

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

251

CR No.7686 of 2016
Decided on : 09.03.2017

Rafiq Khan

... Petitioner

Versus

Yogesh Kumar

.. Respondent

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

Present:- Mr.Munish Kumar Garg, Advocate
for the petitioner.

Mr.Sanjiv Kumar Aggarwal, Advocate
for the respondent.

G.S.Sandhawalia, J. (Oral)

The present petition has been filed by the tenant under Article 227 of the Constitution of India and is directed against the order dated 20.10.2016 passed by the Civil Judge (Jr.Div.), Narwana exercising the power of the Rent Controller. Vide the said order, the application under Order 6, Rule 17 for amendment of the written statement has been dismissed.

The amendment which was sought in the written statement was that a legal objection was being raised under Section 1(3) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short the 'Act') that the construction of the shop has been completed in December, 2002. Two petitions were consolidated having been filed on 01.11.2011 and 04.08.2012 and before the period of ten years have elapsed. Resultantly, provisions of the Rent Act would not be applicable, and therefore, the resultant effect would be that the jurisdiction of the Rent Controller itself was in question. It was further mentioned in the application also that the applicant-tenant

would not lead any evidence except oral and documentary evidence already on the file. The factum of the shops having been constructed in the year 2002 was obviously not in the knowledge of the applicant, therefore, it could not be pleaded at that time.

The reasoning given in the impugned order by the Rent Controller is that there was lack of due diligence, and the trial had already commenced and therefore, in view of the provisions of the Order 6 Rule 17, the application was not allowed since the case had reached at the stage of final arguments. It was noticed that neither any issue was framed regarding the same nor any evidence has been led by the petitioner, nor any question regarding the issue was asked by the petitioner while cross-examining the witnesses of the applicant-respondent. Therefore, it could not be held that no evidence would be required to be produced on the case file. Resultantly, the application was dismissed.

Counsel for the petitioner vehemently submitted that only a legal issue was sought to be raised, and therefore, the application should have been allowed. The law pertaining to amendment is liberal, and the petitioner was not aware of the said fact which is now sought to be brought on record.

Perusal of the eviction petition would go on to show that the case of the respondent-landlord was that the shop was taken on rent vide rent note dated 30.03.2010. Accordingly, the first petition was filed on 01.11.2011 on the ground of eviction due to non payment. Similarly, the second petition was filed on 04.08.2012 for eviction on the ground that the premises were required for bonafide requirement, and taking the same plea that rent note was of the year 2010 (Annexure P/2). The stand of the tenant

specifically was that the electricity connection was taken in his name in the year 2003. It was his specific case that he was a statutory tenant in the demised premises since 2003. Thus, the jurisdiction of the court as such, had been accepted and the plea had been taken that he was a statutory tenant. Therefore, he was well aware that he was the first occupant as such, as it is now alleged that the building was completed in December, 2002. Therefore, it would not lie in his mouth to say he was not aware of these facts that the building was constructed in 2002 and there was no due diligence as such, once he has taken such a stand. It is settled principle that by way of amendment, admission which has been made in favour of the other side cannot be wriggled out and that also at the fag end of the proceedings.

Counsel for the petitioner has vehemently, submitted that there was sufficient material as such on record which would entitle the court to decide the issue of jurisdiction and it could have been gone into by the Rent Controller. Under Order 6 Rule 17, the court is to allow such amendment which may be necessary for determining the said controversy between the parties. Any drastic change in the stand taken, cannot be allowed to be taken. The perusal of the statement of RW-9, clerk of Municipal Council, Shri Narinder Kumar which has now been placed on record, would go on to show that the application for getting the sanctioned site plan was duly exhibited as R-19 vide which, the application had been given for constructing the building. However, nothing could be pointed out as such whether there is any material on record to show that there was any occupancy/completion certificate as such which would enable the Court to adjudicate upon the issue in complete prospective.

Section 1 sub clause 3 of the Act reads as under:-

“Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion.”

A perusal of the above section would go on to show that the date of completion is the relevant date. It could not be pointed out that the completion certificate is on record vide which the benefit of the pleadings that there was no requirement to lead evidence, could be granted to the petitioner.

In such circumstances, this Court is of the opinion, that in the absence of any due diligence which is a pre-requisite condition under the proviso, and in view of the above discussion, the order passed by the Rent Controller was well justified in the facts and circumstance. It does not suffer from any illegality or infirmity which would warrant interference in exercise of revisional jurisdiction by this Court.

Accordingly, civil revision petition is dismissed.

[G.S.Sandhawalia]
Judge

09.03.2017
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No