

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

CR No. 496 of 2019 (O&M)
Date of decision: March 28, 2019

Anurag Setia

...Petitioner

Versus

Pawan Kumar

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Divanshu Jain, Advocate,
for the petitioner.

Mr. Chetan Goel, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. The petitioner herein seeks to challenge the order dated 16.11.2018 passed by the Rent Controller, Chandigarh, whereby the application filed by the petitioner under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure seeking amendment of the written statement has been dismissed.

2. In brief, facts are that the respondent/landlord filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act for eviction of the petitioner from the 1st floor of Shop No. 1543/22, situated in Rana Haveli Market, Mani Majra, U.T., Chandigarh, on the ground of non-payment of rent and personal necessity. A written statement was filed by the petitioner herein through his counsel Shri Anil Mehta and thereafter issues

were framed by the Rent Controller. The respondent/landlord tendered his evidence and documents and after several opportunities was cross-examined. The evidence of the respondent commenced and thereafter an application under Order 6 Rule 17 read with Section 151 of the Code for amendment of the written statement came to be filed. Reply thereto was filed by the respondent/landlord and after consideration the impugned order was passed dismissing the application. Aggrieved against that order, the instant revision has been filed.

3. Learned counsel appearing on behalf of the petitioner/tenant contends that it came to the notice of the petitioner that the written statement filed by his counsel in fact did not take into account certain facts which were sought to be incorporated in the preliminary objections. In the application, it was also mentioned that necessary facts are missing in the petition, while stating the counsel for the petitioner had filed the written statement on his behalf in another eviction petition filed against him, namely Gulshan Kumar Vs. Anurag Setia and the same reply has been filed in the instant petition with minor changes.

4. Learned counsel for the petitioner relies upon the judgments rendered in **Anant Ram Versus Hans Raj and others 2011 (3) PLR 716, Narinder Singh Versus Manjit Kaur 2010 (1) PLR 324, Daya Ram Versus Puran Chand and another 1974 PLR 100, Chicha Cooperative Agricultural Service Society Limited Versus Additional Secretary (Cooperation), Punjab and others 2003 (1) R.C.R. (Civil) 683**, (on the ground that litigant should not be made to suffer for the negligence of his advocate) **Manmohan Lal Versus Shanti Parkash Jain 2014 (5) R.C.R.**

(Civil) 667, (to argue non-compliance with statutory requirement held to be fatal), **Sukhwinder Singh Versus Darshan Lal 2014 (3) Law Herald 2211**, **Rajesh Kumar Aggarwal Versus K.K. Modi and others 2006 (2) Apex Court Judgments (SC) 583**.

5. It is also contended that until and unless the amendment is allowed and the pleadings taken on record, eviction petition is not maintainable for want of pleadings the same would not be entertained by the courts below and therefore, for proper adjudication of the matter, regarding whether the eviction petition itself is maintainable, the petitioner herein would not be able to raise the pleas.

6. Per contra, learned counsel appearing on behalf of the respondent, vehemently argues that the order of the Rent Controller is absolutely correct, as per the settled law. It is argued that an application seeking amendment cannot be allowed, in view the proviso inserted to Rule 17 of Order 6 of the Code wherein by an amendment of Act 22 of 2002, a proviso to the said Rule has been inserted providing 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. Moreover, all the facts sought to be incorporated by way of amendment were well within the knowledge of the petitioner before commencement of the trial and as such the same could not be allowed at this stage of the proceedings. Therefore, the Rent Controller rightly dismissed the application so moved by the petitioner at a belated stage.

7. I have heard learned counsel for the parties and have perused

the case law.

8. A perusal of the record would show that the petition for eviction of the petitioner was filed on 1.5.2017 and on notice written statement was filed on 3.11.2017. Thereafter, rejoinder was filed on 21.11.2017. On completion of the proceedings, issues were framed on 16.2.2018 and the case was fixed for recording the evidence on 6.3.2018. On 6.3.2018, the respondent/landlord tendered his evidence by way of affidavit Ex. PW-1/A along with documents Ex. A-1 to A-4 and the case was adjourned for his cross-examination for 2.4.2018. On 2.4.2018 and 20.4.2018, though respondent came present in the Court, but his cross-examination could not be conducted and eventually his cross-examination was concluded on 17.5.2018. Thereafter on 30.5.2018, the case was adjourned for the petitioner's evidence for 13.7.2018. On 13.7.2018, as no RW was present the case was adjourned for 17.7.2018. On 17.7.2018, the petitioner tendered his evidence by way of affidavit Ex. DW-1/A and his cross-examination was deferred for 2.8.2018. Thereafter, the case was fixed for 28.8.2018 and 11.9.2018 for cross-examination of RW-1. On 11.9.2018, when the case was fixed for evidence of the petitioner, he moved an application under Order 6 Rule 17 read with Section 151 of the Code.

