

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

CR-8410-2016(O&M)

Reserved on:-06.12.2021

Date of Pronouncement:-09.12.2021

M/s Ram Parkash Rakesh Kumar

...Petitioner

Versus

M/s Crown Associates and another

...Respondents

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

Present: Mr.Aalok Jagga, Advocate
for the petitioner.

Mr.Amit Jain, Senior Advocate with
Mr.Varun Parkash, Advocate for the respondents.

H.S. MADAAN, J.(ORAL)

Case taken up through video conferencing.

1. Under challenge in this revision petition is order dated 17.10.2016 (copy Annexure P1) passed by Rent Controller, Chandigarh in Rent Application No.2468 of 2013 titled *M/s Ram Prakash Rakesh Kumar Versus M/s Crown Associates & Anr.*, vide which application dated 21.10.2015 (copy Annexure P7) filed by petitioner/landlord M/s Ram Parkash Rakesh Kumar seeking amendment of the rent petition had

been dismissed.

2. Briefly stated, facts of the case as per the version of the petitioner/landlord are that the petitioner/landlord had filed two ejectment petitions against respondents M/s Crown Associates and its proprietor Sh.Rajwinder Singh; in the first petition petitioner had sought eviction of respondents from 165/5 square feet portion occupied by respondents as tenants on the first floor on backside of SCO 8, Sector 20-D, Cloth Market, Chandigarh, on the ground of non-payment of rent and personal necessity, whereas in the second ejectment petition filed simultaneously on that very day i.e. 24.1.2009 against Rajwinder Singh – respondent No.2 and one Kapil Nagpal as well as M/sBharti Airtel Ltd, seeking their eviction from 108 square feet and 100 square feet i.e. two adjoining cabins on first floor of SCO 8, First Floor, Sector 20-D,Cloth Market, Chandigarh on the ground of personal necessity and subletting, alleging that Kapil Nagpal had sublet the premises to Rajwinder Singh and M/s Bharti Airtel Ltd., who had set up a call centre in the premises; another ground was that of non-payment of rent.

3. On 5.10.2009 Rajwinder Singh – respondent had filed written statement in first petition stating that he as proprietor of M/s Crown Associates was tenant in the entire portion of 480 square feet on first floor backside of SCO 8, Sector 20-D, Chandigarh, at initial rate of rent @ Rs.9,500/- per month in the year 2001, which was subsequently increased to Rs.12,600/- per month and it is the current rate of rent. Such respondent denied that he is in possession of 165.5 square feet of the property as tenant. In the second ejectment petition, respondent No.2 Rajwinder Singh

filed written statement on 23.9.2009, wherein he took the identical stand claiming that he is the tenant in the entire backside half portion of 480 square feet with current rate of rent being Rs.12,600/-.

4. After the provisional rent was tendered, issues were framed. The petitioner led evidence closing it on 4.7.2015 and the case was adjourned for evidence of respondents on that day. On 21.10.2015 petitioner filed an application for amendment of the petition to plead that his son namely Sugam Arora has attained the age of 19 years and has started running his business of sale of wholesale cloths at Chandigarh; that he has been doing the said business on part time basis apart from study, therefore he requires the premises for running of such business and opening of his separate office, therefore the premises in occupation of the respondent-tenant is required by son of the petitioner, who does not own and possess any other commercial property within urban area of Chandigarh apart from ground floor of SCO 8, Sector 20 Chandigarh and they have not vacated any commercial property after commencement of Rent Act. The petitioner wanted to amend his prayer clause by substituting 165.5 square feet to 480 square feet of the demised premises thereby admitting the stand taken by respondent in their statement and to cut the controversy short.

5. The application for amendment was opposed by respondent stating that petitioner could not change the nature of the petition and could not add a new case.

6. Vide order dated 17.10.2016, Rent Controller, Chandigarh dismissed the application for amendment of the petition mainly for the

reason of application having been filed at a belated stage, when the petition had been fixed for evidence of respondent and secondly that petitioner wanted to change the nature of the petition, which was not permissible.

7. The petitioner felt aggrieved by the said order and has challenged the same by way of filing the present civil revision petition, notice of which was given to the respondents, who have put in appearance through counsel.

