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

**CR No.3031 of 2022(O&M)
Date of Decision: 09.11.2023**

**1. Deepak KumarPetitioner
Vs**

Sukhcharanjit Singh ThindRespondent

CR No.3108 of 2022(O&M)

**2. Pardeep Kumar and anotherPetitioners
Vs**

Sukhcharanjit Singh ThindRespondent

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present:Mr. Vaibhav Sehgal, Advocate
for the petitioner(s).

Mr. Namit Gautam, Advocate
for the respondent.

HARKESH MANUJA, J.(Oral)

[1]. This common order of mine shall dispose of CR No.3031 of 2022 titled as Deepak Kumar Vs. Sukhcharanjit Singh Thind and CR No.3108 of 2022 titled as Pardeep Kumar and another Vs. Sukhcharanjit Singh Thind as similar facts and controversy are involved therein. For reference, facts are being taken from CR No.3031 of 2022.

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[2]. By way of present revision petition, challenge has been made to an order dated 04.07.2022 passed by the Rent Controller, Ludhiana, whereby an additional issue has been framed on an application filed by the respondent-landlord.

[3]. Briefly stating, the respondent-landlord filed a petition on 24.05.2019, seeking eviction of the petitioner-tenant from the tenanted premises i.e. shop No.3 forming part of property No.B.XX.2594 and BXX.2595, situated at Bhai Bala Chowk, Ferozepur road Ludhiana. Written statement to the same was filed by the petitioner-tenant followed by filing of replication by the respondent-landlord with the permission of Rent Controller on 07.01.2020. Even a rejoinder to the said replication was filed on behalf of the petitioner-tenant.

[4]. Upon consideration of the pleadings, following issues were framed by the Rent Controller:-

“[a] Whether the respondent is liable to be evicted from the demised premises on account of non payment of arrears of rent? OPP

[b] Whether the respondent is liable to be evicted from the demised premises on the ground of personal use and occupation? OPP

[c] Whether the petition is bad for partial ejectment? OPR

(d) Whether the petition is bad for non joinder of necessary parties? OPR

[e] Relief.”

[5]. Immediately thereafter, on 06.12.2021, the respondent-landlord filed an application for framing of additional issue to the following effect:-

“Whether the property has become unfit and unsafe for human habitation? OPP”

[6]. The petitioner-tenant opposed the prayer made in the aforementioned application having filed detailed reply.

[7]. The Rent Controller vide order dated 04.07.2022, allowed the prayer made in the application filed at the instance of respondent-landlord, thereby framing following additional issue:-

“2(A). Whether the property has become unfit and unsafe for human habitation?OPP”

[8]. Impugning the aforementioned order dated 04.07.2022, learned counsel for the petitioner-tenant submits that an eviction under the provisions of East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred as ‘1949 Act’) can be sought only on the grounds enumerated under Section 13 thereof and unless and until, those are specifically pleaded in the eviction petition, no order of eviction can be passed for merely having raised an additional or new plea or ground been set up in the replication. He further submits that the sole purpose of filing of replication is

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to explain the defence stand taken in the written statement and not to raise any new or additional plea, or to add any other prayer or ground therein as the remedy for adding any new prayer or ground is only by seeking amendment of the original pleadings i.e. the eviction petition. In support of his contentions, learned counsel placed reliance upon **Arun Kumar Guru Vs. Orissa Forest Development Corporation Ltd., 2001(3) CivCC 114** and **Swaran Kaur Vs. Harjit Singh, 2000(2) CivCC 477.**

The relevant paragraph No.11 from **Arun Kumar Guru's case (supra)** and paragraph Nos.7 and 8 from **Swaran Kaur's case (supra)** as referred by learned counsel for the petitioner-tenant are reproduced hereunder:-

Arun Kumar Guru's case (supra)

“11. In the opinion of the Court, rejoinder is not for raising a fresh plea which was not raised in the writ petition. It is basically to explain something which may become necessary in view of the averments made in the counter affidavit which may be something not arising from any averment made in the writ petition. If new facts are to be brought on record or a relief other than what was originally claimed, is to be included, then the proper course is to amend the writ petition and not go on filing rejoinder after rejoinder like that has been done in the present case.

Swaran Kaur's case (supra)

*7. This Court had also an occasion to examine a similar controversy in **Chander Shekhar & another v. State of***

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Punjab, 1996(2) A.I.J. 59. It has been held that no new case can be permitted to be set up in the replication. The petitioners can be permitted only to rebut the assertions made in the written statement.

8. On a consideration of the matter, it is found that the plaintiffs have been rightly declined permission to set up a new plea by amendment of the replication. They had earlier stated that the defendant was in unlawful possession of the suit land. By amendment, they want to take a plea that the defendant was in permissive possession as a licensee. They are not only taking a new plea but also a contradictory plea. This is not permissible in law. The order of the trial Court does not, therefore, need interference.”

Learned counsel for the petitioner also points out that in the eviction petition, no specific plea was ever raised at the instance of the respondent-landlord, mentioning the demised portion being unfit to be used and merely a plea was taken that the same been more than 70 years old.

