

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.113

C.R. No.7294 of 2017 (O&M)

Date of decision: 25.10.2017

Sourav

....Petitioner

versus

Surinder Kaur and another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Anoop Singla, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral)

Through the present petition challenge is made to the order passed by the Rent Controller, Jalandhar, through which the petitioner's application filed under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short the 'Code'), to amend his written statement has been dismissed.

Respondent No.1-landlord had filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, seeking therein the eviction of the petitioner and respondent No.2 from the tenanted premises as described in the Eviction Petition. The eviction was sought on the grounds of subletting and non-payment of rent as also for the reason that respondent No.1 needed the tenanted premises for her own personal use for settling her son.

On being put to notice, the petitioner filed a written statement

on 23.05.2014 denying therein the grounds raised in the eviction petition. On 29.08.2017, an application was filed by the petitioner under Order 6 Rule 17 read with Section 151 of the Code seeking amendment of the written statement filed by him which was dismissed.

Learned counsel for the petitioner submits that the amendment to the written statement filed by the petitioner was necessary as through the same the petitioner sought to incorporate in the already filed written statement the grounds that respondent No.1 had not come to the Court with clean hands; son of respondent No.1 was in possession of other properties in the vicinity; he had entered into agreements for taking on lease other properties at Jalandhar and that he was not in need of the tenanted premises.

The afore submissions made by learned counsel for the petitioner do not merit a favourable consideration.

Order 6 Rule 17 of the Code reads as under:-

"17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

As per the afore-quoted provision of the Code, the Court, at any stage of the proceedings, may allow either party to alter or amend their

pleadings in such manner and on such terms as may be just and all such amendments shall be allowed by the Court as may be necessary for the purpose of determining the real questions in controversy between the parties. As per the proviso, no application for amendment is to be allowed after the commencement of the trial, unless the Court is convinced that in spite of due diligence, the party seeking the amendment could not raise the matter before the commencement of the trial.

Thus, the application seeking amendment is to be allowed only after the Court is convinced that the sought amendments are necessary for the purpose for determining the real question in controversy between the parties and that in spite of due diligence the party seeking the amendment could not raise the issue sought to be raised through the amendment before the commencement of the trial. For the Court to arrive at the afore conclusions, it is but necessary that all the facts on the basis of which the amendment is sought are specifically pleaded. Vague averments possibly cannot lead the Court to arrive at any conclusion.

It is the admitted position that the eviction petition was filed on 16.04.2013 to which the petitioner filed his written statement on 23.05.2014 and after three years and three months of the filing of his written statement, when the matter was fixed for the evidence of respondent No.1-landlord, the petitioner, on 29.08.2017, filed an application for seeking amendment in the written statement.

It would be advantageous to refer to the relevant averments made by the petitioner in his amendment application. The same are extracted as under:-

"3. That the preliminary objection No.8 is to be added in the written reply and the same are under:-

"That the plaintiff has not come to court with clean hands and has suppressed the material facts from the notice of this Hon'ble Court and is guilty of stating untrue facts and is liable to the offence of perjury".

4. That in para No.3 in the 11th line after the end of sentence with word alleged the following be allowed to be added.

"The son of the petitioner namely Harpreet Singh is in possession of other properties/showrooms situated at different places at Jalandhar and nearby the area of Jalandhar and has entered into an agreement of lease of properties situated at Jalandhar and nearby area of Jalandhar. The names of persons are being searched. Beside this Harpreet Singh is not in need as alleged as the same is artificial and mere desire of the petitioner."

A perusal of the above averments shows that the amendments sought by the petitioner were absolutely vague as it was submitted therein that the son of respondent No.1 was in possession of "other properties/showrooms" in "different places" at Jalandhar and "near by the area of Jalandhar". It was further submitted by the petitioner that the son of respondent No.1 had entered into "an agreement" of lease of "properties situated at Jalandhar and near by area of Jalandhar". It was still further submitted that "the names of persons are being searched."

Neither the description of the properties/showrooms allegedly

in the possession of the son of respondent No.1 have been given nor the location thereof. The averment that "the names of persons are being searched" clearly shows that the petitioner was neither aware of the properties allegedly in possession of son of respondent No.1 nor was he aware with regard to the properties leased out by the son of respondent No.1. It has also nowhere been pleaded by the petitioner as to when and in what manner did he come to know of the facts which are now sought to be incorporated in the written statement filed by the petitioner over three years ago.

In view of the above vague pleadings, it is virtually impossible to reach to a conclusion whether the amendment is necessary to decide the controversy between the parties or that in spite of due diligence the same could not be pleaded by the petitioner before the commencement of the eviction proceedings.

In view of the above, no merit is found in the present petition and resultantly, the same is ordered to be dismissed.

Since the eviction petition is found to be pending for the last over four and half years, therefore, I consider it just and appropriate to request the Rent Controller, Jalandhar, to dispose of the eviction petition expeditiously but not later than six months from the date of receipt of a certified copy of this order.

(DEEPAK SIBAL)
JUDGE

October 25, 2017

Jyoti 1

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*