

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

CR No.5722 of 2023 (O&M)

Date of decision: 06.10.2023.

Competition Cell

....Petitioner

Versus

Harpreet Singh and others

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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

VIKRAM AGGARWAL, J. (ORAL)

1. By way of the present revision petition, challenge is to the order dated 18.09.2023 passed by the Appellate Authority, Chandigarh, vide which the application filed by the petitioner-tenant for amendment of written statement was dismissed.

2. An eviction petition was filed by the respondents-landlords against the petitioner-tenant under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (as applicable to Chandigarh) (hereinafter referred to as a Rent Act) seeking eviction of the petitioner-tenant from the 3rd floor of SCO- 83-84, Sector-17-D, Chandigarh (hereinafter referred to as the demised premises). Eviction was sought on the ground of non-payment of rent and *bona fide* necessity.

3. The eviction petition was allowed on the ground of *bona fide* necessity (Annexure P-3) by the Rent Controller, Chandigarh on 14.09.2018.

4. An appeal was preferred against the decision dated 14.09.2018. During the pendency of the appeal, an application was moved by the petitioner-tenant under Order 6 Rule 17 CPC seeking amendment of the written statement (Annexure P-7). It was averred in the application that the petitioner-tenant had

come to know that there was a litigation regarding the partition of the demised premises which had been instituted by one-Harjit Kaur against S.S. Gill and other co-owners. A preliminary decree was passed by the Court of the Civil Judge (Junior Division), Chandigarh on 19.05.2016 and shares of the parties were determined. Subsequently, an application for final decree was filed and a final partition decree was passed on 10.10.2018. After that, one of the co-owners M/s Canam Consultants filed an application for being impleaded as a party to the eviction petition but the same was rejected. It had been averred in the said application by M/s Canam Consultants that its consent had not been obtained for filing of the eviction petition. It was averred in the application for amendment that since consent of co-owner had not been taken, the eviction petition was not maintainable. It was further averred that the respondents-landlords were owners of SCO-317-18, Sector-35-B, Chandigarh. The respondents-landlords had been leasing out and renewing the leases of the tenant that is Weldon Opticians and they were getting the rent increased from time to time. It was averred that accordingly it was proved that the respondents-landlords did not require the demised premises for their own use and occupation. It was also averred that the building in Sector-35 had been got vacated and was not being occupied by the respondents-landlords which further falsified their claim of *bona fide* need. Under the circumstances, amendments to the said effect were sought to be made and preliminary objections No.10 and 11 were sought to be introduced in the written statement. A stand taken was that the proposed amendments were arising from the subsequent events and were, therefore, essential for the just and proper decision of the case.

5. The application was opposed by the respondents-landlords. In the reply (Annexure P-8), it was averred that the facts regarding the passing of the preliminary decree etc., in a partition suit were always in the knowledge of the

petitioner-tenant which was also evident from the questions put in the cross-examination to PW-1-Harpreet Singh. In fact counsel representing the petitioner-tenant was representing him in the said partition suit also. It was admitted that the final decree had been passed but the same had not been got registered and, therefore, it could not be termed to be a decree. It was denied that after the passing of the final decree, each co-owner would get a share in the building and that there would be no merger of tenancy with ownership unless 100% share in the property is purchased by the tenant. It was averred that the application for amendment had been filed at the fag end of the appeal with a view to delay its decision. With regard to the building in Sector-35, it was averred that the basement had not fallen vacant and, therefore, the SCO could not be used because lifts had to be installed.

6. By way of the impugned order, the application for amendment was dismissed leading to the filing of the present revision petition.

7. I have heard Mr. Divanshu Jain, learned counsel representing the petitioner-tenant.

8. Leaned counsel for the petitioner-tenant has vehemently submitted that the Appellate Authority erred in dismissing the application for amendment. Strenuous arguments have been addressed on how and why the amendment was essential. Learned counsel for the petitioner-tenant has submitted about the preliminary decree, the final decree, the application moved by M/s Canam Consultants under Order 1 Rule 10 and its dismissal, the SCO in Sector-35 having been vacated and not being put to use etc. Learned counsel has contended that without the consent of all co-owners, the eviction petition itself would not be maintainable. It has also been contended that after the passing of the final decree, the facts are essential to be pleaded in the written statement since the final decree had been passed on 10.10.2018, which was after the eviction order dated 14.09.2018 having been passed. Learned counsel has also contended that the fact

