

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

**Reserved on: 02.09.2022**

**DATE OF DECISION: October 10, 2022**

**1. CR-3304-2017 (O&M)**

Raj Kumar ..... Petitioner

*Versus*

Ramesh Lal ..... Respondent

**2. CR-3317-2017 (O&M)**

Raj Kumar ..... Petitioner

*Versus*

Ramesh Lal ..... Respondent

**3. CR-3318-2017(O&M)**

Raj Kumar .....Petitioner

*Versus*

M/s Sanjeev Sales and others .....Respondents

**4. CR-3332-2017 (O&M)**

Gulshan Jain .....Petitioner

*Versus*

Sanjeev Sales and others .....Respondents

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present:- Mr.Karanvir Singh Khehar, Advocate  
for the petitioner (s) in all cases.

Mr. Ankur Ghai, Advocate  
for the respondent(s)  
in CR-3304-2017 & 3317-2017.

Mr. A.P. Kaushal, Advocate  
for the respondent(s)  
in CR-3318-2017 & CR-3332-2017

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**HARKESH MANUJA, J.**

This order of mine shall dispose of the following four revision petitions arising out of the impugned orders passed by learned Rent Controller, Ludhiana; whereby amendment applications filed at the instance of petitioner/ landlord in separate eviction petitions have been dismissed:-

- i) **CR-3304-2017 titled as Raj Kumar Vs. Ramesh Lal:** This revision petition arises out of the order dated 02.02.2017 passed by learned Rent Controller, Ludhiana against rejection of an amendment application filed at the instance of petitioner/ landlord in Rent Petition No. 35082 of (RA No.154 dated 01.07.2013). The ejectment petition relates to one shop measuring 8' x 23' being part of property No. B-IX-1560, Saban Bazar, Ludhiana seeking ejectment on the ground of personal necessity.

In response, the respondent/ tenant filed written statement, disputing the relationship of landlord and tenant, besides alleging that the petitioner/ landlord was having number of other properties in Ludhiana.

While the evidence of petitioner/ landlord was being recorded, an application for seeking amendment of rent petition was filed so as to incorporate the following para in the ejectment petition:-

*“There is one Room lying on the 2<sup>nd</sup> floor of the building No. B-IX-1560, Girnar Complex, Saban Bazar, Ludhiana and the same cannot be*

*utilized by him for business purposes due to deteriorated condition”.*

- ii) **CR-3317-2017 titled as Raj Kumar Vs. Ramesh Lal:** This revision petition arises out of the order dated 02.02.2017 passed by learned Rent Controller, Ludhiana against rejection of an amendment application filed at the instance of petitioner/ landlord in Rent Petition No. 29 of 2014. The ejectment petition relates to one shop and staircase measuring 8’ x 23’ situated on the ground floor being part of property No. B-IX-1560, Girnar Complex, Saban Bazar (Talab Bazar), Ludhiana and was filed on the ground of non-payment of rent.

Here also, the respondent/ tenant disputed the relationship besides alleging that the petitioner/ landlord is having number of other properties in Ludhiana. In this case the evidence of petitioner/ landlord was yet to begin when an application for seeking amendment of rent petition was filed so as to incorporate the following para in the ejectment petition:-

*“There is one Room lying on the 2<sup>nd</sup> floor of the building No. B-IX-1560, Girnar Complex, Saban Bazar, Ludhiana and the same cannot be utilized by him for business purposes due to deteriorated condition”.*

- iii) **CR-3318-2017 titled as Raj Kumar Vs. M/s Sanjeev Sales and others:** This revision petition arises out of the order dated 02.02.2017 passed by learned Rent Controller, Ludhiana against rejection of an amendment application filed at the instance of petitioner/ landlord in Rent Petition No. 30 of 2014. The ejectment petition relates to one chaubara on the first floor measuring 10’ x 16’ bearing part of

property No. B-IX-1560, Girnar Complex, Saban Bazar (Talab Bazar), Ludhiana seeking ejectment on the ground of personal necessity of his son.

Here again, the respondent/ tenant disputed the relationship of landlord and tenant besides alleging that the petitioner/ landlord having number of other properties in Ludhiana.

