

CR-6672 of 2023 (O&M)

2023:PHHC:146592

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

CR-6672 of 2023

Date of decision: 17.11.2023

M/s Piare Lal & Sons and others

.....Petitioners

Versus

Anupam Gupta

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

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

NAMIT KUMAR, J.

CM-21045-CII of 2023

1. This application has been filed by the applicant-petitioners for placing on record the testimony of petitioner PW-1, as Annexure A1.

2. Allowed as prayed for. Annexure A-1 is taken on record subject to all just exceptions.

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1. Instant revision petition has been filed by the tenant impugning the order dated 23.08.2023 (Annexure P-5) passed by the Court of learned Civil Judge (Junior Division) Jalandhar, whereby application filed by him under Order 6 Rule 17 CPC for amendment of written statement has been dismissed.

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2. Brief facts as averred in the petition are that the respondent-landlord filed ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for ejectment of the petitioner-tenants which was contested by the present petitioners by filing a detailed written statement wherein relationship of landlord and tenant was denied.

3. Before proceeding further, it is apt to mention here that when the case was pending for cross-examination of PW1, an application was filed by the petitioner-tenants for assessment of provisional rent and in the said application it was stated that petitioner-tenants have never denied the relationship of landlord and tenant in the written statement but they have only mentioned that they were not aware about the transfer of title in favour of the respondent-landlord. The said application was dismissed by the Rent Controller, Jalandhar, vide order dated 05.12.2022 by passing following order: -

“Heard on the application filed on behalf of the respondents for assessment of provisional rent. It has been stated that the case is pending for cross examination of PW1. It has been further stated that the respondents have never denied the relationship of landlord/tenant in the written reply but they have only mentioned that they were not aware about the transfer of title in favour of the petitioner. As per the application, deceased Rakesh Kumar, one of the partners of the firm M/s Pyare Lal & Sons has paid rent to the petitioner and that respondents no.1 and 2 were not aware about it. It has been prayed that since the respondents are ready to pay the provisional

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rent alongwith cost and interest, the same may be assessed.

In reply, it has been stated that when the respondents have denied the relationship of landlord/tenant in the written reply, the question of assessment of provisional rent does not arise. It has been further stated that once the respondents have taken a particular stand, they cannot be allowed to contradict their own stand. A prayer has been made for dismissal of the application.

It is pertinent to mention here that after filing of the written reply by the respondents, issues were framed and the case was fixed for evidence of petitioner, since the respondents in their reply had categorically stated that they deny the relationship of landlord/tenant between the parties. The instant application has been filed when the case was fixed for cross examination of PW1.

It is the case of the respondents that they have never denied the relationship of landlord/tenant between the parties and that they have only mentioned that they were not aware of the transfer of title in favour of the petitioner. However, the aforesaid contention cannot be accepted in view of para no. 3 of the written reply wherein the respondents have clearly denied the relationship of landlord/tenant between the parties. Further, in para no.2 of the reply, the respondents have stated that they have been tenants of the earlier owner. Further, in sub para no.1 of para no. 5, it has been stated that the relationship of landlord/tenant is denied because the respondents were not aware of the transfer of title in favour of petitioner. In the considered opinion of this court, the denial of relationship of landlord/tenant by the respondents in their written reply is very clear. Merely mentioning that the relationship is denied because the respondents were not

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aware about the transfer of title, does not change or affect the stand taken by the respondents qua denial of relationship of landlord/tenant.

In the landmark judgments titled “Rakesh Wadhawan & Ors. Versus Jagdamba Industrial Corporation & others, SC PLR VOL CXXXI 2002 (2) 370, it has been held that once the relationship of landlord/tenant has been denied by the tenant, there would be no justification for the Rent Controller to pass an order for assessment of rent and permit the tenant to deposit the arrears of rent. Such an approach would create imbalance of equities and would hardly be justified.

It is pertinent to mention here that in the written reply, the tenant has clearly stated that the tenant is ready to pay the arrears subject to proof of ownership of the demise premises by the petitioner. In the opinion of this court, the tenant has denied the relationship and now cannot take the stand that he is ready to deposit the arrears of rent as the same is contradictory to the earlier stand taken by the respondents.

As such, in view of the settled legal principle as cited above and further in view of the reply filed by the respondents, I deem it fit to dismissed the present application.

Now to come upon 18.01.2023 for cross examination of PW1.

