

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

CR-7854-2017 (O&M)

Date of Decision: August 02, 2019

Vijay Kumar

Appellant

Versus

Sham Lal through LR Karan Sachdeva

Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Amit Dhawan, Advocate
for the petitioner.

Mr. Harit Sharma, Advocate
for the respondent.

JAISHREE THAKUR, J. (Oral)

1 This is the civil revision petition filed under Article 227 of the Constitution of India seeking to quash impugned order dated 25.09.2017 passed by Civil Judge, Jr. Division, Nakodar, District Jalandhar whereby application filed by the respondent under Order 6 Rule 17 C.P.C, has been allowed.

2 In brief the facts are that the respondent filed an eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 seeking ejectment of the shop in dispute on the ground that the petitioner is in arrears of rent along with the plea that he requires the shop for his personal necessity to start a separate business. On receipt of notice of the petition, the petitioner filed his written statement on 25.03.2015 to

which a replication was filed controverting the stand in the written statement. In the examination-in-chief, it was duly affirmed that the shop in dispute is required by the deponent for his personal necessity to start the business for his grandson Karan Sachdeva. Bharat Bhushan, who had been appointed as general attorney by Sham Lal, the landlord, also stepped into the witness box and affirmed by way of an affidavit that the shop in dispute was required by the landlord namely Sham Lal for his personal necessity for setting up the business of his grandson-Karan Sachdeva. Thereafter, Karan Sachdeva, the grand son also stepped into the witness box and affirmed by way of an affidavit that the premises were required for their personal necessity to start the business as the deponent had completed his education. During the pendency of the proceedings before the Rent Controller, Sham Lal-the landlord died leaving behind his Class-I legal heirs. Thereafter Karan Sachdeva moved an application to be impleaded as a party on the basis of a registered Will executed in his favour, which application was allowed. Thereafter an application under Order 6 Rule 17 CPC was filed seeking to amend the eviction application and to incorporate the ground that the applicant-Karan Sachdeva required the premises to start his own business. This application was contested by the petitioner-tenant on the ground that the proposed amendment will change the main controversy between the parties and the nature of the petition. It was contended that the ejectment application had become infructuous after the death of Sham Lal and it was argued that the alleged Will, on the basis of which Karan Sachdeva-the applicant is relying upon is forged and a fabricated document. The Rent Controller on appreciation of the pleadings allowed the

application on the ground that late Sham Lal had stepped into the witness box and had clearly stated that the disputed premises were required for settling his grandson-Karan Sachdeva which fact had been supported by an affidavit tendered by Bharat Bhushan.

3. Learned counsel appearing on behalf of the petitioner-tenant argues that late Sh. Sham Lal had preferred ejectment petition on the ground of his own personal necessity to start a personal business and he has filed his detailed affidavit on 01.09.2015, which have gone beyond the pleadings to claim that the shop is required to personal necessity to start the business for his grandson. The affidavit filed by Bharat Bhushan-AW2 and Karan Sachdeva-AW3 were also beyond the pleadings and therefore, the same could not be taken into account. It is argued that the newly added legal heir cannot be allowed to create a new ground for his own personal necessity, when it was not a case as set out in the case of ejectment petition. At best the respondent can file a separate eviction petition on the ground of personal necessity, but cannot seek amendment as prayed by him. Learned counsel for the petitioner relies upon the judgment rendered in ***Raj Kumar Vij v. Hem Raj Singla, 2008 (1) RCR (Civil)44*** to contend that when a landlady is seeking eviction of a tenant on the basis of personal requirement and that need of a family member is not pleaded, in the event of her death, the legal heirs would not be entitled to evict the tenant and therefore, amendment ought not to have been allowed. It is further contended that the need of the landlord is to be seen on the date of filing of suit and the subsequent events have no effect on the rights of ejectment.

4. Per contra, learned counsel for the respondent contends that

late Sh. Sham Lal had filed a petition for eviction on the ground of personal necessity and even in his cross-examination, he had affirmed that he required the premises for setting up the business of his grandson-Karan Sachdeva.

