

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.1697 of 2020 (O&M)

Date of Decision: 05.01.2023

Pushpinder Singh Cheema

..... Petitioner

Versus

M/s Kanwal Agencies

..... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Divanshu Jain, Advocate for the petitioner.

Mr. Tushar Sharma, Advocate for the respondent.

Nidhi Gupta, J.

CM-5607-CII of 2020

This is an application under Section 151 CPC for exemption from filing certified and true typed copies of impugned order and Annexures P-1 to P-18. For the reasons stated in the application, the same is allowed subject to just all exceptions.

Main Case

Present Revision Petition has been filed by the petitioner/landlord challenging order dated 24.02.2020 whereby the petitioner's application under Order 6 Rule 17 CPC for amendment of eviction petition filed under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act") has been dismissed.

Brief facts of the case are that the petitioner is owner of SCO No. 383, Sector 37-D, Chandigarh. The present respondent is a tenant in front portion of second floor of SCO No.383, Sector 37-D, Chandigarh; as also the Basement of SCO No.383, Sector 37-D, Chandigarh. Accordingly, the petitioner had filed two eviction petitions under Section 13-B of the Act against respondent/tenant for eviction of respondent. The first eviction petition was filed by the petitioner in the year 2012, seeking eviction of the respondent from front portion of second floor of SCO No.383, Sector 37-D, Chandigarh (Annexure P-1); and the Second/present petition was filed on 24.11.2014 under Section 13-B of the Act for eviction of the respondent-tenant from the Basement of SCO No.383, Sector 37-D, Chandigarh. Eviction was sought by the petitioner inter alia on the ground that the petitioner requires the entire building of SCO No.383, Sector 37-D, Chandigarh for his personal use and occupation as he intends to open a Food Joint with multiple facilities in the entire building of SCO No.383, Sector 37-D, Chandigarh for earning his livelihood.

Upon notice, respondent appeared and filed applications under Section 18-A of the Act seeking leave to defend in both eviction petitions on 27.8.2012, and 21.12.2014 respectively. Subsequently, during pendency of these eviction petitions, respondent filed three applications under Order 6 Rule 17 CPC, for amendment of his applications filed under Section 18-A of the Act seeking leave to contest. Vide order dated 6.11.2019, the Id. Rent Controller had allowed the third application for amendment filed by the respondent.

Ld. Counsel for the petitioner inter-alia, submits that the present eviction petition was originally filed in the year 2014 whereafter the respondent had filed its application for leave to contest also in 2014. However, due to the 8 to 10 years that have passed in the interregnum in the litigation ensuing from the amendments wrought by the respondent time and again in his applications for grant of leave to contest, the requirement of the petitioner has also changed during this long period. Whereas, originally the petitioner had required the entire SCO No.383, Sector 37-D, Chandigarh, however, now, upon re-assessment of the market, the petitioner does not any longer wish to open a Food Joint in the premises in question.

It is submitted that during this period the petitioner had to earn his living and had accordingly been liasoning with various companies and production houses to start wholesale business of their products in order to earn his livelihood and the petitioner had got offers from many companies to make the petitioner their wholesale agent of their products. Moreover, the petitioner saw that there was acute recession in the hospitality business and opening a Food Joint was no longer a profitable or viable proposition, as such, the petitioner abandoned his plan to open a Food Joint in the SCO No.383, Sector 37-D, Chandigarh in question and now intends to open a wholesale agency of a few production houses/companies from the premises in occupation of the respondent/tenant i.e. basement, and open a small office in front portion of the second floor of SCO in question. It is submitted that accordingly, in view of this changed situation due to the long passage of time, the petitioner had sought to amend Para

5(i) of his eviction petition by adding preliminary objection No.11 and 12. It is submitted that therefore, dismissal of his application under Order 6 Rule 17 CPC by way of impugned order, deserves to be set aside as the Id. Court below has failed to appreciate the true facts and circumstances of the petitioner.