*Date of Order: 05.12.2022 (Joshica Sood)
Rent Controller Division-14”*

4. The said order was impugned by the petitioner-tenants by filing Civil Revision No.759 of 2023, which was disposed of vide order dated 13.04.2023 with the following order: -

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“At the very outset, learned counsel for the petitioners submits that he does not press the present petition and prays for withdrawal of the same with liberty to approach the Rent Controller in the pending proceedings, as may be permissible in law.

Dismissed as withdrawn with liberty as aforesaid.

(VIKAS SURJ)
JUDGE

April 13, 2023”

5. Thereafter, petitioner-tenant filed an application under Order 6 Rule 17 CPC for amendment of the written statement. The said application having been dismissed by the Rent Controller, the petitioner has approached this Court impugning the said order. Relevant portion of the order dated 23.08.2023 passed by the Rent Controller, Jalandhar, while dismissing the said application is as under:

“4. At the outset, it is pertinent to mention here that earlier the respondent had denied the relationship of landlord/tenant between the parties specifically in the written reply. Accordingly, vide order dated 17.05.2022, it was held by this Court that since the relationship stands denied, there is no requirement for assessment of provisional rent. Thereafter, an application was moved by the respondent seeking permission to tender rent. The said application was dismissed vide order dated 05.12.2022 by this Court.

5. Vide the present application, the respondent seek to admit the relationship of landlord/tenant between the parties which had been earlier denied. The ground taken by the respondent is an averment in the affidavit tendered by the petitioner as PW1 in the present case. It is the case

of the respondent that since the said averment is on oath, the respondent admits the petitioner to be the owner/landlord of the demised premises. However, the aforesaid contention raised by the respondent cannot be accepted. Firstly, the same averments were mentioned in the petitioner also. In para no. 2 of the petitioner, it has been categorically stated that the petitioner became the owner of the demise premises on the basis of gift deed. Further, the same averments were also mentioned in the affidavit filed alongwith the petition. Merely because the petitioner has stated the same thing on oath during his evidence, does not mean that the respondent can be given a chance to know now change his stand and admit the petitioner to be the owner as well as landlord of the demise premises. If the same is allowed, it is the considered opinion of this Court, it would amount to the respondent changing their entire case. Further the judgment relied upon by the respondent is distinguishable and does not apply in the present case.

*6. Also, in the judgment titled **Jaspal Kaur Cheema & Ors. V. Industrial Trade Links & Ors., (2017) 8 SCC 592**, it was held by the Hon'ble Apex Court that an amendment in written reply in a rent petition can be allowed if the purpose of an amendment is to elaborate the defence and take additional pleas. In the aforesaid case, the tenant had earlier admitted the relationship of landlord/tenant and vide the amendment, he sought to deny the relationship which was not allowed. Relying on the aforesaid case, this Court finds that there is no merit in the instant application. The same is ordered to be dismissed.*

Now to come upon 27.09.2023 for cross examination of PW1.

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Date of Order: 23.08.2023 (Ms. Joshica Sood)
Civil Judge (Junior Division)-10"

6. Learned counsel for the petitioners contended that the impugned order passed by the Rent Controller is totally perverse as proceedings before the Rent Controller are at the initial stage as only one PW has been examined and no prejudice would be caused to the respondent-landlords if the amendment is allowed. He further contended that petitioner never changed the nature of the written statement and present amendment is necessary to decide the real controversy.

7. I have heard learned counsel for the petitioners and perused the record.

8. Admittedly, in the written statement filed before the Rent Controller, the petitioners denied the relationship of landlord and tenant and the said stand is being changed by the petitioner-tenants by taking a u-turn in the amended written statement, which cannot be permitted as the same would change the stand taken by the petitioner-tenants altogether. Since the petitioners had earlier denied the relationship of landlord and tenant between the parties, therefore, vide order dated 17.05.2022 it was held by the Rent Controller that there is no requirement of assessment of provisional rent and thereafter the application filed by the petitioner-tenants seeking permission to tender rent and for assessment of provisional rent was dismissed vide order dated 05.12.2022. Order dated 05.12.2022 has become final as the revision petition preferred by the petitioner-tenants was withdrawn vide

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order dated 13.04.2023 seeking liberty to approach the Rent Controller in the pending proceedings.

9. The impugned order passed by the Rent is quite detailed and well-reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

10. Finding no merit in the revision petition, the same stands dismissed.

17.11.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No