

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

CR-1417-2019(O&M)

Date of decision:-24.1.2023

Mohammad Ilyas

...Petitioner

Versus

Mohammad Nazir

...Respondent

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

Present: Mr.S.K. Singla, Advocate
for the petitioner.

Mr.K.B. Raheja, Advocate
for respondent.

H.S. MADAAN, J.

1. Under challenge in this revision petition is order dated 4.2.2019 passed by Additional District Judge-cum-Appellate Authority, Sangrur vide which an application filed by appellant/respondent-tenant for amendment of the written statement had been dismissed.

2. Briefly stated, facts of the case are that petitioner/landlord Mohd. Nazir had filed an ejectment petition against respondent-tenant Mohd. Ilyas with regard to shop in dispute. That ejectment petition was allowed by Rent Controller, Malerkotla vide order dated 31.3.2016. Feeling aggrieved, the tenant had preferred an appeal before Appellate Authority, Sangrur, notice of which was given to the landlord arrayed as a respondent in the appeal, who had put in appearance. During the course of proceedings, the appellant/tenant filed an application for amendment of

written reply stating that it has come in evidence that Mohd.Nazir landlord is owner in possession of three other shops and this fact was admitted by the landlord in his cross-examination that he has three other shops adjacent to shop in dispute. However, the submission made by learned counsel for the tenant before Rent Controller was rejected for the reason that no such plea had been taken in the written reply, therefore, the applicant/appellant wanted to amend the written reply.

3. That application was resisted by the landlord/respondent in the appeal. The Appellate Authority, Sangrur vide the impugned order dated 4.2.2019 had dismissed the application, leaving the appellant/tenant aggrieved, who has filed the present revision petition, notice of which was given to respondent/landlord and he has put in appearance through counsel.

4. I have heard learned counsel for the parties besides going through the record.

5. The proviso to Order 6 Rule 17 CPC clearly 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*'.

6. Furthermore, in terms of Order 6 Rule 17 CPC, the amendment of pleadings can be allowed only if it is necessary for the purpose of determining the real question of controversy between the parties. In the present case the application was rightly declined by the Appellate Authority since if allowed it would have put the clock back

resulting in stretching the proceedings further and the proposed amendment is not such without which the controversy between the parties cannot be adjudicated in an effective and proper manner. While dismissing the application, learned Appellate Authority, Sangrur has observed that these very contentions can be raised at the time of arguments in appeal. The Appellate Authority has already protected the rights of the appellant/tenant stating that he can raise the plea in that regard during the course of arguments.

7. Learned counsel for the revision petitioner/tenant has referred to judgments *Usha Balashaheb Swami & Ors. Versus Kiran Appaso Swami & Ors., 2007(2) RCR(Civil)830, Pritam Singh Versus Avtar Singh, 2010(9) RCR(Civil)912, Arya Mitter and another Versus Harbans Lal and another, 2009(3) RCR(Civil)756, Aadish Aggarwal and another Versus Brijeshwar Swaroop and another, 2018(1) RCR(Civil) 33* and *Padam Sain Versus Meena and others, 2017(2)RCR(Civil)696*. However, those are not helpful to the petitioner in any manner due to different facts and circumstances and the context in which such observations had been made.

8. On the other hand, learned counsel for the respondent/landlord also referred to authorities *Naveet Singla Versus Haryana Urban Development Authority and others, 2016(3) RCR(Civil)1049, Hardayal Singh Versus Kirpal Singh, 2000(1) RCR(Civil)249, Ranbir Singh Versus Bhupinder Kaur and another, 2017(3) Law Herald 2215* and *Ram Niwas Versus Daya Nand and others, 2015(5) RCR(Civil) 692* in support of his contentions that the application

was rightly dismissed by the Appellate Authority, Sangrur.

9. I find myself in agreement with the Appellate Authority, Sangrur and do not see any illegality or infirmity in the impugned order, which might have warranted interference by this Court by exercising revisional jurisdiction.

10. Finding no merit in the revision petition, the same stands dismissed.

24.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No