

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

CR 2809/2019

Date of decision: December 23,2022.

Kanta Devi @ Kanta Rani

.....Petitioner

Vs.

Paramjit Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Parvinder Singh, Advocate for the petitioner
None for the respondents despite service.

Nidhi Gupta,J.

Prayer in the present revision petition is for setting aside order dated 28.1.2019 (P-6) passed by Rent Controller, Garhshankar whereby the application filed by petitioner under Order 1 Rule 10 CPC for impleadment as party respondent has been dismissed.

Brief facts of the case are that respondent no.1- Paramjit Singh filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act'), for ejectment of Hari Om, who is the (now-deceased) husband of the applicant/petitioner, *'from shop marked as ABCD shown red in colour*

in the site plan bounded as East property of petitioner, West PWD Road, north petitioner, South Paramjit Kaur and Bharat Bhushan, situated on the ground floor in the urban area of Mahilpur, Tehsil Garhshankar’ (hereinafter referred to as ‘the demised premises’), by alleging that said Hari Om was tenant of respondent no.1 in the shop in dispute. During pendency of the said petition Hari Om expired, whereupon, the petitioner herein was arrayed as legal representative/ respondent No. 1A in the above said rent petition - as evident from the amended memo of parties of the rent petition (Annexure P-1) pending before the Rent Controller, Garhshankar.

Learned counsel for the petitioner submits that it has been the consistent case of the petitioner that the respondent no.1 is wrongly claiming to be landlord of the demised premises as, in actual fact the petitioner is owner thereof as she had bought the said property vide sale deed dated 2.5.2008 (Annexure P-7). It is submitted that the petitioner had strained relations with her deceased husband and therefore, the above said ejectment petition was filed by respondent No. 1 in collusion with her deceased husband Hari Om. It is in this situation that the petitioner had filed an application under Order 1 Rule 10 CPC for her impleadment as independent respondent in the ejectment petition, which application has been dismissed by the Rent Controller vide impugned order Annexure P-6.

It is further submitted that respondent No. 1 claiming himself to be owner of the shop in question had earlier also filed a Civil Suit seeking *‘permanent injunction restraining the defendants themselves or through anybody else or with the help of police from interfering into lawful and peaceful possession of plaintiff over the building marked as ABCD shown in red colour in the site plan bounded as East Khalsa College, West plaintiff, north plaintiff, South Paramjit Kaur et cetera being part of Khata No. 38411/3875 Khasra No. 34//12/1/1/30–11 as per the Jama Bandi of the year 2008–09 situated in the area of village Mahilpur Tehsil Garhshankar, by way of demolition as well as by raising any construction and be restrained from doing so in future’* against the present petitioner qua the same property. It is stated that it is important to note that in this earlier civil suit filed by the respondent the deceased husband Hari Om/ defendant no. 2 therein, had been proceeded against ex parte whereas the petitioner had been the contesting defendant (as evident from Annexure P-8 at page 32 of the paper book). During the pendency of the said suit respondent/ plaintiff had also filed an application under Order 39 Rules 1 and 2 CPC before the trial Court. That application was dismissed by the learned trial Court vide order dated 1.12.2015 (Annexure P-8); and respondent’s request for appointment of a Local Commissioner was also dismissed by the learned trial Court vide order dated 24.9.2018 (Annexure P-9). However, respondent No. 1 had

subsequently withdrawn the said Civil Suit vide order dated 31.1.2019 (P-10) passed by the Id. Addl. Civil Judge (Senior Division), Garshankar. It is submitted that accordingly, all these facts go to show that in actual fact, the respondent was never the owner of the premises in question, and that the present rent petition has been filed in collusion with the estranged, now deceased, husband of the petitioner with the sole motive of illegally ejecting the petitioner from the premises in question.

Heard learned counsel for the petitioner.

Perusal of the record of this case shows that contesting respondent no.1 was served as far back as on 17.5.2019, however, till date he has not put in appearance. Accordingly, respondent no.1 is proceeded against ex parte and this matter is decided in his absence.

Without adverting to any of the other points in dispute that may exist between the parties which will be decided in the pending rent petition in due course, a perusal of the impugned order shows that the petitioner has raised some arguable, fundamental issues that would require consideration and adjudication for a proper determination of the rights of the parties. In my considered view if a claim is made before this Court, it becomes incumbent upon this Court to examine the veracity of such claim; and even if the same is unsupported by relevant material an opportunity may be granted in the interest of

justice to place on record such materials as may be required for the proper adjudication of the matter.

In this regard reference is made to decision of the Hon'ble High Court of Delhi in case **2006(3) R.C.R. (Civil) 9.- "Maharaji Educational Trust & Anr. Vs. Punjab & Sind Bank & Anr"**, where in a suit filed by Plaintiff, the Defendant Bank filed an interim application for condonation of delay in filing the written statement. The said application filed by the Defendant was opposed by the Plaintiff while alleging that the application was not supported by an affidavit. The Delhi High Court held that the plea that the application is not supported by a proper affidavit is of no consequence, at best, it is an irregularity which could be cured and it is not an illegality which would render the application liable to be dismissed on that ground alone.

