

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

CR-5336-2022(O&M)

Date of decision:-21.11.2022

M/s Raja Ram Phool Chand and another

...Petitioners

Versus

Kulwinder Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.R.S. Chugh, Advocate
for the petitioners.

H.S. MADAAN, J.(ORAL)

1. Under challenge in this revision petition is order dated 18.10.2022 passed by Rent Controller, Ludhiana in a rent petition titled 'Kulwinder Singh and others Vs.M/s Raja Ram Phool Chand and another' vide which he had dismissed application under Order 6 Rule 17 CPC filed by respondents/tenants seeking amendment of written statement. Such respondents/tenants are revisionists before this Court.

2. Briefly stated, facts of the case are that petitioners had brought an ejectment petition against respondents/tenants on the ground of the premises being required by petitioner No.2 Jasvinder Singh for opening his office as an Advocate. As per the case of the petitioners, such

petitioner No.2 Jasvinder Singh was earlier working with his father Sh.Harbhajan Singh in his office at Model Town, Ludhiana, thereafter he wanted to have his own independent office because office of Sh.Harbhajan Singh was not sufficient for the entire staff and requirement of petitioner No.2. Separate ejectment petitions had been filed against M/s Raja Ram Phool Chand and another as well as against another tenant M/s Sokhi Auto Industries on the ground of bona fide need.

3. On notice, the respondents/tenants put in appearance and contested the rent petition contending that there was no bona fide need of the demised premises as claimed in the rent petition. The office of Sh.Harbhajan Singh is enough for use by his son Jasvinder Singh as well. The respondents prayed for dismissal of the rent petition in question.

4. Issues on merits were framed. The parties were afforded opportunities to lead evidence, which they availed of and the case was fixed for arguments. In the meanwhile, the respondents/tenants filed an application for amendment of the written statement claiming that subsequent events have taken place, which have come to the knowledge of respondents recently, therefore those are required to be incorporated in the written statement, for which permission for amendment by the Court is required.

5. According to the respondents/tenants as per knowledge acquired by them Sh.Harbhajan Singh father of Sh.Jasvinder Singh has since expired and Sh.Jasvinder Singh can use the office of his father exclusively and ample accommodation is available there. Therefore, the necessity for getting the respondents evicted from the demised premises

no more exists. Furthermore, the other tenanted premises in occupation of M/s Sokhi Auto Industries comprising one big shed and one room total measuring 90 square yards has been ordered to be vacated vide order dated 29.10.2019, which is more than enough for any advocate to run his office. Another assertion made is that an ejectment petition had been filed by petitioners against M/s Kochhar Steel Scrap Company on the ground of personal necessity of petitioner No.1 Kulwinder Singh, however when record of MC, Ludhiana was summoned, it came out that the said shop had come to the share of petitioner No.2 and not petitioner No.1 Kulwinder Singh as falsely claimed in this petition. Therefore, the present petition is mala fide. Furthermore, the partition of property bearing No.497, Industrial Area-A, Ludhiana amongst the petitioners has been effected and petitioner No.1 Kulwinder Singh took loan from the bank against his share in the property, though subsequently, he committed defaults and notice under Securitisation and Reconstruction of Financial Asset and Enforcement of Security Act, 2002 was issued and pasted on the property. The petitioners have concealed material facts of partition of joint property amongst themselves. The respondents/tenants wanted to incorporate all those facts, which have come to their notice recently on engaging a new counsel and they were not having knowledge of all those facts when the written statement was filed.

6. The application was opposed on behalf of the petitioners by filing a reply raising various preliminary objections to say that application is not maintainable and is an abuse of process of law; the evidence of respondents was already closed and case was fixed for arguments when a

frivolous application was filed to delay the proceedings of the petition, which is pending since the year 2015. On merits, the petitioners pointed out that father of petitioner No.2, Sh. Harbhajan Singh has expired and his office was a small one, where staff of petitioner No.2 Sh.Jasvinder Singh cannot be accommodated. Therefore, the demised premises in occupation of the present respondents/tenants as well as M/s Sokhi Auto Industries is bona fide required by the petitioner No.2 Jasvinder Singh for opening his office. Dismissal of the application was prayed for.

7. After hearing arguments, learned Rent Controller, Ludhiana vide order dated 18.10.2022 dismissed the application. For ready reference, the operative part of the impugned order contained in para No.7 is being reproduced as under:

7. The amendment application now has been filed in the present petition which is for ejectment of the respondent/applicant from the demised premises filed under section 13 of the East Punjab Urban Rent Restriction Act 1949. When the present application was filed, the case was going on for rebuttal evidence, if any otherwise for arguments. Now through the present application, as noted above it is submitted that the father of the petitioner no.2 who was advocate died and now petitioner no.2 became independent in the office of his father and this fact has been concealed and also that the other tenancy premises has been ordered to be vacated vide order dated 29.10.2019. So the area is more than enough by the petitioner and also that petitioners had filed one petition for ejectment of one shop on the grounds of personal necessity and in the said case allegedly

it came to know that the said shop of another petition came to the share of petition no.2 and not of petitioner no.1. So factum of some partition allegedly concealed by the petitioners. So it is claim that the present petition is malafide and not of any bonafide need. One alleged fact of availing some loan by petitioner no.1 is to be got added by way of amendment in the proposed amendment. It is stated that facts mentioned in the applications came to know recently by the applicant.

However in view of this court, both the parties have led their evidence and the case has reached at final stage i.e. rebuttal evidence if any otherwise for arguments. Now the facts as alleged through the present application came to the knowledge of the applicant recently. In view of this court further the alleged facts, as mentioned in the present application were not liable to be ignored earlier by the applicant if any, particularly when it is not explained plausibly why the proposed amendment application was not moved at appropriate stage as and when alleged facts happened mentioned in the application now sought to be incorporated in written statement by way of amendment. Even otherwise again to say, the petition is to be decided on merit after appreciating the evidence already lead by the parties in accordance with law. Therefore, I do not find any merit in the present application for amendment as moved by the applicant/defendant. The same is accordingly dismissed. The application stands disposed of accordingly.

Now to come up on 04.11.2022 for rebuttal evidence if any otherwise for arguments.

8. Feeling aggrieved by the said order the respondents/tenants have filed the present revision petition.

9. I have heard learned counsel for the revisionists besides going through the record and I find myself in agreement with the Rent Controller, Ludhiana that no case for allowing the application for amendment is made out when the application so filed is highly belated and case is waiting final disposal with both the parties having concluded their evidence in affirmative. The application comes out to be a delaying tactics so as to set the clock back and to have a *de novo* trial. Such type of tactics cannot be allowed to succeed. Thus, the application for amendment was rightly dismissed. The proposed amendment is not found to be necessary for the purpose of determining the real questions of controversy between the parties besides being extremely belated.

10. Proviso to Order 6 Rule 17 CPC dilates 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. Here in the grab of incorporating subsequent events, the revisionists want to reopen of the matter as a delaying tactics.

11. The order is certainly not perverse or passed in an arbitrary manner. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to

interfere with the impugned order by way of exercising the revisional jurisdiction.

12. Finding no merits in the present petition, the same stands dismissed.

21.11.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No