

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

131

CR-4950 of 2023(O&M)
Date of Decision: 25.09.2023

Harjeet Singh Through his LRs

....Petitioner

Versus

Shree Sanatan Dharm Mahabir Dal and another

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Vishal Aggarwal, Advocate
for the petitioner.

Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Saksham Mahajan, Advocate and
Mr. Kashish Garg, Advocate
for respondent No.1.

SANJAY VASHISTH, J.(Oral)

1. By way of present revision petition, order dated 17.08.2023 passed by learned Rent Contoller, Bathinda has been challenged by the petitioner-tenant (respondents before learned rent controller), whereby application filed by him for framing of additional issues was dismissed.

2. Facts leading to the filing of the present revision are that; Shree Sanatan Dharm Mahabir Dal (regd.), Bathinda through its President (being applicant) filed an ejectment application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949. The

basic grounds for filing the ejectment application are: **(i)** *material alteration done by the respondents-tenants* ; **(ii)** *non payment of rent*; and **(iii)** *Sub-letting*;. The said application for ejectment was instituted way back in the year 2018 and thereafter, both the sides have led their evidence. However, at the stage of final arguments respondents-tenants proposed to frame some additional issues.

3. Originally, vide order dated 24.04.2019, the issues were framed by learned Rent Controller

The copy of the order dated 24.04.2019 is produced by the learned Senior Counsel for the respondent-landlord in the Court today and same is taken on record. For the purpose of convenience, the same is reproduced as under:

*' Present:Sh. N.M. Aggarwal, Adv. Counsel
for the applicant.
Respondent No.1 exparte.
Sh. JG Goyal Adv, counsel for
Lrs of respondent No.2.*

Harjinder Singh s/o Harjit Singh has suffered statement that he is ready to pay Rs. 6237/- of provisional rent as per order dated 02.04.2019 to applicant.

*Charanji Lal Garg has also suffered statement that Ghula Singh was the tenant of petitioner DalAfter that his son Davinder Singh was the tenant; Respondent Harjeet Singh and their sons Harjinder Singh & Ravinder Singh were never the tenants of petitioner dal; They were all sub-tenants; Sub-tenants have no right to tender rent; He does not want to accept this tender money.
From the pleadings of the parties following issues are framed:*

'1. Whether the applicant is entitled for ejectment of respondents from demised shop under Section 13 of East Punjab Urban Rent Restriction Act, 1949 as prayed for? OPP.

2. Whether the eviction application has not been filed through competent authorized person? OPR.

3. *Whether the application is not maintainable in the present form? OPR*

4. *Whether the applicant has no cause of action to file the present application? OPR.*

5. *Whether the applicant has no locus standi to file the present application? OPR.*

6. *Whether the applicant is estopped from filing the present application by his own act and conduct? OPR*

7. *Whether the application is bad for non-joinder of necessary parties? OPR.*

8. *Whether the eviction application is filed on false ground on the basis of false documents? OPR*

9. *Whether the eviction application of applicant is false, vexatious and frivolous? OPR.*

10. *Relief.'*

No other issue arises or pressed. Now to come up on 07.05.2019 for evidence of applicant. Applicant is directed to tender all his affidavits on next date. List of witnesses be filed within a week, failing which applicant shall not be entitled to any assistance of this Court.'

4. After leading of the evidence by both the sides, respondents-tenants proposed following additional eleven issues:

'(i) Whether the applicant is a registered charitable, social, religious society having its bye-laws and constitution? OPA

(ii) Whether Sh. Chiranji Lal Garg is duly authorized competent person of applicant Dal on the basis of resolution dated 26.05.2018 to file the present eviction application? OPA (this issue is to be framed in place of issue no. 2 which is wrongly framed by wrongly putting burden of issue no. 2 upon respondent no. 2 though affirmative fact of Chiranji Lal Garg being competent authorize person is pleaded by the applicant-landlord whereas denied by respondent no. 2 specifically, hence respondent no. 2 has to lead rebuttal evidence to the said issue and not to prove negative issue, hence this issue no. 2 be deleted and above proposed issue may kindly be ordered to be framed along with other issue.)

