

Sr. No. 299

2023:PHHC:052184

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

CR-1394-2023 (O&M)

Date of decision: 13.04.2023

Rajinder Kumar Goyal

...Revisionist

Vs.

Som Nath Garg through his LR Achri Devi since deceased through her LRs
Anjali Gupta and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ishan Gupta, Advocate,
For the Revisionist.

Mr. Tribhawan Singla, Advocate,
For respondent No.1.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 07.02.2023 (Annexure P-1) passed by Learned Rent Controller, Sangrur whereby application filed by Revisionist/tenant to amend reply claiming to plead subsequent events, was dismissed.

2. Succinct facts first.

2.1. Original respondent/landlord Som Nath Garg (since deceased) was owner of the demised premises, which comprises of a shop situated at DC Office Road, Prem Basti, Sangrur. In the year-2004, revisionist/tenant took the abovementioned premises on rent.

2.2. On 29.01.2013, respondent/landlord Som Nath Garg filed eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for eviction of revisionist from the shop in dispute on the ground of non-payment of rent as well as personal *bonafide* necessity.

Revisionist/tenant appeared before Learned Rent Controller and filed a reply specifically denying averments made in the petition.

3. Learned counsel for revisionist submits that once on the death of Som Nath Garg, his Legal representative was impleaded on the basis of a registered Will, thereby, excluding his own son Ajay Kumar Garg, there was no occasion for learned Rent Controller to implead said Ajay Kumar Garg {respondent No.1(ii) herein} as Legal representatives of Smt. Achri Devi. Especially, in view of the fact that Smt. Achri Devi during her lifetime executed a registered transfer deed of the demised premises in favour of her daughter Anjali Gupta {respondent No.1(i) herein} and she thus became the absolute owner to the extent of her mother's share. Moreover, said Anjali Gupta filed a civil suit for declaration, possession and permanent injunction against Ajay Kumar Garg and his son Samay Garg {respondent No.2 herein}.

3.1 Learned counsel further submits that this Court in case titled ***Krishan Chand Vs. Rahul Kumar*** reported in ***2009(1) RCR (Civil) 323***, while dealing with an identical proposition of law vis-à-vis the amendment application by the tenant after the impleadment of LRs on the basis of Will, observed as under:

"7. I have already pointed out that the manner in which the order was passed by the Rent Controller impleading also the persons claiming to be the legal representatives on intestacy could not have been made to be arrayed as legal representatives along with persons who are claiming as legal representatives under a Will. Evidently there was a dispute inter se and they could have been arrayed only as respondents. However, the counsel for the respondent points out that the amendment itself was carried in such a fashion that only Satpal had been added as a legal representative from amongst the persons who are claiming on intestacy, apart from the three persons who are added as legal representatives on the basis of a Will. On instructions from the counsel conducting the case at the trial Court, the learned counsel for the respondent states

that even Satpal has withdrawn himself out of contest and now the petition is being prosecuted only by the three persons claiming to be the legal representatives of the deceased on the basis of a Will. If that were so, the contentions raised by the tenant by the amended written statement disputing the maintainability of the petition in the manner now sought to be done assumes significance. I may not be understood as saying that the defence is correct but it is nonetheless the defence that has been taken by the tenant on appropriate legal advice.

8. The written statement that was amended brings nothing more than what the situation demanded when the original landlord died and some of legal representatives alone came on record claiming to be petitioners under the Will. The order deleting the amended portion permitted to be made to the written statement filed by the tenant is erroneous and accordingly set aside.”

3.2 He further contends that revisionist/tenant is not creating any dispute regarding title of the property in question. It is clear from documentary record that Samay Garg and Anjali Gupta are only owners of the premises in question and have become landlords. Ajay Garg is neither landlord nor owner. The copy of the plaint of suit filed by Anjali Gupta established that there is a dispute among Anjali Gupta, Samay Garg and Ajay Garg. When dispute arose amongst owners, then rent petition remains not maintainable. Revisionist/tenant only wants to take legal objection in the reply, which is necessary for adjudication of the case. Vide impugned order dated 07.02.2023, learned Rent Controller dismissed the application. He submits that only one opportunity may be granted to the revisionist.

4. Per contra learned counsel for respondent No.1 vehemently opposes the petition, arguing on lines of impugned order.

5. I have heard learned counsel for parties and gone through the case file.

6. Rules of procedure are handmaid of justice. They cannot be allowed to thwart real and substantial justice between the parties. The valuable right of litigants to establish their cases by amending the written

statement ought not to be taken away by the Court except in a case of their deliberate omission/failure to amend written statement. Prejudice would indeed be caused to revisionist herein, unless afforded an opportunity to amend written statement.

7. Proposed amendment will only avoid multiplicity of litigation and in any case not change the nature of *lis* before the learned Court below. As regards the dispute qua ownership, a separate suit is already pending and Learned Rent Controller is merely to adjudicate on the tenancy rights in the proceedings pending before it. In the peculiar circumstances, I deem it appropriate to grant one opportunity to revisionist-tenant. Proposed amendment be carried out within a period of 4 weeks from today. Amended reply, which is filed with the application be taken on record. Learned Rent Controller to proceed with the matter. Only one opportunity shall be given to revisionist-tenant by learned Rent Controller to adduce any evidence in support of his amendment. To that extent, impugned order is modified and the revision petition is allowed.

8. Disposed of, accordingly.

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

(ARUN MONGA)
JUDGE

13.04.2023

Vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No