

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

Civil Revision No.1545 of 2018

Date of Decision: March 8, 2018

Navdeep Singh

...Petitioner

Versus

Mohan Lal

...Respondent

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr. Namit Gautam, Advocate
for the petitioner.

HARINDER SINGH SIDHU, J.

This petition has been filed impugning the order dated 26.02.2018 of the Learned District Judge-cum-Appellate Authority, Jalandhar whereby application filed by the petitioner for amendment of written statement has been dismissed.

The respondent-landlord had filed a petition under Section 13 of the East Punjab Urban Restriction Act, 1949 for ejectment of the petitioner-tenant from the demised premises on the ground of personal necessity. The Learned Rent Controller passed order of ejectment on 22.9.2017. The petitioner filed an appeal there-against which is pending. He moved an application before the Appellate Authority for amendment of the written statement. He sought to add another preliminary objection in the written statement already filed to the following effect:-

“5. That the petitioner has purposely concealed the factum of being in possession of one shoop which is lying vacant. The said shop is part and parcel of property no.S-09/07448 and is situated in the area of Phagwara Gate, Near Mobile House, Jalandhar. The said shop is clearly shown in the photographs attached and for this reason the ejectment petition filed by the petitioner is liable to be dismissed.”

It was stated in the application that the petitioner had come to know

only a day before its filing that the respondent-landlord had one other shop which was in his possession and the said fact had been concealed by him while leading evidence before the Rent Controller. In his reply to the application, the respondent-landlord denied that he was in possession of any shop as alleged. He stated that the number mentioned in the application was with regard to the residence of the landlord.

The learned Appellate Authority accepted the contention of the respondent-landlord that the premises/shop referred to in the application of the petitioner-tenant was not a shop but was a part of his residence and he was using the same for parking his car and that it was not a vacant shop. The Appellate Authority also held that the petitioner had not produced any document which could prove that the landlord was using the alleged shop as a shop or that he had rented out the same to some other person. Moreover, the tenant had already taken objection in his written statement that the landlord had another shop in the area of MC, Jalandhar. Accordingly, the application was dismissed.

Learned counsel for the petitioner contended that the impugned order cannot be sustained. He argued that the Learned Appellate Authority while disposing of the application had discussed the merits of the averments sought to be incorporated by the amendment which was impermissible. He argued that amendment in the written statement can be permitted at any stage and any amendment which is necessary for the just decision of the case ought to be allowed.

Having heard learned counsel for the petitioner, I feel that there is no merit in the present revision petition.

Order 6 Rule 7 of the CPC, after its amendment by the Civil

Procedure Code (Amendment) Act, 2002 reads as under :-

“17.Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.

"Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

As per the proviso to Order 6 Rule 17 no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that the party could not have raised it before the commencement of trial. Hon'ble Supreme Court in **Vidyabai & Ors Versus Padmalatha & Anr. 2009(1) R.C.R.(Civil) 763** has held that the proviso is mandatory. The court has no jurisdiction to allow an amendment unless the conditions precedent therefor are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.

The instant amendment application has been made at the appellate stage. So the proviso is attracted in this case. The petitioner in his application has averred as under:

- “5. *That the applicant yesterday came to know that the petitioner has one other shop which is in his possession and the same is situated in the area of Phagwara Gate, Near Mobile House, Jalandhar and the said fact has been purposely concealed by the petitioner from the court while filing the ejectment application and while leading the evidence before the Ld. Rent Controller.*
7. *That the above said shop which has ben concealed by the petitioner from the Hon'ble Court is situated in one of the most busiest and commercial area of Jalandhar.*
9. *That the amendment sought for is very much necessary for the just decision of the case. The applicant was not aware of the fact that the petitioner is in possession of said vacant shop and the present application has been moved immediately after coming to know the said fact.”*

The above are general and vague averments. No particulars have

been furnished which would satisfy the requirement of the proviso that the matters now sought to be introduced by the amendment could not have been raised earlier in spite of due diligence. This is particularly so as the petitioner in para No. 5(c) of the written statement had already stated that the landlord is having properties in his name which he would disclose at the time of evidence.

The relevant paragraph 5(c) of the written statement is reproduced as under:

“(c) That sub para no. (c) of para no.5 of the petition is wrong and incorrect. It is incorrect that the petitioner is not in possession of any such like shop. It is incorrect that the petitioner has not vacated any such like property/shop. The petitioner is having other property/shop. The petitioner is having other properties in his name which he has purposely concealed, which the respondent will disclose at the time of evidence.”

Even though the Ld. Counsel for the petitioner may be right in his contention that the Appellate Authority while deciding the application was not justified in entering into the merits of the amendment, but considering that the requirements of the proviso to Order 6 Rule 17 have not been satisfied there is no merit in the petition and the same is dismissed.

March 08, 2018

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No