(iii) Whether applicant let out the site of shop in question on monthly rent of Rs 40/- per month

to respondent no. 1 vide rent note dated 25.08.1965 executed by respondent no. 1? OPA

(iv) Whether respondent no. 1 has raised the structure of shop in question at the site of shop after taking it on rent? OPA

(v) Whether the respondent is in arrears of rent since 31.03.2011? OPA

(vi) Whether the respondent no. 1 has illegally without written consent of the applicant sub let the shop in question to respondent no. 2 for valuable consideration? OPA

(vii) Whether the respondent no. 1 has made the unlawful addition alteration in the shop in question thereby diminishing the value and utility of the premises in question ? OPA

(viii) Whether the alleged rent note is inadmissible into evidence due to non-registration which requires compulsory registration under the registration act. If so its effect? OPR

(ix) Whether the applicant has filed the eviction application on the basis of false, fabricated and bogus documents against respondent no. 2. If so its effect? OPR

(x) If above issue is proved whether the applicant is liable to be prosecuted under section 340 of CrPC for filling false eviction application using false and bogus document basing its claim on the false document? OPR

(xi) Whether the Jurisdiction of the rent controller is barred under The Punjab Religious Premises and Land (Eviction and Rent Recovery Act), 1997? OPR'

5. Learned counsel for the petitioner submits that on the basis of the pleadings available on record, some of the important issues have not been framed by the learned Rent Controller, therefore, additional issues now proposed are necessary for proper adjudication of the rent petition. Further submits that it is realized by the petitioners-tenants that if now proposed issues are framed, same would be worth for its adjudication on the basis of the evidence already led by the respective parties. Thus, an application was filed by the petitioners before the learned Rent Controller, which was dismissed vide impugned order dated 17.08.2023.

6. Arguing on the necessity of framing of the correct and appropriate issues, the counsel for the petitioner(s) (respondents-tenants) relied upon the provision of order 14 Rule 5 CPC and further cites the order dated 07.08.2023 passed by this Court (Punjab and Haryana High Court, Chandigarh) in CR-2327 of 2018 **Tilak Raj Sharma through his LR Swatanter Bala VS. Sourabhdeep Sharma and others; Date of Decision: 07.08.2023** and submits that application filed at belated stage for framing of additional issues, cannot be dismissed outrightly on the said account only and the prime criteria that the Court should adopt to decide such an application is that the rights of either of the parties may not get prejudiced.

Counsel for the petitioner also relies upon the decision of this Court passed in **CR No. 7078 of 2018, date of decision 10.07.2019**, titled as **Apeejay School, Charkhi Dadri and others VS. Sh. Ravidas Seva Ashram Charkhi Dadri and another** and submits that onus to prove certain issues should have been fastened upon the landlord-respondent as the respondent has to prove subject matter pleaded by him and in the absence thereof, the suit may fail.

Counsel for the petitioner lastly, relied upon a decision of this Court passed titled as **Bir Singh (deceased) through his Lrs Vs. Ravinder Saini and another 2018(1) PLR 669, Doc Id #980742** and submits that the practice of framing of the issues only on the basis of the various prayer made in the suit is not in consonance with the provision of Order XIV Rule 1 of C.P.C., which provides that each

material proposition of fact and law asserted by one party and denied by the other must give rise to a separate and distinct issue.

7. However, throughout the submissions, no satisfactory reply is given by learned counsel for the petitioners to the Court's query that what is the reasonable ground with the petitioners (respondents-tenants) for proposing the framing of additional issues at the fag end of the trial i.e. after a period of 4/5 years.

8. On the other hand, Mr. Sumeet Mahajan, Sr. Advocate with Mr. Saksham Mahajan, Advocate appears on behalf of the respondents/landlords and submits that the issues were framed way back on 24.04.2019 and after that, no issues were ever proposed or pressed by the petitioners-tenants and even Court never realized need of any other additional issue.

Thereafter, even the evidence was called for and same was led by both the sides.

