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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CR-5899-2024 (O&M)****Reserved on : 21.10.2024****Date of Decision : 29.10.2024**

M/s Samrat Sales & Anr.

... Petitioner(s)

Versus

M/s Mohan Lal and Co. & Anr.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashok Sharma Nabhewala, Advocate for the petitioners.

ALKA SARIN, J.

1. The present revision petition has been preferred by the tenant-petitioners challenging the order dated 26.07.2024 passed by the Rent Controller, Ambala whereby the application for amendment of the ejectment application filed by the landlord-respondents was allowed. The tenant-petitioners have also prayed for quashing the rent proceedings pending before the Rent Controller.

2. Brief facts relevant to the present *lis* are that on 10.05.2017 the landlord-respondents filed an ejectment application seeking eviction of the tenant-petitioners from the premises in dispute on inter-alia the grounds of non-payment of rent and personal bonafide necessity. The tenant-petitioners filed the written statement on 14.07.2021 and the matter was adjourned to 28.07.2021 for rejoinder, if any, as well as for framing of issues and for

tendering of rent. On 28.07.2021 the landlord-respondents moved an application under Order 6 Rule 17 CPC for amendment of the ejectment application seeking to add ground (iv) for eviction of the tenant-petitioners.

The said ground (iv) sought to be inserted reads as under :

“(iv) That the respondents have acquired property number 179/4,11Q, adjoining Saraswati service center, Bank Road, Ambala Cantt, which building is reasonably sufficient for the requirement of the respondents in the urban area of Ambala Cantt.”

On 16.03.2023 the tenant-petitioners filed their reply to the amendment application. Vide the impugned order dated 26.07.2024 the Rent Controller accepted the amendment application. Hence, the present revision petition by the tenant-petitioners.

3. Learned counsel for the tenant-petitioners would contend that the Rent Controller erred in allowing the amendment application. According to counsel the amendment has no relevance to the eviction proceedings as the ground sought to be raised is not a ground for eviction available under the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973. It is argued that the amendment application was filed at a belated stage and would change the nature of the dispute. Lastly it was argued that the Rent Controller has no jurisdiction to decide the ejectment application since the premises in dispute belong to the Municipal Committee and are therefore exempt from the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973.

4. I have heard the learned counsel for the tenant-petitioners.

5. In the present case the landlord-respondents had originally filed the ejectment application seeking eviction of the tenant-petitioners on the grounds of non-payment of rent and personal bonafide necessity. By the amendment the landlord-respondents sought to also take up a ground that the tenant-petitioners have acquired some other property which is reasonably sufficient for their requirements. It was averred that that the landlord-respondents were earlier unaware that the tenant-petitioners had purchased the other property and had started business in the newly acquired shop and therefore could not take the aforementioned ground in the ejectment application. The counsel for the tenant-petitioners has not been able to point out anything to show that the landlord-respondents were actually aware about the existence of the other shop with the tenant-petitioners when the ejectment application was originally filed by them. There is no inflexible rule that a cause of action arising subsequent to the filing of the ejectment application cannot be added by way of an amendment. However, the availability of the additional ground of eviction to the landlord-respondents would be examined by the Rent Controller on the basis of the evidence available on the record and the law applicable thereto. The argument that the ground being added is not a ground for eviction mentioned in the Haryana Urban (Control of Rent and Eviction) Act, 1973 and should have therefore not been allowed is also to be rejected. If a landlord raises a plea not available by the statute the same has to be dealt with by the Rent Controller when it decides the ejectment application. But that is not a reason not to permit an amendment under Order 6 Rule 17 CPC. The amendment application was filed immediately after the tenant-petitioners filed their written statement. Issues are yet to be framed. The trial is still at the initial

stages. As such, there is no question of the amendment application being filed at a belated stage. The tenant-petitioners can controvert the additional ground of eviction in their amended written statement.

6. The Hon'ble Supreme Court in **Life Insurance Corporation of India vs. Sanjeev Builders (P) Ltd. & Anr. [2023(1) RCR Civil 851 = (2022) 16 SCC 1]** summed up the law regarding amendment of pleadings and inter-alia 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 pin-pointedly 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)”

It is well settled that before the amendment is allowed the Court should satisfy itself whether such an amendment is necessary for determining the real controversy between the parties. The Court is required to weigh the prejudice or injustice which would be caused to the other side. The Court should not refuse bonafide and legitimate amendment and at the same time it

should not allow malafide or dishonest amendment. If the amendment is necessary for the just decision of the case in order to do justice between the parties, then such amendment is required to be allowed, even after commencement of the trial, though in the present case even the issues are yet to be framed.

7. The other plea raised in the revision petition and argued by the counsel for the tenant-petitioners is that the Rent Controller has no jurisdiction to decide the ejectment application since the premises in dispute belong to the Municipal Committee and are therefore exempt from the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 and therefore the entire proceedings before the Rent Controller be quashed. This plea is also liable to be rejected on the short ground that no such argument was raised before the Rent Controller nor was even pleaded in the original written statement or in the reply to the amendment application.

8. In view of the above, no fault can be found with the impugned order dated 26.07.2024 passed by the Rent Controller. The present revision petition being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

29.10.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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