8. I have heard learned counsel for the parties besides going through the record.

9. Learned counsel for the revisionist has argued that the proposed amendment is necessary for just and final adjudication of the controversy between the parties and delay if any in filing of the application should not come in way of acceptance of the application.

10. Whereas learned counsel for the respondents has defended the impugned order being legal and valid, not calling for any interference.

11. Learned counsel for the revisionist has referred to various judgments in support of his contentions, which are as under:

Sajjan Kumar Versus Ram Kishan, (2005) 13 Supreme Court Cases 89 by the Apex Court where in a case of civil suit which was at the final stage, an application had been filed by the plaintiff to rectify the incorrect description of the suit property in the plaint, observing that the proposed amendment was necessary to bring the real question in controversy between the parties to the fore and refusal to permit amendment likely to create needless complications at stage of execution

in the event of success of plaintiff in the suit. The application was accepted observing that though the appellant ought to have been diligent in promptly seeking amendment in plaint at an early stage of suit, more so when error in question had been pointed out in written statement, even then amendment should have been allowed and it was allowed with imposition of costs of Rs.1,000/-. It was further observed that when the trial Court had failed to exercise jurisdiction vested in it and rejecting prayer for amendment and occasioning possible failure of justice thereby, such prayer was liable to be corrected by the High Court in exercise of its supervisory jurisdiction.

Next judgment referred to was **Manohar Lal Versus Jai Parkash** passed in CR No.7797 of 2014(O&M) decided on 19.4.2017 by a Single Bench of this Court wherein, the application for amendment of written statement by tenant at the stage when the parties had closed their evidence was allowed, setting aside the order passed by the Rent Controller dismissed the application. The operative part of the order being as under:

It is settled principle that under Order 6 Rule 17 CPC, amendment is to be allowed where it is necessary for the purpose of determining the real question in controversy between the parties. The dispute herein is as to what is the area of the tenanted premises and the eviction has to be ordered from which portion. The landlord would be gravely prejudiced at the end of the day if from 200 Sq.ft. of the tenanted premises, ejectment is not ordered. Then the objection in principal, would be raised that there can be no

partial eviction and therefore, the purpose of filing the eviction application, as such, would be subverted, even if the landlord succeeds in getting the order of eviction. Therefore, the amendment which is sought is a very valid and required amendment. The rules of procedures are hand-maids of justice and technicalities are not to stand in the way and the Courts are to adjudicate on the merits of the dispute. If there is an error in the pleadings, as such, and subsequently also, by filing of the affidavit by way of evidence, this Court cannot close its eyes of the facts that on an earlier point of time, the area of the tenanted premises already stands admitted as to what was the extent of the tenanted premises.

*Mr.Bahl is well justified to place reliance upon the judgment of the Three Judges Bench of the Apex Court in **Sajjan Kumar Vs. Ram Kishan 2005 (13) SCC 89** wherein amendment was allowed of the plaint where the correct description of the suit premises was allowed on the ground that even if it was at a belated stage. It was noticed in the said case that in order to avoid complications, the description of the suit premises needed to be corrected. Similar are the facts herein and by not correcting the error would only lead to failure of justice between the parties. It is also pertinent to notice that by virtue of the amendment, even if the proceedings are delayed, the same would be to the detriment of the landlord and the tenant, as such, cannot object to this aspect.*

12. Learned counsel for the petitioner has also pressed into service judgment **Usha Devi Versus Rijwan Ahamd & Ors., 2008(1)**

RCR(Civil) 840 by the Apex Court where in a suit for permanent injunction where wrong description of the property had been given in the plaint to which the defendant had taken objection in the written statement, however application for amendment was moved after two years, which was opposed contending that a wrong description had come to the knowledge of plaintiff when written statement was filed and plea of inadvertence was not available to the plaintiff; despite that opposition the amendment was allowed holding that it was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution, in the event of the plaintiff succeeding in the suit.