of the SCO in Sector 35 not being occupied by the respondents-landlords also needs to be incorporated in the written statement. Learned counsel has submitted that without there being requisite pleadings, no amount of evidence or arguments would be permissible. Learned counsel has contended that the Appellant Authority gravely erred in observing that the application for amendment of the written statement was delayed. It has been submitted that the application moved by Canam Consultants under Order 1 Rule 10 CPC was dismissed on 18.07.2023 and the application for amendment was moved by the petitioner on 25.08.2023. It has also been submitted that amendment of written statement could be allowed even at the appellate stage. In support of his contentions learned counsel has placed reliance upon the judgments of this Court in the case of *Tehal Singh Vs. Harnam Kaur and others in CR No.4987 of 2015*, *Gyan Aggarwal Vs. Brij Bhushan Salwan, 2019 (1) R.C.R (Rent) 419*, *Dr. (Mrs.) Maninder Ahuja Vs. Smt. Lila Devi, 1980(2) R.C.R. 153*, *M/s Mehendra Road Lines Vs. Food Corporation of India, 2001(3) R.C.R.(Civil) 52* and judgments of the Hon'ble Supreme Court in *Andhra Bank Vs. ABN Amro Bank N. V., 2007(3) R.C.R.(Civil) 585*, *M/s Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., 2001 (2) Rent LR 466*, *Rajesh Kumar Aggarwal Vs. K.K. Modi, 2006(2) R.C.R.(Civil) 577*, *Prithi Pal Singh Vs. Amrik Singh, 2014(10) R.C.R.(Civil) 327* and *Life Insurance Corporation of India Vs. Corporation of India Vs. Sanjeev Builders Private Limited, 2022(4) Law Herald (SC) 3241*.

9. I have given my thoughtful consideration to the arguments advanced by learned counsel for the petitioner. Though the arguments were forceful and persuasive, the same have not found favour with this Court.

10. Admittedly, the eviction petition was filed on the grounds of non-payment of rent and *bona fide* necessity. The property is a shop-cum-office in Sector 17, Chandigarh and the petitioner-tenant is in occupation of the third floor

of the said property. The eviction petition was allowed by the Rent Controller on 14.09.2018 on the grounds of *bona fide* necessity. The application for amendment was moved on 25.08.2023 i.e., after a period of five years from the passing of the eviction. No doubt, the application under Order 1 Rule 10 CPC moved by Canam Consultants was dismissed 18.07.2023. However, in the considered opinion of this Court, the same would not affect the application filed by the petitioner-tenant for amendment because the grounds on which amendment is being sought pertain to the year 2018 etc. In any case, if one goes through the written statement filed by the petitioner-tenant to the eviction petition (Annexure P-2), it emerges that all these objections have already been raised in the written statement. Paragraphs 3 to 5 of preliminary objections taken in the written statement are as under:-

“3. That the present eviction petition is bad for mis-joinder of necessary parties in as much as there are other partners of the respondent concern who have the tenancy rights in their individual capacity. The said partners have not been impleaded, therefore the present eviction petition deserves dismissal.

4. That there are other co-owners of the building in question and the said other co-owners have not been impleaded as parties to the present eviction petition, therefore the present petition deserves dismissal.

5. That the petitioners have not got the consent of all the other co-owners to file the present eviction petition as much as Shri Iqbal Singh son of Shri Jeewan Singh, Smt. Harjit Kaur and Mr. Awasthi are other co-owners of the building in question and they do not want the eviction of the respondent from the tenanted premises. Similarly the other co-owners have also not consented for filing of the present petition, therefore the petition deserves dismissal.”

