

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

129

**CR-1607-2024 (O&M)
Date of decision:14.03.2024**

Rajesh Mittal

... Petitioner

Vs.

Satish Kumar

... Respondent

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Suresh Singla, Advocate for the petitioner.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed against the order dated 16.02.2024 passed by the Rent Controller, Malerkotla (Annexure P-7), vide which an application filed by the petitioner/tenant under Order 6 Rule 17 CPC for amendment of the reply has been dismissed.

2. The brief facts that are relevant for the purpose of adjudication of the present revision petition are that the landlord/respondent has filed an eviction petition bearing RP No.40 of 2019 title as Satish Kumar Vs. Rajesh Mittal under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 seeking eviction of the tenant/petitioner from the demised premises on the ground of arrears of rent and personal necessity of his daughter-in-law.

3. On notice of the said petition, the tenant/petitioner filed his reply contesting the eviction petition by raising preliminary objections as well as objections on merits. Thereafter as per pleadings of the parties, the issues were framed by the Court vide order dated 24.03.2022 and accordingly the parties led their evidence. On 18.12.2023, when the case was

fixed for rebuttal evidence, then an application was moved by the petitioner under Order 6 Rule 17 CPC read with Section 151 CPC for amending the reply seeking addition of Preliminary Objection No.9, due to some subsequent events/latest developments during the pendency of the eviction petition. Reply to the said application was filed by the respondent. Then vide the impugned order dated 16.02.2024 the Rent Controller, Malerkotla dismissed the said application. Hence, the tenant/revision petitioner has knocked the doors of this Court by way of filing the present revision petition.

4. Learned counsel for the petitioner while relying upon the decision of the Hon'ble Supreme Court in **Hasmat Rai & another Vs. Raghunath Prashad, 1971 AIR SC 1711** has contended that the Rent Controller, Malerkotla has totally erred in law in not taking into consideration the settled proposition of law that the necessity must exist not merely at the time of filing of the eviction petition, rather it must subsist till the order of eviction is passed. He has further contended that it has been wrongly observed in the impugned order that the petitioner has nothing to substantiate his plea with regard to subsequent events, whereas it has come in cross-examination of AW2 – Sunita Rani herself (for whom the eviction is sought) that the family has almost shifted from Malerkotla to Ludhiana. From her cross-examination, it is clear that the family of the landlord including his son – Ankur and daughter-in-law Sunita Rani resides and work together at Ludhiana and they have admitted their son – Vansh in a school at Ludhiana and they sometimes visit their shop at Malerkotla. He has argued that this subsequent development, if taken into consideration, shall

extinguish the necessity of landlord/Sunita Rani. He has further argued that under Order 6 Rule 17 CPC, the Court has the discretion to permit the amendment at any stage of the proceedings, if such amendment is necessary for the purpose of determining the real controversy and the Courts should be more liberal in allowing amendment in the written statement, than that of a plaint as question of prejudice would be far less in the former than in the later case. He has submitted that the delay in filing the application for amendment of the written statement cannot be a ground for rejection especially when no prejudice is shown to have been caused to the plaintiff and has contended that the impugned order being arbitrary is not sustainable in the eyes of law and is liable to be set aside.

5. I have heard learned counsel for the petitioner at length and have perused the record.

6. By way of proposed amendment the petitioner intends to amend his written reply alleging that during the pendency of the eviction petition, petitioner and his family have shifted their residence and business from Malerkotla to Ludhiana and grandson of the petitioner is also studying at Ludhiana and the petitioner is negotiating with various property dealers to sell his property at Malerkotla. So need of the premises in dispute has extinguished.

7. For the proposed amendment, the petitioner is relying upon cross-examination of AW2 – Sunita Rani. But the evidence on record is not to be appreciated at this stage and only at the time of final adjudication, the evidence on record is to be appreciated to ascertain the bonafide need of the landlord.

8. Nothing has been brought on record which could justify the need for amendment due to any subsequent event. As such, no ground exists for allowing the proposed amendment in the written statement.
9. In the light of the above, the impugned order does not suffer from any illegality or perversity and does not call for any interference.
10. The revision petition sans merit is dismissed.

(SUKHVINDER KAUR)
JUDGE

14.03.2024
harjeet

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |