

Sandeep Khanna and another

....Petitioners

versus

Babita Sharma

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Kishore Bhardwaj, Advocate for the petitioners.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 10.01.2023 (Annexure P-1) passed by learned Rent Controller, Chandigarh, whereby application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC') filed by petitioners seeking to amend written statement, was dismissed.

2. Learned counsel for the petitioners contends that the petitioners filed written statement to the Eviction petition filed by respondent/landlady claiming herself to be the sole and exclusive owner of SCF-50, Sector-28C, Chandigarh. Though petitioners denied status of respondent, but in the reply on merits, inadvertently, it got recorded that contents of Para-2 (wherein averments regarding inception and substitution of tenancy were made) are admitted being matter of record. Learned counsel further contends that respondent claims to be owner on the basis of some Will executed by late Sh. Hansraj, after demise of her husband late Sh. Bhupesh Sharma. Said fact was not mentioned in the petition and same was brought to the notice of the Court by way of reply to applications filed by other co-owners under Order I Rule 10 of CPC. He contends that upon becoming aware of aforesaid *bonafide* inadvertent mistake, petitioners moved an application under Order VI Rule 17 of CPC for necessary amendment in written statement. Vide

impugned order dated 10.01.2023 (Annexure P-1), learned Rent Controller dismissed the aforesaid application, without adverting to the facts and circumstances.

3. Given the nature of order being passed, there is no necessity to issue notice to respondent as no prejudice would be caused to her. Notice to respondent is thus dispensed with.

4. I have heard learned counsel for petitioners and perused the case file.

5. Rules of procedure are handmaid of justice and cannot be allowed to thwart real and substantial justice between the parties. Prejudice would indeed be caused to petitioners unless afforded an opportunity to file the amended written statement.

6. Provisions contained in Order VIII Rule 1 CPC though ought to be adhered to but learned Rent Controller could have still permitted petitioners to file the amended written statement, subject to certain penalty as a deterrent. Otherwise also, provisions contained in Order VIII Rule 1 *ibid* have been held to be directory in nature by the Supreme Court in ***Salem Bar Association Vs. UOI, 2005(6) SCC 344***. The Courts should not, therefore, be too harsh to disallow amendment of written statement at early stage, particularly when the same will not change the nature of petition.

7. That apart, it transpires that nature of amendment being sought to be carried out is in tune with stand taken by the petitioners in their specific stand in Para-2 of Preliminary Objections denying that respondent herein the landlady or owner as also the stand of the co-owners of the premises in question in their application filed under Order I Rule 10 of CPC during pendency of trial before learned Rent Controller. Prior thereto, there was no disclosure of the same in Rent Petition filed by landlady. Ownership of premises being a matter of privilege information, privy only to the LR after demise of predecessor-in-interest (late Sh.

Hansraj Sharma), who had inducted the predecessor-in-interest of petitioner-tenants in the premises. In the premise, it was only when the fact of names of LRs, who are current owners of the premises came to the knowledge of tenants, they moved the application under Order VI Rule 17 of CPC to carry out corresponding amendment in their reply in order to avoid any technical objections later being taken by LRs who were impleaded subsequently as the landlords. Therefore, no prejudice would be caused, if amendment is carried out. In addition, I am of the view that learned Rent Controller fell in error in observing that amendment is being carried out only to delay proceedings as application seeking to carry out necessary changes in the reply was filed prior to cross-examination of witnesses of landlady, who had carried out their examination-in-chief by way of affidavits, though of-course after filing of their affidavits in examination-in-chief, their cross-examination was deferred for want of certain documents.

8. On a Court query, learned counsel for petitioners submits that in fact, cross-examination is yet not over and some of the PWs are yet to be cross-examined. Being so, I am of the view that no prejudice would be caused in case, application seeking amendment of written statement is allowed.

9. In the premise, impugned order is set aside. Application for amendment of written statement is allowed. Amended reply to the rent petition be taken on record and learned Rent Controller to proceed further as per procedure.

10. Disposed of, accordingly.

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

(ARUN MONGA)
JUDGE

February 22, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No