

In the High Court of Punjab and Haryana at Chandigarh

**CM No. 4807-CII of 2018 in/and
CR No. 3073 of 2017(O&M)
Date of Decision: 11.5.2018**

Tehal Singh

---Petitioner

versus

Bablu

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Munish Garg, Advocate
for the petitioner
Mr. Tribhawan Singla, Advocate,
for the respondent

Rekha Mittal, J.

CM No. 4807-CII of 2018

Prayer in this application is for restoration of the revision petition.

Heard.

Allowed as prayed for. Order dated 22.2.2018 is recalled and CR No. 3073 of 2017 is restored to its original number and status and is taken on Board today itself.

Disposed of accordingly.

CR No. 3073 of 2017

The present petition directs challenge against order dated 8.12.2016 passed by the Rent Controller, Barnala whereby application for amendment of the written statement to admit the allegations qua the respondent/eviction petitioner being landlord of the demised shop viz-a-viz

plea of the applicant in the original written statement to deny the allegations raised in paras 4 and 5 of the application for eviction has been dismissed by the Rent Controller.

Counsel for the petitioner has submitted that the Rent Controller dismissed the application on the grounds that issues are already framed, petitioner (respondent herein) had already led evidence by examining the witnesses and no application for amendment shall be allowed after 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 commencement of trial. The applicant did not mention any reason to show due diligence. The application is filed at a belated stage and the same is rejected.

It is argued with vehemence that proviso appended to Rule 17 of Order 6 of the Code of Civil Procedure does not create a complete embargo against amendment of the pleadings post commencement of trial. It is further argued that there are plethora of judgments by Hon'ble the Supreme Court that amendment can be allowed after commencement of trial if the same is necessary for complete and effective adjudication of the matter in controversy and allowing amendment does not cause such a serious prejudice to the contesting party for which cost is the remedy. It is further argued that unless the application for amendment is found to be mala fide, the same should be allowed when otherwise law with regard to amendment of written statement stands on a better footing than that of a plaint. According to counsel, as the petitioner was not aware of correctness of facts pleaded in paras 4 and 5 of the application for eviction and he was under a bona fide impression that he is a tenant under Sh. Mathura Dass, he

denied plea of the respondent qua Will dated 7.9.1995, written agreement dated 6.4.2011 and mutation No. 2670 dated 14.9.2012. The last submission made by counsel is that a serious prejudice shall be caused to the petitioner in case he is not allowed to amend the written statement when otherwise the respondent-landlord can well be compensated with costs for delay, if any, attributable to the petitioner. In support of his contention, he has relied upon judgment of this Court **Anita Rai vs. Lavneesh Gulati 2016(1) RCR (Rent) 516.**

Counsel representing the respondent/eviction petitioner, on the contrary, has supported the impugned order. It is argued that though the learned Rent Controller has not adverted to the question of prejudice being caused to the respondent in case the proposed amendment is allowed but as the petitioner denied the relationship of landlord/tenant between the parties, the Rent Controller did not assess provisional rent and an issue in this regard has been framed, therefore, a serious prejudice shall be caused to the respondent/landlord in case the petitioner is allowed to change his stance and admit the averments raised in the eviction petition qua respondent is the landlord of the shop in question. It is further argued that no amendment can be allowed which can take away a vested right accrued to the contesting party.

I have heard counsel for the parties, perused the paper book particularly the order impugned.

Before adverting to the submissions made by counsel for the parties, I would like to deal with the judgment in **Anita Rai's case (supra)**. In the said case, application for amendment of the written statement was filed by Anita Rai which was dismissed by the Rent Controller vide order

dated 18.3.2015 that became subject matter of challenge in Civil Revision No. 4168 of 2015 decided on 29.1.2016. In para 4 of the referred judgment, it has been specifically recorded that counsel for the respondent therein has further argued that he would have no objection to the amendment in the written statement but this is only a plea to delay the proceedings since the petitioner has already filed her affidavit in examination-in-chief and the matter is now fixed for 1.2.2016 for cross examination and if this petition is allowed, the petitioner will now seek an adjournment to file a fresh affidavit. Since in **Anita Rai's case (supra)**, counsel for the respondent/eviction petitioner raised no objection to amend the written statement, the petitioner cannot derive any advantage to his contention from the referred authority.

Indisputably, the petitioner denied various facts incorporated in the application for eviction though he stated that Mathura Dass is his landlord qua the shop in question. The petitioner denied the relationship of landlord-tenant between the parties and for that reason the Rent Controller did not assess provisional rent and proceeded to frame issues on the basis of pleadings of the parties. One of the issues framed by the Rent Controller is qua relationship of landlord-tenant between the parties and onus thereof has been placed upon the respondent/eviction petitioner. In case, the eviction petitioner is successful to establish relationship of landlord-tenant between the parties, he may be entitled to seek eviction of the petitioner on the ground of non-payment of rent alone as tenant may not be entitled to an opportunity to tender the outstanding arrears of rent, in the light of judgment of Hon'ble the Supreme Court **Rakesh Wadhawan vs. M/s. Jagdamba Industrial Corporation & Others 2002(1) RCR(Rent)**

514. In the given scenario, as a valuable right has accrued in favour of the respondent/landlord to seek eviction of the petitioner on the ground of non-payment of rent in case he is successful to prove the relationship of landlord/tenant between the parties, a serious prejudice shall be caused to the respondent in case the proposed amendment is allowed for which cost is not the remedy. In this context, reference can be made to judgment of this Court **Amarjit Singh vs.Sandla Sood 2014(2) RCR(Civil) 649.**

For the foregoing reasons, the petition fails and is accordingly dismissed. No order as to costs.

(Rekha Mittal)
Judge

11.5.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No