

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

CR-3311 of 2021 (O&M)

Date of decision: 20.12.2021

M/s Leader Jewelers and others

...Petitioners

Versus

Varinder Sareen

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Vikas Bali, Advocate for the petitioners.

Mr. Puneet Gupta, Sr. Advocate with
Mr. Kunal Mittal, Advocate for the respondent.

H.S. MADAAN, J.

Case taken up through video conferencing.

1. Briefly stated facts of the case are that, petitioner-landlord Varinder Sareen had filed an ejectment petition against respondent-tenant M/s Leader Jewellers etc., seeking ejectment of the latter from the demised premises in the form of a shop along with basement/strong room and stair case etc., situated on GT Road, Jalandhar, on the ground of non-payment of rent w.e.f. June 2015; the petitioner-landlord requiring the demised shop for his personal *bona fide* need for establishment of business for his younger son, namely Arush Sareen, who had completed his B.com degree in June 2015, not owning any property in his name and rather dependent upon the petitioner, desirous of starting a new business of furnishing i.e. wooden flooring, wall

papers, furniture cloth etc., on the first floor of the demised premises; according to the petitioner, his said son was not getting good response in his new business due to less foot fall of customers; the petitioner himself is occupying a shop on the ground floor measuring 14" x 40" approx., where he is running business of crockery under the name and style of M/s Kishan Chand and Sons for the last more than 40-50 years and is also occupying half of the first floor of main building known as Sareen Building; the said shop was got vacated by the petitioner by filing an ejectment petition for expansion of his business and for *bona fide* need of co-petitioner Smt. Janak Dulari for opening an office for her son, namely Sh. Kishore Sareen, who is a legal practitioner; another ground taken was of the shop having become unsafe and unfit for human habitation; according to the petitioner, the respondents are having sufficient similar accommodation on the main GT road just opposite to the demised shop, one adjoining to Bank of Baroda, near Jyoti Chowk, GT Road, Jalandhar and on the backside of the shop in question

2. On notice, respondent No.1 had appeared through its partner; written statement on behalf of respondents No.1, 2 and 4 was filed, contesting the ejectment petition; issues on merits were framed; the parties were afforded adequate opportunities to lead evidence and then vide detailed order dated 23.03.2021, Rent Controller, Jalandhar accepted the petition on the ground of personal necessity.

3. Feeling aggrieved, respondent-tenants had filed an appeal

before Addl. District Judge-cum-Appellate Authority, Jalandhar, notice of which was given to the petitioner/landlord, who put in appearance. During the course of proceedings, the appellants moved an application under Order 6 Rule 17 CPC for amendment of written statement, contending that petitioner had wrongly taken ground of personal necessity of the demised shop, stating that he required the same to start business for his son. As a matter of fact, said son of the petitioner was a student and throughout litigation, he was studying and he has since migrated to Canada on study visa. Therefore, the ground of personal necessity propounded by the petitioner is bogus and fictitious without any reality. The appellants wanted to amend para No.7 of the written statement as follows:-

“7. That the alleged ground of personal necessity as propounded by the petitioner in para no.2 of the petition is bogus and fictitious ground as the son of the petitioner namely Arush Sareen is a student and has migrated to Canada on Study Visa and is not running any alleged business nor the alleged business had ever been started nor is being/was being run by the son of the petitioner nor the shop in dispute is required for any such alleged business. Thus the ground of personal necessity as propounded by the petitioner in para no.2 (b) of the petition is bogus and fictitious and without any reality.”

They further wanted amendment in para No.8 to the following effect:-

“8. That the petition of the petitioner is not maintainable at all in view of the law laid down by Hon’ble Supreme Court of India in “Pal Singh vs. Sunder Singh (S.C.) :-

*“A. Delhi Rent Control Act, 1958, Section 14
(1) (e) –Evidence Act, Section 116- Premises owned*

by a number of co-owners-Suit for eviction by one of the co-owners is maintainable if other co- owners did not object.”

4. That application was opposed by the respondent/landlord, contending that it had been filed as a delaying tactic. As a matter of fact, his son Arush Sareen had completed his studies of B.com when the ejectment petition was filed and on account of unnecessary delay caused by the appellants in final decision of the ejectment petition as well as in disposal of the appeal, huge business losses were suffered by said son of respondent/landlord during outbreak of COVID-19. The respondent and his younger son were facing mental agony, tension and pressure, as such, it was decided to utilize the period of litigation by pursuing the course in accounts in Canada. Therefore, Arush Sareen went to Canada on 11.08.2021 on student visa, which is valid till 30.04.2022, after which he is scheduled to return to India to start his business of furnishing in the shop in question. The respondent undertook that in case the appellants were ready to surrender the possession of the shop in question now, then his younger son would return from Canada forthwith even after leaving his studies midway. Since the written reply was filed by the appellants in the ejectment petition in April 2016, whereas, Arush Sareen had gone to Canada in the month of August, 2021, therefore, amendment could not be permitted, since the event had not taken place in the year 2021 and the proposed amendment if allowed would amount to de novo trial, which

would cause serious prejudice to the respondent.

