

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

CR no.618 of 2019

Date of Decision: 30.01.2019

Sandeep Singh Pannu @ Sunny

...Petitioner

Vs.

Dr. G.L. Goyal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Divanshu Jain, Advocate, for the petitioner.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the order of the Rent Controller, Chandigarh, dated 20.12.2018, by which the application filed by the petitioner under Order 6 Rule 17 CPC for amendment of his written statement has been dismissed.

Vide the said amendment the petitioner, i.e. respondent no.2 before the Rent Controller, had sought to plead that the respondent-landlord (petitioner before the Rent Controller) had concealed the factum of his having occupied one room and top floor of the house in question, (i.e. of which the demised premises are part being the ground floor of that house).

The reasoning given by the learned Rent Controller is that firstly, the petitioner herein has denied the relationship of landlord and tenant between the parties and further, since the respondent-landlord in his petition before that Court had only claimed eviction of the ground floor of the house and there was nothing in the application of the present petitioner

(respondent no.2 before that court) that the amendment was in respect of any subsequent events, the application had only been filed to delay the proceedings.

Learned counsel first points to the cross-examination of the respondent-landlord as PW-1 (copy Annexure P-7) as follows:-

“...I have completed all the three storey of the house in 2010. I do not know when the ground floor was completed and same is in my answer regarding the first and second floor...”

xxx xxx xxx

...At present only first floor is on rent and second floor is lying vacant. The second floor is lying vacant for the last one year. I do not remember the date, month and year from when second floor was got vacated from the previous tenant...

xxx xxx xxx

...I have let out the premises/portion i.e. two bedroom attached bathrooms, dining and drawing, kitchen and lobby of house in question on ground floor. Voltd. The remaining portion of ground floor i.e. Front bedroom with attached bathroom was in my possession...

xxx xxx xxx

...It is correct that entire top floor, one room is in my possession...

xxx xxx xxx”

He thereafter points to the averment in the affidavit filed by the respondent-landlord in his petition before the Rent Controller as follows:-

“That except for the House No.170, Sector 33, Chandigarh and Govt. accommodation provided during the service, the petitioner neither has occupied nor vacated any residential building in the urban Area of U.T., Chandigarh after the commencement of the Rent Act.”

He then draws attention to Sections 2(a) and Section 13 (3) (i) (a) (b) (c) of the East Punjab Urban Rent Restriction Act, 1949, which read as follows:-

“2. **Definitions**-In this Act, unless there is anything repugnant in the subject or context:-

(a)"building" means any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, go-downs, out-houses, or furniture let therewith, but does not include a room in a hotel, hostel or boarding-house;”

xxx xxx xxx
13. **Eviction of Tenants**- xxx xxx

(3)(a) (i) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession-

- (i) in the case of a residential building if-
 - (a) he requires it for his own occupation;
 - (b) he is not occupying another residential building, in the urban area concerned; and
 - (c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area.

xxx xxx xxx

He submits that since the declaration to be made by the landlord in his petition is in respect of an entire building, it was incumbent upon him to have given the facts which he has stated in his cross-examination and had not stated in his petition, as also in his affidavit.

Learned counsel for the petitioner lastly points to paragraph 10 of his application filed under Order 6 Rule 17 (copy Annexure P-5), wherein it is stated that the proposed amendment is necessary because the aforesaid admission by the respondent herein was made during his cross-

examination as a witness in the present *lis*.

Thus, the contention is that what is now sought to be impleaded by way of an amendment in the written statement could not have been pleaded earlier and consequently the Rent Controller has wholly erred in dismissing the application.

Having considered the argument, though learned counsel may be correct in his contention that the aforesaid averment could not have been incorporated in the written statement of the petitioner (as respondent no.2) at any prior point of time, he not having knowledge thereof and such knowledge having been only gained after the testimony of the respondent-landlord, however, I still see no reason to allow an application filed under Order 6 Rule 17 of the CPC well after the trial has started, because what the petitioner wishes to bring on record would factually be already on record by way of the cross-examination of the respondent-landlord. The application would therefore seem to be superfluous and one by which the trial would be unnecessarily delayed.

Hence, this petition is dismissed as regards the prayer for allowing the amendment in the written statement, but with a direction issued to the Rent Controller that at the time of final adjudication of the petition before him, the admission made by the respondent-landlord as regards other parts of the property occupied/vacated by him in which the demised property is located, shall be duly taken into consideration to determine whether the respondent herein (landlord) is entitled to the relief claimed by

him or not, including (naturally) in terms of the statutory provisions of the Rent Act of 1949.

It is made absolutely clear that this Court has made no observation whatsoever on the merit of the case for either party, which would be gone into by the Rent Controller wholly on the basis of the evidence led by the parties and the statutory provisions applicable.

30.01.2019

vcgarg

(Amol Rattan Singh)**Judge****Whether speaking/reasoned : Yes****Whether reportable : No**