

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

**Civil Revision No. 8195 of 2017 (O&M)
Date of decision: 02.08.2019**

Sukhdev Singh

...Petitioner

Versus

Dharampal Gupta

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. A.S. Narang, Advocate,
for the petitioner.

Mr. Naresh Kumar, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. The petitioner herein seeks to challenge the order dated 28.09.2017 passed by the Rent Controller, Chandigarh whereby the second application for amendment of the eviction petition filed by the respondent/landlord, has been allowed. By virtue of the said amendment, mandatory ingredients, which are necessary to be pleaded under Section 13(3)(a)(i)(b) & (c) of East Punjab Rent Restriction Act, 1949 (hereinafter referred to as 'the Act') as extended to Chandigarh were sought to be incorporated in the eviction petition filed.

2. In brief, the facts are that the respondent/ landlord (henceforth called the respondent), claiming himself to be the owner of Booth No. 62, Sector 8-B, Chandigarh, filed a petition under Section 13 of the Act for eviction of

the petitioner/ tenant (henceforth called the petitioner) from the demised premises. However as the respondent failed to plead the necessary ingredients as required under clauses (b) & (c) of Section 13(3)(a)(ii) of the Act, the petitioner contested the aforesaid petition and in the written statement filed, raised an objection that the basic ingredients of Section 13 of the Act have not been fulfilled. Thereafter issues were framed, evidence was led and when the case was fixed for rebuttal evidence and arguments, the respondent filed the first application under Order 6 Rule 17 of the Code of Civil Procedure, seeking amendment of the eviction petition. The said application was allowed by the Rent Controller vide order dated 06.08.2016, which was challenged by the petitioner by filing Civil Revision No. 5797 of 2016. The Civil Revision was decided on 02.05.2017 whereby the order dated 06.08.2016 passed by the Rent Controller was set aside and liberty was also granted to the respondent to file appropriate application before the Rent Controller. The Rent Controller was directed to decide the application under Order 6 Rule 17 CPC afresh keeping in view the material available on the record. Pursuant to the aforesaid order, the respondent filed second application seeking amendment of para 10 of the Eviction Petition. The Rent Controller vide order dated 28.09.2017 allowed the second amendment application. Aggrieved against the said order, the instant revision petition has been filed.

3. Mr. A.S. Narang, learned counsel appearing on behalf of the petitioner contends that the Rent Controller by allowing the amendment has permitted the respondent to cover up the lacunas in the case, as certain

admissions that have been made during the cross-examination are now sought to be withdrawn. It is contended that in the original para 10 of the rent petition, which is now sought to be amended, it had been pleaded that the premises in question were required by him / his brothers / his family members, however, during cross-examination it has come on record that his brothers are in occupation of commercial property in Sector 17, Chandigarh which fact was well within his knowledge. It is also argued that the Rent Controller despite taking note of the fact that amendment could only be allowed if the applicant was able to prove that despite due diligence certain facts were not in his knowledge, no finding has been given thereon. It is further contended that the lacunas are sought to be covered by way of amendment after cross-examination had commenced and the Rent Controller had closed rebuttal evidence of the landlord and by this amendment sought the entire case would be reopened.

4. Per contra, Mr. Naresh Kumar, learned counsel appearing on behalf of the respondent urges that the Courts are liberal in allowing amendment even at a belated stage. It is argued that unless and until the amendment is allowed in para 10 as sought to be incorporated, the Courts below would not be able to properly adjudicate the matter.

5. I have heard learned counsel for the parties and with their able assistance have gone through the pleadings of the case.

6. A perusal of the pleadings would reflect that a petition had been filed under Section 13 of the Act as applicable to the U.T. Chandigarh for eviction of Booth No. 62, Sector 8-B, U.T., Chandigarh. In the petition, it

had been pleaded that the respondent had been assisting his brothers in Booth No. 25, Sector 8-B, Chandigarh and on account of order of their eviction from the said booth, the demised premises are required by the respondent and his family members for running and establishing his own business from the said booth. Para 10 of the eviction petition is reproduced as under :-

“10. That the petitioner had been assisting his brother in the aforesaid booth No. 25, Sector 8-B, Chandigarh and on account of the order of eviction as mentioned above passed by the Learned Rent Controller, Sh. Gurpartap Singh, the demised premises are required by the present petitioner/his brother/family members for their use and occupation and for running and establishing his own business in the said Booth. It is well settled that the landlord is the best judge of his needs and the booth in question is required by the petitioner with immediate effect.”

