IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 1525 of 2018(O&M)

Date of decision: 8.3.2018

M/s R.B. Mill and another ….Petitioners

VERSUS

Anoop Singh Gill .....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Surinder Singh Walia, Advocate for the petitioners.

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REKHA MITTAL, J.

The present petition directs challenge against order dated 27.11.2017 passed by the Rent Controller, Chandigarh whereby application for amendment of eviction petition under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in short 'CPC') has been allowed.

Counsel for the petitioners/tenant would argue that the respondent has filed eviction application qua tenancy premises measuring approximately 126 square feet of front shop of left side portion of industrial shed No.433-A, Industrial Area, Phase II, Chandigarh on various grounds raised in the application. It has been averred that the respondent has purchased the demised premises by making full and final sale consideration vide agreement to sell dated 18.04.2006 from Mrs Swaraj Katari who had also executed an irrevocable General Power of Attorney in favour of the respondent authorizing him to manage the property, collect

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rent from the tenants and evict them from the demised premises in accordance with law. The respondent, after closing his evidence filed the instant application to amend the eviction petition by raising a plea that he filed a suit for specific performance against Smt. Swaraj Katari, suit was decreed on 06.09.2016, deed of transfer of lease rights has been executed and registered through process of the Court. As such, the respondent has become owner and landlord of the demised premises.

Counsel for the petitioner has impugned the order allowing amendment primarily on two grounds. The first submission made by counsel is that the application for amendment was filed after commencement of trial, therefore, application is hit by the proviso appended to Rule 17 of Order 6 CPC which debars post commencement trial amendments. The second submission made by counsel is that the petitioner had raised an issue with regard to maintainability of the eviction application and the said objection may be rendered infructuous if the order passed by the Rent Controller allowing amendment is allowed to sustain.

The plea of the petitioner that the proposed amendment is hit by the proviso to Rule 17 of Order 6 CPC is not meritorious in the face of situation that facts sought to be added by way of amendment have occurred during pendency of eviction proceedings, therefore, the same could not be incorporated in the original petition despite exercise of due diligence. In this view of the matter, the proviso to Rule 17 is not attracted in the given circumstances. This apart, proviso to Rule 17 does not create a complete bar against allowing post commencement trial amendment if the same are

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otherwise material and do not cause prejudice to the other side for which cost is the remedy.

So far as plea with regard to petitioners having raised an issue of non-maintainability of the eviction petition, it would be for the Rent Controller to decide at an appropriate stage as to whether the application for eviction was maintainable on the basis of facts pleaded in the original petition and what is the effect of subsequent events that sought to be added by way of amendment. I would hasten to add that at the time of disposing of an application for amendment, the Court cannot examine merits of the facts sought to be added by way of amendment.

In view of what has been discussed hereinabove, finding no merit, the petition fails and is accordingly dismissed in limine. No order as to costs.

MARCH 8, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no

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