9. Learned counsel for the petitioner relies on several judgments to argue that with great vehemence that the amendment of the pleadings in the written statement ought to be allowed. He has relied upon the judgment in **Anant Ram's case (supra)** to contend that this Court had allowed the amendment of the plaint even when the case had reached the argument stage. It was held that the petitioner/plaintiff cannot be allowed to suffer for

the lapse on the part of his counsel. In that case, amendment was sought to change the date of the sale deed which had been wrongly mentioned. This Court allowed the amendment by placing reliance on the judgment in **Ajendra Prasadji N. Pande v. Swami Keshvprakeshdasji N., 2007 (1) RCR (Civil) 481**, where the Hon'ble Supreme Court had allowed the amendment with a caveat *“A prayer for amendment of pleadings made after the commencement of a trial, shall ordinarily be declined. Where, however, the applicant establishes that despite the exercise of due diligence, he could not raise the pleadings sought to be pleaded by way of amendment, before the commencement of a trial, a court would be justified in allowing such an amendment. The power, therefore, to allow amendment of pleadings, even after the commencement of the trial, subsists, but with a caveat that the party praying for amendment must establish that despite the exercise of due diligence, the pleadings sought to be pleaded by way of an amendment could not be raised before the trial commenced. A court, therefore, may where it is of the opinion that the amendment is necessary for the purpose of determining the real controversy and if the applicant satisfies the court that despite the exercise of due diligence, he could not raise the pleadings before the trial commenced, allow such a prayer, even after the commencement of the trial.”*

10. In **Anant Ram's case (supra)**, the only amendment was to the date of the sale deed and the mutation sanctioned on the basis of the sale deed. The said sale deed and the mutation were challenged on the ground that the same were result of the fraud and no such sale deed had been

executed by the plaintiff's father during his life time. The sale deeds which were in the possession of the respondents/defendants were produced in Court and it was only then a typographical error pertaining to the date of the sale deed was discovered which led to an application being moved under Order 6 Rule 17 of the Code of Civil Procedure, which was allowed. The facts in **Anant Ram's case (supra)** are wholly distinguishable from the present case and hence the said judgment cannot be relied upon since the plaintiff/petitioner therein had acted with due diligence on coming to know that wrong date of the sale deed that was challenged has been mentioned.

11. The judgment rendered in **Narinder Singh's case (supra)**, allowed the amendment in the plaint in respect of the boundaries mentioned therein. It was contended that the sale deed had been given to the counsel and it was for the counsel to describe the correct boundaries in the plaint and if the same had been wrongly described, the plaintiff could not be penalized for the same. This Court allowed the amendment on the ground that the amendment is essential for just decision of the case and no prejudice whatsoever shall be caused to the respondents therein in case amendment is allowed, as the nature of the suit and/or the property is not going to be altered.

12. The judgment of **Daya Ram (supra)**, which has been relied upon by the learned counsel for the petitioner is a judgment rendered in 1973 and that too prior to the amendment of 2002 and, therefore, the same cannot be relied upon. In the judgment in **Sukhwinder Singh's case (supra)**, the amendment was allowed in a petition filed under East Punjab

Urban Rent Restriction Act, 1949. This Court allowed the amendment on

the ground that the strict provision of the Code of Civil Procedure would not be applicable.

13. Learned counsel also argues that the judgment rendered in **Rajesh Kumar Aggarwal's case (supra)** would be applicable to the facts of the present case, wherein it has been held that it is mandatory on the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties and the Courts should not go into the correctness or falsity of the case set up. Further reliance has been placed upon a judgment rendered in **Varun Pahwa Versus Mrs. Renu Chaudhary 2019 (2) R.C.R. (Civil) 383**, wherein amendment of plaint was allowed by taking into account the plea that the mistake was inadvertent. In **Varun Pahwa's case (supra)**, amendment was sought on the ground that a mistake had crept in the memo of parties. The plaintiff was described as Varun Pahwas through Director Siddharth Garments Pvt. Ltd., whereas it should have been Siddharth Garments through its Director Varun Pahwa. Holding it to be a mistake of counsel the Hon'ble Supreme Court allowed amendment. The facts of **Varun Pahwa's case (supra)** are not applicable in the present case, as the amendment sought was well within knowledge of the petitioner who did not exercise due diligence.