On the other hand, it is inter alia submitted by learned counsel for respondent that the amendments sought by the respondent were necessary and proper as they were based upon subsequent events that had transpired during the pendency of the eviction petitions. It is stated that however, this is not the case with the petitioner as the changes sought to be made by the petitioner are not based on subsequent events. It is submitted that if amendments are permitted then the same would amount to changing nature of the suit itself. It is further pointed out that the petitioner has let out other parts of the SCO No.383, Sector 37-D, Chandigarh to other tenants and therefore, it is not a change in need of the petitioner but he is trying to wriggle out of the fact that he has rented out other parts of the said SCO.

I have heard learned counsel for the parties.

A perusal of the record shows that the first eviction petition was filed in 2012 and respondent/tenant had filed application under Section 18-A of the Act for grant of leave to contest on 27.08.2012. Thereafter, respondent filed an application on 11.03.2016 seeking amendment in leave to contest. Subsequently, the petitioner filed present/second eviction petition under Section 13-B of the Act on

24.11.2014 now seeking eviction of the respondent from basement of SCO No.383, Sector 37-D, Chandigarh; in response to which the respondent filed application for leave to contest on 21.12.2014. Thereafter, on 01.07.2015, the respondent filed second application under Order 6 Rule 17 now seeking to amend the above said application for leave to contest dated 21.12.2014. Thereafter, a third application was filed by the respondent for amendment of its application under Section 18-A of the Act. Perusal of the record shows that these applications for amendment were not contested by the petitioner in view of the law laid down by this Court in judgments dated **02.05.2011, passed in Civil Revision No.6140 of 2010 titled as 'M/s Ghazal Restaurant and another Versus Mrs. Samarbir Kaur @ Samarbir and others'; and judgment dated 20.03.2012, passed in Civil Revision No.767 of 2012 titled as 'Amar Manchanda and another Versus Abhey Man Singh Sidhu @ Abhey Man Sidhu and another'.**

Be that as it may, there is no denying the fact that a long period of time of 8-10 years has passed in pursuing the litigation pertaining to the applications for amendment of the applications under Section 18-A of the Act filed by the respondent. It is but trite to suggest that the requirement of the petitioner could not also have undergone a change during this period. Though, it has been submitted by learned counsel for the respondent that he had sought amendment in his application for leave to contest to place on record subsequent events and the same cannot be said to be true for the amendments sought to be made by the petitioner, yet it cannot be disputed that during long passage of time, the petitioner had to somehow earn his living and is entitled to

change his mind regarding the kind of business that he wants to open in the said premises. It is evident from the record of the present case that the petitioner was unable to start his business since the past ten years due to prolonged litigation between the parties.

Moreover, in this regard, reliance can be placed on judgments of this Court in **CR-5151-2019 (O&M) titled as “Shri Sanatan Dharam Sabha (Registered) Gaushala Bazar Hoshiarpur Vs. Sita Devi”**; **CR-5163-2019 (O&M) titled as “Shri Sanatan Dharam Sabha (Registered) Gaushala Bazar Hoshiarpur Vs. Gulwinder Singh”** and **CR-5168-2019 (O&M) titled as “Shri Sanatan Dharam Sabha (Registered) Gaushala Bazar Hoshiarpur Vs. Gulwinder Singh”**; as well as judgment rendered by the Hon’ble Supreme Court in **Civil Appeal Nos.5350-5351 of 2002 titled as “Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others”** wherein it has been held as under:-

“16. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.”

17. While considering whether an application for amendment should or should not be allowed, the Court should not go into the

correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case." (emphasis supplied)

Even further, the Hon'ble Apex Court in case titled as **'Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal & Ors',** (2005) 8 SCC 252 has held that it is always the prerogative of the landlord to determine whether he requires the premises in question for his bonafide use for expansion of business, and it is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of the business.

Therefore, as per the ratio of the above referred decisions, as per the law laid down by the Hon'ble Supreme Court it is not open for this Court to go into the merits of the amendments sought to be brought about by the petitioner, which will be considered by the learned Rent Controller. Thus, no prejudice will be caused to the respondent as all factors will be considered by the learned Rent Controller after amendment. Even otherwise, no prejudice will be caused to the respondent as protection is granted to him within the statute itself whereunder the petitioner cannot let out or sell the premises in question for five years thereafter.

As such, in view of the discussion hereinabove, this Revision Petition is allowed and impugned order dated 24.02.2020 is set

aside and the petitioner is permitted to amend his eviction petition.

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

05.01.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No