13. Learned counsel for the revisionist has also relied upon judgments **Abdul Rehman and another Versus Mohd. Ruldu and Ors., 2012(4) RCR(Civil) 481, Raman Kumar Versus Jai Kant Jindal and others, 2017(3) RCR(Civil) 885, Smt.Mamta Versus Anil Kumar Mehta, 2017(2) PLR 588, Shakuntla Devi now (deceased) through LRs Versus Krishan Lal, 2017(1) Law Herald 791, Surender Kumar Sharma Versus Makhan Singh, 2009(4) RCR(Civil) 597 and M.C. Agrawal HUF versus M/s Sahara India and ors., 2008(5) SCC 642.**

14. On the other hand, learned counsel appearing for the respondents has also referred to various citations first being **Mashyak Grihnirman Sahakari Sanstha Maryadit Versus Usman Habib Dhuka and others, 2013(2) RCR(Civil) 965** wherein while dealing with a case where the plaintiff had sought amendment of the plaint on the ground that

they were not aware of the conveyance deed dated 8.2.1989, observing that prima facie such contention was not correct, ordered dismissal of the application for amendment, which had been set aside by the High Court, was restored.

The second judgment referred to was **J. Samuel and others Versus Gattu Mahesh and others, 2012(1) RCR(Civil) 903** by the Apex Court. In that case when an amendment application was filed after arguments were concluded and matter was posted for judgment, in view of proviso to Order 6 Rule 17 CPC restricting power of amendment once the trial has commenced except when Court comes to the conclusion that in spite of due diligence party could not have raised the matter before commencement of trial, the amendment sought was declined holding that it was a case of lack of due diligence wherein such amendment is implidely barred under the Code.

The next judgment relied upon was **Vidyabai & Ors Versus Padmalatha & Anr., 2009(1) RCR(Civil) 763** by the Apex Court wherein it was observed that the Court has no jurisdiction to allow amendment of pleadings after commencement of trial.

Learned counsel for the respondents has further relied upon judgment **Sukhdev Singh Versus Bal Krishan, 2005(2) RCR(Civil) 205** by a Single Judge of this Court. In para No.4 of the judgment, it was observed as under:

4. *By no stretch of imagination, it could be concluded that the status of the defendant-petitioner as tenant which is sought to be asserted by incorporating paragraph 3-A in the written*

statement was not in his knowledge when he filed the written statement. Therefore, the application is far beyond the scope of Order 6 Rule 17 Civil Procedure Code. There is no ground made out showing that palpable injustice would be caused which may warrant interference of this Court under Article 227 of the Constitution. The instant petition is devoid of merit and the same is liable to be dismissed.

Whereas in **Arjun Chand Versus Smt.Shama Joshi, 2011(44) RCR(Civil) 874** by Single Bench of this Court, the observations made were as follows:

It is now well settled that the amendment of the pleadings can be allowed even after commencement of the trial where the Court comes to the conclusion that despite due diligence the party could not have raised the matter before the commencement of the trial, meaning thereby it can be raised at any time, but the amendment cannot be allowed to fill up the lacuna caused in the case of the party on account of admission made in the pleadings and from the statement recorded before the Court. In the present case, the case set up by the landlord was that the demised premises is required for her son Ish Kumar who would start the business of Chemist in it. However, when her son Ish Kumar appeared in the witness box as AW4, he categorically stated that he is only a graduate in Arts and would not be able to open the Chemist shop as he does not possess the license for it. He also admitted that he has no proof of being an

LIC agent. In order to overcome this hurdle, after the arguments were heard by the Rent Controller, the amendment has been sought in the eviction petition in the garb of subsequent events to aver that Ish Kumar would start the business of Ayurvedic Medicines in the demised premises for which obviously no license is required as alleged by learned counsel for the landlord. Insofar as the other amendment with regard to averment that neither the landlord nor her son is in occupation of any such non-residential building or has vacated any such building in the same urban area is concerned, it was in their knowledge from the beginning and is not such a subsequent event which could not have been discovered by them earlier despite due diligence.

15. After hearing the rival contentions, considering the judgments referred to by learned counsel for the parties and going through the record, I find that the application for amendment of the petition deserves to be accepted and the impugned order is not sustainable and is liable to be set aside.