In the present case too, while dismissing the application vide Impugned Order dated 28.01.2019 an observation has been made that the petitioner's application under O1R10 is not supported by an affidavit, and thus the same has been dismissed. However, as per ratio of the above said case, said lapse should be considered an irregularity and not an illegality.

Further, in the present case, in view of the assertions of the petitioner before the rent controller, albeit unsupported by relevant material at the time, it is incumbent in the interest of justice, as also to

effectively and completely adjudicate upon and settle all the questions/ issues in dispute between the parties, that the petitioner's application under Order 1 Rule 10 CPC be allowed and she be impleaded being necessary party.

I am supported in my view by judgment rendered by the Hon'ble Supreme Court in **Aliji Momonji & Co. v Lalji Mavji 1996(5) SCC 379**. In said case the Lessee had filed a suit for Permanent Injunction against the Municipal Corporation, Bombay, restraining them from demolishing a portion of a building for which the corporation had issued a notice. The owners filed an application under OIR10 which was allowed by the trial court and the said Order was upheld by the High Court. The Hon'ble Supreme Court in paras 5 and 6 of above-referred judgment upheld the said orders by observing that where the presence of the Respondent is necessary for complete and effectual adjudication of the dispute, though no relief is sought, he is a proper party. Further observed that in case the demolition of the building is carried out then the rights, title and interest in the property of the landlord would be affected and hence, he is a proper party.

Para 5 of the said judgment reads as under:-

5. The controversy is no longer *res integra*. It is settled law by catena of decisions of this Court that where the presence of the respondent is necessary for complete and effectual adjudication of the dispute, though no relief is sought, he is a proper party. Necessary party is one without whose presence no effective and complete adjudication of the dispute could be

made and no relief granted. The question is : whether the landlord is a necessary or proper party to the suit for perpetual injunction against the Municipal Corporation for demolition of demised building ? The landlord has a direct and substantial interest in the demised building before the demolition of which notice under Section 351 was issued. In the event of its demolition, his rights would materially be affected. His right, title and interest in the property demised to the tenant or license would be in jeopardy. It may be that the construction which is sought to be demolished by the Municipal Corporation was made with or without the consent of the landlord or the lessor. But the demolition would undoubtedly materially affect the right, title and interest in the property of the landlord. Under those circumstances, the landlord necessarily is a proper party, though the relief is sought for against the Municipal Corporation for perpetual injunction restraining the Municipal Corporation from demolition of the building. Under those circumstances, the question of the commercial interest would not arise. In *Ramesh Hirachand Kundanmal's case* (supra), this Court had pointed out in para 18 of the judgment that the notice did not relate to the structure but to two chattels. Original lessee from the landlord had no direct interest in that property. Under these circumstances it was held that the second respondent has no direct interest in the subject matter of the litigation and the addition thereof would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which was required to be adjudicated and settled. It is true, as pointed out by Shri Nariman that in para 14, this Court in that case had pointed out that what makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is not necessary for the purpose of this case to go into the wider question whether witness can be a proper and necessary party when the witness has a commercial interest. This Court in *Anil Kr. Singh v. Shivnath Mishra, 1995(2) RRR 179(SC) : (1995) 3 SCC 147* similar question was answered holding that the respondent was a necessary party. (Emphasis supplied)

In the present Revision petition as well, the Petitioner is in possession of the property in question, hence she is at least a proper party, and as such a hearing ought to be afforded to her in her own independent right as she will be dispossessed in case the eviction order is passed against her without permitting her to file her version via written statement disclosing her entitlement to be in possession over the property.

In **1998(2) R.C.R. (Civil) 346. "Jagdish Chand Sharma vs. Municipal Committee, Hassanpur"** suit was filed by the Plaintiff (Shri Nanak Chand) against Defendant (Municipal Committee, Hassanpur) for restraining them from demolishing a temple. The same was contested by the Municipal Committee (Defendant) by stating that the suit property is part of khasra no. 505 and is owned and possessed by the Municipal Committee. One Jagdish Chand Sharma filed an application under OI R10 for becoming a party to the said suit by stating that he is in actual occupation of land measuring 4 biswas comprised in khasra no. 1159 min which has been now renumbered as khasra no. 505. He also pleaded that the previous suit filed by the them Gram Panchayat, Hassanpur against the said Jagdish Chand, wherein it was pleaded that Panchayat was owner in possession of the land in question and the applicant had taken unauthorized possession of the same, the said suit was decreed by the trial court, however the appeal filed by him was allowed by Ld. District

Judge, Gurugram. He also pleaded that in the said judgement it was duly noted that khasra no. 1159 min was subject matter of the dispute. The trial court dismissed the said application; however, this Court allowed the revision by holding that the underlying feature of Procedural Law must be construed as to achieve the ends of justice. Thus, it was observed that in the previous suit where the possession of Jagdish Chand Sharma has been decided in his favour, then qua the subsequent suit with respect to the same property he is a necessary and proper party.

