

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CR No. 3385 of 2018 (O&M)
Date of decision: 29.1.2019

Kamal Arora

...Petitioner

Versus

Kala Singh and another

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. B.M. Vinayak, Advocate,
for the petitioner.

JAISHREE THAKUR, J.

The petitioner herein seeks to challenge the order dated 21.2.2018 passed by the Rent Controller, dismissing the application filed under Order 6 Rule 17 of the Code of Civil Procedure seeking amendment in the petition that has been filed for eviction of the respondents.

In brief, the facts are that the petitioner herein, who is landlord, has filed a petition under Section 13 of the Rent Act for eviction of the respondents herein from the property as described in the head note. In the said petition, respondent No.1 has been arrayed as Shri Kala Singh son of Shri Joginder Singh and respondent No.2 has been reflected as Shri Pinda son of Joginder Singh; carrying on business in one shop built in Khasra No. 2216/233, bearing House Tax No. 93/XVIII, situated in the area of Tung Pai Sub-Urban, Batala Road, Opposite Petrol Pump, Near Rishabh Motors, Amritsar. In para 1 of the petition, it has been stated that respondent No.2 is

the “son” of respondent No.1 and that he is also carrying on business along with respondent No.1 and in para 2 (ii), it has been mentioned that “respondent” requires the demised premises for his own use and occupation. In fact, the petitioner is engaged in the business of “franchisee” of Reliance Company for the sale of its “various types of yarns” and he has executed “franchisee agreement” with Reliance Company in this respect.

Learned counsel for the petitioner herein contends that it is on account of sheer inadvertence that respondent No.2 has been mentioned as son of respondent No.1 and, therefore, word “son” ought to be deleted and in its place, word “brother” be inserted. It is also argued that word “respondent” as mentioned in para 2 (ii) should be deleted and in its place word “applicant” be inserted because it is the applicant who is seeking eviction of the respondents from the demised premises. Similarly, word “franchise” is liable to be deleted and in its place word “Del Credre Agent” is liable to be inserted and further word “its various types of yarns” requires to be replaced by word “RIL Pet Resin”. It is argued that the proposed amendment is necessary for just decision of the case, while further submitting that substitution of the words “brother” in place of “son”, “applicant” in place “respondent”, “Del Credre Agent” in place of “franchise” and “RIL Pet Resin” in place of “its various types of yarns” would not change the very nature of the proceedings that have been initiated seeking eviction of the respondents. It is also argued that the lower court has taken a hyper technical view in rejecting the application for amendment as filed.

Notice of motion of the said petition was issued and as per the

office report, respondent No.1 has been duly served, whereas respondent No.2 has been served through his brother, namely respondent No.1 and thus service is complete. However, despite service no one has put in appearance on behalf of the respondents; nor there is any power of attorney on the record on their behalf.

A short question that arises for consideration in this case is, whether the application for amendment ought to have been allowed, even though it might have been filed at belated stage.

At this stage, it would be appropriate to reproduce Order 6 Rule 17 of the Code of Civil Procedure, which reads as under:-

“Order VI

Pleadings Generally

1. Pleading.—“Pleading” shall mean plaint or written statement.

xx xx xx

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.”

From a bare perusal of the Rule re-produced above, it is abundantly clear that the Court may “at any stage of the proceedings” allow either party to alter or amend his pleadings in such manner so as to determine the real

controversy between the parties. Proviso (ii) is to the effect that an application for amendment shall not 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 trial court by relying on this proviso came to hold that the trial has commenced and the petitioner had failed to seek the amendment at early stage of the proceedings and, therefore, was not diligent.

I have heard learned counsel for the petitioner and have also perused the order so passed.

In the opinion of this Court, the amendment that is being sought does not change the nature of the petition or the relief that is being sought. The petitioner herein is seeking eviction of the two respondents, who are in possession and occupation of the demised premises. Respondent No.2 has been reflected as son of respondent No.1 whereas he, in fact, is the brother of respondent No.1. Similarly the word “respondent” which has been used in para 2 (ii) can easily be transposed with the terms “applicant”, because a categorical statement is being made that the demised premises are required for use and occupation of the petitioner/landlord. Furthermore, the reason given for seeking eviction is that the petitioner/applicant requires the premises for his own use and occupation. He is already engaged in the business which he would like to start from his own shop, in addition to the business which is being carried out in Delhi. In fact, the applicant/petitioner belongs to Amritsar, which is his native place and rest of his family members are also settled in Amritsar and it is in this background that he

needs the shop situated in Amritsar. Merely because word “franchise” has been used in place of “Del Credre Agent”, it would not effect the nature of claim that the premises are required by the petitioner for his own use and occupation.

Moreover, apart from the fact that amendment in the pleadings would not change the nature of the eviction petition, the trial is at the initial stage and statement of only three witnesses have been recorded by way of tendering their affidavits in examination-in-chief and the cross-examination is yet to be conducted. This fact does not stand controverted since no one has put in appearance on behalf of the respondents. Otherwise also, the word “son” which has been mentioned in the petition is factually incorrect as both the respondents are the sons of “Shri Joginder Singh” and as such respondent No.2 can only be “brother” and not “son” of respondent No.1. Similarly, it is the applicant/petitioner who is seeking ejectment of the respondents, so the word used in para 2 (ii) “respondent” also on the face of it is factually incorrect. It is only the “applicant/petitioner” who being the owner is in the requirement of the demised premises. These words on the face of it appear to have occurred because of typographical errors. It is well settled law that the amendment can be allowed at any stage of the proceedings, provided no prejudice is caused to the other side. The amendment as sought does not alter the nature of the suit. Therefore, since the trial is at the very initial stage and the cross-examination of the petitioner's witnesses is yet to take place, no prejudice would have been caused to the respondents in case the amendment sought for was allowed, as these were just mistakes which had crept in inadvertently.

In view of the above, the revision petition is allowed, the impugned order is set aside and the application filed by the petitioner for amendment is allowed.

29.1.2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No