

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

Date of Decision: 31.08.2018

1. CR No.5729 of 2018(O&M)

Hardeep Singh

..... Petitioner

Versus

Pankaj Mittal and another

.....Respondents

2. CR No.5761 of 2018(O&M)

Hardeep Singh

..... Petitioner

Versus

Pankaj Mittal and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Sandeep Kumar Bakolia, Advocate
for the petitioner(s).

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.5729 of 2018 titled Hardeep Singh Vs. Pankaj Mittal and another and CR No.5761 of 2018 titled Hardeep Singh Vs. Pankaj Mittal and another are being decided. Facts are being taken from CR No.5729 of 2018.

[2]. Petitioner has challenged the order dated 06.08.2018 passed by Rent Controller/Civil Judge (Senior Division), Moga, whereby the application under Order 6 Rule 17 CPC for amendment of written statement filed by the petitioner was

dismissed.

[3]. Respondents filed an ejectment petition under Section 13 of East Punjab Urban Rent Restriction Act for ejectment of the petitioner from the property shown in the petition on the ground that the petitioner was a tenant at monthly rate of Rs.4000/- + Rs.200/- per month as charges towards water and sewerage. The tenancy was oral. The ejectment was sought on the ground of non-payment of rent and for personal necessity of respondent No.1 Pankaj Mittal as he wanted to shift his residence in the said property.

[4]. The ejectment petition was contested by the petitioner. An application under Order 6 Rule 17 CPC was filed by the petitioner for amendment of written statement.

[5]. The application was dismissed by the Rent Controller/Civil Judge (Senior Division), Moga vide impugned order dated 06.08.2018.

[6]. Learned counsel for the petitioner submitted that the property measuring 29 M 2 S was purchased by the respondents on 17.08.2010 from Raj Rani wife of Vinay Kumar. Respondent No.1 has constructed a new house in the said property and has also shifted his residence there. Electric meter connection and water sewerage connection were already

running in the name of respondent No.1 Pankaj Mittal in the new premises. They have concealed the factum of purchase of property and construction thereupon and the said fact came to the knowledge of the petitioner during pendency of the case, therefore, petitioner sought permission to amend para No.5 of his written statement by incorporating the aforesaid fact. Learned counsel further submitted that the proposed amendment would not change the nature of the case and the amendment of the written statement has to be liberally construed as the same is situated at some different pedestal than the amendment of plaint.

[7]. Trial Court found that the previous attempts made by the petitioner in filing the applications were declined and final opportunity was granted to the petitioner to conclude his evidence. Instead of concluding his evidence, the petitioner moved an application for amendment of the written statement at such a belated stage at which no such prayer can be granted.

[8]. The facts on record would show that the ejectment of the petitioner was sought by the respondents on the ground of non-payment of rent and *bona fide* necessity of landlord. The ejectment petition was filed on 13.07.2015. After appearance of the petitioner on 28.08.2015, written statement was filed on 12.10.2015. Thereafter, issues were framed on 23.12.2015.

Respondents herein have already concluded their evidence on 12.08.2016 and thereafter, evidence of the present petitioner being respondents in the main case started. Firstly on 16.11.2016, an application was filed by the petitioner for admission and denial of the documents. In due course, the said application was dismissed on 12.09.2017. Thereafter, another application was filed by the petitioner on 26.02.2018 for issuance of directions to the respondents to produce original sale deed. The said prayer was also declined by the Rent Controller vide order dated 22.05.2018. In both the aforesaid applications, a reference was made to the sale deed dated 17.08.2010, which shows that the factum of execution of sale deed was well within the knowledge of the petitioner from the very beginning. The copy of sale deed is already on the record which was furnished by the petitioner himself on 16.11.2016 i.e. about 20 months prior to filing of the present application. The filing of application at such a belated stage would only be construed to be an intended effort of the petitioner to delay decision of the ejectment petition.

[9]. The proposed amendment is not a *bona fide* amendment, rather the same is intended to get the proceedings delayed. Respondents have already led their evidence and the witnesses have already been cross examined by the petitioner.

After closure of the evidence of the respondents, seven effective opportunities were availed by the petitioner for concluding his evidence. On earlier two occasions, different applications were filed for the purpose of delaying the decision of the ejectment petition. After dismissal of the said applications, the present application came to be filed despite the fact that the factum of sale deed dated 17.08.2010 was very much in the knowledge of the petitioner as the same was placed on record by the petitioner himself on 16.11.2016. Petitioner sought to incorporate the plea of construction of the house by respondent No.1 on the land so purchased vide sale deed dated 17.08.2010. The plea of *bona fide* of the landlord cannot be appreciated from the view point of the tenant. It has to be appreciated from the view point of the landlord. The availability of newly constructed house with respondent No.1 would not disentitle him for claiming the property in question for his personal need according to his own wish. Wish of the landlord has to be prevailed in the context of personal necessity. The amendment in which the landlord wants to utilize the premises is a subjective thing and the tenant has no say in such need of the landlord. The amendment sought by the petitioner is not *bona fide*.

[10]. It is a settled principle of law that all *bona fide*

amendments should be allowed. Though the amendment of written statement is to be liberally construed, but the amendment which is not based on *bona fide* of the tenant is to be declined. After framing of issues on 23.12.2015, two applications filed by the petitioner for admission and denial of documents and issuance of directions to the respondents for production of original sale deed were declined by the trial Court. The date of filing of said applications would show that the factum of sale deed dated 17.08.2010 was very much in the knowledge of the petitioner as the same was produced by the petitioner himself on 16.11.2016 i.e. date on which the first application for admission and denial of documents was moved by the petitioner.

[11]. Keeping in view all the attending facts and circumstances of the case, I find that prayer of the petitioner for amendment of written statement cannot be allowed. The present revision petitions are accordingly dismissed.

August 31, 2018

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No