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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: May 12, 2023

Manmohan Singh (since deceased) through LRs

....Revisionists

versus

Varinder Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. V.K. Sandhir, Advocate for the revisionists.

ARUN MONGA, J. (ORAL)**CRM-8861-CII-2023**

For the reasons stated in application, same is allowed subject to all just exceptions.

Main case (O&M)

Petition herein *inter alia* is for setting aside impugned order dated 20.04.2023 passed by learned Appellate Authority, Tarn Taran in RA/04/2018 titled as “Varinder Singh versus Manmohan Singh” whereby application of revisionists/ tenants under Order VI Rule 17 read with Section 151 of Code of Civil Procedure, 1908 (for short ‘CPC’) seeking amendment in written statement dated 31.03.2016 (Annexure P-3), was dismissed.

2. The revision petition is premised on the averments that respondent herein/landlord filed application seeking ejectment of revisionist (since deceased and now represented by legal representatives) from demised premises on the ground of his being in arrears of rent for 12 months, and for *bona fide* need of his son.

2.1. Vide judgment/ order dated 09.07.2018 (Annexure P-1), learned Rent Controller dismissed the ejectment application. Respondent/landlord preferred

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appeal against aforesaid order. During pendency of appeal, revisionist(s) moved an application under Order VI Rule 17 read with Section 151 CPC for amendment of written statement to incorporate entire details of business being run by son of landlord and concealment of facts by landlord at the time of filing the ejectment application.

2.1. Vide impugned order dated 20.04.2003, learned Appellate Authority dismissed the application.

3. Learned counsel for revisionists/tenants would contend that by way of amendment, they wanted to amend written statement by adding following lines at the end of para no.3 sub para (ii) of the written statement:

“The applicant had concealed the material facts from the Hon’ble court and had not disclosed the true facts. In fact said son of applicant namely Preetinderdeep Singh, who is having alias name as Shampy Rajput is already running business as government contractor and getting contract to construct roads from the concerned government department. The said son of the applicant has uploaded his profile with his photograph on the social site by describing his name as Shampy Rajput and he described that he is a government contractor and has his own business. He also given detail of his study in the said profile by describing that he studied in GGS Khalsa College and Maharaja Ranjit Singh Public School and he is from Tarn Taran Sahib. The respondent further came to know that infact said son of the applicant is already running business of contractor and is getting contract from the government for constructing roads and he is also having PAN No.DTNPS0758C. On enquiry the respondent further came to know that said son of the applicant is having bank account with Punjab & Sind Bank, Tarn Taran Branch, Amritsar with having account no.07321000006902 and in the said account he had shown transactions of crores of rupees. Even in the said account it has been shown one of the transaction of RIGS dated 16/02/2018 vide which a sum of Rs.20.00lakhwastransferred from the said account to Friends Hat Mix Plant/PSIBH18047424220 which itself shows that he is doing the above referred to business being Government Contractor. In the said account there are also various entries of huge amount of Rs. 16,00,000/-, Rs. 11,32,419/-, three entries of Rs.15,00,000/- each alongwith various other entries of Rs. 7,00,000/-, Rs.8,00,000/-, Rs.2,50,000/-, Rs.5,00,000/-etc. All the above referred to circumstances itself shows that said son of the applicant is in fact already running business but the applicant has not disclosed this fact in the ejectment petition and has mislead the Hon’ble Court by concealing all the above referred to true facts from the Hon’ble Court with malafide intention and as such the present petition is liable to be dismissed on this very ground also.”

3.1. Learned counsel would further contend that aforesaid facts were not in the knowledge of revisionists at the time of filing written statement and even during pendency of ejectment petition before learned trial Court. The same came to their knowledge recently and they immediately moved application for amendment of written statement.

4. I have heard learned counsel for revisionists and perused the record.

5. Impugned order dated 20.04.2023 passed by learned Appellate Authority, Tarn Taran, is premised, *inter alia*, on the following reasoning:

“5. At the outset it is worth mentioning here that herein the applicant/respondent nowhere in the application has disclosed as to when the alleged profile of the son of appellant/applicant was uploaded from where it could be ascertained that the applicant had remained due diligent and why amendment was not sought at the material time. It was necessary so to disclose because, though strictly the provisions of CPC are not applicable, but its principles will be applicable as held in the case cited as 1977 (1) Rent Controller Reporter 595, so relied upon by the learned counsel for the applicant. In terms of the proviso to Order VI Rule 17 of 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 parties could not have raised the matter before the commencement of trial." Herein not only the trial commenced but culminated as well and application is being moved at the first appellate stage without proving due diligence on the part of the applicant.

6. It is more so when the Dissolution Deed would show that the son of the appellant/applicant had retired from the said firm carrying on the business of Road Construction, Running Hot Mix Plant, under the name and style of M/s Balwinder Singh & Co with effect from 31.03.2015 whereas the present application was filed only on 04.01.2016 and decided on 09.07.2018. That is the reason that the applicant/respondent did not raise this point in his written reply filed to the application despite the fact or led any evidence despite the fact that specific issue no.2 was framed, "Whether the applicant has not come to the court with clean hands." Applicant herein is pleading that this fact that son of the applicant is uploaded the profile that he is running business of contractor. Had it been so then applicant there and then would have moved application to seek amendment before learned Rent Controller where the proceedings were pending. This shows that applicant/respondent knew that son of the applicant has retired from the firm and that is the reason he had not moved application to seek amendment as it is being so alleged herein at the stage of first appeal. That also is the reason that applicant/respondent intentionally has not disclosed as to when the profile of the son of the appellant/applicant was uploaded. Obviously the

applicant/respondent had never remained due diligent and failed to explain as to why then amendment was not sought at the material time in case he came to know about it during trial as being alleged in this application. Applicant/respondent wants to drag the matter and wants to seek a de novo trial (new trial) by terming these facts to be subsequent events which in fact these are not so, for the reasons recorded above. There is no merit in this application and same is dismissed.”

6. Perusal of pleadings on record reflects that in the reply to Para-3 of ejectment petition, following specific denial as well as assertions were made by revisionist(s) in the corresponding para of the reply:

“3. That para No. 3 of the petition is wrong and incorrect hence denied.

(i) That para No. (i) of the application is wrong and incorrect. The replying respondent always asked the petitioner to take the rent on the end of every month but the applicant is not ready to take the rent every month and always asked that he is not ready to take rent every month and he want to take rent for 10 to 12 months collectively.

(ii) That para No.3 (ii) of the petition is wrong and incorrect and vague and the applicant does not require this shop for the personal use and occupation of his son Namely Preetinderdeep Singh for his business. The applicant does not require bonafidely the shop in dispute. The applicant also have another shop and he is doing the business in the said shop along with his son Preetinderdeep Singh who is also running the said shop with his father and applicant has no other son as such the son of the applicant is not requiring the said shop in dispute as he is well settled along with his father and doing successfully business in the shop which is in possession of his father.”

7. Perusal of above clearly reflects that tenants have already taken the stand that neither there was any requirement of personal necessity nor otherwise the shop was required by son of landlord since he is well settled and carrying out his business. The nature of amendment now sought to be made in the written statement at the appellate stage is merely an elaboration of the pleadings already on record. It seems that the object of amendment now sought is to produce further evidence, which could have been done, but was not produced earlier and gain more time by delaying the eviction proceedings.

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8. There is no room for interference in the aforesaid valid reasons recorded by learned Court below.
9. No material irregularity in law or procedure has been committed by learned Court below, so as to exercise extraordinary revisional jurisdiction herein.
10. Being so, there is no requirement of any amendment in the written statement. Revision petition is dismissed with liberty to revisionists to file an application for additional evidence, if so advised. Needless to say, same shall be decided by learned Appellate Authority, in accordance with law.
11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 12, 2023
mahavir

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