

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

**CR No.7193-2017 (O&M)
Date of Decision:26.08.2019**

Amit Kumar.

....Petitioner(s)

Versus

Smt.Savitri Devi and another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr.Dhruv Walia for Mr. Munish Gupta, Advocate for
petitioner-tenant.
Mr. Lokesh Sharma, Advocate for the respondent No.1.

JAISHREE THAKUR, J.(ORAL)

1. This is the revision petition that has been filed under Article 227 of the Constitution of India praying for setting aside the order dated 04.10.2017 vide which the application for amendment of the written statement filed by the petitioner stands declined.

2. In brief, the facts of the case are that the respondent herein filed an eviction petition against the petitioner under Section 13 of the Haryana Urban Control of Rent and Eviction Act, 1973 seeking ejectment of the tenant/ petitioner on the grounds of non-payment of rent, grounds of personal necessity of her son and for sub letting the shop by the petitioner to respondent No.2. The petition was contested by way of filing the reply to the eviction petition and thereafter, the case was adjourned to 16.09.2014 for filing of the replication and framing of issues.

3. However, since the replication was not filed, the learned Rent Conroller, Narnaul framed issues and adjourned the matter for evidence.

During the pendency of the proceedings, the landlady sought permission to file replication which application was allowed and ultimately challenged by the tenant before this High Court by filing CR No.3211 of 2016 and the same was dismissed by an order dated 25.05.2016. Thereafter, the petitioner preferred an application under Order 6 Rule 17 CPC seeking to amend the written statement and insert para No.3 therein. In the application it was contended that it has come to the knowledge of the petitioner that the landlady had sought ejectment of one Naresh Kumar from the adjoining shop on similar grounds that is the ground of personal necessity of her grandson Pankaj , but the same was withdrawn on her statement that she did not want to pursue the petition.

4. Learned counsel appearing on behalf of the petitioner herein contends that the amendment goes to the root of the case, that is the ‘bonafide necessity’ of the landlady and therefore, the amendment application ought to have been allowed. It is argued that the ejectment application qua Sh.Naresh Kumar had been withdrawn on account of the fact that there was an enhancement of rent and, therefore, the present ejectment of the petitioner is not for personal necessity, but only to arm twist the petitioner herein to increase the Rent. It is submitted that the petitioner became aware of the fact after the written statement had been filed and therefore could not be pleaded earlier.

5. *Per contra* learned counsel appearing on behalf of the respondent landlady submits that there is no infirmity in the orders so passed. It is submitted that the petitioner herein has already taken a similar plea qua one tenant namely Kanwar Singh in his written statement. It is also argued that the amendment sought is only to delay the proceedings

before the Rent Controller.

6. I have heard the learned counsel for the parties and perused the orders so passed on the application under Order 6 Rule 17 CPC.

7. Order 6 Rule 17 CPC provides for the procedure to amend pleadings, be it a plaint or a written statement. For an amendment to be allowed, the party seeking amendment has to establish that despite his due diligence he could not take up the pleas at the relevant time and could not move an application for amendment earlier.

8. The Rent Controller dismissed the application by stating that the plea can be taken up by the petitioner when he is to lead his evidence, ignoring the fact that in the absence of pleadings, either in the plaint or written statement, a party would not be able to lead evidence. It is settled law that the parties can lead evidence limited to their pleadings and parties while leading evidence cannot travel beyond pleadings. If the parties are allowed to lead evidence beyond pleadings, then the sacrosanctity of pleadings comes to an end and the entire purpose of filing pleadings also stand defeated. It also cannot be lost sight of, that the amendment sought to be pleaded is of an occurrence that took place subsequent to the written statement that was filed in 2014. It is always open to a party to plead subsequent event should it be necessary to do so. Even otherwise the amendment sought goes to the very root of the case i.e. whether the premises is genuinely required by the landlady, in the wake of the fact that she has withdrawn two eviction petitions. The petitioner has already taken a similar plea in the written statement and therefore if the amendment is allowed it would not effect the nature of the defence, but would only further supplement the stand already taken.

9. The argument as raised by the counsel for the respondent that the amendment should not be allowed as the evidence of the parties has commenced, would have some bearing if the evidence of the parties had concluded, which is not so. A perusal of the impugned order itself reflects that the evidence of the landlady has not been concluded. The delay in concluding the trial cannot be attributed to the petitioner, as the landlady herself delayed proceedings by choosing to file replication after eight months of issues being framed and witnesses summoned. The evidence is at a nascent stage and no prejudice would be caused to the respondent which cannot be compensated in terms of costs. In **Revajeetu Builders & Developers vs Narayanaswamy & Sons & others 2010 (1) RCR (Civil) 27** it has been held that amendment *“The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money”* while also concluding that *“We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”*

10. Consequently, after hearing both the parties this court deems it appropriate to allow the application for amendment by giving the petitioner herein one opportunity to file his amended written statement subject to payment of costs of Rs.5000/- to the respondent landlady who in turn will be allowed to file replication thereto. Any observations made are only for the purpose of deciding the application for amendment and do not have bearing on the case, which is to be decided on its own merits.

11. Since the ejectment application is of the 2013 and the matter has been stayed in this Court since 2017, let an endeavour be made by the learned Rent Controller to conclude the proceedings as expeditiously as possible, preferably within a period of 09 months on receipt of certified copy of this order.

12. Parties are directed to appear before the learned Rent Controller on 27.09.2019.

(JAISHREE THAKUR)
JUDGE

26.08.2019
raman

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No