

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

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**CR-737-2018 (O&M)
Decided on : 28.03.2022**

Onkar Singh (deceased) through LRs

... Petitioner(s)

Versus

Ramesh Bhandari

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Amit Jain, Sr. Advocate with
Mr. Chetan Salathia, Advocate
for the petitioner(s).

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Sunpreet Singh, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J. (Oral)

The instant revision petition has been filed to impugn the dismissal of an application filed under Order 6 Rule 17 CPC for amendment of the ejectment petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for brevity 'the Rent Act'), for ejectment of the respondent from the demised premises.

Learned Sr. counsel for the petitioners *inter alia* contends that the father of the petitioners-landlord Onkar Singh, had filed a petition under Section 13 of the Rent Act on the ground of personal necessity, as the shop in dispute was required for the use and occupation of his son Gurjeet Singh and another ejectment petition too had been filed for the personal necessity of his second son i.e. Jaspal Singh *qua* another shop, which was under the tenancy of one Nirmal Kumar. During the pendency of the ejectment petitions, the father of the petitioners Onkar Singh expired, hence,

they were impleaded as his legal heirs in the ejectment petition filed u/s 13

of the Rent Act. The ejectment petition was duly contested by the respondent(s). In their written statements, it was alleged that the petitioners-landlord had various other shops, which were lying vacant. A replication was, thereafter, filed by the petitioners-landlord, wherein, it was pleaded by them that the other commercial properties, which were under their ownership were not ideally located in comparison to the shop in dispute and still further, the shop was required for the personal necessity of Gurjeet Singh.

Learned Sr. Counsel contends that in order to avoid any technical objection, an application for amendment of the ejectment petition was thus filed for necessary clarification and also to elaborate the factual status of other shops, which were under the joint ownership of the petitioners and their family members. It was also submitted that the petitioners Gurjeet Singh and Jaspal Singh while stepping into the witness-box as AW-1 and AW-5, respectively, had clarified their status *qua* all the shops, which were under their ownership and other co-sharers including the shops which were under the tenancy of different tenants as well as the factum of no other shop lying vacant. Learned Sr. counsel thus submits that it was in the aforementioned background, the petitioners wanted to amend sub-para 'A' of para 2 of the ejectment petition, so as to show that the other shops which were situated at Tempo Adda, Phagwara Road, Hoshiarpur, were not suitable for doing business.

Learned Sr. counsel further submitted that no doubt the proceedings before the Rent Controller were at an advance stage and the evidence of the parties had also concluded, however, the amendment which was being sought by the petitioners was more of legal in nature and would

in no way change the complexion of the ejectment petition filed under

Section 13 of the Rent Act and rather, it would help the Rent Controller to decide the controversy more effectively. In support of his submissions, he has placed reliance upon the judgments of this Court rendered in cases Jaswinder Singh Jawanda and another Vs. Suraj Parkash, 2008(59) RCR(C) 49, Chhaju Singh Sulekh Ram Family Trust, Khanna through its Managing Trustee, Chhaju Singh (deceased) through his LRs Vs. Baljinder Singh, 2017(1) RCR (Rent) 539 and Sohan Lal Bagga Vs. Mohd. Sayeed, 2017(1) Law Herald 716.

Per contra, learned Sr. counsel for the respondent has vehemently opposed the submissions made by the counsel opposite, by submitting that all the facts which the petitioners were now wanting to incorporate by way of the amended plaint, were already in their knowledge. The evidence of both the parties stood recorded and concluded and the case was at an advance stage i.e. was fixed for rebuttal evidence and arguments. It was further urged that the application under Order 6 Rule 17 CPC was completely silent as to why the petitioner had failed to exercise due diligence at the time of filing the petition and incorporating all these facts, more so, when it was their admitted case that they were well aware of these facts. He, thus, prayed for dismissal of the instant revision petition.

In support of his submissions, the learned Sr. counsel has placed reliance upon the judgment of the Apex Court rendered in Vidyabai & Ors. Vs. Padmalatha & Anr., 2009(1) RCR(C) 763 and judgment of this Court rendered in Sudagar Singh and another Vs. Darshan Lal and others, 2007(1) PLJ 461.

I have heard learned counsel for the parties and perused the relevant material on record.

A perusal of the impugned order comes across as a well

reasoned one, which does not warrant any interference of this Court. This Court is unable to accept the submissions made by the counsel for the petitioners that the amendment of the plaint would not in any way prejudice the case of the respondent. It would be relevant to reproduce the proviso of Order 6 Rule 17 CPC, which reads as under:-

“Provided 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.”

A reading of the aforementioned provisions leaves no manner of doubt that once the trial has commenced, the Court should not allow amendment in pleadings. It is not the case of the petitioner that certain new facts came to his knowledge after the commencement of the trial. Admittedly all the facts which the petitioners are wanting to incorporate were well within their knowledge. Moreover, the amendment in the plaint has been sought by the petitioners at a highly belated stage when the case is fixed for rebuttal evidence and arguments.

Petition stands dismissed accordingly.

(MANJARI NEHRU KAUL)
JUDGE

March 28, 2022

J.Ram

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