

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****125****CR-4741-2024 (O&M)****Date of Decision : 29.08.2024**

Abdul Rashid and Another

....Petitioners

VERSUS

Kuldeep Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Liaqat Ali, Advocate for the petitioners.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed under Article 227 of the Constitution of India challenging order dated 23.05.2024 whereby the application filed by the petitioners herein for amendment of the written statement has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a suit for possession of a shop situated in the area of Sudhar Bazar (Akalgarh), Tehsil Raikot, District Ludhiana. The written statement was filed by the defendant-petitioners herein. The defendant-petitioners herein had filed an application seeking permission to tender the rent and in the said application it was stated that no rent has been paid by them from July 2019. The said application was allowed and the defendant-petitioners were allowed to tender the rent for the period. Now the present application has been filed for amendment of the written statement seeking to add the following lines at the end of para 4 of the written statement :

“The defendant given the rent of Rs.2750/- to the plaintiff in the month of July 2019 and the plaintiff refused to issue the receipt of rent of that very month and asked the defendant to first sign the new rent deed of 11 months and the defendants refused to do the same, due to which the plaintiff never issue the receipt.”

3. Learned counsel for the defendant-petitioners would contend that the amendment is necessary as the amount was paid earlier, however, no receipt was issued by the plaintiff-respondent and that the earlier counsel did not include the said lines in the written statement.

4. Heard.

5. No doubt the law as far as amendment of the written statement is concerned is liberal. However, it is incumbent on the defendant-petitioners to show the relevancy of the amendment which is now sought. A perusal of the amendment which has been sought reveals that a stand has been taken that the defendant-petitioners had given the rent of Rs.2,750/- to the plaintiff-respondent in the month of July 2019 and that he had refused to give a receipt. It has been noticed by the Trial Court that earlier an application was filed by the defendant-petitioners themselves for depositing the rent wherein it was stated that no rent had been paid from July 2019. The said application was allowed and the defendant-petitioners were allowed to tender the rent for the period. Having done so, a totally contradictory stand is now being sought to be taken in the written statement. Learned counsel for the defendant-petitioners is also unable to explain the relevancy of the

present amendment especially in view of the issues which have been framed in the present case which read as under :

1. Whether the defendants are the tenants of the plaintiff, the defendants have breached the terms and conditions of tenancy, have not paid the rent of the demised shop to the plaintiff w.e.f. 01.11.2019 and the plaintiff is entitled for possession, recovery and mesne profits as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable and is liable to be dismissed? OPD.
3. Relief.

6. Order VI Rule 17 CPC 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 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:

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.”

7. Hon'ble Supreme Court in the case of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr. [2023 (1) RCR (Civil) 851]** has held 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).”

8. Learned counsel for the defendant-petitioners has not been able to show as to how the amendment now sought has any relevance to the case or is necessary for the decision of the case on merits.

9. In view of the above, I do not find any merit in the present revision petition. The same being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

29.08.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO