

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 5103 of 2017(O&M)

Date of Decision:27.4.2018

Kakkar Medical Agency and another

---Petitioners

vs.

Joginder Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: None for the petitioners
Mr. B.D.Sharma, Advocate
for the respondents

Rekha Mittal, J.

The present petition directs challenge against order dated 10.5.2017 passed by the Rent Controller, Jalandhar whereby application for amendment of written statement filed under Order 6 Rule 17 of the Code of Civil Procedure (in short “the Code”) has been dismissed.

The respondents/petitioners have sought eviction of the petitioners/respondents from shop forming part of property NJ-122, Mohalla Mohindru, Jalandhar on the ground of arrears of rent and personal necessity of respondent /petitioner No. 3 Sandeep Singh. The petitioners filed the written statement controverting the allegations with regard to their being liable to be ejected from the tenancy premises on any ground raised in the application for eviction. The petitioners filed instant application for amendment of the written statement/reply on the plea that recently it came to notice of the petitioners that respondent/petitioner No. 3 for whom the shop is stated to be required has taken

possession of the premises in Shankar Market, situated on the Circular Road for business, alleged to be started by petitioner No. 3. On consideration of reply to the application and having heard counsel for the parties, the application was dismissed by the Rent Controller with the observations that contentions which have been raised in the application can be raised during evidence by the respondent, even during cross examination of witness(s) of the petitioners. The court has taken into consideration proviso appended to Rule 17 of Order VI of the Code and further held that a vague plea has been raised by the applicants by not incorporating the shop number.

Counsel for the respondents has supported the impugned order with the submission that in the application for amendment, neither particulars nor capacity in which respondent No. 3 is in possession of a shop in Shankar Market, Jalandhar have been mentioned, therefore, the Rent Controller has rightly dismissed the application for amendment which is otherwise hit by the proviso appended to Rule 17 of Order VI of the Code.

There is no representation on behalf of the petitioners earlier being represented by a counsel.

I have heard counsel for the respondents, perused the paper book particularly the documents annexed with the petition.

Proviso appended to Rule 17 of Order VI of the Code does not create a complete bar against allowing post commencement trial amendments which are otherwise material and necessary for rendering substantial justice as well as complete and effective adjudication of the matter in controversy. There cannot be any dispute about the settled position in law that at the time of dealing with an application for amendment of pleadings, the court cannot examine merits of the facts sought to be added by way of amendment. If the petitioners are not permitted to raise a plea that respondent No. 3 for whose personal necessity the shop is sought to be vacated is in possession of a premises in Shankar market,

Jalandhar, evidence to be led by them in this regard may be rejected by the court being beyond pleadings. Even if the petitioners have not given the complete particulars of the premises allegedly occupied by respondent No. 3 in Shankar market, Jalandhar, that itself does not constitute a ground to reject their prayer for amendment of written statement that certainly stands on a better footing than that of a plaint. The Rent Controller has passed contradictory order by holding that contentions which have been sought to be raised in the application can be raised during evidence by the petitioners as well as cross examination of the witnesses of the respondents but later declined the prayer on the plea that averments sought be raised are vague in nature. Counsel for the respondents has failed to convince this court that the proposed amendment will either change nature of defence raised by the petitioners or cause such a serious prejudice to the respondents for which cost is not the remedy. As there is a serious dispute in the lis with regard to bona fide personal requirement of respondent No. 3 qua shop in question for his business, contention raised by the petitioners/tenants is neither irrelevant nor immaterial for deciding the issue in dispute.

For the foregoing reasons, the petition is allowed. The impugned order is set aside and the application filed by the petitioners for amendment of the written statement is allowed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

27.4.2018

paramjit

Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No