

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 5251/2022(O&M)

Date of decision: 21.12.2022.

Mohinder Pal Anand

.....Petitioner

Vs.

Inderjeet Anand

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Anil Chawla, Advocate for the petitioner/tenant

 Mr.Ashok Aggarwal, Senior Advocate with
 Mr.Mukul Aggarwal, Advocate,
 Mr.Shrenik Jain,Advocate and
 Mr. Hari Pal, Advocate for the respondent/landlord.

Nidhi Gupta,J.

Present revision petition is filed against the order dated 12.9.2022 passed by Rent Controller, Amritsar in Rent Petition No. 482/2018 whereby the application filed by the respondent/landlord under Order 6 Rule 17 read with Section 151 CPC for amendment of petition has been allowed.

It is pleaded case of the respondent/landlord that he, along with his brother Sh. Bal Kishan Anand is owner of one shop bearing No.78-A situated on Railway Link Road, Amritsar (hereinafter referred to as 'the demised premises') and this shop was rented out to the petitioner on 6.7.2016

@ Rs.1000/- per month. Even a rent note dated 6.7.2016 was executed by the petitioner/tenant in favour of the respondent/landlord and his brother Bal Kishan Anand. Thereafter, the respondent/landlord filed Rent Petition No. 482/2018 seeking ejectment of the petitioner from the demised premises under Section 13 of the East Punjab Urban Rent Restrict Act, 1949 (hereinafter referred to as 'the Old Act'). The ground on which the eviction of the petitioner was sought was bona fide requirement of the respondent for use and occupation of the demised premises as office by his daughter Miss Neha Mahajan, who is a practicing lawyer, but since she had no office where clients could be entertained as such demised premises were required. It is further averred in the Rent Petition that the respondent has no other shop within the Municipal limits of Amritsar after the commencement of the Rent Act, and the demised premises will be used exclusively by the daughter of the respondent.

Petitioner filed reply to this petition denying the existence of relationship of landlord and tenant between the parties and taking other grounds seeking dismissal of the Rent Petition. It was further stated by the petitioner that in fact the petitioner and respondent are real brothers and the shop in question was never taken on rent by the petitioner from the respondent. It is further stated that the demised premises has been in possession of the petitioner since 1982-83, and he has actually been in full and complete control and possession of the demised premises since the death of their father in 6.6.1998, and the petitioner has never paid any rent to anybody for the occupation of the same.

After completion of pleadings when the trial had commenced, the respondent/landlord filed application under Order 6 Rule 17 CPC seeking

to amend the Rent Petition on the ground that a) the Rent Petition had been filed under the Old Act and since the inception of tenancy was on 6.7.2016, which is after 30.11.2013, the petition was required to be filed under the Punjab Rent Act,1995 (for short 'the New/ 1995 Act'); and b) para 3(i) (a) was sought to be added as a ground with regard to arrears of rent. This application for amendment was resisted by the petitioner inter alia, on the ground that (a) ground of arrears of rent was not taken earlier and (b) evidence in the case has already started and respondent herein has produced Sh. Bal Kishan Anand as AW-1 and at this stage, the respondent has no right to amend the petition as per new Act.

Vide impugned order dated 12.9.2022 the learned Rent Controller has allowed the said amendment application of the respondent/landlord permitting amendment of the Rent Petition. It is this order which is in challenge in this revision petition.

Ld. Counsel for the petitioner has vehemently submitted that since the very beginning landlord-tenant relationship between the parties has been specifically denied by the petitioner. Moreover, the petitioner is in possession of the demised premises since 1982-83. It is submitted that the present application is a ploy to obviate the evidence led by Bal Kishan Anand AW1 the third brother of the parties, who in his evidence has admitted the case of the petitioner. It is forcefully contended that the amendment sought is not necessary and the respondent should have exercised due diligence and cannot be now permitted to amend the petition. It has further been submitted by the learned counsel for the petitioner that concession of Section 20(2) (a) is available to the tenant only once and grave prejudice and injustice will be caused to him if the impugned order is sustained.

In response, it is submitted by the learned Sr. Counsel for the respondent/landlord that the respondent is not very literate and can hardly affix his signatures in English and is further not conversant with legal procedure and therefore, was not aware and was entirely dependent upon his previous counsel who had filed the Rent Petition under the Old Act. It is only upon the death of the previous counsel when the respondent engaged the present counsel that he came to know that the rent petition is required to be filed as per new Act. It is submitted that grave prejudice will be caused to the respondent if the present amendment is not permitted; whereas, on the other hand since the case is at its initial stage therefore, no prejudice would be caused to the petitioner especially as possession of the petitioner is not being disturbed. It is further un rebutted by ld. Sr. Counsel that the evidence led heretofore shall remain on record, and evidence of parties will resume from where it was left off. It is submitted that only due to lack of proper legal guidance that the Rent Petition was inadvertently filed under the old Act. Further stated that one is only formal amendment sought by the respondent and factum re: non-payment of rent will be determined by the learned Rent Controller.

