

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

CR No.4496 of 2017(O&M)

Date of decision: 30.8.2018

Sham Sunder

.....Petitioner

VERSUS

Inderjit Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. B.D. Sharma, Advocate for the petitioner.

Mr. Sanjay Tangri, Advocate for the respondent.

REKHA MITTAL, J.

The present petition directs challenge against order dated 24.05.2017 (Annexure P-7) passed by the Rent Controller, Jalandhar whereby application of the petitioner for amendment of the written statement to plead alleged subsequent events regarding construction of two shopping complexes by the respondent/landlord has been rejected.

Counsel for the petitioner/tenant would urge that earlier the petitioner filed an application for amendment of the written statement in order to add the facts regarding the respondent/landlord being the owner and in possession of as many as 8 properties which were not disclosed in the application for eviction. The amendment of the written statement was allowed by the Rent Controller vide order dated 22.01.2015, that came to be challenged by the respondent/landlord in CR No.2852 of 2015 dismissed by this Court vide order dated 12.01.2017 (Annexure P-3). It is

further argued that during pendency of the eviction proceedings but after amendment of the written statement sought earlier, the respondent-landlord has constructed shopping complex in the name of Krishna Tower near Guru Singh Sabha Gurdwara, Rama Mandi, Jalandhar in place of new complex mentioned at Sr. No.i and H.S. Tower in place of property of Raj Palace mentioned at Sr. No.iv of the order dated 12.01.2017 passed by this Court. It is further argued that it has also been averred that the show-room as well as shopping complex photographs of which are attached are available for the alleged need of the respondent-landlord as the same are lying vacant and are in possession of the respondent. The petitioner has also sought to raise the plea that the respondent got vacated the shops from other tenants in the building of which the premises in question is a part and have also damaged the roof as well as shutters of those shops with the intention to cause undue harassment to the petitioner. It is vehemently argued that the proposed amendment is relevant and material for adjudication of the real controversy as to whether the premises in question is required for the bona fide need projected by the respondent/landlord. According to counsel, a serious prejudice is likely to be caused to the petitioner in case he is not permitted to amend the written statement by raising preliminary objection No.11, reproduced in para 2 of the application for amendment. The last submission made by counsel is that the mere fact that disposal of eviction proceedings would be delayed in case the proposed amendment is allowed itself cannot constitute a ground to reject plea of the petitioner to amend the written statement by adding subsequent events.

Counsel representing the respondent has seriously contested claim of the petitioner by contending that as the petitioner has already been

permitted to raise the plea with regard to 8 properties, details whereof have been recorded in order dated 12.01.2017 passed by this Court in the aforesaid civil revision, the petitioner cannot be permitted to file repeated applications for amendment of the written statement at the cost of causing unnecessary delay in culmination of the eviction application instituted as back as in the year 2012. It has further been argued that though the respondent in reply to the application has denied construction of Krishna Tower Shopping Complex-cum-showrooms in place of New Complex and H.S. Tower in place of property of Raj Palace but assuming that the respondent has raised any such construction, the same is not relevant for deciding the question of eviction of the petitioner from the tenancy premises which form part of separate building.

I have heard counsel for the parties, perused the paper-book particularly various annexures appended with the petition.

Before advertng to the submissions made by counsel for the parties, it is pertinent to note that the Rent Controller dismissed the application primarily on the ground that as the petitioner has been restrained from leading any further evidence with respect to ownership of the respondent/landlord vide order passed by Hon'ble the High Court, there arises no question of incorporating a fact regarding subsequent event in the written reply as the preliminary objection detailed in the application has no legs to stand in absence of evidence. Further held that the applicant indirectly wants to incorporate a new fact without any documentary proof except the photographs and in this manner there would be no end to trial of the case.

Perusal of the operative part of the impugned order makes it explicitly clear that the Rent Controller dismissed the application primarily

by relying upon order dated 12.01.2017 passed by this Court whereby the revision petition preferred by the landlord was dismissed with the rider that the respondent-tenant would not lead any further evidence regarding proof of ownership of the properties in question. The Rent Controller failed to understand that the rider that the tenant would not lead any further evidence regarding proof of ownership was imposed in view of peculiar circumstances that counsel for the tenant (respondent therein) had submitted that material had already come on record regarding ownership details in the form of evidence, therefore, the tenant may not be leading further evidence to show ownership of the premises which are sought to be incorporated and no witness will be called to prove sale deed etc. In this view of the matter, it can safely be held that the Rent Controller misdirected itself by disposing of the application for amendment primarily on the ground that no useful purpose would be served by allowing amendment as the facts sought to be added by way of amendment cannot be allowed to be proved by leading evidence by the petitioner/tenant. However, the Rent Controller has not made any such observations that the facts sought to be added by way of amendment are not relevant or material for deciding the main dispute of bona fide personal necessity of the respondent/landlord. Counsel for the respondent has submitted that even if the landlord has constructed shopping complex –cum- showrooms in place of new complex and property of Raj Palace, it would be of no consequence for deciding the issue of bona fide necessity in respect of another building. It would be pre-mature to say that occupation of other buildings by the landlord would be irrelevant for decision of bona fide need projected by the respondent. This apart, as per the settled position in law, the Court at the stage of deciding application for amendment cannot examine the merits

of facts sought to be added by way of amendment. Amendment of written statement stands on a better footing than that of the petition. The amendment can be allowed at any stage of the proceedings unless the same is mala fide or would cause such a prejudice to the other side which cannot be remedied with costs. Equally true is that neither delay in filing the application nor amendment resulting in delay in culmination of proceedings can itself be a ground to reject the application for amendment of pleadings. In this view of the matter, order passed by the Rent Controller dismissing application for amendment of the written statement for incorporating the facts with regard to construction of Krishna Tower and H.S. Tower and the same being lying vacant and are in possession of the respondent/landlord cannot be allowed to sustain and liable to be set aside. That being so, the petitioner is permitted to add preliminary objection No.11 to the extent of adding the facts pertaining to construction of Krishna Tower and H.S. Tower and the same being lying vacant and are in possession of the landlord (petitioner therein).

The petitioner has also sought to add certain facts in respect of habit of the respondent and demolition of shops which were got vacated from other tenants are the allegations which are general and vague in nature, therefore, rejected to be added by way of amendment.

In view of what has been discussed hereinbefore, the petition is partly allowed. The petitioner is permitted to amend the written statement to add preliminary objection No.11 but only to the extent of facts relating to Krishna Tower and H.S. Tower stated in almost half of preliminary objection No.11. In order to take care of apprehension of the respondent/landlord qua delay, the petitioner is allowed to amend the written statement in aforesaid terms, subject to following conditions:-

- (1) The petitioner shall file the amended written statement strictly in consonance with order passed by this Court on or before the next date of hearing fixed by the Rent Controller.
- (2) The petitioner shall be entitled to only one effective opportunity to adduce evidence in respect of the facts sought to be added by way of preliminary objection No.11.
- (3) The petitioner shall ensure presence of the witnesses at his own responsibility.
- (4) After evidence is adduced by the petitioner in regard to additional plea (preliminary objection No.11), the respondent/landlord shall be entitled to lead evidence in rebuttal.

In case the petitioner fails to comply with either of the conditions imposed upon him, the petition shall be deemed to be dismissed. The Rent Controller is directed to expedite the proceedings and dispose of the case without unnecessary delay. Nothing stated hereinbefore shall cause prejudice to either of the parties at the time of final adjudication.

AUGUST 30, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no