14. In the case in hand a perusal of the record would show that after framing of issues and commencement of trial, the case was adjourned on a number of occasions as noted in the foregoing paras. The application filed under Order 6 Rule 17 of the Code does not satisfy the conditions as specified in the proviso to the extent that in spite of due diligence the mistake crept in the petition could not be detected before the

commencement of the trial. The law relating to amendment has clearly been settled in **Vidyabai & Ors v. Padmalatha & Anr. (2009) 2 SCC 409**, wherein the Hon'ble Supreme Court held as under:-

“19. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.”

At this juncture, it would be relevant to note that the amendment that is being sought to be incorporated. The petitioner herein wants to include preliminary objections 5 and 6, which reads as under:-

“Preliminary Objection No.5:

That the present petition is liable to be dismissed on the ground that the proposed business as alleged in the petition is not permissible to be run on the First Floor as per the bye laws and terms of the allotment applicable to the shop in question. No repair work can be done on the First Floor and the storage of any material is only permissible in the basement. Otherwise also the petitioner is having sufficient accommodation on the ground floor wherein he is running the business of electronics.

Preliminary Objection No. 6:

That the present petition is not maintainable. The petition does not fulfill the ingredients of Section 13 of the Rent Act. The petitioner part with possession of ground floor of the shop in question for the months of September, October and November of 2017 and let out the same to a tenant Satpal Gupta for

running the business of sale of electronic items. This fact has occurred during the pendency of the present petition.”

15. Apart from seeking to add preliminary objections, 5 and 6, the petitioner herein also seeks to delete certain lines from Para No. 4 of Preliminary Objections and para No. 8 on merit.

16. As has been held by the Hon'ble Supreme Court in **Ajendra Prasadji N. Pande's case (supra)**, it is for the Courts to satisfy itself whether or not any amendment ought to be allowed after the trial has commenced. The caveat allowing the amendment is that the parties seeking amendment must establish that despite exercise of due diligence the pleadings sought to be pleaded by way of amendment could not be raised. A perusal of the preliminary (objection No. 5) sought to be introduced to the effect that the proposed business which the landlord seeks to commence from the first floor is not permissible as per the bye laws and the terms of the allotment applicable to the shop in question, is a ground that was available to the petitioner at the first instance. It cannot be said that this ground was not available with the petitioner/tenant at the time of filing the written statement. At best if such a business is not permissible, it is between the respondent and the authorities concerned and the consequences will be faced by the respondent. In any case, it is not for the tenant/petitioner to dictate as to what business can or cannot be done in the premises sought to be vacated. In case the respondent puts the building to such use which is not permitted under law, he would face the consequences thereof. Even the another preliminary objection (No. 6) that the rent petition does not fulfill the ingredients of Section 13 of the Rent Act is a ground that ought to have

been taken by the petitioner at the time of filing the written statement and if not taken a benefit may have accrued to the landlord which can not be taken away. Moreover, a plea is sought to be raised that the landlord had parted with possession of ground floor in September, October, November of 2017 to Satpal Gupta. This fact could have been incorporated in the written statement filed on 3.11.2017 since it would have been in his knowledge. It can not be ignored that the petitioner is a tenant in the same premises. The amendment is sought only on 11.9.2018 and there is no plausible explanation forthcoming as to why the amendment could not have been sought earlier.

17. As already noticed the trial in this instant case after framing of issues on 16.2.2018 had commenced and the application for amendment was filed at a belated stage when the case was fixed for evidence of the petitioner. Furthermore, the application filed under Order 6 Rule 17 of the Code of Civil Procedure does not disclose as to why these objections, which are legal in nature, were not taken at the first instance, considering the fact that the petitioner was already facing ejectment in another matter and he was very well aware of the facts, which are now sought to be introduced. Thus, the petitioner has not been able to establish that despite his due diligence, he could not move an application for amendment earlier and the argument raised that he has changed his counsel, is not a sufficient cause, considering the fact that he has already filed his evidence by way of affidavit and it can safely be presumed that at the relevant time, he had read the affidavit and as such he knew the pleadings being taken in the written statement. From the narration of the facts, it is clear that the petitioner herein is seeking the

amendment only to make improvement in his pleadings, which is not permissible at this stage of the proceedings.

