

VIKAS CHANDER
2019.01.31 17:23

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

CR no.675 of 2019

Date of Decision: 30.01.2019

Sohan Lal

...Petitioner

Vs.

Ashwani Kumar and another

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Vishal Sharma (Vasudeva), Advocate,
for the petitioner.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the order dated 16.01.2019 passed by the Additional Civil Judge (Sr. Divn.)-cum-Rent Controller, Garshankar, by which his application filed under Order 6 Rule 17 CPC, seeking amendment of his written statement, has been dismissed on the ground that such amendment was sought to be made after the 1st respondent herein (petitioner before the Rent Controller) had faced cross-examination, with the amendment sought by the present petitioner (respondent no.2 before that court), being to the effect that he wishes to deny the ownership of the landlord (respondent herein) over the demises premises, on the ground that in his cross-examination, the said respondent (petitioner before the Rent Controller), had admitted that he had become owner of the demised premises on the basis of a will executed by one Nohria Ram, (with the learned counsel for the petitioner submitting that he was the grand-father of the said respondent).

He also relies upon a judgment of a coordinate Bench of this Court in Varinder Kaur Garcha and others v. Arvinder Pal Singh Sibia and others, 2017(1) PLR 85, to submit that when defendants are still to lead evidence, the amendment of a written statement is permissible.

He further relies upon a judgment of the Supreme Court in Baldev Singh and others v. Manohar Singh and another, 2006(3) RCR (Civil) 844, in which, after referring to earlier judgments on the issue, the amendment sought by the defendant in that *lis* had been allowed, thereby setting aside the order of this Court disallowing such amendment.

However, it is to be firstly noticed here that in that case, though their Lordships had given detailed reasoning as to when an amendment could be allowed, as regards the proviso to Rule 17 of Order 6 (inserted vide an amendment w.e.f. 01.07.2000), it was specifically noticed at the end of the judgment that the trial in that case had still to commence.

In the present case, admittedly, the trial is well in progress.

Other than that, upon query to learned counsel, he submits that his contention to the effect that the respondent is not the owner of the demised premises, is on the basis of the aforesaid admission to the effect that he had become such owner by virtue of the will executed by Nohria Ram, (with that will already on record as Ex.P-3 before the Rent Controller, with the 1st respondent herein not having been shown to be the sole owner of the demised premises, as per learned counsel).

Having considered the aforesaid argument, what is primarily noticed by this Court is that the petitioner wishes to add an averment

denying the ownership/sole ownership of the respondent over the demised premises, on the basis of the statement made by him in his cross-examination, as also on the basis of the will duly exhibited before the Rent Controller.

Keeping in view the fact that the said facts are already on record, I see no reason for the petitioner to now seek an amendment of the written statement well after the trial has started, when the trial court naturally would be bound to look into the averments made in the petition seeking ejectment of the petitioner, in the light of the testimony of the respondent, as also the will of Nohria Ram, even to determine his *locus* to file the petition.

Consequently, while dismissing this petition as regards the amendment sought to be made, the trial court is directed that at the time of adjudication of the petition before it, it would, naturally, duly take into consideration the evidence before it including the aforesaid admission of the respondent in his cross-examination (if it is so made), as also the will which is stated to have been duly exhibited before that court, to determine both, the *locus standi* of respondent no.1 as an owner or landlord of the demised premises, as also in the context of the merits of the case of parties on both sides.

30.01.2019

vcgarg

(Amol Rattan Singh)

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No