5. After hearing learned counsel for the parties, the Appellate Authority dismissed the application, observing that bona fide need of landlord is to be seen on the date when the ejectment petition is filed. In support of that contention, observations made by the Apex Court in judgment **Gaya Prasad Vs. Pradeep Srivastava** 2001 (1) RCR (Rent) 221 were relied upon. It was further observed that the appellants want to bring on record the fact which had taken place in August 2021 after the decision rendered in the ejectment petition by the Rent Controller which was not permissible. The concluding part of the order is being reproduced for ready reference:-

“From the law discussed above, it is quite clear that bonafide need has to be assessed on the date of filing of ejectment application and the subsequent events can be taken into account, if such bonafide need has been wholly satisfied during the subsequent period. In the present case, Arush Sareen with regard to whose bonafide need, the present petition was filed has gone to Canada on study visa then in that scenario, it cannot be said that need of the landlord has been wholly satisfied. It cannot be said that a person would sit idle for a long time for outcome of litigation. Moreover, respondent has placed on record one affidavit stating therein that Arush Sareen will come to India forthwith, if possession is given by the appellant of the property in question. Further, as far as the contention of the applicant that the alleged need of the landlord is bogus, as no business is to be started in the demised premises or that the petition is not maintainable as other co-owners are objecting to it, all these contentions will be taken into

account, at the time of final adjudication of present appeal, on the basis of evidence already led on record by the parties. Moreover, if the present application is allowed, there would be no end to the litigation and as and when, any new fact will come to knowledge of the parties, they will seek the indulgence of the court, to amend their pleadings, resulting into de novo trial. The law laid down by Hon'ble Supreme Court of India, in case titled as Rajesh Kumar Aggarwal & others vs. K. K. Modi & others 2006 (2) RCR (Civil) 577 is not disputed, however, in the considered view of this court, the same is not applicable to the facts in hand. Accordingly, in the present facts and circumstances, no ground is made out to allow the application seeking amendment of written statement and as such, finding no merit in the instant application, same stands dismissed. However, it is made clear that any of the observations made herein will have no effect on the merits of the case. Now to come up on 17.11.2021 for arguments.”

6. This order left the appellants/tenants aggrieved and they have filed the present revision petition, which is being opposed on behalf of the respondent/landlord.

7. I have heard learned counsel for the parties besides going through the record and I find that the revision petition is doomed for failure. Order 6 Rule 17 CPC deals with amendment of the pleadings. It provides that the Court may at any stage of proceedings, allow either party to alter or amend his pleadings in such manner and on such terms as maybe just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. However, as per proviso to Order 6

Rule 17 CPC, no application for amendment shall be allowed if the trial is commenced, unless the Court comes to the conclusion that in spite of due diligence, party could not have raised the matter before commencement of trial. If the present application is seen on the touchstone of this provision, then it comes out that it has been rightly dismissed by the Appellate Authority. The ejectment petition was filed by the petitioner-landlord Varinder Sareen on account of personal necessity besides other grounds. As far as ground of personal necessity is concerned, he had dilated that he required the demised premises for starting business for his son Arush Sareen, who was dependent upon him and was not having any other property. That ground was vehemently opposed on behalf of the tenants. However, the Rent Controller considering the pleadings of the parties, the evidence adduced by them and the law on the subject came to the conclusion that the petitioner/landlord had successfully established the ground of bona fide personal need, therefore, ordered ejectment of the respondents/tenants from the demised premises against which appeal filed by the tenants is pending.