5. I have heard learned counsel for the parties and with their assistant have gone through the pleadings of the case. Admittedly an eviction petition was filed by late Sh. Sham Lal on the ground that the tenant was in arrears of rent and that the shop in dispute was required for his own personal necessity to start a separate business. The issues were framed and thereafter later Sh. Sham Lal in his affidavit filed in the examination-in-chief specifically stated that the shop in dispute is required for his personal necessity *“to start separate business for settling his grandson- Karan Sachdeva.”* A similar affirmation was made by Bharat Bhushan who had been appointed as a general attorney of Sham Lal. Even Karan Sachdeva, the legal heir had stepped into the witness box and affirmed that the petitioner and the deponent required their shop for the personal necessity to start business. Karan Sachdeva was impleaded as a legal heir of Sham Lal (who died during the pendency of proceedings before the Rent Controller), on the basis of a registered Will in his favour dated 17.07.2013 to the exclusion of all others and it is thereafter that he moved an application for amendment to take up the plea that the shop in dispute was required for his own personal necessity.

6. Order 6 Rule 17 CPC pertains to the procedure for amendment of a petition. Before an amendment can be allowed, the Court should satisfy itself whether such amendment is necessary for the determination of a real

question in controversy and if that condition is not satisfied, the Courts should be lothe to allow the said amendment. The Supreme Court in a judgment rendered in ***Revajeetu Builders & Developers vs. Narayanswamy & Sons, 2010 (1) RCR (Civil) 27 inter-alia*** culled out several principles to be taken into consideration while allowing or rejecting the application for amendment and one of them being that the amendment should not cause prejudice to the other side which cannot be compensated in terms of money; whether the application for amendment is bona-fide or mala-fide; whether the proposed amendment constitutionally or fundamentally changing the nature and the character of the case, and while deciding the application for amendment the Court must not refuse bona-fide legitimate, honest and necessary amendments and should reject mala-fide, dishonest averments while holding that cost should be imposed for the delay and the inconvenience caused.

7. In the instant case, Karan Sachdeva was allowed to be impleaded as a party after his grandfather Sham Lal expired. He was impleaded on the basis of a registered valid Will and immediately thereafter he preferred an application seeking to add the ground that the premises were required for his own personal necessity. It is true that the original eviction petition filed by Sham Lal only mention that the premises were required for himself to set up a separate business and there is no mention that the premises were required for his grandson. This fact finds mention in the examination-in-chief of late Sh. Sham Lal, Sh. Bharat Bhushan and Karan Sachdeva, the applicant himself. Since Karan Sachdeva has stepped into the shoes of his grandfather on the basis of a registered Will, the amendment

sought for could be permitted as it would not change the nature of the eviction petition; the same had been filed for personal necessity. The argument raised by learned counsel for the petitioner that there was no mention of eviction being sought for the grandson loses significance as there is a statement to the effect by late Sh. Sham Lal that he needs the premises for his grandson. The respondent is not setting up a new case as has been argued by learned counsel for the petitioner and in case the amendment is allowed, no prejudice would be caused to the petitioner herein.

8. The Supreme Court in ***Shakuntala Bai and Ors v. Narayan Das & Ors. 2004(1) R.C.R.(Rent) 580 : AIR 2004 Supreme Court 3484*** held that the bona-fide need of the landlord has to be examined as on the date of institution of proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate. Again the Supreme Court in ***Kamleshwar Prasad v. Pradumanju Agarwal (Dead) by LR.s 1997(1) R.C.R (Rent) 591 : (1997) 4 S.C.C. 413*** held, "*The crucial date for existence of landlord's requirement is the date of filing of eviction application. Even if the landlord died during the pendency of the writ petition in the High Court the bona-fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other elder son.*"

9. As far as the judgment relied upon by the learned counsel for the petitioner is concerned, in the case of **Raj Kumar Vij (Supra)**, the same is distinguishable and not be applicable to the case in hand. The facts

therein were that Smt. Shanti Devi landlord of the premises, for whom premises was sought, died during the pendency of the proceedings. It was held in that case that legal heirs of Shanti Devi had settled at Chandigarh and Ludhiana and had not shown any intention to shift to Sirhind. It was in this background, it was held that with her death, her need extinguished as she had set up a case for her need and not for the need of other family members. Whereas in the case in hand there is specific statement in evidence that the need is for the use of the grandson though not pleaded in the eviction sought. Since a legal heir is allowed to defend the estate as held in *Shakuntala Bai and Ors v. Narayan Das & Ors.* subsequent event can also to be taken as consideration.

10. Therefore, in case the amendment is allowed no prejudice will be caused to the petitioner since the eviction petition had been filed on the grounds of personal necessity. If amendment is not permitted, it will only multiply litigation as the legal heir who steps into the shoes of the landlord would also have a right to seek eviction.

11. Finding no infirmity, the revision petition stands dismissed.

August 02, 2019

seema

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No