

246-2

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

**CR No.8437 of 2017 (O&M)
Date of Decision : 17.11.2022**

Bakhshi Mohammad Shafi (deceased) through LRPetitioner

VERSUS

Iftikhar Ahmed @ Mohammad Iftikhar & Ors. ...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rakesh Kumar Kochura, Advocate for
Mr. G.N. Malik, Advocate for the petitioner.

Mr. Jai Bhagwan, Advocate for respondent No.1.

ALKA SARIN, J.

The present civil revision under Article 227 of the Constitution of India has been filed challenging the order dated 16.05.2017 (Annexure P-3) passed by the Rent Controller, Malerkotla, vide which the application filed by the tenant-petitioner under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) for amendment of the reply has been dismissed.

The brief facts relevant to the present case are that the landlord-respondent No.1 herein filed an ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as “the Rent Act”) for eviction of the tenant-petitioner from one shop bearing municipal property No.B-IX/476 as mentioned in the head-note of the

ejectment petition on the grounds of arrears of rent and personal necessity.

It had been mentioned in para 6 of the ejectment petition that the landlord-respondent No.1 was not in possession nor had vacated any shop since the date of promulgation of the Rent Act in the urban area of Malerkotla. In Para 6 of the reply it had been stated that the landlord-respondent No.1 was in possession of sufficient commercial and non-commercial properties within the urban limits of the Municipal Council, Malerkotla. During the cross-examination of AW2, Iftikhar Ahmad (respondent No.1 herein), and AW3, Mohd. Riaz (respondent No.2 herein), it came to the knowledge of the tenant-petitioner that Sale Deed No.2296 had been executed vide which the landlord-respondent No.1 along with his brother, after the commencement of the Rent Act, had purchased 3 shops against vacant space measuring 15'x20' on which the landlord-respondent No.1 had also constructed a shop and further that the landlord-respondent No.1 was in possession of another shop which adjoined the northern side of the private passage mentioned towards the North side of the shop in dispute in the heading of the petition. Hence, an application under Order 6 Rule 17 CPC for amendment of the reply was filed. Vide the impugned order, the application was dismissed by the Rent Controller. Aggrieved by the said order the present revision petition has been filed.

Learned counsel for the tenant-petitioner would contend that the amendment sought is necessary for deciding the dispute between the parties and further that no prejudice would be caused to the landlord-respondent No.1 in case the said amendment is allowed. Learned counsel has further relied upon the judgments in the case of **Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors. [2006 (2) RCR (Civil) 577]** and **Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors. [2007 (2) RCR (Civil)**

830] to contend that the law regarding the amendment of a written statement is more liberal than the law pertaining to amendment of the plaint.

Learned counsel for the landlord-respondent No.1 has contended that there is no exercise of due diligence on the part of the tenant-petitioner in the present case inasmuch as the factum of the sale deed was well within the knowledge of the tenant-petitioner as is also noticed in the impugned order dated 16.05.2017.

Heard.

In the present case it has been contended by learned counsel for the tenant-petitioner that the entire facts were not within the knowledge of the tenant-petitioner regarding the commercial properties owned and possessed by the landlord-respondent No.1 as such it was only mentioned in the reply that the landlord-respondent No.1 was in possession of sufficient commercial and non-commercial properties within the urban limits of Municipal Council, Malerkotla. It is further the contention that the tenant-petitioner has come to know about the details of the commercial properties and shop owned and possessed by the landlord-respondent No.1 and hence the application for amendment has been filed. It has further been contended that in order to decide the real controversy between the parties, the said amendment would be necessary.

The Supreme Court in the case of **Rajesh Kumar Aggarwal** (*supra*) has held as under :

“13. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

14. Order 6 Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

15. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

16. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.”

In the case of **Usha Balashaheb Swami** (*supra*) it has been held as under :

“22. As we have already noted herein earlier that in allowing the amendment of the written statement a liberal approach is a general view when admittedly in the event of allowing the amendment the other party can be compensated in money. Technicality of law should not be permitted to hamper the Courts in the administration of justice between the parties. In the case of L.J. Leach and Co. Ltd. v. Jardine Skinner and Co. [AIR 1957 Supreme Court 357], this Court observed “that the Courts are more generous in allowing amendment of the written statement as the question of prejudice is less likely to operate in that event”. In that case this Court also held “that the defendant has right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to serious injustice.”

23. Keeping these principles in mind, namely, that in a case of amendment of a written statement the Courts would be more liberal in allowing than that of a plaintiff as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed, we may now proceed to consider whether the High Court was justified in rejecting the application for amendment of the written statement.”

The law regarding the amendment of a written statement is more liberal and if the party is able to show that despite due diligence the said facts could not be brought on the record before the commencement of

the trial, the amendment would not be denied. In the present case the

ejectment petition has been filed and one of the grounds for ejectment is personal necessity. The facts now sought to be brought on the record, which as per the averments made in the amendment application and as per the contentions of learned counsel for the tenant-petitioner, were not within the knowledge of the tenant-petitioner. The tenant-petitioner was not aware of the true strength of the properties owned by the landlord-respondent No.1 and it is only during the cross-examination of the witnesses of the landlord-respondent No.1 that the said facts emerged and hence necessitated the filing of the amendment application. Learned counsel for the landlord-respondent No.1 has not been able to show as to what prejudice would be caused to the landlord-respondent No.1 in case the said amendment is allowed.

In view of the above, the present revision petition is allowed. The amendment application filed by the tenant-petitioner stands allowed subject to payment of Rs.30,000/- as costs to be paid to the landlord-respondent No.1. Pending applications, if any, also stand disposed off.

It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

17.11.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO