

CR-5151-2019 (O&M).
CR-5163-2019 (O&M) and
CR-5168-2019 (O&M)

-1-

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

1. CR-5151-2019 (O&M)
Date of decision : 13.02.2020

Shri Sanatan Dharam Sabha (Registered) Gaushala Bazar Hoshiarpur

...Petitioner

Versus

Sita Devi

...Respondent

2. CR-5163-2019 (O&M)
Date of decision : 13.02.2020

Shri Sanatan Dharam Sabha (Registered) Gaushala Bazar Hoshiarpur

...Petitioner

Versus

Gulwinder Singh

...Respondent

3. CR-5168-2019 (O&M)
Date of decision : 13.02.2020

Shri Sanatan Dharam Sabha (Registered) Gaushala Bazar Hoshiarpur

...Petitioner

Versus

Gulwinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Rishabh Gupta, Advocate for the petitioner
(In all the petitions)

Mr. R.S. Bajaj, Advocate for the respondent
(In CR-5151-2019)

Mr. Divanshu Jain, Advocate for the respondent
(In CR Nos.5163 and 5168 of 2019)

ANIL KSHETARPAL, J.

This judgment shall dispose of CR Nos.5151, 5163 and 5168 of 2019.

The orders passed by the Rent Controller challenged in these revision petitions are identically worded. Landlord in all these three petitions is also common.

Some facts are required to be noticed.

Shri Sanatam Dharam Sabha (Registered) Gaushala Bazar Hoshiarpur, filed applications under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as “the 1949 Act”) praying for an order of ejectment of the tenants. The tenants contested the petitions by filing the written statement by taking objection that the applicant owns many other properties within the municipal limits of Hoshiarpur which can be used for opening a school. It would be significant to note that one of the ground seeking eviction was that the Sabha requires to open an educational institution in the premises in question. It was pleaded that the applicant/petitioner is already running a

school upto middle class in a premises known as Geeta Bhawan Building Gaushala Bazar and the applicant now wants to upgrade this school from middle to secondary classes and the area available at Gaushala Bazar is small and, therefore, the applicant wants to shift the school from Geeta Bhawan Building to the premises in dispute alongwith other contiguous in possession of other tenants. It was pleaded that after getting possession of the premises in question from the respondents-another tenants, a school building would be constructed thereon.

During the pendency of the rent petitions, various applications were filed in different rent petitions with a view to add para 4(a) in the application under Section 13 of the 1949 Act. The proposed addition is as under:-

“4(a). That in addition to the demised premises, the petitioner Sabha owns 39 shops in Hoshiarpur city, which are under the tenancy of different old tenants. Further the petitioner Sabha owns 11 houses in Hoshiarpur city, which are also rented out to the different tenants long back. The petitioner owns a school building, which is situated in Gaushala Bazar, Hoshiarpur in which the petitioner runs Senior Secondary Schools. Further, the petitioner owns land at village Kotla Gonspur, in which, S.D. City Public School is being run by the petitioner. The petitioner owns and possess land at village Salwara, which is not suitable for opening school. The petition also owns land at village Bassi Daulat Khan, which is given on rent long back. The petitioner owns property at Gaushala Bazar, in which there is a Geeta Bhawan Market and a

school namely S.D. Public School is being run. The petitioner also owns property at Bahadarpur, Hoshiarpur, in which Sanskrit College is being run. The said property has not been got vacated by the petitioner from the above tenants and the property being occupied by the petitioner at present is not suitable to open education institutions, for which the present ejectment petition has been filed. Except the above properties, the petitioner is not occupying any property within Municipal Limits of Hoshiarpur.”

The tenants contested the application. Learned Rent Controller dismissed the application on the ground that the landlord has failed to fulfill the requirements of proviso to Order VI Rule 17 CPC. It has been held that since the petitioner failed to satisfy the Court that after due diligence, the facts sought to be pleaded were not in the notice of the petitioner, therefore, the applications were dismissed.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the paper book.

