

In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 5543 of 2018

Date of Decision:24.8.2018

**The Hisar Progressive Iron & Wooden Works Production Co. Operative
Industrial Society Limited**

---Petitioner

vs.

Laxmi Narayan

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Anurag Jain, Advocate
for the petitioner

Rekha Mittal, J.

The present petition directs challenge against order dated 25.7.2018 (Annexure P-6) passed by Rent Controller, Hisar whereby application filed by the petitioner (respondent therein) seeking permission to amend the written statement has been declined.

Counsel for the petitioner would urge that respondent Laxmi Narayan has filed eviction application in respect of damaged building constructed on portion of khasra No. 8296 Min West (0-13 Marla), detailed in head note of the eviction application on the grounds of non-payment of rent, building being unsafe and unfit for human habitation, ceased to

occupy, detailed in sub paras (i) to (iii) of para 7 of the application. The petitioner-respondent filed the written statement and raised a categorical plea that the respondent-petitioner has got no concern with the building of demised premises because respondent had inducted the petitioner as tenant on land of portion of khasra No. 8396 min and construction thereof was raised by the petitioner with his own funds. In the replication filed by the respondent-landlord, it has been admitted in para 2 that building was raised by the respondent (petitioner herein) on piece of land bearing khasra No. 8396 Min west measuring 13 marlas (70 feet in length, 50 feet in width) situated at Hisar. It is argued that by way of proposed amendment, the petitioner sought to raise certain preliminary objections, detailed in para 3 of the application and further to explain piece of land as vacant piece of land in various paras, detailed in para 3 of the application for amendment. It is further argued that Rent Controller dismissed the application primarily on the ground that by way of proposed amendment, the petitioner wants to withdraw from the earlier admission admitting relationship of landlord-tenant between the parties. It is argued with vehemence that as in the original written statement, a specific plea has already been raised that tenancy was created only qua land but building on land has been raised by the petitioner, there is no question of the petitioner withdrawing from an earlier admission or changing its stand taken in the written statement. It is further argued that the respondent-landlord has already examined seven witnesses but cross examination of the respondent-landlord is still pending. The petitioner would not pray for recalling of the witnesses for further examination even if the proposed amendment is allowed and of course the

respondent-landlord would be at liberty to adduce further evidence in view of amendment in the written statement. It is further argued that scope of amendment of written statement stands at a better footing than that of the petition when otherwise no prejudice shall be caused to the respondent in case the proposed amendment is allowed for which cost is not the remedy.

I have heard counsel for the petitioner, perused the paper book, various annexures appended with the petition particularly the eviction application, written statement, application for amendment of the written statement, reply thereto and the impugned order.

The petitioner has raised a specific and categoric plea that tenancy was created only in respect of land but building was constructed by the petitioner-tenant. By way of the proposed amendment, the petitioner has sought to raise certain issues with regard to the eviction application being not maintainable and the same being time barred. In addition, it has sought to amend 'vacant piece of land' in place of 'piece of land' and 'rented piece of land'. The case is still pending for evidence of the respondent-landlord. The petitioner does not intend to recall the witnesses already examined for the purpose of cross examination. The respondent-landlord is yet to be cross examined in the case.

Taking into consideration the preliminary objections sought to be raised coupled with stand of the petitioner in the original written statement it is difficult to accept that by way of proposed amendment, the petitioner intends to withdraw from an admission earlier made in favour of the respondent, therefore, the proposed amendment would cause such a prejudice to the respondent which cannot be

compensated with costs. As has been rightly argued by counsel, amendment of written statement can be allowed at any stage of the proceedings unless the same is mala fide or would result in such a prejudice to the other side for which cost is not the remedy. In view of the above, the petitioner is permitted to amend the written statement to the extent of raising preliminary objections No. 9 to 11, reproduced in para 3 of the application. The respondent-landlord shall be at liberty to file a fresh affidavit by way of examination in chief and lead further evidence, in view of amendment of the written statement.

For the foregoing reasons, the petition is partly allowed in the aforesaid terms.

Before parting with this order, it is pertinent to mention that the petition has been decided without notice to the respondent in order to avoid delay and unnecessary expense. The respondent would be at liberty to file an application before this Court if he has any grievance to express. It is further clarified that any observations made hereinbefore shall not cause prejudice to either of the parties at the time of final adjudication of the eviction application.

(Rekha Mittal)
Judge

24.8.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No