

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

**CR-1775-2020 (O&M)
Date of decision : 02.09.2022**

M/S Sunder Lal Chopra and Sons

... Petitioner(s)

Versus

Raj Rastogi and Others

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Bhag Singh, Advocate for the petitioner.

Mr. Sanjay Jain, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

The present revision petition under Article 227 of the Constitution of India has been filed for quashing the order dated 03.02.2020 passed by the Rent Controller whereby the application filed by the tenant-petitioner for amendment of the written statement has been dismissed.

Learned counsel for the tenant-petitioner would contend that the petition for ejectment has been filed by the landlord-respondent on the grounds of non-payment of rent and that the premises had become unfit and unsafe for human habitation. Written statement-cum-counter-claim was filed to the said ejectment petition. On 21.02.2019 an application under Order 6 Rule 17 CPC was filed on the ground that during the pendency of the ejectment petition the landlord-respondent had himself damaged the roof of the demised premises by removing the tiles, making two big gaps, ditches

12' x 15' x 6' inches and also damaged the cemented roof/floor in order so that the water can pour into the shop. It was further stated in the application that the tenant-petitioner had moved a complaint to the SHO Police Station, Ambala Cantt. and hence the necessity arose to file the application for amendment of the pleadings. Learned counsel for the tenant-petitioner would further contend that the amendment application was dismissed only on the ground that the same has been filed at a belated stage when the ejectment petition was fixed for rebuttal evidence of the tenant-petitioner. It was further noticed that the proposed amendment would lead to a *de novo* trial of the case. Learned counsel has on instructions categorically stated that the tenant-petitioner does not seek to lead any further evidence and would argue the matter whenever the same is fixed for arguments.

Per contra, learned counsel for the landlord-respondent has contended that the tenant-petitioner had filed a Police complaint in the year 2015 that the landlord-respondent had damaged the building. However, no further efforts were made to move the amendment application till 2019 when the case was fixed for rebuttal and arguments. Learned counsel for the landlord-respondent has relied upon the judgment of Hon'ble Supreme Court in the case of **Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka & Ors. [2013 (2) RCR (Civil) 965]** to contend that in view of the fact that the tenant-petitioner had the knowledge, the amendment application was rightly dismissed by the Rent Controller. Further, reliance has been placed upon the judgment in the case of **Jaspal Kaur & Anr. Vs. Mohinder Singh & Ors. [2014 (9) RCR (Civil) 2935]**.

Heard.

In the present case though admittedly a Police complaint had been registered on 15.07.2015, however, the amendment was not sought and it is only in the year 2019 when the amendment of the written statement has been sought to bring on record the subsequent events. It is trite that the law relating to the amendment of the written statement is more liberal and that of amendment of the plaint. Hon'ble Supreme Court in the case of **Ramesh Kumar Agarwal Vs. Rajmala Exports Pvt. Ltd. & Ors [2012 (2) RCR (Civil) 739]** has held as under :

“11. It is clear that while deciding the application for amendment ordinarily the Court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order 6 Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the Courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations”

In the present case, from a perusal of the averments made in the amendment application as well as from the impugned order, it is apparent that certain subsequent events had taken place i.e. there had been a Police complaint by the tenant-petitioner qua damage having been caused to the roof of the building by the landlord-respondent. The tenant-petitioner has made a categorical statement that he only wants to plead the said facts by way of the amendment and that he would not be leading any further evidence in the matter. Both the judgments in the cases of **Mashyak Grihnirman Sahakari Sanstha Maryadit** (*supra*) and **Jaspal Kaur** (*supra*) relied upon by learned counsel for the landlord-respondent are distinguishable inasmuch as the same relate to the amendment of the plaint and not to amendment of the written statement.

In view of the above, the impugned order dated 03.02.2020 is set aside and the application for amendment of the written statement is allowed subject to payment of Rs.5000/- as costs to the landlord-respondent. It is, however, made clear that no further evidence shall be led by the tenant-petitioner as stated by his learned counsel.

The present revision petition is disposed off accordingly.
Pending applications, if any, also stand disposed off.

02.09.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

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