9. Petitioners-tenants moved the application for proposing additional eleven issues on 11.08.2023. The application to frame additional issues appears to be moved with some ulterior motive, undoubtedly, to delay the proceedings and to prolong his own possession over the subject premises

10. Learned Senior Counsel further submits that neither there is any substance in the application moved to frame additional issues or the proposed issues; nor any fruitful purpose would be served by it for the decision of the rent petition. On the other hand, if the issues

already framed in the year, 2019 are gone into detail, it would be clear that all the required and adequate issues are already framed by learned Rent Controller available and almost all the issues over which evidence has already been led, cover the intent of the proposed issues as well.

11. Learned senior counsel further informs the Court that malicious intention of the petitioners-tenants is very much clear because, even, now some applications have been filed by the petitioners-tenants at the fag end of the trial and one of such application is for seeking direction of Forensic Science examination qua one of receipt dated 23.03.2011. Another such application is for deciding the objection raised to the Exhibited documents i.e. Ex.A1 to Ex.A-10.

12. Mr. Mahajan, learned Senior Counsel, on instructions, further informs that the said aspect has even been noticed by the learned Rent Controller in its order dated 19.09.2023. To substantiate his plea, Mr. Mahajan, learned Senior counsel ,relies upon a decision of this Court passed in **CR No. 4554 of 2015, Date of Decision:22.07.2015** titled as **Surinder Singh Vs.Kuldeep Singh and others**, wherein, it was held that prayer made at a belated stage for framing of the additional issues only to fill up the lacunae left in the evidence already led, should not be allowed of any party. For the sake of convenience, relevant and operative observation made in the aforesaid judgment is reproduced herein under:

"Prayer was made at the fag end of the trial to frame additional issue putting burden thereof on the defendants. That plea had been raised by the defendants in the written statement. They could press for framing of issue arising out of their pleadings. It has further been noticed by the learned trial court in the impugned order that immediately after filing of the application by the petitioner for framing of additional issue before even that was considered and disposed of by the court, the parties started leading evidence pertaining to the issue. In fact, the entire effort of the petitioner seems to fill in some lacuna left in the evidence already led. The object of Order 14, Rule 5 CPC is not to allow any party to move application later on for framing of additional issue just to fill in the lacuna."

13. Learned Senior Counsel also relies upon the judgment of this Court (Punjab and Haryana High Court, Chandigarh), passed in **CR No.2312 of 2021, Date of Decision:11.10.2021** titled as **Rajesh Saini Vs. Harish Saini and others**, wherein, it was held that after the stage of leading of respective evidence by all the parties, application for framing additional issues, ought not to be entertained. Relevant paragraph No.6 of the said judgment is reproduced as under:

'6. Having appraised the order under challenge, I am in agreement with the reasons recorded by the trial Court. It is expected of the trial Court to give finding on the issue of declaration only after giving reasons thereof as well as discussing evidence adduced by the respective parties. It has already been noted that parties have led their respective evidence and at this stage application for framing additional issue ought not to be entertained.'

14. Learned Senior Counsel for the respondent further relies upon a decision of this Court (Punjab and Haryana High Court, Chandigarh) passed in **CR No.5583 of 2019, Date of Decision:28.09.2022**, titled as **Kuljeet Singh Vs. Kulwinder Kaur**

and others, and submits that once facts were already in knowledge of the parties, framing of additional issues at belated stage should not be permitted at the instance of such party. Relevant Paragraph Nos.11,12, 14 and 15 are reproduced hereunder:

'11. There can be no quarrel with the law laid down in the judgments relied upon by the learned counsel for the plaintiff-petitioner. It is trite that additional issues can be framed at any point of time. However, in the present case the issues were initially framed on 04.08.2014 and thereafter re-framed on 30.05.2016. At both times the plaintiff-petitioner did not claim any further, issues. The controversy in the present case has always been, which both the parties were aware of, as to whether there was any oral agreement to sell. Further, both the parties were aware of the fact that defendant-respondent No.1 had claimed to be a bonafide purchaser by leading evidence on issue Nos.1 and 6. As such, all evidence as available would have been led by both the parties.

