

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

CR No.5573 of 2017 (O&M)

Date of Decision: September 30, 2019

Saraswati Iron Store and another

...Petitioners

Versus

Dewan Chand Dhanpat Rai Bhatia Mill and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rakesh Chopra, Advocate
for the petitioners.

Mr. Rajinder Goyal, Advocate and
Mr. R.K. Bansal, Advocate
for the respondents.

JAISHREE THAKUR, J. (Oral)

CM-6542-CII-2019

1. Allowed as prayed for.
2. Annexures P-8 and P-9 are taken on record, subject to all just exceptions.

CR-5573-2017

1. This is a Civil Revision that has been filed under Article 227 of the Constitution of India seeking to challenge the impugned order dated 11.07.2017 whereby, the Rent Controller has allowed the application for amendment of the ejectment petition as well as impugned order dated

25.07.2017 whereby, after taking on record the amended ejectment petition, the Rent Controller directly fixed the case for evidence of the respondents without providing opportunity to the petitioners to file the amended written statement.

2. In brief, the facts are that an ejectment petition was preferred on 17.07.2012 under Section 13 of the East Punjab Urban Rent Restriction Act (for short 'the Act') on the ground of non-payment of rent, impairment of the building as well as on the ground of personal necessity. Regarding the ground of personal necessity, the following has been pleaded in para 3(f) of the ejectment petition:-

“3(f) That the shop in question, as detailed in the heading of the petition, is required by the petitioners for their own personal use, necessity and occupation. The requirement/necessity of the petitioners to occupy said rented premises is their personal and bona fide and the petitioners require the said premises to meet the bona fide needs of their family. The petitioners want to set up their business in the shop in question. The petitioners want to open a big mall and general-cum-departmental store/super market in the shop in question and in the adjoining shops belonging to the petitioners. The shop in question along with adjoining shops of the petitioners are situated in the heart of city and are very suitable for the business of shopping mall or general store. The petitioners want to open various types of departmental store in the said shopping mall. Thus, the respondent is liable to be ejected from the said demised premises. A site plan of the shop in question and adjoining shops belonging to the petitioners is attached herewith, which may kindly be read as a part of this petition”

The petitioners-tenants herein filed the written statement dated 06.05.2012 stating therein in para 15 that the ejectment petition did not comply

with the mandatory requirements of the Act. The respondents-landlords filed a rejoinder to the written statement on 22.01.2013 and replied to the objection taken in para 15 of the written statement, by stating that:-

“15. Para no.15 of the reply as stated is wrong and denied in view of rejoinder given above. It is wrong to state that ejectment petition does not comply with the mandatory requirements of the East Punjab Urban Rent Restriction Act”

Thereafter, the Rent Controller framed issues on 22.01.2013, one of the issue being whether petition is maintainable or not, with the onus to prove the same on the petitioners-tenant. Thereafter, one of the respondent-landlord namely Aman Bhatia tendered his examination-in-chief by way of affidavit in evidence and his cross-examination was deferred. He was eventually cross-examined on 31.10.2013. Thereafter, the respondents-landlords did not produce any further evidence and sought several adjournments to do so. Eventually, on 18.10.2016, the respondents-landlords moved an application seeking amendment of the ejectment petition, which was contested by the petitioners-tenants herein by taking the grounds that the amendment is highly delayed and a valuable right had accrued to the petitioners herein.

3. Mr. Rakesh Chopra, counsel appearing on behalf of the petitioners herein argued that the Rent Controller has erred in allowing the amendment after almost 03 years 09 months of the framing of the issues and almost 36 opportunities availed to lead the evidence. Aggrieved against the said order, he places reliance upon judgments rendered by the Apex Court in ***Ajendraprasadji N. Pande and another vs. Swami Keshavprakeshdasji N.***

and others, 2007(1) Civil Court Cases 0500, Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka and others, 2013(2) Civil Court Cases 0811, and by this court in Amarjit Singh and another vs. Balbir Singh and others, CR No.5394 of 2016 decided on 26.04.2017, Baldev Singh vs. R.P. Kumar, 2011(1) RCR (Rent) 408, Ganga Ram vs. Santokh Singh, 2000 (2) RCR (Rent) 328, Mehtab Singh Advocate vs. Shri Tilak Raj Arora and another, 1988(1) RCR(Rent) 159 and Anurag Setia vs. Pawan Kumar, CR No.496 of 2019 decided on 28.03.2019.

4. Per contra, Mr. Rajinder Goyal counsel appearing on behalf of the respondents argues that there is no infirmity in the order allowing the amendment, since amendment goes to the very root of the case. He argued that the respondents-landlords want to incorporate para 6-A to the ejectment petition, giving details of the properties, which are in their possession and which have been vacated. It is also contended that no prejudice would be caused to the petitioners herein in case, such an amendment is allowed. It is submitted that while filing the ejectment petition, the respondents relied upon the site plan, which had been annexed along with the ejectment petition, which would reflect that the adjoining shops belonged to the respondents. It is further argued that it was specifically mentioned that “*A site plan of the shop in question and adjoining shops belonging to the petitioners is attached herewith, which may kindly be read as a part of this petition*”. Counsel places reliance upon judgment rendered by this court in ***Sukhwinder Singh vs. Darshan Lal, 2014(2) Rent LR 64*** to argue that an opportunity ought to be allowed by the Rent Controller to make up the deficiency of the necessary pleadings in case, the eviction petition does not plead the necessary ingredients as envisaged

under Section 13 of the Act.

5. I have heard counsel for the parties and have also, with their assistance, gone through the pleadings of the case.

6. By way of filing an application under Order 6 Rule 17 CPC, the respondents-landlords sought to incorporate details of the properties, which are in their possession and those properties, which were got vacated, in order to plead the necessary ingredients, as envisaged under Section 13 of the Act. The sole question is whether the amendment ought to have been allowed or not. A perusal of the record shows that the petition for ejectment of the petitioners herein was filed on 17.07.2012 and thereafter, the written statement was filed taking the objection that the ejectment petition did not comply with the mandatory requirements of the East Punjab Urban Rent Restriction Act and a rejoinder was filed thereto, replying to para 15, which is already reproduced above. Thereafter, issues were framed on 22.01.2013 and one of the respondent-landlord namely Aman Bhatia tendered his examination-in-chief by way of affidavit (Ex.PW1/A) into evidence on 24.04.2013 and he was cross-examined in detail and relevant questions regarding the proof of shops in his possession or the shops that were got vacated and the rent that he was receiving therefrom were put to him and his cross-examination was concluded on 31.10.2013. After that, the respondents-landlords took 24 opportunities to conclude their evidence, including the number of last opportunities, some of them being subject to payment of costs. It is only thereafter, that an application seeking amendment of the ejectment petition was filed on 18.10.2016 i.e. after a period of 03 years and 09 months of framing of issues and availing almost 36 opportunities to lead the evidence. The amendment, as sought, seeks to

overcome the lacuna and the objection raised by the petitioners-tenants regarding non-mentioning of necessary ingredients of Section 13 of the Act.

7. **Order VI Rule 17 Code of Civil Procedure** provides for amendment of pleadings, which is reproduced as under:

“17. 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.”

No doubt, law of amendment allows the parties to amend the pleadings either plaint or written statement, which are necessary for determining the real controversy between them, however at the same time, after the trial has commenced, no such amendment is to be allowed, unless the court is the opinion that in spite of due diligence, the party could not raise the pleadings before the trial has commenced.

8. In the judgment rendered in the case of **Ajendra Prasadji N. Pande v. Swami Keshvprakeshdasji N., 2007 (1) RCR (Civil) 481**, the Hon'ble Supreme Court held as under:-

“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.”

9. The law relating to amendment has clearly been settled in ***Vidyabai & Ors vs. 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.”

10. In the case in hand, the following are the material facts, which borne out from the record:-

(a) Ejectment petition was filed on 17.07.2012.

(b) Written statement taking the objection in para 15 that the

ejectment petition did not comply with the mandatory requirements of the Act was filed on 06.11.2012.

(c) Rejoinder to the written statement was filed on 22.01.2013 stating that para 15 of the written statement is wrong and denied, while submitting that it is wrong to state that ejectment petition does not comply with the mandatory requirements of the Act.

(d) Affidavit of one of the landlord namely Aman Bhatia was tendered into evidence on 24.04.2013, whose cross-examination was concluded on 31.10.2013.

(e) Thereafter, respondents-landlords took 24 opportunities to conclude their evidence and after that, the application for amendment of the ejectment petition came to be filed on 18.10.2016 i.e. after 03 years and 09 months of framing of issues and availing 36 opportunities to lead the evidence.

The above factors will derive this court to only one conclusion, that being that, it was well within the knowledge of the respondents-landlords that the ejectment petition filed by them had not pleaded the necessary ingredients of Section 13 of the Act. Regarding the same, an objection was even taken in the written statement by the petitioners, which was ignored by the respondents at the time of filing their rejoinder. To this effect, relevant questions regarding proof of shops in the possession of the landlords or which were got vacated etc. were put to PW1 Aman Bhatia during his cross-examination concluded on 31.10.2013. Thereafter, in order to overcome the lacuna and destroy the valuable right of defence accrued to the petitioners, an application for amendment of the ejectment petition came to be filed on

18.10.2016, after 03 years and 09 months of commencement of trial as well as availing 36 opportunities to lead evidence, to incorporate the necessary ingredients of Section 13 of the Act. Under these circumstances, by any stretch of imagination, it cannot be said that despite the exercise of due diligence, the respondents-landlords could not raise the said pleadings before the trial commenced, which jurisdictional factor must be satisfied, before an amendment to the pleadings is to be allowed, after the commencement of the trial. This would be in consonance with the proviso appended to Order 6 Rule 17 CPC.

11. The judgment, as relied upon by counsel for the respondents in ***Sukhwinder Singh's case(supra)*** is not applicable to the facts involved in the case in hand, because in the case cited supra, the application for amendment of the ejectment petition was dismissed by the Rent Controller merely on the ground of the application being moved at a belated stage. But in the case in hand, there is nothing on record which satisfies this court that despite due diligence, which was required to be exercised by the respondents-landlords, they could not raise these pleadings before the commencement of trial, when a specific objection has been raised to this effect by the petitioners-tenants in their written statement and the respondents-landlords filed a rejoinder thereto. Moreover, once a valuable defence has accrued to the petitioners, the same cannot be permitted to be negated. Under these circumstances, the impugned order does not satisfy the ratio of law held by the Apex Court in ***Ajendra Prasadji N. Pande's case*** and ***Vidyabai's case (supra)***.

12. This court is of the considered view that if the application for amendment of the ejectment petition seeking to incorporate necessary

ingredients of Section 13 of the Act is to be allowed, the landlord must satisfy the court that despite due diligence, necessary ingredients of Section 13 of the Act could not be incorporated earlier in the petition, which is not so in the case in hand. In view of the above, the impugned orders are hereby set aside.

13. Needless to say, anything observed or said by this court is only for the purpose of deciding the instant civil revision petition, which shall have no bearing on the merits of the case.

September 30, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No