

Civil Revision No. 7695 of 2018 (O&M)

Date of decision : November 15, 2018

Sudarshan Sharma @ Komal

.....Petitioner

Versus

Dimpy Malhotra

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILLPresent: Mr. Rakesh Gupta, Advocate
for the petitioner.Mr. Ashish Aggarwal, Senior Advocate with
Mr. Nitin Kaushal, Advocate
for the caveator.

LISA GILL, J.

The petitioner is aggrieved of order dated 18.10.2018 passed by the learned Appellate Authority whereby his application under Order 6 Rule 17 CPC seeking amendment of written statement at the appellate stage has been dismissed. Petition under Section 13 of East Punjab Rent Restriction Act filed by the respondent – landlord was allowed by the learned Rent Controller on 06.12.2016 primarily on the ground of personal necessity.

Appeal was preferred by the present petitioner impugning the said judgment before the appellate authority. An application dated 23.07.2018 (Annexure P4) was filed for amendment of the written statement seeking to incorporate three aspects. Firstly, that when building is used both for residential and non-residential purposes, the same would be treated as a residential building and could not be used for commercial purposes without specific permission. Secondly, the original landlord was Bimla Devi, but all her legal heirs were not impleaded. Thirdly, a shop equivalent

to the size of the demised shop belonging to the landlord, was earlier in possession of another tenant and thereafter it has been let out again by the landlord to M/s Lakshay Build Tech through Raju Sharma, who were the wine contractors. The petitioner sought to buttress his stand that the plea of bona fide necessity was not available with the landlord.

At the outset, learned counsel for the petitioner submits that he does not press for amendment on the first two aspects as prayed for in the application. It is contended that bonafide necessity of the landlord is not proved as she has subsequently let out the adjoining shop to another entity M/s Lakshay Build Tech. In case, she required the shop for her own personal use, the same would not have been let out. It is contended that as the same is a subsequent event, it would be in the interest to incorporate the same in the written statement. Amendment at least, to the said extent, should be allowed.

Learned counsel for the caveator – respondent points out that it was the specific stand of the respondent – landlord even in her petition, that the premises being referred to (the shop allegedly let out again) had earlier been allowed to be used temporarily by M/s Oasis Distilleries Private Limited i.e. the company in which the landlady's husband and sons were the Directors, for running a liquor vend. Presently, the said premises are also being run as a liquor vend by M/s Lakshay Build Tech on a temporary basis. The respondent has permitted M/s Lakshay Build Tech to use the premises on temporary basis. The licence for running the liquor vend, in any case, would come to an end on 31.03.2019. It is, thus, prayed that this petition be dismissed.

Heard learned counsel for the parties and have perused the impugned order.

There is no dispute regarding the specific stand taken by the respondent – landlord as mentioned above.

Learned counsel for the petitioner is unable to deny that even as of now it is a liquor vend which is being run on the premises, the licence of which shall come to an end on 31.03.2019.

Learned Appellate Authority while dealing with the contentions has observed as under:-

“ The respondent has further sought permission to amend the written statement to plead that the petitioner has been letting out a similar shop to liquor vends from time to time and he has now let out the said shop to a liquor vendor M/s Lakshay Build Tech and one Raju Sharma, who are wine contractors. In this context, it is pertinent to point out that even in the ejectment petition, it has been pleaded by the petitioner/landlord that he intends to construct a new department store in the place of demised shop and the adjoining shop after getting the demised shop vacated from the respondent. The petitioner has also pleaded in the petition itself that he has temporarily given the possession of the demised shop to M/s Oasis Distilleries Pvt. Ltd. In the considered opinion of this Court, the instant ejectment petition is pending since the year 2010 and during the ensuing period if the petitioner has parted with the possession of the adjoining shop temporarily, such a subsequent even need not be incorporated in the written statement. It would be preposterous to assume that after filing an ejectment petition, the landlord should maintain status quo with regard to everything till the final outcome of the ejectment petition especially on the ground of personal necessity. There are other safeguards given in the

Rent Act itself which protect the rights of the tenant that in case it is not used the fact of premises for the purpose for which he has got the same vacated, the tenant can reclaim possession.”

Learned counsel for the petitioner is unable to point out any illegality or infirmity in impugned order dated 18.10.2018 which calls for interference by this Court in exercise of revisional jurisdiction at this stage.

Revision Petition is, accordingly, dismissed.

Needless to say none of the observations made herein above are a reflection on the merits of the case and shall have no bearing on the proceedings pending before the learned appellate Authority.

November 15, 2018
rts

(Lisa Gill)
Judge