

In the High Court of Punjab and Haryana at Chandigarh

CR No.9062 of 2017
Date of Decision: 8.1.2018

Jagat Singh and Sons through Smt. Harvinder Kaur

---Petitioner

versus

Gian Chand and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Veneet Chaudhary, Advocate
for the petitioner**

Rekha Mittal, J.

The present petition directs challenge against order dated 28.11.2017 (Annexure P-5) passed by the Rent Controller, Ambala whereby application for amendment of written statement has been dismissed.

Counsel for the petitioner has submitted that respondent Nos. 1 and 2 have filed a petition under Section 13 of Haryana Act No. 11 of 1973 for ejectment of the petitioner and Mandeep Singh @ Shera son of Sh. Narender Singh from shops No. 3808/7 and 3808/8 (portion of property No. 3808) situated in Old Sabzi Mandi, Opposite Khan Hotel, Ambala Cantt. The respondents therein filed the written statement (Annexure P-2) and raised certain preliminary objections as well as controverted the allegations set up in the petition for their eviction. It is further argued that as records of the petition got burnt in a fire incident in the Judicial Record Room, at the time of reconstruction of records, contesting respondents placed certain

documents before the court. When Smt. Harvinder Kaur appeared before the Rent Controller for making a statement regarding correctness of the documents, she made a statement that she is not having any firm in the name and style of M/s Jagat Singh and Sons and name of her son is Manbir Singh. It is further argued that the facts sought to be added by way of amendment by adding para 2-A in the written statement could not be pleaded earlier despite exercise of due diligence, therefore, proviso appended to Rule 17 of Order 6 of the Code of Civil Procedure (in short "CPC") does not create a bar against allowing proposed amendment. Another submission made by counsel is that the respondent/defendant can raise inconsistent, contradictory and alternative pleas in the written statement. The last submission made by counsel is that scope of amendment of written statement stands on a better footing than that of a plaint when otherwise amendment of pleadings can be allowed even by the appellate court.

I have heard counsel for the petitioner, perused the paper book particularly the order impugned.

There cannot be any dispute about the settled position in law that scope of amendment of written statement is larger than that of a plaint. Equally true is that in the written statement, the defendant/respondent can raise alternative/contradictory pleas.

In the case at hand, the application for amendment of written statement was filed after commencement of trial and that too at the stage when the case was fixed for evidence of the petitioner (respondent therein). By way of amendment in the CPC, proviso to Rule 17 of Order 6 was added with an intent to avoid delay in culmination of the proceedings. The

said proviso reads as follows:-

“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.”

The petitioner in para 3 of the application has averred to the following effect:-

“The applicant wants to amend the written statement stated to be filed by the applicant as in spite of the due diligence of the applicant the above stated facts could not have been raised before the court in the written statement by adding following para i.e. Para No. 2-A.”

However, nothing has been mentioned as to what due diligence was exercised by the petitioner at the time of filing of the original written statement despite exercise whereof, she was rendered handicapped to plead the above stated facts. The above stated facts in para 2 of the application are that the petitioner has made the applicant as respondent No. 1 by showing her alleged firm M/s Jagat Singh and sons whereas in actual there is no firm existing in such name and style as alleged by the petitioner. The second plea is that Mandeep Singh @ Shera respondent No. 2 is shown to be son of the applicant whereas name of her son is Manbir Singh.

In the written statement originally filed, there is clear admission by the respondent therein that M/s Jagat Singh and sons are tenant in the shop in question. It has further been averred that there is only one shop in possession of the respondent since long and earlier the same was in possession of Narender Singh. There is no explanation for

withdrawal from the earlier admission in the written statement with regard to tenancy of M/s Jagat Singh and Sons. By way of adding para No. 2-A, the petitioner wanted to add various other facts besides the facts mentioned in para 2 of the application. As a matter of fact, the petitioner failed to give any cause of action to amend the written statement but sought the relief on mere asking by withdrawing from the earlier admission and adding various facts, which cannot be allowed in the light of proviso appended to Rule 17 of Order 6 CPC. I would hasten to add that this Court is not oblivious of the fact that despite addition of proviso to Rule 17, there is no complete bar against allowing amendment of pleadings even after commencement of trial and the same can be allowed in deserving cases. In the given scenario, I do not find an error much less perversity in the impugned order warranting intervention in exercise of supervisory jurisdiction of the Court.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

8.1.2018

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No