

CR-1784-2023 (O&M) AND
CR-1795-2023 (O&M)

112 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: March 22, 2023

1. CR-1784-2023 (O&M)

Tarun Kumar Bhatia

....Petitioner

versus

Himanshu Chawla and another

....Respondents

2. CR-1795-2023 (O&M)

Tarun Kumar Bhatia

....Petitioner

versus

Himanshu Chawla and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Suryakant Gautam, Advocate for petitioner(s).

ARUN MONGA, J. (ORAL)

Vide this common order and judgment, above-mentioned two revisions are being disposed of since facts are analogous and issues raised therein are common. For brevity, recitals are taken from CR-1784-2023.

2. Present revision petition is to set aside impugned order dated 06.12.2022 (Annexure P-3) passed by learned Appellate Authority, whereby application filed by petitioner/tenant seeking permission to amend written statement, was dismissed.

3. Learned counsel for the petitioner-tenant contends that an appeal bearing RSA-54-2011 is pending before this Court wherein a direction has been issued to respondent/landlords not to change the nature of property which is the subject matter *lis* before learned Rent Court. Petitioner-tenant had filed an application seeking to amend written statement whereby he wanted to add following preliminary objection No.7 in the existing written statement:

“That the petitioners/respondents have concealed true and material facts about the property, which they actually owned and the properties are being mentioned in the written statement being filed by the tenant/respondent under para no.4(b). Since, the petitioners have concealed material facts about the very existence of properties being owned and possessed by the petitioners as such alone, the petitioner are not entitled to ejectment of the appellant on the ground of concealment of material fact and having not come to this Hon’ble Court with clean hands.”

3.1. Learned counsel would further contend that petitioner wanted to further amend the written statement by adding following lines in reply to para No.1 on facts of petition as under:

“Even otherwise neither respondents are proved to have stepped into the shoes of Smt. Raj Rani Chawla W/o Sh. Prem Singh Chawla and as such, are not owners of the property in question. Similarly, even the judgment and decree passed by Mrs. Kumud Gugnani the then Ld. ACJ (SD) Panipat vide judgment and decree dated 19/03/2009 and subsequent affirmation of decree of Ld. ADJ Panipat has not become final as RSA No.54 has been filed by Northern Railways and the same is still pending in the Hon’ble High Court Punjab & Haryana at Chandigarh. Thus, admitting all the contents of respondents/ petitioners they are not proved to be owners of the property in question, as the litigation between Northern Railways and Smt. Raj Rani Chawla has not become final. So much so, the present petitioners/ respondents are not permitted to change nature of the property as per information of the appellant by the Hon’ble High Court Punjab & Haryana at Chandigarh. Since the ownership of Smt. Raj Rani is not yet established, thus alone the present petitioners are not competent to file the present petition for eviction of the appellant. Thus, alone the present petition is liable to be dismissed.”

3.2. Learned counsel for petitioner would further canvass that the proposed amendments are necessary for determination of real question in controversy. However, vide impugned order dated 06.12.2022 (Annexure P-3), learned Appellate Authority dismissed the aforesaid application.

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

5. I have heard learned counsel for petitioner and perused the case file.

6. The impugned order is premised on the following reasoning:

“After hearing arguments advanced by both the parties and having perused the case file carefully, it is evident that the appellant has controverted the plea of bona fide necessity of the respondents in his written-statement. The present application has been filed by the appellant with the sole motive to cause delay in the present appeal. As such, there is no necessity or requirement to amend the written-statement by the appellant. The appellant is at liberty to raise the arguments regarding the bona fide necessity of the respondents qua the demised premised at the time of arguments on appeal. The application filed by the appellant for amendment in written-statement is therefore without any

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merit and the same is therefore dismissed. The come up on 13.01.2023 for arguments on main appeal.”

7. 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 petitioner unless afforded an opportunity to amend the written statement.
8. On a Court query, learned counsel for petitioner/tenant undertakes that no further opportunity will be sought to lead any additional evidence *qua* amendment, which is being sought, same being merely technical in nature.
9. It seems from the record that the proposed amendment is intended to plead additional facts for strengthening the petitioner’s stand already taken in the written statement and will not change the nature of his existing defence. For delay, the other side can be compensated by costs.
10. For the foregoing reasons, I deem it appropriate to grant one opportunity to petitioner/tenant for amending written statement, subject to costs of Rs.10,000/- payable to respondent/landlords. Impugned order is, therefore, set aside and the revision petition is allowed accordingly.
11. Disposed of, accordingly.
12. Pending application(s), if any, shall also stand disposed of.
13. A photocopy of this order be placed on the connected case file.

(ARUN MONGA)
JUDGE

March 22, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No