

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM No.13796-CII of 2017 in/and
CR No.802 of 2017
Date of Decision: 25.07.2017**

Gurdev Singh since deceased
through LRs

... Petitioners

Versus

Harbans Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Abhinav Gupta, Advocate,
for the petitioners.

Mr. Sanjeev Soni, Advocate,
for the respondent.

RAJIV NARAIN RAINA, J.(Oral)

1. Issue notice on the application.
2. Mr. Sanjeev Soni, learned counsel accepts notice for the respondent.
3. By consent, the main case is taken up on Board for final disposal.
4. Heard.
5. The brother of the landlord has purchased the property in the vicinity of the shop in dispute and has shifted his entire business in his new premises is not a plea expected to be entertained at the stage of an application under Order 6 Rule 17 CPC for amending the written statement pending in the Court at Rent Controller, Bathinda as it has no bearing on the

relationship of landlord and tenant with the other brother.

6. It is argued that one of the reasons assigned to demonstrate bona fide need of the landlord was that landlord's brother owned a commercial shop and they are in possession as tenants in shop No.4610 and thus what was projected by the respondent landlord was that they intended to evict the petitioner to accommodate the business of his brother exclusively. The shop in question bears No.4596 while the shop in the vicinity bears No.4610.

7. While I was hearing Mr. Abhinav Gupta, learned counsel for the petitioning tenant and Mr. Sanjeev Soni appearing for the landlord respondent and on perusing the order sheet of this Court on the file, I find that while issuing notice of motion the Rent Controller was ad interim directed to adjourn the case beyond the date fixed by this Court. However, the petition was dismissed in default on May 18, 2017 when none appeared for the petitioner.

8. Learned counsel draws solace from the fact that on May 18, 2017 neither did the respondent appear which I do not see how it balances out equity in favour of the petitioner-tenant who would obviously take advantage of delay. However, on June 02, 2017 when the matter came up before the same Bench that issued notice of motion, the previous order recalling the order dismissing the petition in default by restoring the case to its original number but stay was not granted or continued commanding the Rent Controller to adjourn the case. On the other hand, the Rent Controller was directed to continue with the proceedings. When the matter came up on

July 06, 2017 the coordinate Bench found no ground to issue ex parte stay

afresh and adjourned the case to July 25, 2017 and that is how the matter comes up before me today.

9. I have heard both the learned counsel on the impugned interlocutory order dismissing the application under Order 6 Rule 17 CPC for amending the written statement.

10. Learned counsel for the landlord has pointed out from the order sheet that 25 opportunities out of which 5 are last opportunities granted to the tenant to lead his evidence but there has been abject failure to do so. It is obvious that the tenant is biding time by protracting the litigation for his own benefit that laws' delays offer. The personal need of the landlord would not depend, in my considered opinion, upon the acquisition of a nearby property by the brother to establish his own independent or symbiotic family business of tailoring.

11. The argument raised by the tenant before this Court was correctly negated by the Rent Controller with his reasoning found at p.57 of the paper-book where it is observed that just by mere fact of purchasing property by the brother of the landlord will not effect the merits of the case and will not conclusively decide as to whether the landlord is still in need of demised property for his business bonafidely or not. Moreover, court can itself take notice of subsequent events without there being formal amendment in pleadings as held in A.K. Jain Vs. Prem Kapoor 2008 (3) Apex Court Judgments 142 (S.C.).

12. The Rent Controller is not far from right in recording that the amendment prayed for, if allowed, would only prolong the case even when

Court itself can take into consideration subsequent events i.e. purchasing of

property by the brother of the landlord vide sale deed dated August 27, 2015 to examine its impact on the pending case; to which I would add that purchase of property by the brother cannot act as a clog on the respondent's bona fide personal necessity to re-posses the rented premises for himself for his occupation and user.

13. I find no merit in this petition and would dismiss it.

**(RAJIV NARAIN RAINA)
JUDGE**

25.07.2017
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Whether speaking/reasoned Yes

Whether reportable No