

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

Civil Revision No.2456 of 2018.

Decided on:-April 19, 2018.

Harkamal Jit Kaur.

.....Petitioner.

Versus

Jatinder Kumar and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Parminder Singh Kanwar, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed the present civil revision under Article 227 of the Constitution of India impugning the order dated 18.01.2018 (Annexure P-5) passed by learned Additional Civil Judge (Senior Division), Dasuya, whereby the application filed by the petitioner under Order I Rule 10 read with Section 151 CPC for impleading her as a party in the suit pending adjudication, was dismissed.

Briefly stated, the respondent No.1-plaintiff (for short, the plaintiff) had filed a suit for vacant possession by way of ejectment of respondent No.2-defendant (for short, the defendant) from the demised premises, as detailed in the plaint. The plaintiff had pleaded that the defendant is a tenant over two shops and a Chaubara at a monthly rent of Rs.5,000/- since the year 2004. The defendant had paid rent to the father of the plaintiff till the year 2004, but since January, 2005, he is in arrears of rent. The ejectment has been sought on the ground of bonafide personal need and occupation as well.

In the aforesaid suit, the defendant filed his written statement pleading therein that, in fact, the sister of the defendant, namely, Harkamal Jit Kaur (petitioner herein) had taken the shops and Chaubara in dispute in the year 1998 and rent agreement was scribed by the father of the plaintiff in favour of the present petitioner Harkamal Jit Kaur. The defendant had further pleaded that he has no connection with the shops and Chaubara in dispute as the demised premises is in possession of the petitioner.

The written statement was filed by the defendant on 29.02.2016. Thereafter, on 30.10.2017, the petitioner has filed an application under Order I Rule 10 read with Section 151 CPC to get herself impleaded as a party in the suit on the plea that she is in possession of the premises as a tenant on rent @ Rs.500/- per month and, therefore, the valuable rights of the petitioner-applicant are involved in the suit for which she is required to be impleaded as a necessary party.

The application was contested by the plaintiff on the ground that the same has been filed with malafide intention so as to delay the proceedings. The petitioner is neither necessary nor a proper party in the suit. The plaintiff had moved an application for production of rent agreement of the year 1998 allegedly executed by the father of the plaintiff, but the defendant has failed to produce the same.

After considering the rival contentions of both the parties, learned civil Court dismissed the application under Order I Rule 10 read with Section 151 CPC filed by the petitioner vide impugned order dated

18.01.2018 by holding that the petitioner had moved the application on the basis of an agreement of rent note, but the same has not been placed on file.

Impugning the aforesaid order dated 18.01.2018, the petitioner has filed present civil revision.

Learned counsel for the petitioner has argued that, no doubt, the plaintiff is *dominus litis* in the suit and it is his discretion against whom he wants to seek the relief. The plaintiff has averred that the defendant is a tenant in the suit property and is in possession of the same. But when the defendant has categorically pleaded in his written statement that it is the petitioner, who is tenant in the suit property and also in possession of the same, the petitioner was entitled to be impleaded as a party as her rights are going to be affected adversely in case the suit filed by the plaintiff is decreed. The application filed by the petitioner was dismissed on the ground that the petitioner has not placed on record any documentary evidence to prove her possession over the suit property, but at the stage of filing the application under Order I Rule 10 CPC, no such document is required to be placed on record. Moreover, the plaintiff has not placed on record any rent note executed by the defendant to show that he is tenant in the suit property.

He has placed reliance upon ***Bhulla Ram Versus Zile Singh 2001(3) RCR (Civil) 673; Amit Kumar Shaw and another Versus Farida Khatoon and another 2005(2) RCR (Civil) 651 and Subhash Chand Versus Hari Ram 1998(2) RCR (Civil) 236*** to contend that the provisions of Order I Rule 10 CPC require that all persons should be joined as party whose presence is necessary for the effective adjudication of controversy and where

the interest of applicant is directly involved and likely to be adversely affected, the doctrine of *dominus litis* is not applicable. The merits of the claims are determined after evidence of the parties and at the time of deciding the application, the court has to be guided by the averments made in the application only. While referring to ***Amit Kumar Shaw and another's case (supra)***, he has argued that a person may be added as a party when he ought to have been joined as plaintiff or defendant and is not joined so, or when, without his presence, the questions in the suit cannot be completely decided. The very object of Order I Rule 10 CPC is to discourage contests on technical pleas and to save honest and bonafide claimants from being non-suited. He has also referred to ***Subhash Chand's case (supra)***, wherein a suit was filed against the defendant for ejectment and the defendant pleaded that his brother is the actual tenant and his brother moved an application for his impleadment and it was held by this Court that the applicant, if not necessary, is a proper party.

I have heard learned counsel for the petitioner and perused the impugned order.

While moving the application under Order I Rule 10 read with Section 151 CPC, the petitioner has pleaded that she is in possession of the suit property and had taken the shops and Chaubara on rent @ Rs.5,000/- per month. Therefore, she is required to be impleaded as a party to the suit and the suit is required to be tried afresh after giving proper opportunity to the petitioner to be heard and contest the suit. Not associating the petitioner in the suit, will cause a serious prejudice to her rights. The suit has been filed by the

plaintiff for possession by way of ejectment and the same has been filed against the defendant on the plea that he was inducted as a tenant by the father of the plaintiff @ Rs.5,000/- per month in the year 2004 and the defendant is in arrears of rent since January, 2005. By way of written statement, the defendant has pleaded that, in fact, the petitioner-applicant had taken shops and Chaubara in dispute in the year 1998 and the rent agreement was duly subscribed by the father of the plaintiff in favour of the petitioner. But interestingly, no such agreement has been placed on record by the petitioner. Even otherwise, the pleaded case of the plaintiff is that the defendant is a tenant and, therefore, in case the plaintiff fails to prove the tenancy, his suit will fail. The plaintiff cannot be compelled to contest the suit qua a person against whom he has not claimed any relief.

Since no relief has been claimed against the petitioner in the suit, learned civil Court has rightly rejected the application under Order I Rule 10 CPC filed by the petitioner. The petitioner is a real sister of the defendant and the suit was filed on 04.08.2015, whereas the application under Order I Rule 10 CPC was filed on 30.10.2017 i.e. after a delay of more than 2 years, which is sufficient to establish that the very object of the petitioner is to delay the proceedings. Therefore, the judgments cited by learned counsel for the petitioner have no applicability in the facts and circumstances of the present case.

In view of the above, this Court finds that no interference is warranted in the impugned order dated 18.01.2018 passed by the civil Court by invoking the revisional jurisdiction of this Court.

Accordingly, the impugned order dated 18.01.2018 passed by the civil Court is affirmed and the instant civil revision, being devoid of any merit, is dismissed.

April 19, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No