The evidence of petitioner/ landlord was yet to begin when an application seeking amendment of rent petition was filed so as to incorporate the following para in the ejectment petition:-

*“There is one Room lying on the 2<sup>nd</sup> floor of the building No. B-IX-1560, Girnar Complex, Saban Bazar, Ludhiana and the same cannot be utilized by him for business purposes due to deteriorated condition”.*

- iv) **CR-3332-2017 titled as Gulshan Jain Vs. Sanjeev Sales and others:** This revision petition arises out of the order dated 02.02.2017 passed by learned Rent Controller, Ludhiana against rejection of an amendment application filed at the instance of petitioner/ landlord in Rent Petition No. 28 of 2014. The ejectment petition relates to one chaubara measuring 9-1/2' x 23' bearing part of property No.B-IX-1561, Girnar Complex, Saban Bazar (Talab Bazar), Ludhiana seeking eviction on the ground of non-payment of rent as well as personal necessity.

In response, the respondent/ tenant disputed the relationship besides alleging that the petitioner/ landlord was having number of other properties in Ludhiana.

While the evidence of petitioner/ landlord was being recorded, an application for seeking amendment of rent petition was filed so as to

incorporate the following para in the ejectment petition:-

*“There is one Room lying on the 2<sup>nd</sup> floor of the building No. B-IX-1561, Girnar Complex, Saban Bazar, Ludhiana and the same cannot be utilized by him for business purposes due to deteriorated condition”.*

For convenience, facts are taken from CR-3304-2017.

The petitioner/ landlord filed an ejectment application against the respondent/tenant from one shop measuring 8' x 23'; being part of property No. B-IX-1560, Saban Bazar, Ludhiana. It was pleaded in the ejectment petition that the petitioner owned property No. B-IX-1560 and the said shop being part of the aforesaid property was rented out to respondent. Ejection was sought by the petitioner on the ground of his personal necessity as well as for the bonafide need of his son, namely, Sahil Jain. It was pleaded that the son of the petitioner was having no other shop available at this location and further that the petitioner does not own or possess any such premises/ property within the urban area concerned, nor he has vacated any such premises since the inception of East Punjab Urban Rent Restriction Act, 1949, for short 'the Act', except mentioned above.

In response, respondent/ tenant filed his written statement, controverting the averments made in the ejectment petition. Besides denying the bonafide necessity of petitioner and his son, it was also mentioned that the petitioner and his son were having other commercial properties/ shops in Ludhiana.

After framing of issues, petitioner appeared as PW1. During his cross-examination, he was confronted with a question about 'chabutra' situated on the second floor of property No. B-IX-1560 and the factum of the same having not been disclosed in the eviction petition.

Soon thereafter, the petitioner moved an application under Order 6 Rule 17 CPC with a prayer for seeking amendment of eviction petition so as to incorporate the following paragraph:-

*“There is one Room lying on the 2<sup>nd</sup> floor of the building No. B-IX-1560, Girnar Complex, Saban Bazar, Ludhiana and the same cannot be utilized by him for business purposes due to deteriorated condition”.*

Notice of the aforesaid amendment application was issued to the respondent/ tenant, who submitted his detailed objections to the same. The learned Rent Controller vide impugned order dated 02.02.2017 dismissed the amendment application primarily on the ground that the factum of existence of 'chabutra' on the second floor was well within the knowledge of petitioner/landlord at the time of filing of the eviction petition and despite aforesaid, the same was never disclosed in the eviction petition. In addition, it was also recorded that the amendment now sought to be introduced by the petitioner would frustrate the cross-examination conducted upon him by the respondent/ tenant and may defeat his plea of concealment. It is the aforesaid impugned order which has been challenged by way of present revision petition.

It has been argued on behalf of the petitioner that the amendment sought to be introduced is very much necessary for the complete and effective adjudication of the eviction petition. Learned counsel for the petitioner further submitted that the ejectment petition is still at the initial stage of recording of evidence of the petitioner/ landlord and thus, no serious prejudice is going to be caused to the rights of respondent/ tenant who shall still have right to rebut the amendment sought to be introduced.

