

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.8276 of 2014 (O&M)

Date of decision: March 23, 2017

Rattan Singh

..... Petitioner

Versus

Sukhdev Singh

..... Respondent

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

Present: Mr. Divanshu Jain, Advocate
for the petitioner.

G.S. SANDHAWALIA, J. (ORAL)

The present revision petition filed by the landlord is directed against the order dated 15.10.2014 passed by the Rent Controller, SAS Nagar, Mohali under Order 6 Rule 17 of the CPC where the application for incorporating the mandatory ingredients under Section 13 (3) (a) (i) of the Rent Act have been dismissed on the ground that one witness of the landlord has been cross-examined. The reasoning given was that after the amendment under the CPC no amendment can be allowed which could be sought only after due diligence. Accordingly, the case was thereafter put up for evidence of the landlord.

Notice was issued to the tenant and who was duly served on 27.04.2015 but there was no representation on his behalf. Thereafter, he appeared in person on 16.07.2015 and did not appear thereafter. On 01.08.2016, this Court ordered that he be informed of the date fixed. Dasti notice was also issued to serve through his counsel in trial Court on 13.12.2016 for 09.02.2017. As per the office report, the counsel Mr. Vivek

Sharma, Advocate submitted that he is not intouch with the respondent. Thus, he is intentionally avoiding putting in appearance, since, there is stay order operating against the petitioner-landlord himself. Thus left with no other option, the respondent is proceeded against ex parte.

The reasoning given by the Rent Controller is not justified in view of the settled proposition that the law of amendment is liberal specailly keeping in view of the fact that incorporation of the mandatory ingredients are sought for. It has been time and again held that the prejudice would be caused in case the same is not allowed and the landlord would suffer the consequences of the delay, in disposal of the application. The landlord has not withdrawn his admission by the proposed amendment and it is only required to be incorporated in view of the language of Section 13(3) (a) (i) (b) & (c) and the tenant can be given liberty to amend his written statement accordingly. The evidence would come on record that whether the landlord has other property or not. The Court would then decide on the basis of the pleadings and in view of the judgment laid down in ***Banke Ram Vs. Smt. Sarasti Devi, 1977 PLR 112.***

Reliance can be also done made on the judgment ***Sukhwinder Singh Vs. Darshan Lal, 2014 (4) PLR 257*** where in similar circumstances, amendment was permitted. In similar circumstances, this Court in CR No.1305 of 2012 titled as Smt. Pushpa Devi Vs. Ashok Kumar decided on 28.02.2012 also allowed similar application in the case fixed for rebuttal stage.

“It is only the requirement of law which is sought to be incorporated in the pleadings to ensure that the petition is not dismissed on a technical ground. Evidence would have already come on record as to whether there is

*any other property in possession of the landlady or her son, on the basis of which, the case has to be decided on merits. It is a settled principle that the rules of procedure are handmaids of justice and cannot come in the way on account of technicalities as held in **Ram Piari vs. Collector, Sub Division Abohar, 1993 (3) PLR 36**. That recently, this Court in **Shankar Lal vs. Madan Lal and others, 2011 (1) RCR (Rent) 139**, after taking into consideration the observations of Full Bench of this Court in *Banke Ram's case (supra)*, has held that the ingredients of Section 13(3) are mandatory and no specific performatum is required. It is always open to the parties to plead the ingredients in any form given under the Act and the landlord can prove the said ingredients in evidence and if it is shown that no prejudice is caused to the tenants on account of the non-pleadings of the ingredients, the petition cannot be rejected.*

*Keeping in view this fact, no harm would be caused to the tenant if the said amendment is allowed in the pleadings to avoid dismissal on technical ground. Reliance is also placed upon the judgment of this Court rendered in **Banwari Lal vs. Ram Parkash and another, 2009(2) RCR (Rent) 160**. The relevant paragraph of the judgment read as under:-*

12. I find no force in the contention raised by the learned counsel for the petitioner, though, it is always open to the parties to plead the ingredients of Section 13 (3) of the Act in any form given under the Act and it is also settled that landlord can always to prove the said ingredients in evidence and if it is shown that no prejudice is caused to the tenant on account of non-pleading of ingredients of Section 13(3) of the Act, then petition cannot be rejected. However, it is also held that the ingredients of Section 13(3) are mandatory in nature though no specific performatum is required to be given.”

As noticed, the tenant has not appeared to oppose or to demonstrate before this Court that any admission had come on record by way of cross-examination which was sought to be withdrawn as such.

Resultantly, the present revision is allowed. The impugned order passed by Rent Controller is set aside, and the proposed amendment is allowed.

March 23, 2017
Dinesh Bansal

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No