

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

CR No.688 of 2019 (O&M)

Date of Decision: September 17, 2019

Kishan Lal @ Krishan Lal

...Petitioner

Versus

Ajaib Singh

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ankur Ghai, Advocate
for the petitioner-tenant.

Mr. M.S. Dalal, Advocate
for the respondent-landlord.

JAISHREE THAKUR, J. (Oral)

1. This is a civil revision that has been filed under Article 227 of the Constitution of India for setting aside the order dated 02.01.2019 passed by the Rent Controller, Ludhiana whereby, the application of the petitioner-tenant for amendment of the written statement has been dismissed.

2. In brief, the facts are that the respondent-landlord herein preferred an eviction petition against the petitioner-tenant on the grounds of personal necessity and arrears of rent. The eviction petition was contested by the petitioner-tenant by filing his written statement. Thereafter, issues were framed and evidence was led by the respondent-landlord and the matter was listed for the evidence of the petitioner-tenant herein. When the case was fixed for cross-examination of the petitioner-tenant's witnesses, an

application had been filed under Order 6 Rule 17 CPC seeking permission to amend the written statement, so as to take additional pleas of the subsequent events, which application after contest was dismissed.

3. Learned counsel appearing on behalf of the petitioner-tenant would contend that it is imperative that the petitioner-tenant be allowed to amend the written statement, so that he can plead the subsequent events, which came into effect after filing of the written statement. It is contended that in fact, the respondent-landlord had pleaded insufficient accommodation and that is why eviction was being sought, however, during the pendency of the proceedings before the Rent Controller, the respondent-landlord had raised massive construction, besides an additional floor and, therefore, he needs to plead the said events and without the amendment in the written statement, he would not be able to lead any evidence in that regard. In support of his arguments, learned counsel places reliance upon judgments rendered in *Mohd. Ismail vs. Dinkar Vinayakrao Dorlikar, 2009(4) RCR (Civil) 890, Surjit Kaur and others vs. Shanti Devi, 2011(1) RCR (Civil) 131, Rekha Wadhwa and another vs. Pushpa Ahuja and another, 2011(2) RCR (Rent) 207* and *Gama vs. Shaukat Ali Khan, 2015 (1) RCR (Civil) 867*.

4. On the other hand, learned counsel appearing on behalf of the respondent-landlord vehemently opposes the amendment by stating that the respondent-landlord has specifically pleaded that he needed the said shop in dispute in order to expand his business and it is not for the petitioner-tenant to urge that he has sufficient accommodation.

5. I have heard learned counsel for the parties and have gone

through the case file.

6. 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.

7. The Rent Controller dismissed the application while observing that the respondent-landlord sought ejectment of the petitioner-tenant from the shop in question on the ground that he bonafidely required the shop in question, adjoining to his office, to expand his office. The respondent-landlord specifically pleaded that he wants to expand his office by merging the shop in question with his office. It was also observed that when the bonafide requirement of the respondent-landlord is specific qua the shop in question then the construction raised by the respondent-landlord over the entire building has no relevance to the facts of the present petition. It was further observed that the present application is moved by the petitioner-tenant at a belated stage, when the present petition is fixed for cross-examination of his witnesses.

8. It is settled law that the parties can lead evidence limited to their pleadings and parties while leading evidence cannot travel beyond pleadings. If the parties are allowed to lead evidence beyond pleadings then the sacrosanctity of pleadings comes to an end and the entire purpose of filing pleadings also stands defeated. This court cannot lose sight of the fact that the amendment sought to be made is of an occurrence that took place subsequent to the written statement that was filed. It is

always open to a party to plead subsequent events should it be necessary to do so. Even otherwise the amendment sought goes to the very root of the case i.e. whether the premises is genuinely required by the respondent-landlord in the wake of the fact that he has raised massive construction in the property as well as raised entire new additional construction on the second floor. The petitioner-tenant has already taken a similar plea in the written statement and, therefore, if the amendment is allowed it would not affect the nature of the defence , but would only further supplement the stand already taken.

9. The argument as raised by the counsel for the respondent-landlord that the amendment should not be allowed as the evidence of the parties has commenced, would have some bearing if the evidence of both the parties had concluded, which is not so. A perusal of the impugned order itself reflects that the evidence of the petitioner-tenant has not been concluded. The case is at the stage of evidence of the petitioner-tenant and no prejudice would be caused to the respondent-landlord, which cannot be compensated in terms of costs. In **Revajeetu Builders & Developers vs. Narayanaswamy & Sons & ors., 2010 (1) RCR (Civil) 27** it has been held that *“The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money”* while also concluding that *“We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”*

10. Consequently, after hearing both the counsel for the parties, this

court deems it appropriate to allow the application for amendment by giving the petitioner-tenant herein one opportunity to file his amended written statement, if not already filed with the application seeking amendment, subject to payment of costs of ₹ 5000/-to the respondent-landlord who in turn will be allowed to file replication there to. Since the ejectment application is of the year 2015, let an endeavour be made by the Rent Controller to expedite the hearing of the case.

11. Parties (through their counsel) are directed to appear before the learned Rent Controller on 04.10.2019 i.e. the date stated to be already fixed before the Rent Controller. On that date, the petitioner-tenant would first pay the costs to the respondent-landlord and thereafter, the petitioner-tenant would file his amended written statement, if not already filed.

12. Any observations made are only for the purpose of deciding the application for amendment and do not have bearing on the case, which is to be decided on its own merits.

September 17, 2019

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No