

**CR-7758-2017 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.****Sr.No.204-A****Case No. : CR-7758-2017 (O&M)****Date of Decision : May 21, 2024**

Yaqoob Ansari

.... Petitioner

vs.

Harbilas Singh (since deceased)
through his LRs

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Abdul Shehbaz Thind, Advocate
for the petitioner.Mr. Manvinder Singh Sidhu, Advocate
for the respondents.

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GURBIR SINGH, J. :

1. The prayer in the present revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 14.03.2017 (Annexure P-4), passed by learned Additional District Judge, Ludhiana (for short – the Appellate Authority), whereby application for amendment of written statement filed by the petitioner-tenant, has been dismissed.

2. Brief facts of the case, as culled out from the paper book, are that the petitioner is tenant in the shop of respondent. On 18.10.2007, the respondent-landlord filed an ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for brevity – the Act) against the petitioner-tenant, for vacation of the said shop in dispute on the allegations of non-payment of rent, electricity charges, installation of PCO without

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landlord's consent, changing of wooden door to shutter and subletting. So, it was alleged that the tenant materially impaired the utility of the shop by changing its nature. The petitioner-tenant appeared in that petition and contested the same by filing written statement. At that time, the petitioner-tenant disclosed all the facts to his counsel, which were within his knowledge. Vide judgment and decree dated 18.02.2015, the said petition was decided in favour of the respondent-landlord. Feeling aggrieved, petitioner-tenant preferred appeal against the aforesaid judgment and the said appeal is still pending before the learned Appellate Authority. During pendency of the appeal, the petitioner filed an application for amendment of written statement. However, the said application was dismissed by the learned Appellate Authority inter alia on the ground that the facts, sought to be pleaded by way of amendment, were very much in the knowledge of the parties. So, the applicant could not be allowed to amend the written statement in order to take a new plea.

3. Learned counsel for the petitioner-tenant submits that amendment in question is necessary for determination of real controversy because the landlord has inter alia taken the ground of personal necessity without complying with the basic ingredients of sub-clause (b) and (c) of Section 13 of the Act that he is not occupying any other residential or non-residential building whereas these facts are mandatory to be incorporated in the petition. So, prayer was made by the tenant that he may be permitted to incorporate the preliminary objection in the written statement.

4. On the other hand, learned counsel for the respondent-landlord has argued that the amendment at such a belated stage could not be allowed.



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5. I have heard the rival contentions of both the parties and have carefully perused the case file.

6. No doubt, the Courts are liberal in allowing the amendment of written statement, but in the appeal, amendment to the written statement can only be allowed if any injustice would be caused to the party, if amendment is refused. Any amendment, which is necessary for imparting justice, can be allowed. A legal plea cannot be allowed to be taken by way of amendment. Arguments can always be advanced on the legal plea. By way of amendment, the petitioner wants to incorporate preliminary objection no.5 in the written statement , which reads as under :-

“[5] That the present petition is bad in the eyes of law as in the present petition, the petitioner/landlord has failed to plead the mandatory ingredients of sub clause (b) & (c) of Section 13 of the Rent Act that he is not occupying any other residential or non-residential building and he has not vacated such a building without sufficient cause. Without pleading above said mandatory requirement of law, the present petition filed by the petitioner is bad in the eyes of law and is liable to be dismissed with special costs.”

7. The plea of the petitioner is that the landlord failed to plead the mandatory ingredients of sub-clause (b) and (c) of Section 13 of the Rent Act. The same is a legal plea and can be raised by the tenant at any stage of the case including appeal. The Appellate Authority is bound to consider the legal plea. So, the proposed amendment is not necessary at all for just decision of the case. The learned Appellate Authority has rightly dismissed the application moved by the petitioner-tenant for amendment of written

statement.

8. In view of the above, I do not find any ground to interfere in the lawful order passed by the learned Appellate Authority. The present revision petition is without any merit and the same is accordingly dismissed.

9. Pending applications, if any, shall stand disposed of along with this judgment.

May 21, 2024

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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.