

112

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2129-2023 (O&M)

Date of Decision: 12.04.2023

Raj Rani and another

...Revisionists

Versus

Rohit Garg and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Divanshu Jain, Advocate
for the revisionists.

ARUN MONGA, J. (ORAL)

CM-6278-CII-2023

Allowed as prayed for, subject to all just exceptions.

Main case

Revision herein is for setting aside order dated 15.02.2023 passed by Ld. Rent Controller, Sangrur, whereby application filed by revisionists seeking amendment of written statement, was dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Respondent No.1 Rohit Garg filed an eviction petition (Annexure P-1) under Section 13 of the East Punjab Urban Rent Restrictions Act, 1949 against the present revisionists and respondent Nos.2 and 3 for eviction from the shop in dispute situated at Bhawanigarh on the grounds of non-payment of rent and for *bona fide* personal necessity. In the eviction petition, it was stated that the shop in dispute was taken on rent 30-32 year ago by Subhash Chand (husband of revisionist No.1 and father of revisionist No.2) from Hari Ram Garg.

Subsequently, the ownership of said shop has been succeeded by respondent No.1

and his brother Sahil Garg on the basis of a registered Will dated 22.02.2018 of their grandfather Hari Ram Garg, who expired on 12.03.2018.

2.2. Upon notice, revisionists appeared and filed their written reply, wherein they took various preliminary objections regarding the maintainability of the eviction petition. Further, the existence of landlord and tenant relationship with respondent No.1 and said Sahil Garg was categorically denied on account of existence of other legal heirs as well as pending civil suit instituted by one Ramesh Kumar Garg @ Ved Prakash challenging the Will dated 22.02.2018, on the basis of which respondent No.1 was claiming title of the shop in question.

2.3. In reply, it was unambiguously stated that said Subhash Chand used to pay rent to Hari Ram Garg and after his death to his sons and in pursuance of the same arrangement Ramesh Kumar Garg @ Ved Prakash got a blank cheque of Rs.4400/- from Subhash Chand on the pretext that the name will be filled later on as per discussion with his brothers but later on filled the name of Rohit Garg and Sahil Garg on the said blank cheque whereby Subhash Chand paid rent upto September, 2018 to Ramesh Kumar Garg@ Ved Prakash. Thereafter present revisionist No.2 paid an amount of Rs.19,000/- on account of rent to said Ramesh Kumar.

2.4. Respondents No.2 & 3 herein (daughters of said Subhash Chand) filed separate written statement, wherein while reiterating the averments in the written statement of present revisionists, it was clarified that Subhash Chand had taken the shop on rent 30-32 years ago @ Rs.400/- per month from Hari Ram Garg in the year 1986-87 and from time to time the rent was enhanced by parties with mutual understanding and in the year 2017-18, the rent was Rs.1100/- per month.

2.5. During pendency of present proceedings, as a consequence of legal proceedings of injunction suit initiated by respondent No.1 Rohit Garg, revisionists

shop in dispute had come to him and to Sahil Garg under the alleged Will dated 22.02.2018 executed by his grandfather Hari Ram Garg but said Hari Ram Garg was not competent to execute and to get registered the alleged Will of the shop in dispute and of adjoining property mentioned in the alleged Will dated 22.02.2018, as the entire said property is under the ownership of Dera Girdhari Dass and is a part of land comprising in Khewat No.1203/1182, as per Jamabandi for the year 2018-19. Thus, in order to bring true factual matrix before Ld. Rent Controller and in order to clarify and elaborate the submissions regarding payment of rental amount, the present revisionists filed an application under Order 6 Rule 17 CPC seeking leave of the Court to amend their written statement/reply. However, Ld. Rent Controller dismissed the application filed by Revisionists vide order impugned herein.

3. Given the nature of order being passed, there is no necessity to issue notice to respondent No.1, as no serious prejudice would be caused to him. Notice to respondent No.1 is thus dispensed with.

4. Heard.

5. Learned counsel relies upon a judgment of the Supreme Court in *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another*, 2022 Live Law (SC) 729, to contend that the Court should avoid a hyper-technical approach and is ordinarily required to be liberal in allowing amendment of written statement, especially where the opposite party can be compensated by costs and that where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

6. After having heard learned counsel for revisionists and gone through the record, I am of the view that learned counsel for revisionists rightly contends

No.1 herein goes to the root of the matter and, therefore, revisionists are fully justified to seek the appropriate amendment to bring forth the absence of title in favour of alleged landlord/respondent No.1 herein. Further, in my considered view, in case the amendment is not allowed, the defence of revisionists would be severely jeopardized. In any case, the onus of the allegations made by revisionists *qua* lack of title of respondent No.1 will be certainly on the petitioners to discharge by adducing appropriate evidence. Learned counsel has drawn my attention to para 6 of the reply filed to the application seeking amendment in support of his contention that the landlord/respondent No.1 has not seriously controverted the contention *qua* ownership with Dera Girdhari Dass *vis-à-vis* revenue entry of 2018-19 and in any case, he would argue that the revenue entries being public documents, can be brought on record by revisionists by way of evidence, provided of course there is an assertion of fact *qua* the same in the pleadings, without which the production of evidence can be opposed on technical ground of pleadings not being there.

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 revisionists unless afforded an opportunity to amend their written statement.

8. Perusal of impugned order reflects that on one hand Ld. Court below seems to have lost sight of the fact that the application seeking amendment of written statement was filed immediately on coming to know of ownership of Dera Girdhari Dass of the property in question and there was no delay, pointed out by respondent No.1 or even otherwise made out. Furthermore, the amendment sought would not cause any unnecessary delay in the Court proceedings. The trial is at the very nascent stage since the issues are also yet to be framed and evidence has to be

9. As an upshot of above discussion, the revision is allowed. Impugned order is set aside and application under Order 6 Rule 17 CPC filed by revisionists for amendment of written statement, is allowed.
10. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 12, 2023
ashish

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