

CR-8155-2017 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CR-8155-2017 (O&M)****Date of decision: May 17, 2023**

Babu Ram

....Revisionist

versus

Sanjeev Gogna and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Sukhcharan Singh Gill, Advocate for
Mr. D.S. Sobti, Advocate for the revisionist.

Mr. Vishal Aggarwal, Advocate for the respondents.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside impugned order dated 15.11.2017 (Annexure P-9) passed by learned Rent Controller, Ludhiana whereby application under Order XVIII Rule 17 of Code of Civil Procedure, 1908 (for short 'CPC') filed by revisionist/tenant for recalling witness-respondent No.2/Rekha Gogna for further cross-examination, was dismissed.

2. The revision petition is premised on the averments that respondent/landlords filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (as amended upto date) for eviction of revisionist from the shop in question. Respondents led their evidence and subsequently filed an application under Order VI Rule 17 CPC for amendment of rent petition to state that respondent No.2 wanted to expand her business and wanted to open a marble craft gallery in the demised premises. The said application was dismissed. The order of its dismissal was assailed by respondents in CR-5901-2014, which was allowed vide order dated 20.04.2017 (Annexure P-4). Amended rent petition

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(Annexure P-5) was filed. Revisionist/tenant also filed amended written statement (Annexure P-6).

2.1. Thereafter, revisionist filed application (Annexure P-7) under Order XVIII Rule 17 CPC for recalling of respondent No.2 on the new issue of *bonafide* need of opening a marble craft gallery.

2.2. Vide impugned order dated 15.11.2017 (Annexure P-9), aforesaid application was dismissed.

3. Earlier, cross-examination of PW Rekha Gogna had been completed on 08.12.2014. Amendment of eviction petition was allowed on 20.04.2017.

4. Learned counsel for revisionist/tenant would contend that revisionist has not been granted any opportunity to further cross-examine respondent No.2 on the new ground added which is an extremely vital issue as the new ground is also for *bona fide* need of a different sort altogether than were earlier pleaded. In absence thereof, defending the eviction petition would be an exercise in futility as the amended claim would then go un rebutted.

5. On the other hand, learned counsel for respondent/landlords opposes the prayer and supports impugned order being a well-reasoned one rejecting application of the revisionist-tenant.

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

7. It transpires that respondent-landlords on their own volition had sought certain amendments in rent petition which initially were though not allowed but pursuant to CR-5901-2014 preferred before this Court, the amendment was eventually allowed. The said application to recall the witness for further cross-examination *qua* the amendment made in the rent petition is opposed on the ground that said amendment is merely formal in nature and therefore, no further cross-examination is required.

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8. Be that as it may, nature of amendment is such that a stand has been taken that one of the landlords, namely, Rekha Gogna needs the demised shop to start a business and therefore, personal necessity to get it vacated suggests that she would have stated so in her examination-in-chief earlier. Revisionist-tenant is entitled to one opportunity to further cross-examine her *qua* said assertion made in the amended pleadings. This revision petition has already resulted in colossal delay of proceedings before learned Rent Controller as during pendency thereof, same have been kept at abeyance pursuant to order dated 21.11.2017 passed by Rajiv Narain Raina, J., (as he then was in this Court).

8. I am of the view that case should not be held up merely on certain hyper-technicalities and it is in the larger interest that trial proceeds further.

9. Trite law it is that procedure is a handmaid of justice and, ought not be given precedence at the cost of subjugation of substantive justice. Prejudice would indeed be caused to revisionist unless afforded an opportunity to further cross-examine the aforesaid witness.

10. Consequently, revisionist/tenant is granted one opportunity to further cross-examine respondent No.2-Rekha Gogna, subject of course to the discretion of learned Rent Controller to grant further opportunity depending upon work exigencies before it. Revision stands disposed of and impugned order is modified accordingly.

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

(ARUN MONGA)
JUDGE

May 17, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No