

In the High Court of Punjab and Haryana at Chandigarh

CR-8411 of 2015(O&M)

Date of Decision:27.4.2018

Satish Kumar

---Petitioner

vs.

Randeep Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.S.S.Walia, Advocate
for the petitioner
Mr. S.S.Dinarpur, Advocate
for the respondent

Rekha Mittal, J.

The present petition directs challenge against order dated 2.11.2015 passed by the Rent Controller, Yamuna Nagar at Jagadhari (wrongly mentioned as Civil Judge (Junior Division), Yamuna Nagar at Jagadhari) whereby application dated 18.8.2015 for amendment of the written statement has been dismissed while allowing application filed by the respondent-landlord for amendment of the eviction application and application dated 12.2.2005 filed by the petitioner-tenant (respondent therein).

Counsel for the petitioner has submitted that the respondent has filed an application for eviction under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short “the Act”) on the ground of arrears of rent and personal requirement. It has been pleaded by the respondent that he had purchased an area measuring 4 sarsahi i.e. 10.74 square feet vide sale deed No. 4800 dated 29.10.2013 and he has become co-owner in land measuring 2 kanal 14

marlas comprised in khasra No. 60//23/2 mentioned in para 1 of the petition. The petitioner filed written statement raising preliminary objections inter alia challenging locus standi of the respondent to file the petition; maintainability of the petition; the respondent having come to the court with uncleaned hands as he has concealed true and material facts from the court; respondent being estopped from filing petition by his act and conduct and the petition being barred by the provisions of the Specific Relief Act and the Code of Civil Procedure (in short "the Code"). It has specifically been mentioned in para 3 of the preliminary objections that the respondent is not owner of the shop in dispute. Sale deed No. 4800 dated 29.10.2013 is qua vacant plot with size 9' -8" x 10' whereas size of the shop is 9'-6" x 20'. As per the sale deed, there is passage in the Eastern side but actually on the Eastern side, there exists a shop and hence the respondent is owner of some other shop or plot. It has also been averred that since the time of tenancy, the petitioner continued to pay rent to the previous landlord Kshitiz Mittal and he is not in arrears of rent as alleged in the petition. It is argued that due to inadvertent mistake, it has been averred in sub para (1) of para 6 of the written statement that from the very first instance i.e. since November 2013 the petitioner refused to receive the rent. It is argued with vehemence that as the petitioner/tenant has specifically denied the respondent to be owner of the suit shop on the basis of sale deed propounded by him in view of averments raised in para 3 of the preliminary objections, plea raised in sub para (1) of para 6 to the aforesaid effect can be allowed to be deleted. It is argued that a serious prejudice shall be caused to the petitioner in case he is not permitted to delete the aforesaid averments because in case this plea is allowed to continue in the written statement, it may be construed as an admission by the petitioner that there is relationship of landlord and tenant between the parties. It is further argued that scope of amendment of written statement is much larger than that of a plaint. Even an admission made in the written statement can be allowed to be withdrawn

if there is sufficient explanation for the same. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Sushil Kumar Jain vs. Manoj Kumar and another 2009(3) RCR(Civil) 899.**

Counsel representing the respondents has supported the impugned order with the submission that earlier the petitioner filed application dated 12.2.2015 for amendment of the written statement and the same was allowed by the Rent Controller vide order dated 2.11.2015. It is further argued that as admission made by the petitioner in sub para (1) of para 6 of the written statement has enured to benefit of the respondent, the same cannot be allowed to be withdrawn after commencement of trial. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **S.Malla Reddy vs. M/s Future Builders Co-operative Housing Society and others** alongwith connected case **2013(2) RCR(Civil) 957, Heeralal vs. Kalyan Mal 1998(1) RCR(Civil) 140.** Further reference has been made to judgments of this Court **Amarjit Singh vs. Sandla Sood 2014(2) RCR(Civil) 649, Sanjay Bhalla vs. Vivek Bhalla and others 2014 (1) RCR (Civil) 81.**

Before advertng to the submissions made by counsel for the parties, it would be appropriate to deal with the judgments cited at Bar. In **Sushil Kumar Jain's case (supra)**, relied upon by counsel for the petitioner, it has been held that even assuming that there was admission made by the appellant in his original written statement, then also, such admission can be explained by amendment of written statement even by taking inconsistent pleas or substituting or altering defence.