18. For the reasons afore-stated, the revision petition is dismissed.

March 28, 2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No

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1. The petitioner herein seeks to challenge the order dated 16.11.2018 passed by the Rent Controller, Chandigarh, whereby the application filed by the petitioner under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure seeking amendment of the written statement has been dismissed.

2. In brief, facts are that the respondent/landlord filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act for eviction of the petitioner from the 1st floor of Shop No. 1543/22, situated in Rana Haveli Market, Mani Majra, U.T., Chandigarh, on the ground of non-payment of rent and personal necessity. A written statement was filed by the petitioner herein through his counsel Shri Anil Mehta and thereafter issues

were framed by the Rent Controller. The respondent/landlord tendered his evidence and documents and after several opportunities was cross-examined. The evidence of the respondent commenced and thereafter an application under Order 6 Rule 17 read with Section 151 of the Code for amendment of the written statement came to be filed. Reply thereto was filed by the respondent/landlord and after consideration the impugned order was passed dismissing the application. Aggrieved against that order, the instant revision has been filed.

3. Learned counsel appearing on behalf of the petitioner/tenant contends that it came to the notice of the petitioner that the written statement filed by his counsel in fact did not take into account certain facts which were sought to be incorporated in the preliminary objections. In the application, it was also mentioned that necessary facts are missing in the petition, while stating the counsel for the petitioner had filed the written statement on his behalf in another eviction petition filed against him, namely Gulshan Kumar Vs. Anurag Setia and the same reply has been filed in the instant petition with minor changes.

4. Learned counsel for the petitioner relies upon the judgments rendered in **Anant Ram Versus Hans Raj and others 2011 (3) PLR 716, Narinder Singh Versus Manjit Kaur 2010 (1) PLR 324, Daya Ram Versus Puran Chand and another 1974 PLR 100, Chicha Cooperative Agricultural Service Society Limited Versus Additional Secretary (Cooperation), Punjab and others 2003 (1) R.C.R. (Civil) 683**, (on the ground that litigant should not be made to suffer for the negligence of his advocate) **Manmohan Lal Versus Shanti Parkash Jain 2014 (5) R.C.R.**

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5. It is also contended that until and unless the amendment is allowed and the pleadings taken on record, eviction petition is not maintainable for want of pleadings the same would not be entertained by the courts below and therefore, for proper adjudication of the matter, regarding whether the eviction petition itself is maintainable, the petitioner herein would not be able to raise the pleas.

6. Per contra, learned counsel appearing on behalf of the respondent, vehemently argues that the order of the Rent Controller is absolutely correct, as per the settled law. It is argued that an application seeking amendment cannot be allowed, in view the proviso inserted to Rule 17 of Order 6 of the Code wherein by an amendment of Act 22 of 2002, a proviso to the said Rule has been inserted providing 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. Moreover, all the facts sought to be incorporated by way of amendment were well within the knowledge of the petitioner before commencement of the trial and as such the same could not be allowed at this stage of the proceedings. Therefore, the Rent Controller rightly dismissed the application so moved by the petitioner at a belated stage.

7. I have heard learned counsel for the parties and have perused

the case law.

8. A perusal of the record would show that the petition for eviction of the petitioner was filed on 1.5.2017 and on notice written statement was filed on 3.11.2017. Thereafter, rejoinder was filed on 21.11.2017. On completion of the proceedings, issues were framed on 16.2.2018 and the case was fixed for recording the evidence on 6.3.2018. On 6.3.2018, the respondent/landlord tendered his evidence by way of affidavit Ex. PW-1/A along with documents Ex. A-1 to A-4 and the case was adjourned for his cross-examination for 2.4.2018. On 2.4.2018 and 20.4.2018, though respondent came present in the Court, but his cross-examination could not be conducted and eventually his cross-examination was concluded on 17.5.2018. Thereafter on 30.5.2018, the case was adjourned for the petitioner's evidence for 13.7.2018. On 13.7.2018, as no RW was present the case was adjourned for 17.7.2018. On 17.7.2018, the petitioner tendered his evidence by way of affidavit Ex. DW-1/A and his cross-examination was deferred for 2.8.2018. Thereafter, the case was fixed for 28.8.2018 and 11.9.2018 for cross-examination of RW-1. On 11.9.2018, when the case was fixed for evidence of the petitioner, he moved an application under Order 6 Rule 17 read with Section 151 of the Code.

