show that the petition under Section 13 of Act was filed for the bona fide

requirement of the son Ammar Khan who was idle and unemployed. The amendment which is now sought is that Ammar Khan S/o Akhtari Begum does not possess any other shop in the urban area concerned not had vacated any other shop after commencement of the Act. A specific paragraph 9A, though wrongly mentioned as para no. 5, was to be incorporated. In that, the detail of the properties of the deceased-landlady Akhtari Begum were mentioned and as to how the family members were in possession of various shops inter se. Thus, the amendment which is sought is only clarificatory as such which would help the Rent Controller to decide the issue in proper prospective in view of the fact that the mandatory requirement under the Act itself provides that the landlord has to categorically aver regarding these facts.

In similar circumstances, in ***Sukhwinder Singh vs. Darshan Lal, 2014 (2) RCR (Rent) 345*** amendment was allowed while taking into account the fact that the Full Bench of this Court in ***Shri Banke Ram vs. Smt. Sarasti Devi, 1977 (1) RCR (Rent) 595*** has specifically held that the party could suffer at a subsequent stage if it was found that the necessary pleadings had not been made. The relevant observations read as under:

“7. In a judgment of Full Bench of this Court in [Shri Banke Ram v. Smt. Sarasti Devi](#), 1977 PLR 112, it was categorically held that provisions inter-alia of Section 13(3)(a)(i) of the Act were required to be part of the petition in a case where eviction is sought on the ground of personal necessity. In other words, it was necessarily to be pleaded that the landlord is not keeping any other residential building in the area concerned and that he has not vacated such a building without sufficient cause after the commencement of the said Act in the said urban area. Now when the pleadings sought to be incorporated in the

petition by way of an application for amendment are essential for complete adjudication of the matter in controversy, question arises as to whether delay in bringing in such application by itself is fatal for the landlord or not? [In Surender Kumar Sharma v. Makhan Singh](#), 2009(4) Civil Court Case 0599, Hon'ble Apex Court has held that amendment sought at belated stage cannot be refused if it is found that it was necessary for deciding the real controversy between the parties. It was further held that such amendment can be allowed on payment of costs. [In Sukh Sagar and others v. Hem Raj and others](#), 1995(3) PLR 62 (a verdict of a Coordinate Bench of this Court), it was held that the party should not suffer for the lapse on the part of his counsel.

8. More recently and specifically with respect to incorporation of such necessary pleading in a petition under the Act, there is another verdict of a Coordinate Bench of this Court. Eviction of a tenant had been sought on the ground of bona fide personal necessity under the Act but it turned out to be a case of non-pleading of ingredient that the landlord was neither in possession of another commercial site in the urban area nor he had vacated any. [In Rajinder Parshad v. Sohan Lal](#), 2012(1) PLJ 522, it was held that in a case of non pleading of ingredient, landlord is required to be provided with an opportunity to make necessary pleading. In yet another decision of a Coordinate Bench of this Court, it was held that application for amendment under section 13(3)(a)(i) of the Act is not to be dismissed. It was held that where the landlord has not pleaded ingredients of Section 13 (3)(a)(i) of the Act, the landlord is required to be provided an opportunity to make up the deficiency and offer necessary pleadings.”

It is not disputed that the Apex Court in ***Ajit Singh and another vs. Jit Ram and another***, 2008 (9) SCC 699 has also specifically held that necessary averments have to be made regarding the son also for

whom eviction is sought and eviction can fail if the necessary averments have not been made.

The judgment in *Arjun Chand's case (supra)* is not applicable in the facts and circumstances of the present case as in that case, an amendment was sought at the time when the landlord sought to make the amendment and was withdrawing his admission to fill up the patches in the case which had come in the cross examination. In the present case, it is necessary to note that only the issues have been framed and evidence has not started. It is not the case where the landlord has deposed wrongly as such in the witness box and an admission is sought to be withdrawn.

The judgment in *Mamta Rani's case (supra)* pertains to a case where parties have already led evidence with regard to their rights and in such circumstances, it was held that the relief of possession had never been sought and, therefore, they could not at a subsequent stage ask for the same. In *J. Samuel's case (supra)*, the Apex Court has held that due diligence was missing since there was omission of mandatory requirement which is running into 3 or 4 sentences and could not be a typographical error.

The Apex Court has held that a liberal view should be taken for amendment of pleadings. The principles have been laid down in ***Revajeetu Builders & Developers Vs. Narayanaswamy & Sons and others, 2009 (10) SCC 84*** to hold that once there is no mala fide intention as such, it has been time and again held that amendment is to be allowed. The said principles read thus:-

“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.

(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.”

The argument of counsel for the respondents that necessary ingredients had been pleaded is not liable to be accepted. As noticed, the application is purely clarificatory in nature after the death of the original

landlady and only clarifies this factum as to the requirement of the son for whom the eviction was sought and, therefore, the argument is rejected.

Accordingly, the present revision petition is allowed. The amendment sought is allowed subject to payment of ₹3,000/- as costs, to be paid to the respondents-tenants.

15.02.2017
shivani/sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes

Whether reportable

Yes