Ld. Sr. Counsel has also referred to the following judgments in support of his contentions:

- 1. Dr. Sewak Parshad v Gram Panchayat Raipur Rani, 1972, RCR (Rent) 211;**
- 2. Prithvi Singh Azad v Ajaib Singh Sidhu, AIR 1965 Punjab 463;**
- 3. Harnam Singh v Surjit Singh, 1984(1) RCR (Rent) 247;**
- 4. Mrs.Rukhsana A.Rein v JL Arora, 2010(1) RCR (Rent)4;**
- 5. Rajesh Kumar Aggarwal v K.K.Modi, (2006) 4 SCC 385;**

6. **Anita v Rita Kapadia, 2020(1) RCR (Civil) 433;**
7. **Gurjit Kaur v Balwinder Kaur, 2018(4) RCR (Civil) 433;**
8. **Ramanand v Sedhu; 2010(3) RCR (Civil) 31;**
9. **Pruthvirajsinh Nodhubha Jadeja v Jayeshkumar Chhakaddas Shah (2019) 9, SCC 533; and**
10. **Prem Sagar v Phul Chand, 1983(2) RCR (Rent) 405.**

I have heard Id. Counsel for the parties at length and perused the paperbook with their able assistance.

By way of the amendment, the respondent seeks to bring the Rent Petition under the 1995 Act, which was inadvertently filed under the Old Act on basis of mistaken legal apprehension. Admittedly, the tenancy is of the year 2016. Accordingly, the inception of tenancy being after 30.11.2013, as per law it has to be filed under the 1995 Act only. In my view, petition under the old Act would be non est inasmuch as vide Section 75 of the 1995 Act, the old Act stands repealed. It is therefore, clear that the present amendment is necessary and has to be permitted, as, in not doing so not only will prejudice be caused to the petitioner, but the same will also lead to multiplicity of litigation. In this regard, I draw support from judgment rendered by Hon'ble Supreme Court in case of **Life Insurance Corporation of India v Sanjeev Builders Private Limited and another**, Law Finder Doc Id # **2029338**.

Besides the amendment of bringing the petition under the New Act, the respondent also seeks to add para 3(i)(a) reproduced hereinbelow: -

3(i)(a) That the respondent has neither paid nor tendered the arrears of rent at the rate of Rs.1000/- per month which is to be enhanced @ 50%

after every years as per rent note dated 6.7.2016 inspite of repeated demands and requests made by the applicant/landlord. The respondent is in arrears of rent with effect from 22.11.2018 @ Rs.1103/- per month and from 3.7.20-19 @ Rs.1156/- per month upto 3.7.2020 and from 2.7.2020 upto date @ Rs.1214/- per month. The respondent is also to pay property tax @ 7-1/2% on the annual rental arrears which the respondent has not paid inspite of repeated requests and demands made, in addition to the payment of aforesaid arrears of rent”.

As regards above said para 3(i)(a) whereby additional ground of arrears of rent is sought to be added, needless to say the petitioner shall be granted adequate opportunity by the Id. Rent Controller to file his amended written statement to enable him to amend his stance as per the amendments wrought in the rent petition, and to take all grounds available to him as per law.

Accordingly, the amendments as sought by the respondent are allowed. However, since the petition has been converted into petition under the New Act, therefore the Id. Rent Controller shall first establish if relationship of Tenant – landlord exists between the parties or not, and only thereafter, shall follow procedure as prescribed under section 20 read with section 25 of the 1995 Act. In my view, subsequent proceedings/ notice issued by Id. Rent Controller under S. 20 (2)(a) vide the impugned order, is prima facie wrong because even amended written statement has not come forward after amendment has been allowed. Once petition is amended, first petitioner has to be afforded an opportunity to file amended written statement and take whatever pleas are available to him. Once pleadings are complete, only then can Id. Rent Controller make a determination as to the status of the parties as per the materials on record, and then shall follow the procedure as prescribed

by law/ proceed under section 20 read with section 25. This is especially necessary in view of the fact that the petitioner has specifically denied the landlord-tenant relationship between the parties. Issue of non-payment of rent can be determined by the learned Rent Controller only once the relationship of landlord-tenant between the parties is clear.

The present petition accordingly, stands disposed of in the above terms. Pending applications if any stand disposed of.

21.12.2022
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No