In **S.Malla Reddy's case (supra)**, relied upon by counsel for the respondent, relief sought for by the defendants in a subsequent petition under Order 6 Rule 17 of the Code was elaborately dealt with on the two earlier petitions filed by the defendant-appellants under Order 6 Rule 16 and Order 8 Rule 9 of the Code. Subsequent petition labeling the petition under Order 6 Rule

17 of the Code for the same relief was held to be wholly misconceived being an abuse of process of the court. In the said case, application for amendment under Order 6 rule 17 of the Code was filed after hearing of the suit had commenced, some witnesses were examined and after about 13 years.

In **Heeralal's case (supra)**, in a suit for partition the defendants made a clear admission that out of 10 items 7 were joint properties and the plaintiff had 1/3rd share and they had 2/3rd undivided share, it was held that once such a stand is taken, it has to be held that there was no contest between the parties to that extent and a preliminary decree under Order 15 Rule 1 of the Code can be passed straightway. Such a right accrued to the plaintiff cannot be taken away by the defendant by taking inconsistent stand and withdrawing such admission.

In **M/s Modi Spinning and Weaving Mills Company Limited and another's case (supra)**, amendment was sought to be made introducing entirely different case and seeking to displace the plaintiff completely from admissions made by defendants in the written statement. The Court held that if such amendments are allowed, plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants.

In **Amarjit Singh's case (supra)** decided by this Court, the petitioner has denied the relationship of landlord and tenant between the parties and for that reason, the Rent Controller did not assess the provisional rent. Later, the petitioner moved the instant application for amendment of the written statement to delete para No. 5 of the preliminary objections denying the relationship of landlord and tenant but the same was not allowed by this Court with the observation that a right has accrued to the landlady to evict the petitioner on the ground of non-payment of rent and the same cannot be taken away by allowing the petitioner to amend the pleadings.

In **Sanjay Bhalla's case (supra)**, application for amendment was

filed after delay of one year and the same was allowed by the trial court. In the revision petition preferred by the plaintiff, this court set aside the order with the observations that after a long period, defendant seemed to have changed his mind so as to oppose the suit instead of conceding to the same.

In **Ram Niranjana Kajaria vs. Sheo Prakash Kajaria and others** 2015(4) RCR(Civil) 580, application for amendment was made after 15 years to resile from admission made by the defendant and the same was not allowed.

Reverting to the case at hand, perusal of the impugned order would reveal that by the same order, the Rent Controller has allowed an application filed by the respondent to amend the eviction application and the other application dated 12.2.2015 filed under Order 6 Rule 17 of the Code for amendment of the written statement meaning thereby that no issue of delay in filing the application is involved in the present case. In this view of the matter, judgments relied upon by counsel for the petitioner dealing with the question of delay of many years do not have any bearing on the facts of the case in hand.

This apart, perusal of the written statement originally filed as well as application for amendment of written statement dated 12.2.2015 that has been allowed by the Rent Controller would leave no manner of doubt that the petitioner has categorically and emphatically denied the respondent to be owner/landlord of the suit property on the basis of sale deed No. 4800 dated 29.10.2013 in respect of area measuring 4 sarsahi i.e. 10.74 square yards stated to be purchased by the respondent/alleged landlord. Petitioner in the written statement has raised several preliminary objections to challenge maintainability of the eviction application, the respondent having no cause of action to file the petition and the sale deed relied upon by the respondent does not pertain to the shop in question. As the petitioner has opposed the eviction application by raising a serious dispute of relationship of landlord and tenant between the parties, it is difficult to accept contention of the respondent that in case the

petitioner is allowed to delete aforesaid averments in sub para 1 of para 6 of the written statement, the same would amount to taking away any right that has accrued in favour of the respondent or for that reason, allowing the proposed amendment would cause such a prejudice to the respondent for which cost is not the remedy. In this view of the matter, the Rent Controller has committed a serious error by rejecting plea of the petitioner to amend sub para 1 of para 6 of the written statement by way of deletion of the averments “However, from the very first instance i.e. Since November 2013 the petitioner refused to receipt the rent amount”, therefore, the order passed by the Rent Controller dismissing the application for amendment filed on 18.8.2015 cannot be allowed to sustain and set aside.

For the foregoing reasons, the petition is allowed. The application dated 18.8.2015 filed by the petitioner for amendment of the written statement is allowed. However, nothing stated hereinbefore shall cause prejudice to either of the parties at the time of final adjudication.

(Rekha Mittal)

Judge

27.4.2018

paramjit

Whether speaking/reasoned: Yes

Whether reportable : Yes/No