

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

CR No. 701 of 2018 (O&M)

Date of decision: December 5, 2019

Dr. Sudarshan Kumar Aggarwal

...Petitioner

Versus

Smt. Seema and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Mr. Akhilesh Vyas, Advocate,
for respondent No.1.

JAISHREE THAKUR, J.

1. Challenge in the instant revision filed under Article 227 of the Constitution of India is to the order dated 31.1.2018, whereby the application filed by the petitioner herein under Order 6 Rule 17 of the Code of Civil Procedure seeking amendment of the written statement has been dismissed by the Rent Controller, Amritsar.

2. In brief, the facts are that the respondent No.1 herein filed a petition under Section 13 of the East Punjab Rent Restriction Act, 1949 for eviction of the petitioner and respondent No.2 from the property as described in the head note, inter-alia, on the grounds of non-payment of rent and that the premises is required for her own use and occupation. In

response to the notice, the petitioner appeared and filed a written statement, inter-alia taking preliminary objections that the petition is bad for mis-joinder and non-joinder of necessary parties.

3. During the pendency of the eviction petition, the petitioner herein moved an application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure seeking to amend the written statement by incorporating para No. 6 (ii) in the following terms:-

“It is necessary to point out here that the applicant has concealed the material facts from this Hon'ble Court. In fact applicant and her husband Rakesh Maini are in possession of one shop which was earlier under the tenancy of Sh. Rupesh Mahendru as tenant and the said shop has been kept locked by applicant and her husband Rakesh Maini and it is not being used for any purpose and the said shop is lying vacant with the applicant and her husband. It is further pointed out that as the husband of the applicant is doing government service and the applicant always remained house-hold lady and have never done any business during her lifetime and as such the said shop detailed above is not being used by the applicant for any purpose and rather applicant and her husband are looking after to let out that shop. Thus keeping in view the circumstances detailed above the applicant does not fulfill the ingredient of alleged ground of bonafide need.”

4. The Rent Controller dismissed the application, while observing that the application for amendment of the written statement was filed when the case was fixed for petitioner's evidence and that the facts were within the knowledge of the petitioner before commencement of the trial.

order passed by the Rent Controller is not sustainable in the eyes of law as the amendment of pleadings can be allowed at any stage of the proceedings as long as the amendment sought to be incorporated does not cause any prejudice to the other party. It is submitted that the petitioner would not tender any additional evidence in support of the facts sought to be incorporated by way of amendment. It is further submitted that the Rent Controller has wrongly observed that the facts sought to be incorporated were already in the knowledge of the petitioner. In fact, the the petitioner came to know about these facts during the cross-examination of the witnesses, namely RW1 Amit Mahajan and RW3 Neeraj Vaid.

6. I have heard learned counsel for the petitioner and perused the impugned order.

7. 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.”

8. 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 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. In **Usha Balashaheb Swami & others V. Kiran Appaso Swami & Others, 2007 (2) RCR (Civil) 830**, the Hon'ble Supreme Court held that by way of amendment, admission made in pleadings and particularly in the plaint cannot be sought to be omitted or got rid of. The Court further observed that a prayer for amendment of the plaint stand on different footing. The relevant observations of the Court are set out as under:-

“19...a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

20. Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as a question of prejudice would be far less in the former than in the latter case....”

The above judgment was relied upon by the Hon'ble Supreme Court in the case of **Revajeetu Builders & Developers Versus Narayanaswamy & Sons & others R.C.R. (Civil) 27.**

9. In the instant case, no doubt the trial has commenced and the evidence is being led by the petitioner. The amendments, which the petitioner has sought to incorporate are that respondent/landlord and her husband are in possession of one shop, which was earlier under the tenancy of Sh. Rupesh Mahindru and the said shop has been kept locked by the respondent/landlord and her husband and is not being used for any purpose. It is further sought to incorporate that the husband of the respondent/landlord is doing government service and the respondent/landlord always remained a household lady and had never done any business during her life time. 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 amendment being sought are a matter of facts and would help the court to come to a just conclusion. Moreover, the trial is still underway and no prejudice would be caused to the respondent/landlord in case amendment as sought is allowed. The petitioner has already submitted that he would not tender any additional evidence in support of the facts mentioned in the application for amendment.

10. Consequently, the revision petition is allowed, the impugned order is set aside and the application for amendment filed by the petitioner is allowed, subject to payment of ₹5,000/- as costs, to be paid to the respondent/landlord. Needless to mention that the petitioner would not tender any additional evidence in support of the facts sought to be incorporated by way of amendment.

December 5, 2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No