

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

(106)

CR-1779-2020 (O&M)

Date of Decision : 27.04.2022

Dharmesh Kumar and Another

.....Petitioners

Versus

Prem Kumar Gulati and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Brij Mohan Vinayak, Advocate for the petitioners.

Mr. V.K. Sandhir, Advocate for the respondents.

ALKA SARIN, J. (Oral)

This is a revision petition under Article 227 of the Constitution of India for setting aside the impugned order dated 17.02.2020 passed by the learned Rent Controller allowing the application under Order 6 Rule 17 CPC for amendment of the ejectment petition.

Learned counsel for the petitioners would contend that by way of the present amendment the respondent-landlord is seeking to fill in the lacuna in his case inasmuch as in the ejectment petition an essential ingredient that his wife had not vacated any such building in the urban area concerned without any sufficient cause had not been pleaded. It is further the contention that this was a fact well within the knowledge of the respondent-landlord and, hence, the amendment ought not to have been allowed. To buttress his arguments, learned counsel has relied upon the judgment passed in **Arjun Chand Vs. Smt. Shama Joshi [2011(44) RCR**

(Civil) 874] to contend that the amendment could not have been allowed to fill in the lacuna in the case.

Per contra, learned counsel for the respondent has contended that the case is still at the initial stage and issues yet to be framed. It is further the contention that the proposed amendment is only explanatory in nature and would not change the tone and tenor of the ejectment petition in any manner. In support of his argument, learned counsel has relied upon the judgment in the case of **Hari Krishan Vs. Ashok Kumar Kalra & Anr. [2020(2) RCR (Rent) 1]** to contend that amendment incorporating the basic ingredient of Section 13(3)(a)(i) would cause no prejudice to the tenant. It is further being contended by the learned counsel by relying upon the judgments in **Rahul Jain Vs. Prahlad Singh [2014(4) RCR (Civil) 965]** and **M/s Bhatia Cloth House Vs. Dr. Raj Kumar Gupta & Anr. [2008(2) RCR (Rent) 281]**, that even in case there is any defect in the pleadings with regard to the essential ingredients of personal necessity, the same would not be fatal to the petitioner and can be rectified immediately on such an objection being raised. It is further the contention that the same could also be made good by way of evidence, which would be duly considered by the Court.

Heard.

In the present case, admittedly, the ejectment petition is still at the very initial stage inasmuch as issues are yet to be framed. In the ejectment petition the landlord-respondent has sought the eviction of the tenant-petitioner on the ground of personal *bona fide* necessity of himself and his wife and in the petition it has been mentioned that he has not vacated

any such building in the urban area concerned without any sufficient cause after the commencement of the East Punjab Urban Rent Restriction Act, 1949. However, he had not pleaded that his wife had also not vacated any such building in the urban area concerned without any sufficient cause. The only amendment now sought is for adding the following sentence at the end of para 5(i) :

“Smt Kiran Gulati wife of the applicant No.1 has also not vacated any building in the urban area concern without sufficient cause after the commencement of the Act-III, 1949 in the urban area concern nor she is occupying any other building in the urban area concern.”

Reliance placed by the learned counsel in the case of Arjun Chand (*supra*) would be of no avail inasmuch as the same is distinguishable on facts. In the said case the eviction petition had been filed on 21.11.2004 and the written statement was filed on 03.05.2005 and both the parties led their respective evidence. It is only at the stage of final arguments that an application for amendment was moved. In the present case the application has been filed at the very initial stage.