9. Learned counsel for the petitioner relies on several judgments to argue that with great vehemence that the amendment of the pleadings in the written statement ought to be allowed. He has relied upon the judgment in **Anant Ram's case (supra)** to contend that this Court had allowed the amendment of the plaint even when the case had reached the argument stage. It was held that the petitioner/plaintiff cannot be allowed to suffer for

the lapse on the part of his counsel. In that case, amendment was sought to change the date of the sale deed which had been wrongly mentioned. This Court allowed the amendment by placing reliance on the judgment in **Ajendra Prasadji N. Pande v. Swami Keshvprakeshdasji N., 2007 (1) RCR (Civil) 481**, where the Hon'ble Supreme Court had allowed the amendment with a caveat "*A prayer for amendment of pleadings made after the commencement of a trial, shall ordinarily be declined. Where, however, the applicant establishes that despite the exercise of due diligence, he could not raise the pleadings sought to be pleaded by way of amendment, before the commencement of a trial, a court would be justified in allowing such an amendment. The power, therefore, to allow amendment of pleadings, even after the commencement of the trial, subsists, but with a caveat that the party praying for amendment must establish that despite the exercise of due diligence, the pleadings sought to be pleaded by way of an amendment could not be raised before the trial commenced. A court, therefore, may where it is of the opinion that the amendment is necessary for the purpose of determining the real controversy and if the applicant satisfies the court that despite the exercise of due diligence, he could not raise the pleadings before the trial commenced, allow such a prayer, even after the commencement of the trial.*"

10. In **Anant Ram's case (supra)**, the only amendment was to the date of the sale deed and the mutation sanctioned on the basis of the sale deed. The said sale deed and the mutation were challenged on the ground that the same were result of the fraud and no such sale deed had been

executed by the plaintiff's father during his life time. The sale deeds which were in the possession of the respondents/defendants were produced in Court and it was only then a typographical error pertaining to the date of the sale deed was discovered which led to an application being moved under Order 6 Rule 17 of the Code of Civil Procedure, which was allowed. The facts in **Anant Ram's case (supra)** are wholly distinguishable from the present case and hence the said judgment cannot be relied upon since the plaintiff/petitioner therein had acted with due diligence on coming to know that wrong date of the sale deed that was challenged has been mentioned.

11. The judgment rendered in **Narinder Singh's case (supra)**, allowed the amendment in the plaint in respect of the boundaries mentioned therein. It was contended that the sale deed had been given to the counsel and it was for the counsel to describe the correct boundaries in the plaint and if the same had been wrongly described, the plaintiff could not be penalized for the same. This Court allowed the amendment on the ground that the amendment is essential for just decision of the case and no prejudice whatsoever shall be caused to the respondents therein in case amendment is allowed, as the nature of the suit and/or the property is not going to be altered.

12. The judgment of **Daya Ram (supra)**, which has been relied upon by the learned counsel for the petitioner is a judgment rendered in 1973 and that too prior to the amendment of 2002 and, therefore, the same cannot be relied upon. In the judgment in **Sukhwinder Singh's case (supra)**, the amendment was allowed in a petition filed under East Punjab

Urban Rent Restriction Act, 1949. This Court allowed the amendment on

the ground that the strict provision of the Code of Civil Procedure would not be applicable.

13. Learned counsel also argues that the judgment rendered in **Rajesh Kumar Aggarwal's case (supra)** would be applicable to the facts of the present case, wherein it has been held that it is mandatory on the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties and the Courts should not go into the correctness or falsity of the case set up. Further reliance has been placed upon a judgment rendered in **Varun Pahwa Versus Mrs. Renu Chaudhary 2019 (2) R.C.R. (Civil) 383**, wherein amendment of plaint was allowed by taking into account the plea that the mistake was inadvertent. In **Varun Pahwa's case (supra)**, amendment was sought on the ground that a mistake had crept in the memo of parties. The plaintiff was described as Varun Pahwas through Director Siddharth Garments Pvt. Ltd., whereas it should have been Siddharth Garments through its Director Varun Pahwa. Holding it to be a mistake of counsel the Hon'ble Supreme Court allowed amendment. The facts of **Varun Pahwa's case (supra)** are not applicable in the present case, as the amendment sought was well within knowledge of the petitioner who did not exercise due diligence.

14. In the case in hand a perusal of the record would show that after framing of issues and commencement of trial, the case was adjourned on a number of occasions as noted in the foregoing paras. The application filed under Order 6 Rule 17 of the Code does not satisfy the conditions as specified in the proviso to the extent that in spite of due diligence the mistake crept in the petition could not be detected before the

commencement of the trial. The law relating to amendment has clearly been settled in **Vidyabai & Ors v. Padmalatha & Anr. (2009) 2 SCC 409**, wherein the Hon'ble Supreme Court held as under:-

“19. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.”

At this juncture, it would be relevant to note that the amendment that is being sought to be incorporated. The petitioner herein wants to include preliminary objections 5 and 6, which reads as under:-

“Preliminary Objection No.5:

That the present petition is liable to be dismissed on the ground that the proposed business as alleged in the petition is not permissible to be run on the First Floor as per the bye laws and terms of the allotment applicable to the shop in question. No repair work can be done on the First Floor and the storage of any material is only permissible in the basement. Otherwise also the petitioner is having sufficient accommodation on the ground floor wherein he is running the business of electronics.

Preliminary Objection No. 6:

That the present petition is not maintainable. The petition does not fulfill the ingredients of Section 13 of the Rent Act. The petitioner part with possession of ground floor of the shop in question for the months of September, October and November of 2017 and let out the same to a tenant Satpal Gupta for

running the business of sale of electronic items. This fact has occurred during the pendency of the present petition.”

15. Apart from seeking to add preliminary objections, 5 and 6, the petitioner herein also seeks to delete certain lines from Para No. 4 of Preliminary Objections and para No. 8 on merit.

16. As has been held by the Hon'ble Supreme Court in **Ajendra Prasadji N. Pande's case (supra)**, it is for the Courts to satisfy itself whether or not any amendment ought to be allowed after the trial has commenced. The caveat allowing the amendment is that the parties seeking amendment must establish that despite exercise of due diligence the pleadings sought to be pleaded by way of amendment could not be raised. A perusal of the preliminary (objection No. 5) sought to be introduced to the effect that the proposed business which the landlord seeks to commence from the first floor is not permissible as per the bye laws and the terms of the allotment applicable to the shop in question, is a ground that was available to the petitioner at the first instance. It cannot be said that this ground was not available with the petitioner/tenant at the time of filing the written statement. At best if such a business is not permissible, it is between the respondent and the authorities concerned and the consequences will be faced by the respondent. In any case, it is not for the tenant/petitioner to dictate as to what business can or cannot be done in the premises sought to be vacated. In case the respondent puts the building to such use which is not permitted under law, he would face the consequences thereof. Even the another preliminary objection (No. 6) that the rent petition does not fulfill the ingredients of Section 13 of the Rent Act is a ground that ought to have

been taken by the petitioner at the time of filing the written statement and if not taken a benefit may have accrued to the landlord which can not be taken away. Moreover, a plea is sought to be raised that the landlord had parted with possession of ground floor in September, October, November of 2017 to Satpal Gupta. This fact could have been incorporated in the written statement filed on 3.11.2017 since it would have been in his knowledge. It can not be ignored that the petitioner is a tenant in the same premises. The amendment is sought only on 11.9.2018 and there is no plausible explanation forthcoming as to why the amendment could not have been sought earlier.

17. As already noticed the trial in this instant case after framing of issues on 16.2.2018 had commenced and the application for amendment was filed at a belated stage when the case was fixed for evidence of the petitioner. Furthermore, the application filed under Order 6 Rule 17 of the Code of Civil Procedure does not disclose as to why these objections, which are legal in nature, were not taken at the first instance, considering the fact that the petitioner was already facing ejectment in another matter and he was very well aware of the facts, which are now sought to be introduced. Thus, the petitioner has not been able to establish that despite his due diligence, he could not move an application for amendment earlier and the argument raised that he has changed his counsel, is not a sufficient cause, considering the fact that he has already filed his evidence by way of affidavit and it can safely be presumed that at the relevant time, he had read the affidavit and as such he knew the pleadings being taken in the written statement. From the narration of the facts, it is clear that the petitioner herein is seeking the

amendment only to make improvement in his pleadings, which is not permissible at this stage of the proceedings.

18. For the reasons afore-stated, the revision petition is dismissed.

March 28, 2019
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JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No