

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

107

**CR No.8086 of 2016 (O&M)
Date of decision: 14.02.2017**

Joginder Malik & another
Anuradha Bakshi & another

Versus

....Petitioners
...Respondents

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

Present: Mr.Gobind Korla, Advocate, for
Mr.Sandeep Vermani, Advocate, for the petitioners.

G.S. SANDHAWALIA, J. (Oral)

CM-2771-CII-2017

Application for placing on record photocopy of the judgment dated 11.11.2014, passed by the Rent Controller, as Annexure P-3, is allowed. Said document is taken on record, subject to just exceptions. Office to tag the same at appropriate place.

CR-8086-2016 (O&M)

The present revision petition is directed against the order dated 10.10.2016, passed by the Appellate Authority, Faridabad, rejecting the application for amendment of the written statement moved by the appellants.

The said amendment was sought at the appellate stage, after an order had been passed by the Rent Controller, Faridabad on 11.11.2014 in the petition filed under Section 13(6) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short, the 'Act'), directing restoration of the possession of the rented premises bearing No.5-B/52, NIT, Faridabad, within 2 months. The reasons given by the Appellate Authority, while dismissing the application filed by the owners is that the amendment sought would not go to the root of the matter in dispute between the parties

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

CR No.8086 of 2016 (O&M)

-2-

and therefore, the application was dismissed, while noticing that the appeal pertained to a judgment passed in a petition filed under Section 13(6) of the Act, for restoration of possession.

The amendment which is sought in the written statement was in para No.2(i) of the preliminary objections that “site-plan attached with the ejectment petition is attached herewith” and “as per site-plan sanctioned by the Municipal Corporation, Faridabad.” It was the case of the petitioners that the said amendment would not change the nature of the stand taken as it was only clarificatory in nature and therefore, since the law of amendment is liberal and the amendment was only clarificatory, it should have been allowed. The appellants have raised a fresh double storey building over the premises after demolishing the old building and therefore, the plan would be helpful.

The dispute herein pertains to the proceedings initiated by the respondent No.1 who was a tenant in the premises and had been got evicted by respondent No.2/landlady, on the ground of personal necessity vide order dated 16.04.2007. Thereafter, the said order was upheld on 28.01.2008 by the Appellate Authority. Since the possession was taken by the said respondent and she never shifted to the above-mentioned premises but sold the same, on 05.11.2008, the petition was filed by respondent No.1 seeking restoration of the possession.

A categorical plea in the said petition was taken by the present petitioners that they were in actual physical possession of the demolished old building and had raised a double storey building over the same and the

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

CR No.8086 of 2016 (O&M)

-3-

applicant/respondent No.1 herein had nothing to do with that and could not seek direction against the petitioners for restoration of the possession of the house, as she was not a tenant with them. The petitioners, thus, were very categorical in their defence and thereafter, order dated 11.11.2014 (Annexure P3) was passed against them for restoration of the possession on account of the fact that respondent No.2 had violated the provisions of law. The petitioners had already, thus, taken a categorical stand and vide the present amendment, are now wanting to improve upon their stand by taking the plea that in the earlier ejectment petition, there was a site-plan attached and that they have constructed as per the site-plan now sanctioned by the Corporation.

The petitioners were well aware of the ejectment petition which had been filed in pursuance of which, the restoration was being sought. As noticed, the trial is already over and the Rent Controller has already decided the matter against them. At the appellate stage, they were seeking to take a new defence which they were well aware of. The amendment can be allowed where the parties are not aware, as such, and there is due diligence. In the present case, the amendment, at this belated stage, has been rightly declined by the Appellate Authority on the ground that it does not go to the root of the matter in dispute. It is for the Courts to notice that whether the amendment is *bona fide* in nature and whether it has only been filed to take a contradictory plea. In the present case, as noticed, the attempt by the petitioners is not only to delay the proceedings but also to take a plea which is in contradiction to the one raised earlier, by

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.8086 of 2016 (O&M)

-4-

changing the controversy to the extent that restoration can only be permitted to the extent of the earlier premises which were the bone of contention in the petition and not the one which has been newly constructed as per the revised plans. The net result is that the amendment, as such, is patently *mala fide* and not *bona fide* and therefore, keeping in view the settled principles of law laid down by the Apex Court in **Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & others** **2009 (10) SCC 84**, it would not be permissible to the petitioners to take such a stand. By virtue of the amendment, the whole controversy, which has been adjudicated upon and which is now sought to be adjudicated upon, would totally change the nature of the proceedings and is a totally contrary stand which has now been taken as to what would be the portion to which the respondent No.2 would be entitled to. The general principle is that the amendment of pleadings is not to alter or materially substitute the cause of action or the nature of the suit and the nature of the claim and therefore, an inconsistent plea is not permissible as it would amount to substituting and changing and altering the case. Relevant observations and the principles laid down read as under:

“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?

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

CR No.8086 of 2016 (O&M)

-5-

(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.”

Resultantly, in view of the above discussion, the present revision petition is dismissed in limine. It is, however, made clear that anything said herein is only for the purpose of deciding the present revision petition and it shall not prejudice the Appellate Authority, in any manner, while deciding the main appeal, on merits.

February 14th, 2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

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