

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR No. 2487 of 2018

Date of Decision: 19.04.2018

Dalip Singh @ Kuldeep Singh

.....Petitioner

VERSUS

Jia Lal

.....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. V.K. Sandhir, Advocate
for the petitioner.

SURINDER GUPTA, J.

This is revision against order dated 22.01.2018 passed by learned Rent Controller, Amritsar, allowing application of landlord-respondent seeking amendment of petition.

2. Respondent has filed application under Section 13 of the East Punjab Urban Rent Restriction Act seeking ejectment of revision-petitioner from the demised premises on the ground that revision-petitioner is in arrears of rent; has ceased to occupy the demised premises, which has become unfit and unsafe for human habitation. He also sought ejectment of petitioner on the ground of his personal *bona fide* necessity. In para 8 (iv) personal *bona fide* necessity of the respondent for the demised premises has been described in following words:-

“(iv) That the petitioner carries on business of manufacturing pharmaceutical products as a partner in firm Systacare Remedies, Naag Kalan, Majitha Road, Amritsar which is outside municipal limits. The said concern has no city office for sale, display and exhibiting its products. Naag Kalan being a far of area having an administrative office in the city is mandatory for proper functioning of

the firm. Even courier facility is not available at Naag Kalan and postal mail is also not regularly delivered. The petitioner therefore needs demised premises for his own use and occupation for business of his concern in a bona fide manner. The petitioner does not own or occupy any other non residential building in the urban area of Amritsar nor has vacated any such building without sufficient cause ever since commencement of East Punjab Urban Rent Restriction Act III of 1949.”

3. Respondent filed application seeking amendment of petition to incorporate para 7 (a) in his petition, which is as follows:-

“7(A) That petitioner of later on 1.10.2015 has since entered into a partnership with his sons Manish Gupta and Vinay Gupta on account of retirement of earlier partners from the concern Sarvear Pharmaceuticals UA namely Arjun Seth and Rishi Seth the said concern at its national head office, 50 Industrial Estate, P.O. Amritsar Rayon and Silk Mills, G.T. Road, Amritsar carries on its manufacturing activities. That the said concern Sarvear Pharmaceuticals UA has no place of business in commercial area Amritsar and the petitioner has of late taken the decision to open up its sale depot showroom, distribution center and marketing office in the demised premises. Such property is quite suitable for the said business of petitioner which is in the process of expansion of business. Its aggregate sales in Punjab during 2016-2017 were to the tune of ₹72,08,155/- and during 1.4.2017 to 30.7.2017 ₹19,08,005/-. The petitioner therefore bona fide requires demised premises for the business of the aforesaid concern, of course after its reconstruction. The petitioner has 1/3rd share in the profit of said concern.”

4. Learned Rent Controller allowed amendment with observation

that amendment, if allowed, will not change nature of the petition.

5. Learned counsel for revision-petitioner while referring to observation of Hon'ble Apex Court in case of **Ajendraprasadji N. Pande & anr. vs. Swami Keshavprakeshdasji N. and ors., 2007 (1) RCR (Civil) 481** has argued that amendment of pleadings could not be allowed by learned Rent Controller after framing of issues and recording of one witness. The order passed by learned Rent Controller is against spirit of provisions of Order VI Rule 17 CPC. The respondent by adding new facts in the petition has not only tried to change nature of the petition but has also attempted to improve his case.

6. On giving a careful thought to submissions of learned counsel for revision-petitioner and on perusal of paper-book, I find no legal or factual infirmity in the impugned order allowing amendment of the petition.

7. In para 8 (iv), revision-petitioner has described his plea of *bona fide* requirement of demised premises. He has stated that he carries on the business of manufacturing of pharmaceutical products and as a partner in firm M/s Systacare Remedies, Naag Kalan, Majitha Road, Amritsar. Due to location of the office of his firm at a far of place, he requires the demised premises for the purpose of his business. The respondent has sought to add/elucidate need of the demised premises after he has entered into a partnership deed dated 01.10.2015 with his sons, namely, Manish Gupta and Vinay Gupta in the firm Sarvear Pharmaceuticals, which has manufacturing unit in Dehradun and requires the demised premises for its business at Amritsar. The respondent has not added any new plea which will cause any prejudice to the revision-petitioner. The onus to prove this plea will be on respondent. The amendment allowed will not change nature of the petition.

Though, learned Rent Controller has not specifically recorded in its order that the plea now sought to be added could not be raised by the respondent in the original petition by exercising due diligence but this fact is evident that the amended plea is based on partnership deed, which has come into existence after filing of ejectment petition, as such, it cannot be termed that the respondent could plead this fact in the petition filed by him. The amendment only elucidates and elaborates the plea already taken by the respondent in his petition seeking ejectment of the revision-petitioner.

8. In case of *Ajendraprasadji N. Pande (supra)*, Hon'ble Apex Court has observed that the plea sought to be raised by way of amendment in the written statement, if allowed, would have prejudiced the other party. The amendment sought was inconsistent with the plea originally taken in the written statement and the defendants have tried to set up a conflicting case and facts sought to be raised by way of amendment were well within knowledge of defendants. The observations in aforesaid case are not applicable to facts and circumstances of present case. Hon'ble Apex Court in above case has observed that amendment seeks to introduce a totally new and inconsistent case. Keeping in view above facts, the order of the Court below declining permission to amend written statement was upheld. The observations in above referred case are not of any help to revision-petitioner.

9. As a sequel of above discussion, the instant revision petition is dismissed in limine.

April 19, 2018

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**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No