

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

C.R. No.6467 of 2015 (O&M)

Date of Decision.09.12.2019

Udham Singh

...Petitioner

Vs

Amrik Singh (D) through LRs and another

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. J.S. Thind, Advocate
for the petitioner.

Ms. Deepali Puri, Advocate
for respondent No.1.

Mr. Jashanpreet Sidhu, Advocate
for respondent No.2.

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JAISHREE THAKUR J.

1. This is a revision petition that has been filed by the petitioner-tenant (hereinafter referred to as the tenant) seeking to challenge the order dated 09.07.2015 whereby the Rent Controller, Amritsar has dismissed the application filed under Order 6 Rule 17 CPC seeking to amend the written statement.

2. In brief, the facts are that an eviction petition was filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 seeking eviction of the sole tenant on the ground of personal necessity. It was averred in the petition that tenancy was oral accompanied with delivery of possession and as per knowledge of the landlords, no rent note was executed by the original landlord at the time of creation of tenancy.

3. Tenant contested the eviction petition and filed written statement wherein a specific denial was made in sub para of para 1 on merits that "it is also incorrect to state that no rent note was executed".

Subsequent to the filing of the written statement, evidence was adduced and the statement of landlord was recorded as AW1.

4. An application under Order 6 Rule 17 CPC was filed wherein the tenant sought to amend the written statement by incorporating the following words:-

“That the rent note is dated 7.9.1998 executed jointly by the respondent and his brother Darshan Singh in favour of the applicant No.2 Smt. Manjit Kaur wife of late Sh. Mukhtar Singh.

5. The application was contested and the Rent Controller dismissed the application on the ground that the tenant by filing the written statement had denied relationship of landlord and tenant, while further pleading that the respondents are not the joint landlords and the petitioner is not the sole tenant and therefore, the proposed amendment would be contrary to the stand of the tenant so taken in the written statement. The trial has already commenced and the case is at the stage of evidence of the tenant.

6. Learned counsel appearing for the tenant submits that the tenant only intends to incorporate the date, month and year of the said rent note about which he was not aware previously. The amendment sought is explanatory in nature and it does not change the defence already taken in the written statement, rather would help the Court in adjudication of the matter. The parameters for allowing amendment in the plaint and written statement are different and the courts ought not to have adopted a rigid approach while dealing with matters of amendment as sought in the written statement.

7. Per contra, learned counsel appearing on behalf of the

respondents supports the order passed by the Rent Controller and prays for dismissal of the revision petition.

8. I have heard learned counsel for the parties and have perused the paper book. The argument of counsel for the tenant that he only intends to incorporate the date, month and year of the rent note about which he was not aware sans substance, as the tenant in his written statement categorically denied the averment made by the landlords that no rent note was executed by stating that “it is also incorrect to state that no rent note was executed”. Meaning thereby, the tenant was well aware that a rent note exists. He only became wiser when the landlord Amrik Singh stepped into witness box as AW1 and in his cross-examination admitted that Manjit Singh and Darshan Singh have jointly executed rent note in favour of applicant No.2 Manjit Kaur and thereafter, moved application for leading secondary evidence on 22.05.2014 in order to fill up the lacuna, which has been dismissed by the Rent Controller on 02.03.2015. The application for amendment is dated 19.03.2015 i.e. after dismissal of the application for secondary evidence and therefore, it is nothing but an attempt to do what he could not do straightway by way of secondary evidence.

9. There is no dispute to the settled position of law that principles for dealing with cases of amendment in plaint and written statement are different and the Courts should be liberal in case of amendment sought in the written statement but with a proviso 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 the trial. The expression 'due diligence' is conspicuously absent in the present case. Admittedly, the trial

has commenced and is at the stage of evidence of tenant. If the landlord has taken a contrary stand in the evidence than what he has stated in the pleadings, tenant can always take advantage of the same at the time of arguments and Court can draw an adverse inference.

10. As an upshot of my finding, I do not find any infirmity in the order passed by the Rent Controller. Consequently, the revision petition is dismissed.

(JAISHREE THAKUR)
JUDGE

December 09, 2019

Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No