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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1233-2022 (O&M)

Date of decision: January 12, 2023

Smt. Beero @ Asha Rani

....Petitioner

versus

Palwinder Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Dheeraj Mahajan, Advocate,
For the petitioner.

Mr. Inderjit Sharma, Advocate,
For respondent No.1.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside the impugned order dated 12.01.2022 (Annexure P-8) passed by learned Civil Judge (Junior Division), Gurdaspur in Civil Suit No. 1574 of 2019 instituted on 30.11.2019 titled as "Palwinder Kaur Versus Beero and others" whereby the application filed by petitioner/defendant No.1 under Order 6 Rule 17 CPC seeking amendment in the written statement, has been rejected.

2. Learned counsel for the petitioner states that the petitioner-defendant No.1 has sought amendment of the written statement only to explain the averment with regard to her possession over the demised premises and the suit is at the initial stage. He also relies on judgment rendered by Apex Court titled "*Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others*" decided on 18.04.2007 reported in **2007 (2) R.C.R.**

(Civil) 830, relevant part whereof is reproduced herein below:

“20. It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.”

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“23. Keeping these principles in mind, namely, that in a case of amendment of a written statement the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed. We may now proceed to consider whether the high court was justified in rejecting the application of amendment of the written statement.”

3. Per contra, learned counsel for plaintiff/respondent No.1 submits that the application was not maintainable as the same was barred by limitation. He further submits that learned Court has granted status quo in favour of the plaintiff and defendant No.1 had also filed injunction suit which was later on dismissed as withdrawn by her. He further submits that defendant No.1 herself admitted that the rent receipts had been issued in her favour ever since 1978, whereas at one place she had stated that the shop in dispute was taken on rent by her father-in-law in the year-1978; then it is inexplicable as to how the rent receipts were issued in favour of petitioner/defendant No.1.

4. The proposed amendment of written statement is as under:

“That in fact the shop in dispute had been taken on rent by the father-in-law (Mulakh Raj) of defendant no.1 in 1978 from the Mai Ka Mandir through its Pujari/manager Pandit Sukhram Dass who was the duly appointed manager proprietor and care

taker of the said shop in dispute and other properties in the name of Mai Ka Mandir. That an electric connection had also been installed in the name of Mulakh Raj at the time of taking the above said shop on rent in 1978. That after the death of Mulakh Raj, the husband of the defendant no.1 i.e. Sh. Kharaiti Lal came as a tenant in possession of the shop in dispute and after the death of the Kharaiti Lal, defendant no.1 came as a tenant in possession of the shop in dispute. That the rent receipts were usually issued in the name of defendant no.1 i.e. Asha Rani since the shop had been taken on rent in 1978.”

5. Having heard the rival contentions, I am of the view that no prejudice would be caused to the plaintiff/respondent No.1 if the proposed amendment in the written statement of the petitioner is allowed at this stage. Concededly, the trial proceedings are at a very nascent stage. On a Court query, it transpires that no issues have yet been framed and the plaintiff has neither filed his replication nor made any statement.
6. Being so, present revision petition is allowed. Needless to say that the plaintiff will have right to oppose all the pleas taken in the amended written statement by filing a replication and getting issues framed by the trial Court.
7. Pending application/s, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 12, 2023
Vandana

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