

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

**CR No. 6481 of 2017 (O&M)
Date of Decision: February 22, 2019**

Ram Baksh Bahri

.....PETITIONER

VERSUS

Tirath Singh

.....RESPONDENT

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Mandeep Singh Sachdev, Advocate
for the petitioner.

Mr. K.S. Dhillon, Advocate
for the respondent.

SURINDER GUPTA, J.(Oral)

Heard.

The respondent/landlord sought ejectment of petitioner from demised premises for his personal bonafide need on the plea as follows:

“The son of the petitioner is returning to India and both petitioner and his son want to start/open mix showroom of utensils which is in the main market in the locality. The showroom can only be open after demolishing the property and reconstructing for which a future plan has been made by the petitioner and his son.”

The need of the respondent was found bonafide and learned Rent Controller allowed the ejectment petition with the observations as follows:

“I tend to agree with the said arguments as raised by the petitioner and it clearly comes into fore that the son

of the petitioner squarely falls within the term dependent as defined under the Act. In view of the facts and circumstances of the present case and evidence brought on record, no material or proof has been placed by the tenant to show that the need of the petitioner is not genuine or bona fide. So, the evidence brought on record clearly proves that the requirement of the landlord is bonafide and genuine and he requires the same for starting business of utensils alongwith his son.”

In appeal, the tenant/petitioner moved an application under Order 41 Rule 27 of Code of Civil Procedure to examine Head Draftsman and Town Planner, Municipal Corporation, Jalandhar to prove the survey plan, notification implemented in Jalandhar w.e.f. 20.07.2011. The application was allowed and permission was granted to the petitioner to lead additional evidence. Consequently, the Rent Controller was directed to decide the case afresh after evaluating the additional evidence as well.

After recording additional evidence, the respondent moved an application to amend his plea in sub para (b) of para 2 of the petition as follows:

“The son of the petitioner is returning to India and both the petitioner and his son want to start business of utensils in the property in dispute.”

Learned Rent Controller allowed the amendment vide order dated 28.08.2017 against which the petitioner has come up in this revision.

Learned counsel for the revision petitioner has argued that amendment has been sought to fill-up lacunae in the plea taken by the respondent seeking ejectment of petitioner from the demised premises. In

case he had exercised due diligence, the plea sought to be added by way of amendment could be taken at the time of filing of ejectment petition. The respondent sought ejectment of all the tenants in the premises with the plea that he wants to demolish and reconstruct the same in order to start his business. He got ejectment order against two tenants and has also got those two shops vacated while his third petition was dismissed against which the appeal filed by the respondent is pending. The amendment allowed by the Rent Controller has changed the nature of plea taken by the respondent and after conclusion of evidence of respondent and remand of the case by the appellate authority, this amendment could not be allowed. In support of his contentions, he has relied on the observations in the cases of ***Pargat Singh Vs. Baljit Singh and others, 2015 (3) R.C.R. (Civil) 888, Kali Ram Diwan Chand, Commission Agent Vs. Ambala Foods Private Ltd. and another, 2011 (52) R.C.R. (Civil) 378, Ajendra Prasad Ji N.Pande and another Vs. Swami Keshavprakeshdasji N and others, 2007 (1) R.C.R. (Civil) 481.***

A short question which arises for consideration in this revision is as to whether the amendment allowed by the Rent Controller amounts to materially change the nature of plea already taken or it results in filling up lacunae as argued by learned counsel for the petitioner .

The respondent has sought ejectment of the petitioner from the demised premises on the ground of his personal bona fide. While elucidating his need, he has pleaded that he intends to open a showroom after demolishing and reconstructing the premises for which a future plan has been prepared by him and his son. The respondent led the evidence that as per the Government notification promulgated in Jalandhar, the building

Keeping in view the factum of notification, the respondent came up with the plea that he wants to start business in the demised premises by leaving the remaining part of his plea that the business is to be started after demolishing and reconstructing the building. The need to change the plea had occurred when respondent had opportunity to know and realise that he cannot demolish the building or reconstruct it for starting his business. The mere fact that the landlord intends to demolish the building and wants to start his business after reconstructing the same or that he wants to start business in the old building itself does not amount to change the plea of personal bonafide need as projected by the respondent/landlord. The arguments of learned counsel for the petitioner in this regard, as such, has no merits.

Learned counsel for the petitioner has further argued that the petitioner has already got vacated two shops and appeal with regard to his third petition is pending before the Appellate Court. These facts in no manner effect the order of Rent Controller allowing amendment of pleading. The effect of vacations of two shops is not a subject matter to be commented upon in this petition as it will prejudice the interest of parties in main petition. This fact can be seen and evaluated by the Rent Controller at appropriate stage.

Amendment of pleading can be allowed at any stage and even after the start of recording of evidence. The respondent in this case has shown due diligence to seek the amendment immediately after being apprised of the fact that there is a notification barring him from demolishing and reconstructing the building, as such, it cannot be said that he had not

learned counsel for the petitioner are of no help to advance his arguments.

As a sequel of above my discussions, I find no merits in this petition. The same is dismissed.

Keeping in view the fact that the ejectment petition is pending for the last about 8 years, the Rent Controller is directed to dispose of the same at the earliest preferably within a period of 6 months after receipt of copy of this order.

(SURINDER GUPTA)
JUDGE

February 22, 2019
Jyoti-II

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No