[9]. On the other hand, learned counsel for the respondent-landlord submits that though there may not have been specific use of words in the eviction petition such as the “demised premises being unfit and unsafe for human habitation”, yet sufficient averments were there to contend that the building required renovation and re-construction, the same being more than 70 years old. He further submits that the use of words;

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“unfit and unsafe for human habitation” were categorically made in the replication which was permitted to be taken on record by the Rent Controller vide its order dated 07.01.2020, thus, formed part of pleadings and the Rent Controller did not exceed its jurisdiction while relying upon the same for the purpose of framing additional issue.

[10]. I have heard learned counsel for the parties and gone through the paper book as well as the statutory provisions under Section 13 of the 1949 Act. I am unable to find substance in the submissions made on behalf of the petitioner.

[11]. No doubt, in a case where the demised property is regulated under the provisions of 1949 Act, the same can be got evicted by the landlord on the specific grounds as contemplated under Section 13 thereof and not otherwise. In the present case, the cumulative analysis of para No.4 (ii) of the eviction petition shows that the respondent-landlord gave a complete description about the existing structural condition of the building while submitting that the yellow portion thereof which happened to be in his possession was not in a fit condition, whereas the portion in possession of the petitioner-tenant was more than 70 years old and required renovation and re-modeling. The relevant extract therefrom is reproduced hereunder:-

“.....The building as shown yellow is in possession of the petitioner but the same is on the backside and is

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not in a fit condition to be used for running a departmental store/super market. The building is more than 70 years as the respondent predecessor had been inducted in the property in question more than 69-70 years back. The building shall be renovated and shall be remodeled in such a manner so that a modern departmental store/super market can be run in the entire property. The portion as shown yellow is built in such a manner that it has low roofs and the area of the rooms on the first floor is too small and the roofs are at low height. The construction of the building is such that it is of no use at present.....”

[12]. Though the initial pleadings in the shape of eviction petition did not use the specific phrase of the building being unfit and unsafe for human habitation, yet mere non-mentioning of the same, could not flatten the cause of the respondent-landlord in view of the detailed and expressed position of the building in question been delineated therein. Moreover, in the proceedings arising out of the provisions of 1949 Act, the strict principles of pleadings cannot be applied and once the details were set up in the eviction petition, providing the condition and status of the demised building being too old, requiring renovation, it could only be found out or adjudicated upon trial as to whether the same was unfit and unsafe for human habitation. In the given facts and circumstances of the case, the judgments cited on behalf of the petitioner in **Arun Kumar Guru's case (supra)**

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and Swaran Kaur's case (supra) was not applicable as by way of replication, no new ground was added, rather the addition of averments was merely to support the cause already set up in the eviction petition, besides explaining it further and making it more specific. In the replication, only specific phrase of building being unfit and unsafe was added, which could be treated to be an addition to the prayer clause or seeking any additional relief to the claim already made in the eviction petition.

[13]. Moreover, no merit can be found in the submissions made on behalf of the petitioners that in the absence of use of specific words such as demised building having become unfit and unsafe for human habitation, no such plea could have been permitted to be raised at the instance of respondent-landlord thereby calling for no such issue as per Clause (iii) to Sub-Section 4 of Section 13 of the 1949 Act which enables a landowner to seek eviction from the demised premises it having become unfit and unsafe for human habitation. In the humble opinion of this Court, for setting up any such ground of eviction, it is not mandatory or essential to use the exact phrase of building having become “unfit and unsafe for human habitation”. It is more than settled that the pleadings are to be construed liberally and therefore, once specific averments were made in the ejectment petition while stating that the demised premises

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was 70 years old; requiring renovation and remodeling, sufficient pleadings were made so as to seek ejectment on the ground of demised premises being “unfit and unsafe for human habitation”, especially when renovation also meant repair.

[14]. Equally important, there has been no legal impediment on the respondent-landlord to have elucidated upon the plea already taken in the eviction petition by using the specific phraseology in the replication, the ground of building having become “unfit and unsafe for human habitation” neither been hit by limitation or even on account of any other statutory check or handicap. More than that the substantive prayer is for seeking eviction from the tenanted premises which is already there in the eviction petition and thus no new prayer has been added in the replication, thereby causing no prejudice to the rights of the petitioner-tenant. Additionally, the framing of additional issue being based on pleadings already on record would help the Rent Controller to adjudicate upon the rights of the parties in a complete and effective manner and also would afford them opportunity to lead the evidence on the specific plea.

[15]. Furthermore, the plea raised at the instance of petitioner for grant of permission to file supplementary written statement in the wake of additional issue having been framed by Rent Controller, is also devoid of merits as in the present case,

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no fresh pleadings have been filed at the instance of respondent-landlord and the amended issue i.e. issued No.2 (a) has been framed by the Rent Controller, based on the pleadings already available on record in the shape of eviction petition, written statement and replication to which even a rejoinder already stands filed on behalf of petitioner-tenant.

[16]. In view of the discussion made hereinabove, finding no merit in the present revision petitions, the same is dismissed, there being no illegality or perversity in the order dated 04.07.2022 passed by the Rent Controller.

[17]. Pending applications, if any, shall remain disposed of.

09.11.2023
Prince

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No