

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 7687 of 2018(O&M)
Date of Decision:14.11.2018

Shanti Devi

.....Petitioner

Versus

Deen Dayal through his Lrs.

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Karan Garg, Advocate
for the petitioner.

LISA GILL, J.

Petitioner is aggrieved of order dated 08.08.2018, passed by the learned Appellate Authority, Patiala, whereby application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') for amendment of the petition under Section 13 of the East Punjab Urban Rent Restriction Act (for short 'Act.'), has been dismissed.

Undisputed facts are that petitioner had preferred the petition as above, seeking eviction of the tenants-respondents on various grounds. Her petition was dismissed by the learned Rent Controller, Rajpura, vide order dated 01.09.2016 (Annexure P-1) while observing that she had concealed material facts and necessary information as required under Section 13 (3) of the Act was not mentioned inasmuch as she did not disclose the factum of other shops belonging to her. Appeal was filed by the petitioner challenging the said verdict.

The petitioner moved an application for amendment of her petition under Section 13 of the Act before the learned Appellate Authority, Patiala, during the pendency of the appeal preferred by her against judgment dated 01.09.2016. The said application has been dismissed vide impugned

order dated 08.08.2018.

Aggrieved therefrom, present petition has been filed.

Learned counsel for the petitioner vehemently argues that there were seven shops out of which three are in possession of Mukesh Kumar, son of the petitioner. The other three shops were in possession of tenants which were later vacated. Pursuant to a family settlement, the shops which were vacated came to the share of Manoj Kumar. As three of the shops were with Mukesh Kumar and three with Manoj Kumar, the present petitioner is the owner of only one shop i.e., the shop in dispute. The petitioner was non-suited mainly on the ground that ingredients of Section 13 (3) of the Act have not been fulfilled. Moreover, the petitioner has revealed all these facts during her cross-examination. It is argued that in any case the petitioner is entitled to raise the argument in this regard before the Appellate Authority and the amendment has been sought only to remove any technical objection which may be raised by the tenant. Therefore, it would be in the interest of justice to allow the application for amendment of the petition. It is thus prayed that this petition be allowed and the impugned order dated 08.08.2018, passed by the learned Appellate Authority, Patiala, be set aside.

I have heard learned counsel for the petitioner and have gone through the file.

The petitioner seeks amendment of her petition to incorporate the facts as detailed above. Order VI Rule 17 CPC reads as under:-

“3 [17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the

purpose of determining the real questions in controversy between the parties :

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

It is not in dispute that petition seeking eviction of the tenants was filed in May 2012 by the petitioner. Written statement in this case was filed on 17.11.2012, whereby specific objections were raised by the respondent-tenants clearly stating that material facts had been concealed inasmuch as the petitioner was having other shops as well. Learned counsel for the petitioner fairly states that the petitioner testified before the learned Rent Controller, Rajpura on 17.04.2014. Petition was dismissed on 01.09.2016. Appeal was preferred before the learned Appellate Authority, Patiala and the present application for amendment of petition was moved thereafter. There is indeed nothing on record to show that due diligence was exercised by the petitioner in this matter. The amendment sought does not pertain to any new facts or subsequent events which were not within the knowledge of the petitioner. Therefore, it cannot be concluded that due diligence was exercised by the petitioner.

No other argument has been raised.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 08.08.2018, passed by the learned Appellate Authority, Patiala, which calls for interference by this Court in exercise of revisional jurisdiction.

Petition is accordingly dismissed.

Needless to say, petitioner is at liberty to raise all the available

pleas before the learned Appellate Authority, Patiala. Any observation made in this order shall not effect the merits of the appeal pending before the learned Appellate Authority, Patiala and are confined for the decision of the present petition.

14.11.2018
s.khan

[LISA GILL]
Judge

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