

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR No.7002 of 2016 (O&M)
Date of Decision : 30.05.2018

Kamaljit Kaur Ruprai

..... Petitioner

Versus

The United India Assurance Co. Ltd.

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Piyush Kant Jain, Advocate
for the petitioner.

Mr. D.R.Bansal, Advocate
for the respondent.

AJAY TEWARI, J. (Oral)

This petition has been filed against the order of the Rent Controller declining an amendment in the plaint.

The petitioner had filed a petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') seeking an eviction of the respondent. Admittedly in the application a wrong description of the property was given. On the other hand the case of the respondent was that the premises in its occupation were not owned by the petitioner but by one Ajit Singh and the respondent had entered into a lease deed with said Ajit Singh and was regularly paying rent to him. In those pleadings the respondent had also pointed out the mis-description of the property. However, the application for amendment was made after almost 3 years and that was one of the grounds which weighed with the Rent

Controller in rejecting the application. The Rent Controller also held that by the proposed amendment the subject matter of the dispute was sought to be changed. Hence the present petition.

The argument of the counsel for the petitioner is that this mis-description of the property was a mistake otherwise there is no dispute about the identity of the property. As regards the respondent its stand that the property does not belong to the petitioner would also not be prejudiced and the petitioner would be able to succeed only if it is able to satisfy the conscience of the Court that actually the petitioner is the real owner-cum-landlord and not Ajit Singh. He has relied upon a judgment of the Supreme Court passed in *Sajjan Kumar Vs. Ram Kishan (2005) 13 SCC 89* wherein it has been held as follows :-

“2. The plaintiff-appellant is admittedly owner-cum-landlord of the suit property. He filed a suit for eviction against the respondent tenant. The proceedings in the suit were at a final stage when the plaintiff-appellant moved an application for amendment of the plaint. The proposed amendment sought the correction of the description of the suit premises in the plaint. It was alleged by the plaintiff-appellant that the description of the property given in the rent note itself was incorrect and the same description was repeated in the plaint and there would be complications at the stage of execution to avoid which the description of the suit premises as given in the plaint needed to be corrected.

3. The prayer for amendment was opposed on behalf of the defendant- respondent. The principal ground for opposition was that although the defendant-respondent had taken the plea in the written statement itself that the suit premises were not correctly described, yet the plaintiff-appellant proceeded with the trial of the suit and did not take care to seek the amendment

at an early stage.

4. The trial court rejected the prayer for amendment. The civil revision filed under sec. 115 of the Code of Civil Procedure has been rejected by the High Court. Feeling aggrieved, the plaintiff-appellant has filed the present appeal by special leave.

5. Having heard the learned counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if sec. 115 CPC would not have been strictly applicable. It is true that the plaintiff- appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit.”

Counsel for the respondent has raised the same argument viz. that it had brought the fact of mis-description to the notice of the petitioner as far back as 3 years the application for amendment has been moved.

Counsel for the respondent has however not in a position to deny that even if this amendment is allowed the case being set up by it would still continue and there would be no prejudice caused to it if the amendment is allowed because the petitioner would still have to satisfy the

Court that the building in the occupation of the respondent is actually owned by the petitioner and not by Ajit Singh.

Keeping in view the facts and the judgment of the Supreme Court the petition is allowed. This would be subject to costs of Rs.20,000/- to be paid to the respondents. The respondent would now be granted fresh opportunity to file an application for leave to defend under Section 18 (A) (5) of the Act.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

30.05.2018

Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No