7. A written statement was filed in which a preliminary objection No.4 was taken, wherein it had been stated that petition does not fulfill the basic ingredients of Section 13 of East Punjab Urban Rent Restriction Act and the petition deserves to be dismissed on that ground alone to which no replication was filed. Evidence of the respondent landlord was adduced on 25.11.2013 reiterating the contents of the eviction petition verbatim and subsequent thereto an application for amendment of para 10 of the petition was sought by way of an application dated 17.12.2015 which was contested by the petitioner-tenant, which amendment was allowed and subsequently challenged in the High Court by way of filing Civil Revision No. 5797 of

2016 titled as 'Sukhdev Singh vs. Dharampal Gupta. The High Court by its decision dated 02.05.2017 remanded the matter back to the Rent Controller to re-decide the application under Order 6 Rule 17 CPC, which has subsequently been allowed. The issues were framed on 23.08.2013 and evidence was led. The petitioner herein during the course of cross-examination was able to elicit that the petitioner and his brothers were in possession of other properties, namely, an industrial plot and shed situated in Industrial Area, Phase-II, Chandigarh and a shop in Sector 17, Chandigarh which were in occupation of his brother and it is after the said cross-examination that the proposed amendment was sought stating that the respondent is having 14.03% shares in M/s Deepak Radios Pvt. Ltd. but the same was not in his physical possession and was in occupation of his brothers and further that he was holding a GPA in respect of Industrial Plot No. 604, Industrial Area, Phase-II Chandigarh, which was in his occupation but could not be used. The amendment sought in para 10 is reproduced as Under: -

“That the petitioner had been assisting his brother in the aforesaid booth No. 25, Sector 8-B, Chandigarh and on account of the order of eviction as mentioned above passed by the Learned Rent Controller, Sh. Gurpartap Singh, the demised premises are required by the present petitioner for his use and occupation and for running and establishing his own business in the said Booth. It is well settled that the landlord is the best judge of his needs and the booth in question is required by the petitioner with immediate effect. It is further submitted that the petitioner is neither occupying another

commercial property for running his business of trading in urban area of Chandigarh nor the petitioner has vacated any such property in the urban area of Chandigarh after enforcement of the East Punjab Urban Rent Restriction Act and as such he has no option but to get demised property vacated through present petition. Further the petitioner is having 14.3% shares in M/s Deepak Radios Private Limited, but the premises occupied by M/s Deepak Radios Private Limited is not in physical possession of the petitioner, but the same is in occupation of his brothers namely Sri Jagan Nath Gupta and Ashok Kumar Gupta its Directors and further the petitioner is holding GPA in respect of Industrial Plot No. 604, Industrial Area, Phase II, Chandigarh which is allotted for candle manufacturing and is in occupation of the petitioner and same is being used for keeping the tools and equipments of the petitioner. It cannot be used for trading of electrical and electronics which are to be traded by the petitioner in the shop in question under occupation of the respondent. The shop in question is sufficient and suitable for the said personal use and occupation of the petitioner.”

8. 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. In ***Ajendra Prasadji N. Pande v. Swami Keshyprakeshdasji N., 2007 (1) RCR (Civil) 481***, the Supreme Court had allowed the amendment with a caveat :

“A prayer for amendment of pleadings made after the commencement of a trial, shall ordinarily be declined. Where, however, the applicant establishes that despite the exercise of due diligence, he could not raise the pleadings sought to be pleaded by way of amendment, before the commencement of a trial, a court would be justified in allowing such an amendment. The power, therefore, to allow amendment of pleadings, even after the commencement of the trial, subsists, but with a caveat that the party praying for amendment must establish that despite the exercise of due diligence, the pleadings sought to be pleaded by way of an amendment could not be raised before the trial commenced. A court, therefore, may where it is of the opinion that the amendment is necessary for the purpose of determining the real controversy and if the applicant satisfies the court that despite the exercise of due diligence, he could not raise the pleadings before the trial commenced, allow such a prayer, even after the commencement of the trial.”

9. In the present case, a written statement had been filed taking up the plea of maintainability of the eviction petition on the ground that ingredients as specified under Section 13 of the Act had not been fulfilled. No replication was filed thereto. The respondent was aware of the said objection as raised in the year 2013, adduced his evidence by way of affidavit without stating any of the ingredients as specified under Section 13 of the Act. It is only after cross-examination was conducted and the petitioner tenant had been able to elicit that the landlord was in possession of other accommodation and his brothers were already running a business in the name and style of 'Deepak Radios Pvt. Ltd.' that the amendment was

sought. A valuable admission has been made in the cross examination in favour of the petitioner, which cannot be taken away by allowing the amendment to the eviction petition.

10. Even otherwise, the amendment that has been allowed ignores the amendment of Act No. 22 of 2002 which has introduced a proviso to Order 6 Rule 17 CPC, 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 the trial. The application under Order 6 Rule 17 CPC does not aver as to when the mistake was detected in the pleadings. Evidence was adduced by the respondent by way of his affidavit affirming the contents of the eviction petition filed in 2012 and it is only after the issues had been framed and cross-examination concluded that an application was preferred, which ought not to have been entertained at that belated stage. By way of the amendment, the respondent landlord is seeking to cover up all lacunas in the eviction petition. The application as filed does appear to be bonafide. It cannot be said that the petitioner herein was not aware that he was a share to the extent of 14.3% in the building Deepak Radios or that he had the GPA to an Industrial Plot in Union Territory Chandigarh which was in his possession. These facts as sought to be introduced were well within his knowledge at the time of filing the eviction petition and adducing evidence. The 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. Consequently, the revision petition is allowed, impugned order dated 28.09.2017 passed by the Rent Controller, Chandigarh 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.

02.08.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes.

Whether reportable

No.