

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

CR No. 7670 of 2017 (O&M)
Date of decision: March 11, 2019

Inder Mal

...Petitioner

Versus

Ajesh Yadav and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ajay Jain, Advocate,
for the petitioner.

Mr. Kulbhuhan Sharma, Advocate,
for respondent No.1.

Mr. Gulshan Nandwani, Advocate,
for respondent No.2.

JAISHREE THAKUR, J.

1. Aggrieved against the order dated 16.9.2017, whereby the Rent Controller has allowed the application filed by respondent No.1/landlord under Order 6 Rule 17 of the Code of Civil Procedure (for short “**the Code**”), the instant revision has been filed by the petitioner/tenant.

2. In brief, facts are that a petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 came to be filed seeking eviction of the respondents/tenants from a shop situated at Sarai Balbhadar near New Subzi Mandi, Katla Bazar Road, Rewari. In the ejection petition, the grounds of personal necessity set up was described as requiring the shop to set up business for his son. In para 4 (ii) of the

eviction petition, it was mentioned as under:-

“...The son of petitioner namely Himanshu Yadav has completed his education of BBA who is completely dependent upon the petitioner. The petitioner want to settle his son Himanshu Yadav in the shop in dispute in which the son of petitioner will do his business of electrical goods and appliances etc. Since the petitioner himself is doing the wire/cable assembling business under the name and style of 'M/s Rewari Cable' behind shop in dispute. Thus, the son of petitioner has experience of wire/cable and its allied business. The business which has to be started by the son of petitioner in the shop in dispute is ancillary to the business of petitioner himself. Since the son Himanshu Yadav is completely dependent upon the petitioner, therefore, it is the duty of petitioner to settle his said son in the business for earning his own livelihood independently. So, petitioner is in dire, pressing, honest and bonafide need of shop in dispute to settle his said son therein so that his son may start his own business.”

3. It was further mentioned that the petitioner has no other shop or commercial place in the market of Rewari Town/Urban Area to settle his son nor has he ever remained in possession of any other shop in Rewari Town. Thereafter, an application for amendment under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure came to be filed stating therein that inadvertently, it had been mentioned by the petitioner/landlord that his son Himanshu Yadav has completed his education of BBA, whereas, in fact, there was a typographical mistake which crept in and it should have been mentioned that Himanshu Yadav is near completion of his education of BBA. It is further argued that the

amendment sought was clarificatory in nature and would not be inconsistent with the pleadings already set out. It was also argued that no prejudice would be caused to either party and would serve the purpose of law and justice.

4. The application was contested on several grounds, namely, that the landlord had consciously signed the petition and the affidavit in support of the said petition and while also filing his affidavit by way of evidence wherein it had clearly been stated that his son Himanshu Yadav has completed his BBA. The Rent Controller allowed the application by holding that no prejudice would be caused to the tenant in case the amendment is allowed, which is only clarificatory in nature and would not change the basic structure of the petition. Aggrieved against the said amendment, the instant petition has been filed.

5. Mr. Ajay Jain, learned counsel appearing on behalf of the petitioner, vehemently argues that the order of the Rent Controller is not sustainable. It is argued that the amendment has been allowed ignoring the proviso to Rule 17 of Order 6 of the Code wherein by an amendment of Act 22 of 2002, a proviso to the said Rule has been inserted providing 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. It is argued that, in fact, the eviction petition was filed on 9.2.2015 and in support of the petition, an affidavit was filed. Thereafter issues were framed on 1.2.2016 and after availing of several opportunities to lead evidence, the instant application was filed.

6. Per contra, learned counsel appearing on behalf of the respondents, while supporting the order so impugned, submits that the Rent Controller was well within his jurisdiction to allow the amendment, as no prejudice would be caused to either party, the amendment sought being clarificatory in nature and as such no interference is called for setting aside the impugned order. It is further argued that the entire tone and tanor of the petition seeking eviction of the tenants is on the ground that the premises is required for the landlord's son who has completed his education of BBA and to settle him in business and therefore, even if the trial has commenced and his affidavit is on the record, no prejudice would be caused to the petitioner.

7. I have heard learned counsel for the parties and have perused the case law.

8. No doubt, an amendment has been allowed by the Rent Controller, but can the same be allowed in the face of the proviso to Rule 17 of Order 6 of the Code is the question to be answered? A reading of the eviction petition reflects that the landlord is seeking eviction of the tenant from the shop in dispute to set up his son in business, a son who has completed his BBA. A further reading would again reflect that the landlord himself is doing the business of of wire/cable assembling in the name and style of M/s Rewari Cable, behind the shop in dispute and the business which is to be set up is ancillary to the business of the petitioner/landlord himself. It has further been stated that the son is completely dependent upon the landlord and it is his duty to settle his son in the business for earning his livelihood independently and the need is honest and bonafide. By an amendment the only difference would be to the extent that Himanshu Yadav

is “*yet to complete his education*” of BBA. In the opinion of this Court by introduction of the amendment sought would not in any manner change the structure of the petition filed since there is a categoric reference that the son is dependent upon the father/landlord and the business that is sought to be set up is ancillary to the business already being done by the landlord himself.

9. However, the proviso (2) to Rule 17 of Order 6 of the Code is stringent, in so far it clearly mandates 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. In the instant case, after the issues had been framed and evidence by way of affidavit of the respondent herein was filed as Ex. PW4/A, the respondent took several opportunities thereafter to conclude his evidence before moving an application for amendment. The application filed under Order 6 Rule 17 of the Code does not satisfy the conditions as specified in the proviso, to the extent that there is no mention that in spite of due diligence the mistake crept in the petition which could not be detected before the commencement of the trial. The application also does not mention as to when the mistake was detected. If the amendment had been sought prior to the issues framed, the respondent may have been able to argue for amendment. It is deemed that the affidavit in evidence was filed after reading the same. Law in this regard has clearly been settled in **Vidyabai & Ors v. Padmalatha & Anr. (2009) 2 SCC 409**, wherein the Hon'ble Supreme Court held as under:-

“19. It is the primal duty of the court to decide as to whether

such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.”

10. In view of the fact that whether the son of the landlord has completed his BBA or he was near completion of his course, was a fact which was very well known to the personal knowledge of the landlord and as such, the same cannot be allowed to be incorporated by way of amendment at this belated stage of the proceedings, particularly when the trial had already commenced as far back as February, 2016 and thereafter 10 opportunities were afforded to respondent No.1 to conclude his evidence. As such the impugned order passed by the Rent Controller deserves to be set aside.

11. Consequently, the revision petition is allowed, impugned order dated 16.9.2017 passed by the Rent Controller, Rewari is set aside and the application filed by the respondent/landlord for amendment under Order 6 Rule 17 of the Code of Civil Procedure is dismissed.

March 11, 2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No