On the one hand, learned counsel for the petitioner has submitted that the petitioner-Sabha only wanted to give details of the other properties owned by the Sabha alongwith the explanation that how the other properties are not suitable for the bona fide requirement of the Sabha of opening a school, on the other hand, learned counsel for the respondents vehemently argued that the rent petition is pending for more than 5 years and in the written statement itself, the tenant had objected to

the maintainability of the petition as the landlord has failed to plead details of the other properties owned by the applicant/petitioner-Sabha. He further submitted that even in evidence, the attention of the representative of the Sabha was drawn to these facts but still the pleadings were not previously amended.

Learned counsel has also relied upon judgment passed in **CR No.5573 of 2017, decided on 30.09.2019, in the case of Saraswati Iron Store and another, Vs. Dewan Chand Dhanpat Rai Bhatia Mill and others** and the judgment passed in **CR No.5394 of 2016 decided on 26.04.2017, Amarjit Singh and another Vs. Balbir Singh and others**, in support of his arguments.

This Court has considered the submissions of the learned counsels for the parties.

At the outset, it is important to note that strict rules of procedure as laid down in the Code of Civil Procedure are not applicable to the petition/application filed under the 1949 Act. The attention of the Court was not drawn to any provisions in the 1949 Act providing for applicability of the Code of Civil Procedure to the petitions filed under the 1949 Act. Further, it is by now well settled that the general principles of procedure laid down in the Code of Civil Procedure are applicable for regulating the procedure and guidance of the Rent Controllers. Reference in this regard can be made to a Division Bench judgment in the case of **Mehtab Singh Vs. Shri Tilak Raj Arora and another, 1988 (1) PLR 269.**

Still further, the Courts while deciding the application seeking amendment of the applications must first analyze as to whether strict rules of procedure as provided under the Code of Civil Procedure are applicable or not. Thereafter, the Courts must proceed to examine as to whether the amendment being sought is clarificatory, descriptive or is to remove formal defects. The amendment sought for, can be also to correct typographical error. There can be applications for amendment to incorporate/add subsequent developments. The Rent Controllers would also examine that whether fresh petition is maintainable or not. The Courts must also take into consideration the cases where necessary ingredients as provided in Section 13 are sought to be added by amending the pleadings. Such amendments are to help the Courts in adjudicating the case properly. Such amendments are only to advance the cause of justice. Rules of Procedure have been devised to advance the cause of justice and not to scuttle it. With these objectives in mind, the Courts must proceed to decide the application filed for amendment of the pleadings. There can be cases of rectification of factual error which was not in the knowledge of the applicant or there is some patent mistake in the application or the reply.

Just to clarify to obviate any misunderstanding, it is clarified that wherever the amendments are substantive or the Court comes to a conclusion that the effort is to delay the disposal of the application, the Courts would be justified in dismissing the petitions. Still further, there

can be cases where the tenant with a view to delay the disposal of the application for eviction is just trying to elaborate on what has already been pleaded. In such cases, following the general rules of procedure, the Courts would be justified in refusing on the ground that evidence is not required to be pleaded. The pleadings are required to be restricted to the facts and that also in a concise form.

Now let us examine the judgments relied upon by the learned counsel for the respondent.

It may be noted that in the case of Saraswati Iron Store and another (Supra), the attention of the Court was not drawn to the fact that Code of Civil Procedure, as such, is not applicable. The Court proceeded on the basis of proviso to Order VI Rule 17 of the Code of Civil Procedure and thus, decided the case. Similar is the position in the case of Amarjit Singh and another (Supra).

In the considered view of this Court, the aforesaid judgments passed are not only on the facts of the case but also per incuriam because the attention of the Courts was not drawn to the fact that strict rules of procedure as laid down in the Code of Civil Procedure are not applicable. With highest respect, the aforesaid judgments being per incuriam cannot be said to be laying the law.

As noticed above, the proposed amendments are only clarificatory in nature so as to obviate rejection of the petition on the ground that the petitioner-Sabha has not disclosed the facts. The Sabha is

wanting to open an educational institution for education of the students. Such Sabha is represented by a representative. For the fault of office bearers/representative, the Sabha should not be punished. Still further, there is no bar in the maintainability of the fresh petition. In such circumstances, rather than permitting multiplicity of the litigations, it would have been more appropriate to allow the application for amendment.

Accordingly, all the three revision petitions are allowed.

The Rent Controller would permit the petitioner-Sabha to amend their pleadings and thereafter proceed with the matter in accordance with law.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

13.02.2020

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No