



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

CR-3375-2024 (O&M)

Decided on: 30.05.2024

Ved Prakash @ Ved Adlakha

...Petitioner

Versus

Sanjay Adlakha

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. S.K.Garg, Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Advocate
for the petitioner.

RITU TAGORE, J.

1. This revision is directed against the order dated 21.05.2024 passed by learned Appellate Authority, Faridabad in CIS No.RA/12/2023 titled 'Ved Adlakha Vs. Sanjay Adlakha', whereby, the application moved by the petitioner-tenant (appellant before the learned Appellate Authority, Faridabad) under Order 6 Rule 17 CPC for amendment of reply/written statement has been dismissed.

2. Learned Senior counsel for the petitioner contends that respondent-landlord (petitioner before the learned Rent Controller) filed an ejectment petition under Section 13 of the Haryana (Urban Control of Rent and Eviction) Act 1973, against the petitioner-tenant (respondent before the learned Rent Controller), seeking his ejectment from the demised shop on the ground of personal necessity of the respondent, to settle his son by starting a business of Tour and Travels in the demised shop. The respondent



also pleaded that he has no other property in the urban area concerned to run the proposed business, as detailed in the petition (Annexure P-1).

3. Learned Senior counsel states that upon notice, petitioner appeared, filed his reply, admitted his relationship as landlord and tenant, but denied the averments that respondent (landlord) requires the demised shop for his *bona fide* personal necessity as alleged. The petitioner further averred that respondent has sufficient accommodation to start a business for his son, as detailed in reply (Annexure P-2).

4. Learned Senior counsel urges that parties to the petition went to trial on the issues framed by learned Rent Controller, Faridabad. After considering the presented evidence, learned Rent Controller allowed the ejectment petition vide judgment dated 24.03.2023. Being aggrieved by the said ejectment order, the petitioner filed an appeal before the learned Appellate Authority, Faridabad, which is pending adjudication.

5. Learned Senior counsel further urges that during the pendency of rent petition, the respondent sold area measuring 340 sq. yards, adjoining the area on which the shop in question is situated. The petitioner filed an application (Annexure P-3) under Order 6, Rule 17, CPC read with Section 151 CPC for amendment of the reply/written statement, during the pendency of the appeal before learned Appellate Authority, seeking amendment of para 6 (a) and (b) of the written statement. Respondent filed a reply (Annexure P-4) and resisted the application in its entirety, also raising a preliminary objection regarding its maintainability, alleging it was filed belatedly with intention to delay the proceedings.



6. Learned Senior counsel submits that dismissal of the application (Annexure P-3) by learned Appellate Authority vide impugned order dated 21.05.2024, suffers from material jurisdictional irregularity and illegality, which is unsustainable in the eyes of law and same is liable to be set aside.

7. Learned Senior counsel urges that law of amendment with respect to written statement or reply is quite liberal. The respondent is permitted to take even new or inconsistent pleas in order to amend the reply unlike the plaint. However, the proposed amendment does not alter or substitute new cause of action on the basis of which original *lis* was raised or defence taken. Learned counsel contends that by way of amendment in written statement, the petitioner intends to elaborate and clarify the facts which came in his knowledge during the pendency of the rent petition.

8. Submitting further, learned Senior counsel urges that the petitioner does not intend to lead any additional evidence on the proposed amendment on the written statement and undertakes to argue the matter, not intending to delay the matter. The learned counsel submits that for all mistakes or delays, caused in the proceedings of the case, the other party can be fairly compensated by way of costs. It is stated that amendment is necessary for complete, proper and effective adjudication of the controversy. Further, the proposed amendment shall not cause any prejudice to the other party; rather, it will cause injustice to the petitioner, who would be prevented from raising all permissible pleas in the written statement. To support his arguments, learned counsel referred to **Suraj Prakash Bhasin Vs. Smt. Raj**

Rani Bhasin and others, 1981 AIR (Supreme Court) 485, Charan Das and



others Vs. Amir Khan and others, 1921 AIR (PC) 50, Baldev Singh and others Vs. Manohar Singh and another, 2006(6) SCC 498, Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others 2007(1) R.C.R.(Rent) 457 and decision of co-ordinate Bench of this Court in *Zarina Begum Vs. Faquir Hussan and another, 1990 PLJ 289.*

9. I have duly considered the submissions in the light of the grounds raised in the petition, material available on the paper book and the case law relied upon in this regard.