The judgment relied upon by learned counsel for the respondents in case of Hari Krishan (*supra*) is applicable to the present case with full force. In the said judgment it was held as under :

“The Rent Controller while allowing the application has relied upon the judgment of this Court in the case of Gurnam Singh versus Roshan Lal, 2009 (1) PLR 562

wherein application was filed under Section 13-A for eviction of the tenant from the shop. The landlord after the evidence had been led and the arguments had been heard, had filed an application for amendment on the ground that Section 13-A would not be applicable to non-residential premises and he had sought an amendment to seek eviction on the basis of Section 13 of the Act instead of Section 13-A of the Act. The amendment had been allowed by this Court by holding that the Rent Controller would not be strictly bound by the provisions of Code of Civil Procedure. Reference can also be made to the judgment of the Coordinate Bench of this Court in the case of Sukhwinder Singh versus Darshan Lal (supra) wherein the petitioner landlord in the petition had not pleaded the ingredients that he was not in possession of another premises in the urban area nor he had vacated the same and he had preferred an application for amendment to plead these basic ingredients. The Rent Controller had dismissed the application by holding that it had been filed to delay the trial and it was not evident that despite due diligence the matter could not be raised earlier. This Court had allowed the amendment by holding that such an omission in the pleadings could be rectified by allowing the amendment. In the case of Pawan Kumar versus

Ravinder Singh (supra), the similar amendment where the landlord had sought to incorporate statutory compliance of the provisions of the Act inasmuch as he did not possess any such building or he had vacated the same after the commencement of the Act, had been allowed by the trial Court. The challenge thereto was negated by this Court by holding that the amendment had been rightly allowed and no prejudice would have been caused to the tenant and he would have the right to cross examine the landlord during the evidence stage. In the case of Raman Mal versus Faquir Chand and ors (supra) the petition of the landlord for ejectment had been dismissed by the Rent Controller as well as the Appellate Court. His revision petition there against was allowed and he was allowed to amend the petition by pleading the ingredients of Section 13 (3) (a) (i) of the Act that he required the premises for his bona fide necessity and that he did not have any other premises nor he had vacated the premises after coming into force of the Act. A similar amendment had been upheld by the Coordinate Bench of this Court in the case of Madhi Mal versus Sat Pal (supra). Therefore, allowing the amendment would also be in the interest of justice and equity. The petitioner will also get adequate opportunity to rebut the case of the landlord.”

It was further held in the case of Rahul Jain (*supra*) that :

“A perusal of the averments made in the eviction petition, as noticed above, would show that the respondent-landlord has pleaded all the ingredients of his personal necessity as required; may be the language of the averments is not very specific. It is well settled that if there is any defect in the pleadings of the landlord with regard to the ground of eviction, as raised under Section 13(3)(a)(i) of the Rent Act, the same is not fatal to the petition and the same can be rectified immediately on raising such an objection. This view finds support from the judgment of this Court in ‘M/s Bhatia Cloth House v. Dr. Raj Kumar Gupta and another’ 2008(4) RCR (Civil) 250, wherein it has been held as under :

“It is consistent position in law that ambiguity in pleadings regarding the ingredients, set out in Section 13(3)(a) of the Act, if made good in the evidence, is sufficient compliance of the statutory provisions.”

In ‘Raj Kumar v. Budha Mal’ 2011(2) RCR (Rent) 60, it was held that :

*“Having perused the judgment in Banke Ram’s case (*supra*), this Court is of the opinion that of course ingredients of sub-section (b) and (c) of Section 13(3)(a)(i) of the 1949 Act are to be*

necessarily pleaded in the eviction petition, however, as held by the Full Bench in paragraph 12 of the judgment, this Court is of the opinion that it should not be understood that under no circumstances, in the absence of pleadings, the evidence regarding the ingredients envisaged under sub-section (b) and (c) can be looked into. Hence, in the opinion of this Court, if parties were fully aware about the ingredients of sub-section (b) and (c) at the time of leading evidence and both the parties have led evidence on these issues, then petition cannot be thrown out merely because the landlord has failed to plead ingredients of sub-section (b) and (c) in the eviction petition.”

Keeping in view the fact that the application for amendment has been moved at the initial stage and it is not in any manner going to change the nature of the ejectment petition as also in view of the settled law, as referred to above, I do not find any illegality or infirmity in the impugned order passed by the Rent Controller.

The revision petition, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed of.

Dismissed.

(ALKA SARIN)
JUDGE

April 27, 2022

sandeep

Whether speaking/reasoned :

Yes/No

Whether Reportable :

Yes/No