

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

**CR-4048-2016 (O&M)  
Date of Decision:26.09.2018**

Prem Kumar

... Petitioner

Versus

Raj Kumar Banga

... Respondent

**CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.**

Present:- Mr. Tanmoy Gupta, Advocate for the petitioner.

Mr. Aditya Jain, Advocate for the respondent.

...

**TEJINDER SINGH DHINDSA, J. (ORAL)**

Petitioner/tenant has filed the instant revision petition assailing the order dated 09.05.2016 passed by the learned Appellate Authority, Palwal and in terms of which an application under Order 6 Rule 17 CPC seeking amendment in the written statement has been dismissed.

Brief facts that may be noticed are that the landlord (respondent herein) filed a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 seeking eviction of the tenant (petitioner herein) on the ground of non-payment of rent as also bonafide personal necessity. The petition was allowed by the learned Rent Controller, Palwal in the year 2014. Petitioner herein preferred an appeal against the order of ejectment and which is pending final adjudication before the Appellate Authority.

It is during the pendency of the proceedings in appeal that the tenant filed an application dated 17.09.2015 (Annexure P-3) seeking

amendment in the written statement that had been filed before the Rent Controller and for incorporating certain preliminary objections, the details of which have been furnished in the application itself placed on record and appended as Annexure P-3 along with instant petition. Such application has been dealt with and declined vide impugned order dated 09.05.2016.

During the course of hearing before this Court, counsel has pressed for only one preliminary objection No.9 to be added in the written statement and which was in the following terms:

*“That the shop in question along with 7 other shops, two rooms and a chowk were owned and possessed by Rishi Ram who was the grand father of the petitioner. Rishi Ram had 4 sons namely Data Ram, Yadav Rai, Khem Chand and Hem Raj. The entire property of Rishi Ram is reflected in a site plan submitted by the petitioner in case no.114 of 20.1.1997 titled Raj Kumar and others versus Yadav Rai and others decided on 6.3.1997 by the court of Sh. Sanjeev Jindal, Civil Judge (Jr. Division), Palwal. By virtue of the above said case the above said properties of Rishi Ram were divided among his sons and grand sons. The petitioner has concealed this factum in the eviction petition. It is submitted that as per the said judgement and decree, the petitioner and his brother Lajpat Rai were given 5 shops and one room along with first floor. The 5 shops and the room allotted to the petitioner and his brother Lajpat Rai are shown with the letters O P E D C L M N in the site plan submitted by the petitioner in case no.114 of 1997. Further the petitioner and his brother Lajpat Rai were also allotted the first floor of the said building shown with the letters S T U V W X. The copy of the map and that of judgement and decree dated 6.3.1997 are attached herewith. Therefore the petitioner is in possession of several other shops in the same vicinity but has concealed the same intentionally and deliberately in the*

*present eviction petition and as such there is no bonafide element of need with the petitioner/landlord and it is just lust or desire on the part of the petitioner/landlord to get the shop in question vacated from the respondent/tenant.”*

It was urged that the Appellate Authority has erred in not permitting the amendment as amendment of a written statement can be allowed at any stage and an appeal is nothing but an extension of the suit. Further argued that the amendment sought would go to the root of the matter and as such, was necessary for purpose of determining the controversy between the parties as regards bonafide personal need of the landlord in relation to the demised premises.

Having heard counsel for the parties at length, this Court is of the considered view that there is no merit in the instant revision petition and the same deserves to be dismissed.

The Apex Court in **Salem Advocate Bar Association, T.N. Vs. Union of India, 2005(3) RCR (Civil) 530** had examined the object of Order 6 Rule 17 CPC in para 26 of the judgment and made the following observations:

*“26. Order 6 Rule 17 of the Code deals with amendment of pleadings. [By Amendment Act](#) 46 of 1999, this provision was deleted. It has again been restored by [Amendment Act](#) 22 of 2002 but with an added proviso to prevent application for amendment being 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. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not*

*have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision.”*

Adverting to the facts of the present case, written statement had been filed by the tenant/present petitioner before the Rent Controller in the year 2014. In para 4 (ii) of the written statement, the tenant/petitioner had contested the ground taken up by the landlord with regard to bonafide personal need and had made the following averments:

*“Para no.4 (ii) of the petition as stated is wrong and not admitted. It is wrong to allege that the petitioner requires the shop in dispute for his son Abhinav alias Ankit. It is denied that the petitioner wants to settle him in the shop in dispute. It is wrong to allege that the said son of the petitioner is carrying on business of jewellery in the rented shop. The story of Rs.6000/- rent is altogether wrong and concocted one. It is denied that the petitioner or his son have no other shop in their occupation. On the contrary, the petitioner has many shops and he has filed the present petition against the respondent with some ulterior motives and malafides intentions. The shop in dispute is not at all required by the petitioner as alleged. This ground is totally false and fictitious.”*

Perusal of the averments reproduced herein above clearly demonstrate that the tenant claimed to be aware with regard to the landlord/ his son having other premises in their occupation. It is nowhere pleaded in the application now filed before the Appellate Authority under Order 6 Rule 17 CPC that inspite of due diligence, the tenant could not have raised and pleaded facts as sought vide application which stands dismissed vide impugned order. Undoubtedly, an amendment may be allowed by the Court even after commencement of the trial but in the present case, the application

has been moved after the decision of the Rent Controller and during pendency of the appeal before the Appellate Authority seeking amendment of a nature which was in the knowledge of the petitioner/tenant as would be apparent in terms of averments contained in para 4 (ii) of the written statement.

In view of the above, no infirmity is found in the impugned order dated 09.05.2016 passed by the Appellate Authority, Palwal and which would require intervention at the hands of this Court in exercise of its revisional jurisdiction.

Petition is dismissed.

**26.09.2018**

*harjeet*

**(TEJINDER SINGH DHINDSA)  
JUDGE**

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|-----|----------------------------|--------|
| i)  | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable?        | Yes/No |