

Parshotam Lal

.....Petitioner

Versus

Krishan Gopal

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAURPresent: Mr. Kanwal Goyal, Advocate and
Mr. Ishan Gupta, Advocate
for the petitioner.Mr. Rishav Jain, Advocate
for the respondent.**NIRMALJIT KAUR, J. (ORAL)**

The present revision petition is filed against the order dated 27.04.2018, passed by the Rent Controller, Sangrur, vide which, the application filed by the petitioner under Order 67 Rule 17 CPC for amendment of the pleadings, was dismissed.

A perusal of the said order shows that the said application was dismissed by observing that the subsequent events have no reasonable nexus with the claim mentioned in the petition and that the petitioner failed to move the application for amendment at the initial stage and in any case, it was open to him to base his claims at the initial stage itself in case he wanted to open the shop for selling the medicines by his son and not for the business of lubrication as he knew the same and is not a subsequent event. He had admitted this fact in his cross examination. Now, it would amount to recalling the admissions made by the petitioner during the cross examination.

Learned counsel for the respondent too while vehemently

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opposing the present revision petition, submitted that the petitioner had made certain admissions during his cross examination and therefore, the subsequent amendment of the pleadings would amount to recalling of the admissions, which would affect the rights and evidence led by the respondent/tenant and further the said amendment would also relate to the time when the petition was filed.

In order to adjudicate, it is relevant to note down the events in chronological order:

- (i) The rent petition was filed on 16.05.2012 for bonafide need on account of his son Amit Kumar.
- (ii) The request for termination of the lubricant licence and for the similar transfer of the drug licence by one of the son of the petitioner namely Rahul Grover in favour of other son of petitioner namely Amit Kumar for medical business, took place on 16.10.2017.
- (iii) The petitioner/son of petitioner made a request for issuance of a drug licence to the concerned authority, which was granted on 01.04.2018 and the request for termination of the lubricant licence was accepted on 06.04.2018.
- (iv) Whereas, the application for amendment of the pleadings was moved on 23.02.2018.

No doubt, the cross examination of the petitioner took place way back on 08.09.2015. However, learned counsel for the respondent has not been able to point out from the cross examination of the petitioner/plaintiff that the petitioner in any way had admitted that his son Amit Kumar was running a business of medical store. Obviously, the Court

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below recorded a wrong finding that there was admission by the landlord that his son Amit Kumar was running a medical store and he knew that his son Amit Kumar was running a medical store way back in 2015 and still he did not amend his pleadings at that stage. Therefore, the argument that it would amount to recalling the admission made by the petitioner has no basis. Moreover, learned counsel for the petitioner has pointed out that the licence of the medical store was in favour of Rahul Grover i.e. his other son, who transferred the same in favour of Amit Kumar (Annexure P-7) only on 16.12.2017.

From the above, it is evident that the transfer of the licence in the name of Amit Kumar was subsequent and even the lubricant licence was terminated on 06.04.2018. In these circumstances, it is evident that these are subsequent events and therefore, the petitioner could not have filed for amendment at the earlier point of time, prior to this.

In these circumstances, in case the amendment is allowed, it would also not amount to recalling of any admission. As per the judgment rendered by the Hon'ble Apex Court in the case of Om Parkash Gupta Vs. Ranbir B.Goyal, 2002(1) R.C.R. (Rent) 150, in para 11 it is held as under:-

“11.The ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances

would shorten litigation and enable complete justice being done to the parties; (iii) that such subsequent event is brought to the notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In Pasupuleti Venkateswarlu Vs. The Motor and General Traders, 1975 RCR (Rent) 486 (SC) this Court held that a fact arising after the lis, coming to the notice of the Court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the Court cannot be blinked at. The Court may in such cases bend the rules of procedure if no specific provision of law or rule of fairplay is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The court speaking through Krishna Iyer, J. affirmed the proposition that court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fairplay is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautions, and (iv) the rules of fairness to both sides should be scrupulously obeyed.”

The said judgment was subsequently followed by this Court in the case of Shakuntla Devi now (deceased) through LRs Vs. Krishan Lal, 2017 (1) Law Herald 791 as well as in the case of Jawahar Lal Versus Dewan Chand, 2008 (4) R.C.R. (Civil) 218, wherein, it was held that in case a party is entitled to file a separate suit on the subsequent events then there is no reason as to why the same cannot be allowed to be incorporated by

way of amendment in the pending suit. Para 7 of the judgment Jawahar Lal (supra) reads as under:-

“7. In this context, the ratio of law laid down in the cases of Sukhdev Chand and Rajesh Kumar Aggarwal (supra) would come into play. It has been held by the Hon'ble Supreme Court that where landlord is not debarred from filing a separate suit on the ground on which the amendment is sought, then rejecting the prayer for amendment would amount to force the landlord to resort to another litigation which is not in the interest of either landlord or a tenant. Similarly, where it is found that it is permissible for a person to file an independent suit, then as observed in the case of Rajesh Kumar Aggarwal (supra), why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in a pending suit. It is also to be noticed that procedural justice requires that the events and developments subsequent to the institution of proceedings must be taken into consideration in appropriate cases to promote substantial justice. As can be observed that a need of a person to seek eviction on account of personal use would not remain static. With the passage of time, the same would keep on changing. That is why the principle of res judicata does not strictly apply to filing of another eviction petition on the ground of personal necessity. The subsequent events in regard to the changed need of requirement of this premises for the son of the petitioner can certainly be taken into consideration to promote the substantial justice. The general principle of law urged by Mr. Palli in regard to the power to allow amendment specifically when it does not affect the cause of action by introducing a new case or when it does not cause serious prejudice to the opposite side are well settled. In the present case that the cause of action to seek eviction

continues to be ground of personal necessity of the petitioner, which has not changed in any manner. If the petitioner is entitled to file a separate suit on the cause, the same can very well be allowed to be incorporated by way of amendment in the present suit, when the issue requiring decision; would continue to be the same. I am, thus, not inclined to interfere in the impugned order and would dismiss the revision petition.”

The similar observations were made in the case of Shakuntla Devi (supra). In the present case, it is not disputed that the petitioner had a right to file another suit on the event herein. Therefore, this Court sees no reason as to why the said amendment cannot be allowed as it is evident from the above facts that the said events are subsequent and go to the root of the case.

In view of the above, the present revision petition is allowed and the order dated 27.04.2018, passed by the Rent Controller, Sangrur, is set aside. The petitioner is now permitted to file an application for amendment of the pleadings.

It is stated by learned counsel for the petitioner that he has already filed the application for amendment of the pleadings before the Rent Controller. If it is so, the same be taken on record and the eviction petition shall now proceed, in accordance with law.

29.11.2019
sandeep

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No