In the present Revision petition also, in the previous suit filed by the Respondent no. 1 against the present Petitioner, (Annexures P-8, P-9, P-10) the trial court therein held that the Respondent-Plaintiff has not been able to prove his possession and it was accordingly, directed therein that petitioner/ defendant can raise construction on suit land and status quo in regard to possession was also granted over suit land till decision in the said suit. No doubt, in the present case, respondent no.1 is the '*Dominus Litus*', however, in view of the previous suit initiated by Respondent no.1 himself, the Petitioner is a property party herein.

Further, again in **1979(2) R.C.R. (Rent) 612. - "Vidya Sagar vs. Kesho Kumar & Anr"**, the Rent Petition was filed by one Vidya Sagar against Tenant Kesho Kumar for evicting him from the property in question. One Savitri Devi filed application under OIR10

for impleading herself as a party by alleging that the said Kesho Kumar was in fact tenant of her deceased husband Lakshmi Nath who was the real brother of Vidya Sagar, and stated that she is recovering rent from the tenant Kesho Kumar. The Trial Court allowed the application, however the aforesaid Vidya Sagar preferred Civil Revision before this Hon'ble High Court, and while dismissing the same this Hon'ble Court held that the relationship between Savitri Devi and the Landlord is very material to be determined in the said case and the same would avoid multiplicity of the proceedings.

In the present case as well, once the Petitioner is able to establish her independent right to remain in possession then it would avoid the multiplicity of litigation and moreover, no prejudice would be caused to Respondent no. 1.

Reference may also be made to judgment of this Court in **Smt. Shayama Jain v Smt. Savitri Devi and others, Law Finder Doc Id# 2274**. Para 6 of the said judgment reads as follows:-

6. Having heard learned counsel for the parties at considerable length and perusing the record with their assistance. I am of the considered opinion that this revision petition deserves to succeed and the impugned order dated 24.8.200 passed by the Civil Judge is liable to be set aside. The averments made in the application clearly establish the interest of the applicant- petitioner inasmuch as it has been averred that she has purchased the land and constructed the house by leaving the area of 200 square yards for the passage. She has further asserted that when the plaintiff-respondent No. 1 constructed the staircase illegally obstructing the free access to the house of the applicant-petitioner, she has to file a complaint on 27.2.2000 to the Deputy Commissioner, Narnaul and the notice dated 28.2.2000 issued to plaintiff respondent No. 1 is on the basis of her complaint. Therefore, the applicant- petitioner is a necessary party and

it has to be held that the order passed by the Civil Judge suffers from material irregularity and illegality. Both the judgments relied upon by the learned counsel substantially support his submission because in Nand Lal Nandwani's case (supra), this Court has taken the view that in a suit for permanent injunction restraining the Municipal Committee from demolishing the plaintiff's wall on the disputed land, the presence of the person who had his house situated opposite just across the street was considered necessary and he was held to be a person interested within the meaning of Order [1](#), Rule [10](#) of the Code. Therefore, the revision petition deserves to be allowed and the impugned order dated 24.8.2000 is liable to be set aside.(emphasis supplied)

Reference is also be made to **Rajiv Goel v Sohan Lal Khosla, Law Finder Doc Id # 208664** and **Krishan Lal v Sudesh Kumari, Law Finder Doc Id # 30625**. Head note in **Krishan Lal's** case (supra) reads as follows:-

“Civil Procedure Code, 1908, Order 1 Rule 10 - All co-owners are necessary party to a suit to recover property belonging to them jointly - Impleading of parties - Factors which may be considered by the Court - On re-iteration of the settled principles and in a derivative manner, it is possible to indicate certain factors which may be considered by the Court while determining such a question :-

(a) Whether the applicant is a necessary and proper party keeping in view the facts and circumstances of the case-

(b) Whether presence of such a party before the court is necessary for effectively and completely adjudicating the matter and granting a complete and effective decree to the party entitled to-

(c) Whether such a party interested would be directly effected as a result of culmination of such persons into decree or it would only be effected remotely, indirectly and distantly

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In addition to above, where the Court considers the presence of a party necessary or proper and complete adjudication, then it may well be considered relevant whether non-impleadment of such a party would result in avoidable multiplicity of litigation, the effort should be to implead a party rather than to force the party to go to a fresh litigation”

In my considered view, in the present case, the petitioner as legal representative of deceased husband Hari Om will be limited in her defence being constrained to adopt the defence which her deceased husband had taken; whereas as evident from the discussion hereinabove, for proper adjudication of the present matter, it is just and proper that the petitioner be impleaded and permitted to file her written statement as an independent respondent.

Accordingly, the present revision petition is allowed, impugned order dated 28.1.2019 (P-6) passed by Rent Controller, Garhshankar is set aside and application under Order 1 Rule 10 CPC filed by the petitioner is allowed and it is directed that petitioner be given one effective opportunity to file her written statement.

(Nidhi Gupta)
Judge

December 23, 2022.
Joshi

Whether speaking/reasoned
Whether reportable

Yes
Yes/No