8. One fact which is to be taken note of in this case is that the Appellate Authority had calculated the mesne profits of the demised premises @ Rs.15,000/- per month, asking the tenants to pay the same to the landlord. Both the parties were aggrieved by the said order. The appellants/tenants with regard to direction issued to them to pay the

mesne profits, whereas, the landlord finding that amount so assessed was on lower side and they had filed the revision petitions before this Court. The revision petitions filed by both the parties came up for hearing before a coordinate bench i.e. Hon'ble Mr. Justice Mahabir Singh Sindhu, where they arrived at consensus that the revision petitions be disposed of with a direction to the Appellate Authority to decide the appeal on some early date and accordingly it was so done asking the Appellate Authority to proceed with the matter expeditiously and if there was no legal impediment, the same be concluded on or before 31.12.2021. It is to be further noticed that son of landlord Arush Sareen had left the country by that time, which was on 24.03.2021 as is evident from perusal of photocopy of his passport. The application for amendment of the written statement was filed on 23.04.2021 and that application was pending when the appellants/tenants had given their consent for early disposal of the main appeal. Now they are making a turn around and filing this revision petition obviously with a motive to prolong the proceedings.

9. With regard to judgments referred to by learned counsel for the petitioners i.e. **Hasmat Rai and Anr. Vs. Raghunath Prashad, 1981 (2) RCR (Rent) 401, BKN Pillai Vs. P. Pillai, 2001(1) RCR (Rent) 10, M/s Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., 2001(2) RCR (Rent) 393** those judgments are prior to the amendment in Order 6 Rule 17 CPC, providing that amendment is not to be allowed after

beginning of the trial and the judgments are to be seen in that context. Although in **Hasmat Rai's case** (supra), the Supreme Court had observed that requirement of landlord must continue to exist throughout progress of litigation till decree of final Court but that judgment had different facts since during pendency of appeal by the tenant, the landlord had obtained possession of another portion of the building and for that reason, it had been observed that the necessity of landlord had ceased to exist and the tenant could amend the written statement to take that plea. In this case, the tenants have nowhere alleged that the landlord has taken the possession of any other premises during pendency of the litigation, rather, their case is that son of landlord for whom the demised premises were statedly required, has since migrated to Canada but as has been taken note of by the Appellate Authority and observed supra, it is not a case of permanent migration of son of the landlord, rather, his visa for the Canada is upto 30.04.2022 and thereafter, he will have to come back. As such, it cannot be said that necessity of landlord has ceased to exist.

10. Furthermore in judgment **Gaya Prasad** (supra) by the Apex Court, which has been noticed by the Appellate Authority in the impugned order itself and the relevant part of the judgment has been extensively quoted, it has been observed that the crucial date for deciding bona fide requirement of landlord is date of application and the subsequent event would be fade out need of the landlord, therefore, the latest view of the Apex Court in this judgment is to be followed,

since facts of that judgment are quite similar to facts of the present case.

11. With regard to judgment **B.K.N. Pillai's** (supra) by the Apex Court, it provided guidelines for allowing amendment of pleadings but as already observed that was before amendment in the provision prior to the year 2002.

12. With regard to judgment **M/s Estralla Rubber's** (supra), that judgment dealt with principles for allowing amendment in pleadings. Judged on touchstone of these principles even, the revisionists do not have any case because the proposed amendment has not been found to be necessary for proper and final adjudication of controversy between the parties.

13. The other judgment **Rajesh Kumar Aggarwal's & Ors.** (supra), wherein it was observed that it is mandatory on Court to allow all amendments which are necessary for the purpose of determining the real questions in controversy between the parties and the Court should not go into correctness or falsity of the case for amendment. Again, this judgment is of no help to the revisionists because the proposed amendment does not come out to be necessary for the purpose of determining the real questions in controversy between the parties. There is no question of the Court going into correctness or falsity of the case for amendment but some reference thereto has to be made to see whether the application for amendment deserves to be allowed or rejected.

14. With regard to other judgments i.e. Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors., 2006(2) RCR (Civil) 577, Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors., 2007 (2) RCR (Civil) 830, Andhra Bank Vs. ABN Amro Bank N.V. & Ors., 2007 (3) RCR (Civil) 585, Mrs. Bhawna Manchandani Vs. Mr. Swaran Dhawan, 2005 (119) DLT 183, Gajendra Singh Lodha Vs. Bhanwar Lal Kothari & Ors., 2009 (1) RCR (Rent) 195, Sri Naren Saha Vs. Smt. Sukhoda Bala Saha, 2012 (33) RCR (Civil) 99 and Ashok Kumar Dureja Vs. Shri Rajendra Kumar Jain through LRs, 2017 (4) MPLJ 619 those also do not find application to the present case due to different facts, circumstances and the context in which such observations had been made.

15. The Addl. District Judge-cum-Appellate Authority has not found the proposed amendment to be necessary for just and proper adjudication of the controversy between the parties, as such, had rejected the same giving valid reasons. No fault can be found with such order. The revision petition is bound to fail and the same stands dismissed.

20.12.2021

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(H.S. MADAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No