On the other hand, it has been submitted on behalf of respondent/ tenant that there is concealment on the part of the petitioner/ landlord who deliberately failed to disclose the factum of other shop/ premises owned by him at the time of filing of the ejectment petition and as such he has been rightly declined permission to amend the ejectment petition. It is also submitted that the petitioner/ landlord is acting in a malafide manner, just trying to fill in the lacuna in his pleadings that too after framing of issues and commencement of trial, as such, there is no due diligence on his part.

I have heard learned counsel for the parties and gone through the record. I find merit in the contentions raised on behalf of the petitioner. In fact, the amendment sought to be introduced is merely factual and supplemental in nature which shall help the learned Rent Controller to decide the ejectment petition in a more effective manner. The learned Rent Controller fell into an error while recording that by way of an amendment, the petitioner intends to fill in the lacuna which has arisen during his cross-examination relating to

the factum of existence of a chabutra/ shop on the second floor of property which has not been disclosed in the eviction petition.

In this regard, on a careful and comprehensive reading of the eviction petition it can be easily traced out that the petitioner/ landlord by way of his averment in the eviction petition has categorically disclosed the factum of his ownership as regards the entire property bearing No. B-IX-1560 and the tenanted portion forms part of it. Once the petitioner/landlord has disclosed the factum of his ownership of the entire property which also includes its second floor consisting of one chabutra/ shop, it cannot be said that there is any concealment on his part and allowing this amendment application will cause serious prejudice to the rights of respondent/ tenant. Rather on the facts and circumstances of the present case, the amendment sought to be introduced is merely clarificatory and explanatory in nature and the same would even vindicate the plea raised by the respondent/ tenant which shall be appreciated at the time of conclusion of trial in the ejectment petition. My aforesaid view is derived from the judgment of this Court in **Harbhajan Kaur Vs. Kuldeep Kaur**, 2016 (5) RCR (Civil) 1012 and relevant para 11 of the same is reproduced as under:-

*“11. I have heard the learned counsel for the parties and carefully gone through the case law cited in context to the preposition involved. Vide impugned order the petitioners have not been permitted to amend the ejectment application to incorporate the plea that the petitioners have five other shops besides the shop in dispute. This plea if permitted to be taken on record would not cause any prejudice to the tenant-respondent*

*as plea of the respondent-tenant is not being prejudiced by amendment rather it would vindicate the plea of tenant-respondent to be appreciated at the final arguments. The attempt of the Court should always be to secure the truth and to advance the cause of justice. If any mistake in pleading a fact is caused, parties can be permitted to amend the pleadings especially when the party seeking amendment does not want to lead any additional evidence.”*

As regards the plea raised by the respondent/ tenant to the effect that once the trial has commenced, amendment application could not be allowed, reliance has been placed upon judgments passed by the Hon'ble Supreme Court in case titled as ***Vidhyabai and others Vs. Padamlatha and anr., 2009 (1) RCR (Civil) 763; J. Samuel and others Vs. Gattu Mahesh and others, 2012 (1) RCR (Civil) 903; and Chander Kanta Bansal Vs. Rajinder Singh Anand, 2008 (2) RCR (Civil) 801.*** In the facts and circumstances of the present case, I am of the view that the aforementioned judgments may not help the case of the respondents. Some of the relevant paragraphs from the aforesaid judgments are reproduced hereunder for reference:-

***“Vidhyabai’s case (supra)***

14. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed.

*However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its*

*jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."*

**"J. Samuel's case:**

12. *The primary aim of the court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the court so that the court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their plaints. The Court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states that: no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.*

**"Chander Kanta Bansal's case (supra)**

*....It makes it clear that after the commencement of trial, no application for amendment shall be allowed. However, if it is established that in spite of "due diligence" the party could not have raised the matter before the commencement of trial depending on the*

*circumstances, the court is free to order such application.”*

From a cumulative and conjoint reading of the above, it can be easily made out that in the abovementioned judgments itself, exceptions have been carved out to the restriction imposed by virtue of proviso to Order 6 Rule 17 CPC, to the effect that (i) proviso does not restrict the power of the Court to allow amendment in case it comes to the conclusion that inspite of due diligence a party could not have raised the matter before commencement of the trial and (ii) if the Court records that the amendment is necessary to decide the real dispute between the parties.