16. Though the petitioner had earlier filed two separate ejectment petitions; in the first petition seeking ejectment of respondents from 165/5 square feet portion, whereas in the second petition, which was filed simultaneously on that very day against Rajwinder Singh and Kapil Nagpal seeking their eviction from 108 square feet and 100 square feet i.e. two adjoining cabins but then the stand taken by Rajwinder Singh was that he was tenant in the entire portion of 480 square feet, though

petitioner landlord had denied the same earlier but thereafter to bring the case in line with the stand taken by Rajwinder Singh, he is seeking amendment of the petition to that very effect. Though the application for amendment was filed somewhat belatedly, when the trial had started and as per the plea raised by learned counsel for the respondent in view of the proviso inserted in Rule 17, the amendment cannot be allowed except when the Court comes to the conclusion that in spite of due diligence party could not have raise the matter before commencement of trial. But then it has to kept in mind that proposed amendment is necessary for just and final adjudication of the controversy between the parties and that rules of procedure are handmaid of justice. These are meant to advance ends of justice. The Courts are not to get bogged down in technicalities and in the process deviate from the pious duty of dispensing justice. It is always desirable to decide a *lis* on merits after considering the version of contestants, rather than non-suiting a litigant for technical reasons and decide a dispute considering version of one side only since there is a danger of deflection from the path of justice in the process. The Court has to keep in view the scenario firstly if the application for amendment is dismissed and secondly if it is allowed. If the application is dismissed and ultimately on conclusion of trial it comes out that respondent – Rajwinder Singh is in possession of entire 480 square feet on the first floor of backside of SCO 8, Sector 20-D, Chandigarh, then the petition for ejectment would be defective seeking partial ejectment and it would be difficult to find out as to from which portion the ejectment is to be done and on the other hand, if the petitioner/landlord is allowed to amend the

petition, so as to fall in line with case of respondent-tenant Rajwinder Singh that he is in possession of entire 480 square feet on the first floor as pleaded, that would only help the Court in arriving at a proper and appropriate conclusion for that amendment in the description of the property is needed.

17. In judgment *Sajjan Kumar Versus Ram Kishan* (supra), on which the petitioner is placing reliance upon, amendment of the plaint had been allowed at the final stage of the suit observing that refusal to permit amendment was likely to create needless complications at the stage of execution in the event of success of plaintiff in the suit. In the said case proposed amendment was correction of description of the suit premises in the plaint. Similar is the position in this case. In other judgment *Manohar Lal Versus Jai Parkash* (supra), it was observed that amendment is to be allowed where it is necessary for the purpose of determining the real question in controversy between the parties. In that case also, the dispute between the parties was as to what is the area of tenanted premises and eviction was to be ordered from which portion. In *Usha Devi Versus Rajwan Ahamd & Ors* (supra), the Apex Court had held that amendment should be allowed when it was necessary for the purpose of bringing to the fore the real question in controversy between the parties. The other authorities pressed into service by learned counsel for the petitioner help him in making out a case that the amendment under the circumstances ought to be allowed.

18. On the other hand, in *Mashyak Grihnirman Sahakari Sanstha Maryadit Versus Usman Habib Dhuka and others* (supra) relied

upon by learned counsel for the respondents, the amendment was refused for the reason that the plea raised by the plaintiff that he was not aware of the conveyance deed dated 8.2.1989 was not found to be believable. Here is a different case when the petitioner/landlord is seeking correction in the description of the tenanted premises. In ***J.Samuel and others*** case (supra), the amendment application was filed after arguments were concluded and matter was posted for judgment, whereas in this case the application has been filed at a much earlier stage. Furthermore, it is certainly not a case of omission of incorporating specific pleading, which is mandatory under the law attributing it to typographical error as had been pleaded by the plaintiff in that case while seeking incorporation of those ingredients by way of amendment of the plaint. The judgment ***Vidyabai & Ors. Versus Padamlatha*** case (supra) relied upon by learned counsel for the respondents is not of much help to the respondents since in this very authority, it is observed that it is primary duty of the Court to decide whether such amendment is necessary to decide the real dispute between the parties and only under such conditions, the amendment is to be allowed. Here it transpires that proposed amendment is necessary to decide the real dispute between the parties. As regards the other authorities referred to by learned counsel for the respondents, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made. The other amendment sought with regard to adult son of the petitioner requiring the premises for starting some business is only adding to the plea already raised putting forward ground of personal necessity and it

also ought to be allowed.

19. Under the circumstances, the order under revision is set aside and application for amendment of plaint is allowed, subject to payment of cost of Rs.30,000/- to be paid by the revisionist/landlord to the respondents/tenants. Payment of cost shall be a condition precedent for permission to the petitioner to amend the rent petition.

With these observations, the revision petition is allowed accordingly.

9.12.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No