10. There is no dispute that the Court under Order 6, Rule 17, CPC has wide discretion to allow amendment in the pleadings which aids and enable the Court to decide the matter effectively and completely. The judicial precedents have emphasized that Courts should be liberal in permitting amendment of pleading unless they cause serious prejudice to other side. Furthermore, prayer for amendment of plaint and written statement stand on different pedestal. While the defendant can be permitted to take an inconsistent stand, the same is not permissible in the amendment of plaint.

11. At this stage, it is fruitful to go through the provisions of Order 6 Rule 17 CPC, which reads as under:-

“Amendment of pleadings- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party



could not have raised the matter before the commencement of trial.”

12. A bare perusal of the aforesaid provisions indicate that the Court may at any stage of proceedings, allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. However, the proviso added to the main provision stipulates that when trial has commenced, and the party seeking an amendment must establish that, despite exercising due diligence, failed to raise the plea which now intended to incorporate through amendment.

13. Keeping these principles in mind, lets now consider whether learned Appellate Court had erred in rejecting the application for amendment of the written statement filed by the petitioner. A bare perusal of the order rejecting the application of amendment of written statement/reply indicates that while rejecting the application learned Appellate Authority based its decision primarily on the grounds that the amendment has been sought belatedly after one year of preferring the appeal. Secondly, the facts namely, existence of vacant portion behind the demised premises and it's sale which the petitioner intends to incorporate in his amended written statement were already in his knowledge. Thirdly, the application of the petitioner for ascertaining the area of that portion by local commissioner was dismissed. Fourthly, application of the petitioner for interrogatories on the above aspect was disposed as not pressed upon and landlord had been crossed examined on the aspect of the sale and finally the petitioner did not



file an application for amendment earlier and moved the application in the appeal just to delay the matter.

14. It cannot be doubted that wide discretion has been conferred on the Court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the Court just and proper. Nonetheless, while dealing with the prayer of amendment, it is also be necessary to keep in mind that the Court shall allow amendment of the pleadings if it finds that delay in disposal of the suit can be avoided and suit can be disposed of expeditiously. By the Civil Procedure Code (Amendment) Act, 2002, a proviso has been added to Order 6 Rule 17 CPC, which restricts the Courts from permitting an amendment to be allowed in the pleadings by either of the parties, if at the time of filing an application for amendment, the trial has already commenced. However, the Court may allow amendment if it is satisfied that, in spite of due diligence the party could not have raised the matter before commencement of trial.

15. Keeping all the above facts in mind and the provisions of Order 6 Rule 17 CPC including the amendment made therein, no ground is made out to adopt a liberal approach for the petitioner to permit him to amend his written statement. The learned counsel for the petitioner during course of his arguments, failed to controvert the factual aspects mentioned by the learned Appellate Court, demonstrating that the petitioner failed to exercise due diligence in prosecuting his case. From the facts, it is as clear as crystal that the petitioner was not duly careful in pursuing his case and application was moved by the petitioner just to delay the proceedings. Therefore, the plea to exercise a liberal approach does not find favour with him.

16. In view of the reasons stated above, it is observed that the learned Appellate Authority has rightly exercised the jurisdiction vested in it while rejecting the prayer of the petitioner for amendment of his written statement even on payment of costs. This Court find no illegality or perversity in the order, warranting interference in the revisional jurisdiction of this Court. Accordingly, revision petition stands dismissed.

17. It is noted that observations made above should not be construed as an expression of opinion on the merits of the case. Same are purely confined to the present controversy and deliberations.

18. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

30.05.2024
Rimpal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No