As already explained in the preceding part of the judgment, the amendment sought to be incorporated is merely to elucidate the facts already pleaded in the eviction petition and thus, there cannot be said to be lack of due diligence on the part of the petitioner. More than that, the amendment sought to be carried out is even material for the effective determination of *lis* between the parties.

Besides it, all the judgments cited by learned counsel for respondent pertain to the trial of Civil Suits; wherein the procedure is specifically and categorically regulated by the Code of Civil Procedure; whereas the same is not applicable *ipso facto* to the proceedings carried out under the Rent Act. Infact, it can only be said that the procedure laid down under Code of Civil procedure is applicable only as nearly as may be. Even a perusal of Sections 16 & 17 of the East Punjab Urban Rent Restriction Act, 1949 shows that

except power to summon and enforce attendance of witnesses & also execution of orders, no other procedure has been specifically made applicable to rent proceedings. However, at the same time, the procedure followed by the authorities under the Rent Act has to be in consonance with the principles of natural justice which would entail avoidance of a hyper-technical approach. Reference in this regard can be made to the judgment of this Court in **Sukhwinder Singh Vs. Darshan Lal**, 2014 (2) RCR (Rent) 345, the relevant paras 9, 10 & 11 are reproduced hereunder:-

- “9. *Keeping in view the totality of facts and circumstances as also the law as discussed earlier, the impugned order dismissing the application for amendment of the pleadings primarily on the ground of delay cannot Kadyan Vinod Kumar 2014.05.27 17:43 I attest to the accuracy and integrity of this document Chandigarh sustain in law. At this stage, it may be mentioned that the learned Rent Controller was merely influenced by the proviso appended to Order VI Rule 17 CPC which provides that no application for amendment is to be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.*
10. *There is force in the argument of Counsel for the petitioner that he being a landlord is to suffer the consequences of delay and there cannot be any motive in filing this application much less for delaying and dilating the proceedings. It is claimed that it is a sincere effort to bring in all the essential facts sought to be introduced in the petition, with transparency and genuineness.*

11. *Neither the Civil Procedure Code ipso facto with all the principles of law is automatically applicable nor provisions of CPC render the Rent Controller or the Appellate Authority under the Act to be meaningless when cause of administration of justice suffers. In a case as the present one, as has already been noticed, such omission in pleadings once comes to the notice of the Rent Controller, is required to be incorporated even by calling upon the petitioner to do so."*

Reliance can also be placed in the case titled as ***Ranjna Mahajan & another Vs. Chhavi Ahluwalia and ors.***, 2019 (1) RCR (Rent) 149. Relevant para no.27 is reproduced for reference:-

- "27. Firstly, it is settled that the Civil Procedure Code, as such, does not govern the proceedings under the Act except to the limited extent provided for under sections 16 and 17 thereof. Section 16 is concerned with 'Power to summon and enforce attendance of witnesses' and Section 17 deals with enforcement of orders. (Ram Dass v. Sukhdev Kaur, 1981(2) RCR (Rent) 23 : AIR 1981 Punjab and Haryana 301)."*

In view of what has been stated hereinabove and keeping in view the facts and circumstances of the present case, no serious prejudice is going to be caused to the rights of the respondent/ tenant in case the amendment application filed at the instance of petitioner/ landlord is allowed. More than that, the amendment sought for, does not change the cause of action or even the nature of the present proceedings. Neither the landlord is taking any new plea; nor even

any new case is being set up. Still further, the procedural provisions are even required to be construed liberally as the same lay down the rules to regulate the remedy unless the parties act in its complete disregard.

Consequently, the revision petition(s) are allowed. Impugned order dated 02.02.2017 is hereby set aside. The petitioner/ landlord is permitted to carry out the necessary amendment in the rent petition as prayed for in his application.

Pending miscellaneous application(s), if any, shall also stand disposed of.

A photocopy of this order be placed on the files of other connected cases.

October 10, 2022  
sanjay

( HARKESH MANUJA )  
JUDGE

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| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether Reportable</i>        | <i>Yes/No</i> |