Paragraphs 7 and 8 state as under:-

7. *That Smt. Harjit kaur filed a suit for partition and to the knowledge of the respondent the same has been decreed and thus the present eviction petition is now not maintainable and deserves dismissal.*

8. *That there are about 13 co-owners of the building in question and they are not joining hands together, therefore the father of the present petitioners Shri S.S. Gill decided to sell the property and some share of the building has been sold to one Shri Awasthi who was a sitting tenant. In fact the owners want to dispose off the property and to get a better price equivalent to the price of the vacant property, therefore the present eviction petition has been filed. In fact there is no bonafide need to the petitioners.”*

Even on merits, Paragraph 5 of the written statement states as under:-

“5. Para 5 as stated is not correct, hence denied. In fact Shri S.S. Gill earlier filed eviction petition under section 13-B of the Rent Act against the tenants of a building No.317-318, Sector 35-D, Chandigarh and the same was withdrawn. It may also mentioned here that the petitioners are getting rent increased from the tenants in building situated in Sector 35-D, Chandigarh and have not filed the eviction petition against all the tenants. The petitions is being filed only against a tenant who is not increasing the rent to the fancy of the petitioners.”

11. The aforementioned averments clearly show that whatever is now sought to be introduced by way of amendment has already been pleaded. In the application for amendment (Annexure P-7), the amendments sought to be introduced are as under:-

“Preliminary Objection No.10

That the other co-owners namely Harjit kaur, Canam Consultants, Iqbal Singh who have been declared co-owners of the building by way of final decree in partition suit dated 10.10.2018 & none of them has given the consent, therefore the petitioners without getting their consent cannot file or continue

with the petition against the respondent-tenant. The petition on this score deserves dismissal.

Preliminary Objection No.11

That admittedly the respondent-co-owners are settled in England & having two immoveable properties in India known as SCO No.317-18, Sector 35-B, Chandigarh & SCO No.83-84, Sector 17-D, Chandigarh and the petition has been filed against tenants of the both buildings on the ground of personal necessity etc. After getting the possession of the building in Sector 35, Chandigarh, the petitioners have not occupied the said building nor started any business in the said building for the last more than two years @ getting the rent increased from the tenant of the building in question i.e. Harjeet Singh of Weldone Optician which proves the malefide on the part of the petitioners and the ground of bonafide need is on concocted story.”

12. The aforesaid proposed amendments further make it clear that there was in-fact no such need of the amendments as the case of the petitioner-tenant already stands pleaded in the written statement. It would be essential to mention here that every subsequent development would not be required to be introduced by way of an amendment especially at the stage of appeal. If this proposition was to be accepted, litigation will never come to an end and all subsequent events, whether relevant or not, shall be sought to be introduced by way of an amendment by the party interested in delaying the matter.

13. With regard to amendment of pleadings, the Hon’ble Apex Court summed up the principles in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another*** 2022 AIR (SC) 4256, It was laid down as under:-

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application

thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)”

14. In ***the case of Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & others, 2010(1)R.C.R.(Civil) 27***, the Hon’ble Apex Court, while examining the entire law on the subject laid down the following principles qua amendment of pleadings:-

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) *Whether the amendment sought is imperative for proper and effective adjudication of the case?*
- (2) *Whether the application for amendment is bona fide or mala fide?*
- (3) *The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) *Refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) *Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and*
- (6) *As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”*

15. If one examines the principles laid down by the Hon’ble Apex Court, it emerges that the amendments sought to be introduced in the present case are not essential for the just decision of the case nor it would be required for the effective and proper adjudication of the controversy between the parties. They will delay the decision of the appeal. In fact, this Court would not hesitate in adding here that the amendments sought to be made in fact appear to be *mala fide*. The Appellate Authority, therefore, did not commit any illegality or jurisdictional error in rejecting the application thereby warranting interference in revisional jurisdiction.

16. I have gone through the judgments relied upon by learned counsel for the petitioner-tenant. There is not dispute in the ratio laid down in the judgments in the case of ***Tehal Singh Vs. Harnam Kaur and others*** (supra) and ***Gyan Aggarwal Vs. Brij Bhushan Salwan*** (supra), with regard to the issue of consent of all co-owners. Further it is also not in dispute that delay should not be a ground to refuse amendment and that the amendment can be allowed at the appellate stage also. The principles laid down by the Hon’ble Apex Court in the case of ***Life***

Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another (supra) have also been considered. However, as has been discussed in the previous paragraphs, the amendments sought to be made do not fall within the parameters laid down by the Hon’ble Apex Court and under the circumstances, the judgements relied upon by learned counsel for the petitioner-tenant would not apply to the facts of the present case.

In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

October 06th, 2023
Rekha

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned : *Yes/No.*

Whether reportable : *Yes/No.*