

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

283

CR-2029-2020 (O&M)
Date of Decision: 16.10.2023

Satpal and another

...Petitioners

Versus

Harish Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

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

Mr. Sanjiv Gupta, Advocate for the respondent.

HARKESH MANUJA, J. (oral)

1. By way of present petition, challenge has been made to an order dated 06.02.2020 passed by Rent Controller, Patiala, whereby an application seeking amendment of eviction petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as '1949 Act') at the instance of petitioner-landlords has been dismissed.

2. Briefly stating, an eviction petition came to be filed at the instance of petitioner-landowners against respondent-tenant qua the demised premises i.e. shop No.2 bearing M.C. No.16/17/3 situated at Anardana Chowk, near A.C. Market Car parking, Patiala, while

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submitting that the demised premises was required for the personal requirement of their two sons respectively, who were not permanently employed and were doing odd jobs only to earn livelihood. It was also submitted that a similar eviction petition was also filed against another tenant, namely, Jaspal Singh, from shop No.1. The petitioner-landlords also averred that qua shop No.3 which was also under tenancy, no eviction was sought, as from the said premises, they were earning major rental income.

3. In response, respondent-tenant submitted in his written statement that there was material concealment on the part of the petitioner-landlords as they owned many other properties at Patiala, which were not disclosed in the eviction petition and thus, there was violation of Section 13(A)(ii) of 1949 Act and as such, the petition was liable to be dismissed.

4. Upon framing of issues vide order dated 05.03.2018, petitioner No.1-landlord appeared as PW-1 and in his cross-examination, besides admitting ownership of three shops as disclosed in the eviction petition, he also accepted the factum of existence of shop No.4 having been rented out to one Chakrit Kumar/Chakrit Aggarwal. At this stage, the petitioners moved an application seeking amendment of their eviction petition, so as to disclose and explain the fact of certain portion of their property having rented out in favour of

aforementioned Chakrit Kumar/ Chakrit Aggarwal, which was being termed as shop No.4 in the cross-examination, seeking addition of following paragraphs:

“13A. That on the backside of the shop in dispute as well as of adjoining tenant Jaspal Singh, there was house of owner which was consisting of one room/store and hall. The petitioners had obtained the sanction for constructing the shops from Municipal Authorities in the year 1986. The sanctioned plan by the Municipal Authorities in original is attached as Annexure P-5.

13B. That the petitioner’s sons are not permanently settled. They are living at the mercy of the petitioners or by supplementing their income by doing odd jobs. However, their income is not sufficient. In the meantime the adjoining owner of the property which was originally belong to Parkash Chand was purchased by Chakrit Aggarwal in his name as well as in the name of his mother, had approached the son of the petitioner namely Gaganjot Singh and requested that in case he rent out the said room and hall to him, he will pay the rent @ 10,000/- per month and requested to include the said portion in his already existing shops. The arrangement was done by him with intention to construct a big showroom. The son of the petitioner namely Gaganjot Singh agreed for the same after consulting with son of other petitioner, resultantly the said portion was given and Chakrit Aggarwal agreed included the said room and hall in his showroom and thus constructed a big

showroom. The plan showing the arrangement so made by him is attached as ANNEXURE P-6.

13C. That even the photographs showing that there is no direct access to the said hall and room from main road as well as showroom so constructed by the said Chakrit Aggarwal from back side after including the said hall and room are annexed as ANNEXURE P-7 to P-9.

13D. That thus after filing the petition, the petitioners have given the back portion of the room and hall of Chakrit Aggarwal and the same has supplemented the income the sons of the petitioners.”

5. The aforesaid application was opposed at the instance of respondent-tenant while submitting that the application moved by the petitioner-landlords was not *bona fide*. It was also stated that the petitioners were merely trying to cover-up the plea of concealment, raised in the original written statement by filing-up the lacuna as the factum of existence of shop No.4 having been rented out to Chakrit Kumar/ Chakrit Aggarwal was admitted in cross-examination.

6. The Rent Controller vide order dated 06.02.2020 dismissed the application moved at the instance of petitioner-landowners while recording that the landowners were required to disclose all necessary facts pertaining to other properties owned or possessed by them at the time of filing of rent petition and no such

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application seeking amendment of eviction petition to fill-up the lacuna could be permitted and that too of the commencement of trial.

7. I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made by leaned counsel for the petitioner-landlords.

8. No doubt the petitioner-landowners, seeking eviction of tenant(s), are supposed to disclose all other properties owned or possessed by him/them in the eviction petition at the first instance, yet in case of such non-disclosure if an attempt is made by the landlord to make up the same by way of seeking amendment, it should not be declined unless the unrevealed secret appears to be deliberate and *mala fide*. Respondent-tenant has taken a plea of concealment of necessary facts and statutory ingredients on the part of the petitioner-landlords, however, allowing of application for amendment, if the eviction petition would not disentitle him to press for and pursue the plea of concealment, which shall be determined upon appreciation of evidence lead by the parties especially when the merits of the amendment sought for is not be adjudicated upon in detail at this stage. Moreover mere fact that certain admissions have been made by the petitioner-landlords in cross-examination as regards the existence of tenancy of Shop No.4 with Chakrit Kumar/Chakrit Aggarwal, yet the same can always be explained. Besides it, the amendment sought for by the petitioner-

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landlords is also going to help the Rent Controller to decide the *lis* between the parties in a complete and effective manner and also affording an opportunity to the petitioner-landlords to elucidate and justify the ownership and renting out of same portion of property to Chakrit Kumar.

9. In the facts of discussion made hereinabove, impugned order dated 06.02.2020 passed by the Rent Controller, Patiala, is set aside. The present revision petition is allowed and the prayer made by the petitioner-landlords seeking amendment of eviction petition stands granted.

10. Pending application(s), if any, shall stand(s) disposed off.

16.10.2023

Mangal Singh

(HARKESH MANUJA)
JUDGE

Whether Speaking / Reasoned :	Yes	No
Whether Reportable :	Yes	No