

CR-2938 of 2019 (O&M)

2023:PHHC:110026

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-2938 of 2019 (O&M)

Date of decision: 17.08.2023

Onkar Singh and another

.....Petitioners

Versus

Smt. Manpreet Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Kshitij Sharma, Advocate,
for the petitioners.

Mr. Satbir Singh, Advocate,
for respondents No.1, 3 and 4.

Mr. Vikas Sheel Verma, Advocate,
for respondents No.5 & 6 and
LRs of respondent No.2.

NAMIT KUMAR, J.

1. Present revision petition has been filed by the petitioners/tenants seeking setting aside of order dated 12.04.2019 passed by the Rent Controller, Chandigarh, whereby the application filed by them under Order 6 Rule 17 CPC for amendment of their written statement, has been dismissed.

2. Brief facts relevant for the disposal of the present revision petition are that respondents/landlords filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act for eviction of the petitioners/tenants from the entire bay No.845 on the ground floor of SCO No.845-846, Sector 22-A, Chandigarh, on the ground of non-

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payment of arrears of rent by the tenants. Petitioners filed written statement to the eviction petition. Thereafter, due to non-appearance of the petitioners before the Rent Controller, *ex parte* eviction order was passed against them on 18.03.2016. Petitioners moved an application for setting aside of *ex parte* eviction order before the Rent Controller, which was dismissed vide order dated 17.08.2017. Thereafter, petitioners filed a petition being Civil Revision No.6312 of 2017 before this Court for setting aside of *ex parte* eviction order dated 18.03.2016, which was allowed by this Court vide order dated 21.02.2019 and the Rent Controller was directed to decide the matter afresh from the stage immediately before passing of the *ex parte* order dated 18.03.2016. Thereafter, on 28.03.2019, petitioners filed application under Order 6 Rule 17 CPC for amendment of their written statement, which has been dismissed by the Rent Controller vide impugned order dated 12.04.2019.

3. Learned counsel for the petitioners contended that the impugned order is factually perverse, illegal and erroneous as the Rent Controller failed to appreciate that there are subsequent facts, events and payment of rent between the period w.e.f. 12.01.2012 to 31.01.2013. The payment of rent was voluntary by the petitioners, which was accepted by the respondents. He further contended that earlier the denial of relationship of landlord and tenant between the parties was on account of the fact that respondents were having a leasehold property from the Chandigarh Administration and the same was cancelled in the year 2002, thus, the respondents ceased to be

lessor and there was no relationship of landlord and the tenant between the parties. He further contended that the present amendment is necessary for proper adjudication of the matter and effectively deciding the controversy between the parties. He further contended that no prejudice would be caused to the petitioner by way of present amendment. It is further submitted that in any event, Courts are not required to go into the merits of the amendment.

4. *Per contra*, learned counsel for the respondents contended that the application of the petitioners has rightly been dismissed by the Rent Controller. They further contended that issues have already been framed and respondents/landlords have led their evidence in affirmative. They further contended that petitioners have specifically denied the relationship of landlord and tenant as a result of which the provisional rent was not assessed and now after a long time petitioners cannot be permitted to take u-turn. They contended that application was filed only to delay the proceedings and the same has rightly been dismissed.

5. I have heard learned counsel for the parties and with their able-assistance perused the record.

6. The impugned order dated 12.04.2019 whereby application for amendment of written statement has been rejected, reads as under: -

“10. Present petition was filed on 4.2.2013. After last opportunity, another opportunity was granted to the respondents to file reply subject to deposit of cost of Rs.300/- in Legal Aid Fund and the original written

statement was filed on 9.9.2013. After filing of replication, arguments on the point of assessment of provisional rent were heard and a detailed order dated 31.10.2013 was passed by the then learned Rent Controller, Chandigarh while observing that since there is a categorical denial of respondents with regard to the relationship of landlord and tenant, the Court is not required to pass order of provisional assessment of rent. It was also held that if the petitioners/ landlords would establish the relationship of landlord and tenant on the basis of evidence, then certainly no opportunity shall be given to the respondents to deposit the arrears of rent. Issues were framed including the issue regarding the existence of relationship of landlord and tenant amongst the parties. The petitioners have already led the affirmative evidence. The respondents have also availed nine opportunities to lead evidence and two adjournments for making effort for compromise, after deposit of rent in the proceedings of appeal of previous petition for eviction. Reliance upon the decision in case Anita Rai Vs Lavneesh Gulati (Supra) is misconceived, as in the said case the tenant who had earlier denied the relationship of landlord and tenant, was permitted to amend the written statement to state that she does not deny the said relationship, on the concession made by counsel for the landlord and on the assurance of the counsel for tenant that witness will not be recalled. Further, in that case personal necessity was additional ground for eviction. Therefore, present matter is squarely distinguishable. The proposed amendment will spiflicate the order dated 31.10.2013 and otiose the affirmative evidence of the petitioners. Not only did the respondents made conscious decision to deny the relationship of landlord and tenant, but also maintained it for sufficiently long period making it necessary for the petitioners to lead

entire evidence including on the issue of relationship and open all cards, without there being any burden upon the respondents/tenants to pay the provisional rent which might have been assessed in the year 2013 itself, if the respondents had not denied the relationship. The admitted subsequent events need not always be incorporated in the pleadings. It is always open to the respondents to place a certified copy of the proceedings or orders passed in previous petition for eviction during evidence of respondents to throw light on relevant matters. It will not be akin to the situation that the facts not pleaded, need not be proved.

11. For the aforesaid reasons, it is held that there is no justification with the respondents to seek amendment of written statement. The application has been filed only to cause delay. Application for amendment of written statement being merit-less is hereby dismissed.”

7. Amendment in pleadings is envisaged/ permitted under Order 6 Rule 17 of the Civil Procedure Code (for short ‘CPC’), which is reproduced hereinbelow, and stipulates that:-

“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

8. From a reading of the above provision, it is clear that as per proviso to Order 6 Rule 17 CPC, no application for amendment shall be allowed after the trial has commenced unless, the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial.

9. In ***Vidyabai and others v. Padmalatha and another, (2009) 2 SCC 409***, the Hon'ble Supreme Court observed in para 19 as under:

"7. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), the Parliament inter alia inserted a proviso to Order 6 Rule 17 of the Code, which reads as under:

"Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.

8. From the order passed by the learned Trial Judge, it is evident that the respondents had not been able to fulfill the said pre-condition. The question, therefore, which arises for consideration is as to whether the trial had commenced or not. In our opinion, it did. The date on which the issues are framed is the date of first hearing. Provisions of the Civil Procedure Code envisage taking of various steps at different stages of the proceeding. Filing of an affidavit in

lieu of examination in chief of the witness, in our opinion, would amount to 'commencement of proceeding'."

19. It is primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction in a case of this nature is limited. Thus unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

10. Hon'ble Supreme Court in ***Gautam Sarup v. Leela Jetly and others, 2008(1) R.C.R.(Rent) 487*** has held as under: -

"22. What, therefore, emerges from the discussions made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other."

11. In the present case, issues have already been framed and respondents/landlords have led their evidence in affirmative. Earlier by denying the relationship of landlord and tenant between the parties, petitioners have escaped the liability of payment of provisional rent. The application filed by the petitioners under Order 6 Rule 17 has rightly been rejected by the Rent Controller inasmuch as if the same is

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allowed evidence led by the respondents would go in vain. Thus, the application was filed only to delay the proceedings.

12. This Court does not find any illegality or perversity in the impugned order, therefore, no interference is called for in the same.

13. Dismissed.

17.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No