

CR-123-2018 (O&M)

201 (2nd case)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-123-2018 (O&M)

Date of decision: May 01, 2023

Parkash Chand

....Petitioner

versus

Gurmeet Kaur

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Vaibhav Sehgal, Advocate for petitioner.

Mr. Ashish Gupta, Advocate for respondent.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside impugned order dated 04.01.2018 (Annexure P-1) passed by learned Rent Controller, Ludhiana whereby application under Section 151 of Code of Civil Procedure, 1908 (for short 'CPC') filed by petitioner-tenant seeking permission to file amended written statement, was dismissed.

2. The revision petition is premised on the averments that respondent-landlady filed ejectment petition against petitioner-tenant on the ground of arrears of rent and *bona fide* personal necessity.

2.1. During pendency of proceedings, petitioner-tenant filed application (Annexure P-2) under Order VI Rule 17 of CPC for carrying out amendments in written statement to the effect that all the shops except shop of petitioner and the adjacent shop have been vacated and tenants have surrendered possession in favour of respondent and thus, she has now got ample and adequate space for carrying out her business as projected by her in the ejectment petition. Learned Rent Controller allowed the said application vide order dated 21.11.2016 (Annexure P-4) observing that subsequent events are extremely relevant and petitioner should be given an adequate opportunity to prove the same.

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2.2. During pendency of proceedings, it transpired that in the application for amendment, petitioner had pleaded that one property dealer, namely, Govind Sharma son of Harbans Manu Property Dealer approached petitioner to know as to whether petitioner intends to purchase the property of respondent. The said property dealer quoted amount of Rs.30 lakh but petitioner told that he is willing to pay Rs.20 lakh. Respondent denied said averments, but were permitted by learned Rent Controller to be pleaded in terms of amendment in written statement. Inadvertently and due to typographical mistake, said fact was wrongly mentioned in amended written statement as that property dealer, namely, Govind Sharma was asking Rs.25 lakh and petitioner was willing to pay Rs.15 lakh. In this view of the matter, petitioner filed application under section 151 CPC to file amended written statement in accordance with application for amendment filed before learned Rent Controller and allowed vide order dated 21.11.2016 (Annexure P-4).

2.2. Vide impugned order dated 04.01.2018 (Annexure P-1), learned Rent Controller dismissed the said application.

3. I have heard learned counsel for the parties and perused case file.

4. Perusal of application dated 16.08.2016 (Annexure P-2) seeking amendment of written statement clearly states in as many as words "*the applicant showed his intention to purchase it, but the price being quoted by the property dealer was beyond imagination as the petitioner was asking for Rs.30 lacs for the whole property but value of the property is not more than 20 lacs*".

4.1. Perusal of the same leaves no manner of doubt that in the application filed prior to the amendment, figures *qua* property in question have clearly been stated as Rs.30 lakh and Rs.20 lakh and therefore, arguments of learned opposite counsel that same is an afterthought files in the face of stand taken in the application concededly stating proposed amendment to be made. Once amendment was allowed vide order dated 21.11.2016 (Annexure P-4), I see no reason as to why corresponding averments, which were proposed to be inserted by way of amendment be not allowed.

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Amendment, no doubt, was carried out, but instead of figures “Rs.30 lakh and Rs.20 lakh” there has been mistake in mentioning the same correspondingly as “Rs.20 lakh and Rs.15 lakh” by reduction of Rs.5 lakh each which is stated to be typographical error, given that figures in the application were correctly stated as Rs.30 lakh and Rs.20 lakh.

4.2. Learned counsel for petitioner has also drawn my attention to the testimony of witnesses relied upon by petitioner, who in their deposition have stated figures as “Rs.30 lakh and Rs.20 lakh” and not “Rs.25 lakh and Rs.15 lakh”.

4.3. In course of arguments, learned counsel for respondent also states that correction is just a ruse to delay proceedings by petitioner-tenant, who continues to be in possession of premises in question. I see no reason to deny the petitioner-tenant to correct the figures’ mistake. In fact, contribution to delay, if at all, can safely be assumed on the part of respondent-landlord, who has been opposing revision petition, which was filed in the year-2018. Further proceedings in the Court below were to be kept at abeyance by the Court orders of this Court, and yet revision has been pending inordinately while proceedings before the Court below are held up. Both the parties have contributed to the delay of proceedings and therefore, substantive justice ought not to be subjugated merely on the ground that parties have contributed to the delay of proceedings.

5. In the premise, revision petition is allowed. Petitioner-tenant is permitted to carry out proposed amendment as per his application dated 16.08.2016 (Annexure P-2) and impugned order is set aside and application seeking correction in the amendment of written statement is allowed.

6. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 01, 2023

mahavir

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No