12. Learned counsel for the plaintiff-petitioner has also not been able to show as to what additional evidence he would lead in the event of the two additional issues being framed. A perusal of the application for framing of additional issues shows that the same is also bereft of any details as to what evidence the plaintiff-petitioner wishes to lead which could not have been led in the event of non-framing of the additional issues.

13. xxxxxx

*14. In the case of **Kanan (dead) by LRs & Ors. v. V.S.Pandurangam (dead) by LRS & Ors. [2008 (1) RCR (Civil) 193]** it has held as under:*

*"11. By a series of decisions of this Court it has been settled that omission to frame an issue as required under Order 14, Rule 1 Civil Procedure Code would not vitiate the trial in a suit where the parties went to trial fully knowing the rival case and led evidence in support of their respective contentions and to refute the contentions of the other side vide **Nedunuri Kameswaramma v. Sampati Subba Rao, AIR 1963 SC 884.***

*12. In **Sayed Akhtar v. Abdul Ahad, 2003 (2) RCR (Rent) 213** it was held by this Court that even if no specific issue has been framed but if the parties were aware of that*

*issue and have led evidence on it, the Appellate Court should not interfere with the findings of the trial Court. A similar view was taken in **Kali Prasad Agarwalla and others v. M/s Bharat Coking Coal Limited and others, 1989 Supp (1) SCC 628 (vide paragraph 19)** and in **Shaikh Mahamad Umarsaheb v. Kadalaskar Hasham Karimsab and others, AIR 1970 SC 61 (vide paragraph 9)** as well as in several other decisions.*

15. The case is now at the stage of rebuttal and arguments and the application appears to have been filed only to fill up the lacunae in the case."

15. This Court has also noticed each and every aspect of the facts addressed before it alongwith the cited judgments. Court has also examined the already framed issues by the learned Rent Controller vide its order dated 24.04.2019 (supra) and also the additionally proposed issues. Infact, proposed issue No.1(i) can be an expected argument from the side of petitioners-tenants and said argument can be addressed with the help of evidence led by him in support of the issues already framed. Proposed issued No.2 (i) is already covered under framed issue No.2. All other proposed issues of which the onus to prove is upon the landlord are also covered with the already framed issues, therefore, the plea of framing of additional issues with the onus to prove the same upon the landlord appears to be totally misconceived. Even, the proposed issues of which onus to prove is taken by tenant upon himself are also either covered under already framed issues or the same are not made out because of no such pleadings.

16. I have also taken note of the fact that there is a huge delay at the instance of the respondents-tenants in moving the application. Issues were framed on 24.04.2019 and that time, no other issue was pressed by the respondents-tenants. Now after such a long period that too at the stage when the trial is at fag for final decision, there is nothing special pointed out by the Counsel for the petitioner that what made him to move the present application at such a belated stage, which undoubtedly prejudices the right of the landlord, whose property is occupied by him as tenant .

17. In the aforesaid backdrop of the circumstances and judgments cited by Mr. Sumeet Mahajan, learned Senior counsel for the respondents which are directly applicable, to the present revision petition, this Court is of the view that to frame additional issues, the application is moved at highly belated stage and it appears to be moved with an ulterior motive to prolong the proceedings before the Court.

As this Court has been informed that ejectment application is based upon the three grounds i.e. (i) making alteration at the instance of the respondent-tenant; (ii) non payment of rent; and (iii) Sub-letting, undoubtedly, it is expected from the learned Rent Controller that under Issue No.1, it would be decided on the basis of the evidence available on record in regard to all the three grounds independently. Thus, finding no substance in the prayer made by the respondents-tenants, I do not deem it appropriate to cause any kind of

interference in the impugned order dated 17.08.2023, passed by learned trial Court, thus, **the same is maintained and the present revision petition stands dismissed.**

September 25, 2023
rashmi

Whether speaking/reasoned
Whether reportable?

[SANJAY VASHISTH]
JUDGE

yes/no
yes/no