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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision: 03.12.2024

Pirithi Singh

..... Petitioner

Versus

Shri Sanatan Dharm Mahabir Dal (Regd.),
Bathinda and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms. Mona Goyal, Advocate for the petitioner.

VIKAS BAHL, J (ORAL)

1. This is a civil revision petition filed under Article 227 of the Constitution of India against the order dated 21.09.2024 (Annexure P-1) passed by the Rent Controller, Bathinda, whereby, application for recasting of the proposed issues and changing the burden of issue of issue No.5 upon landlord/respondent, has been dismissed.

2. Learned counsel for the petitioner has submitted that in the present case, eviction has been sought by the respondent-landlord on the ground of subletting and change of user, however a perusal of the order framing issues dated 10.02.2022 would show that as regards both the aforesaid grounds only one consolidated issue has been framed to the effect 'whether the applicant is entitled to seek the respondent's ejection from the demised premises on the grounds, as pleaded in the application? OPA'. It is submitted that separate issues should have been framed with respect to the same instead of framing one consolidated issue.

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3. Learned counsel for the petitioner has further argued that issue No.5 has been framed in the present case to the effect that 'whether the application is not filed by the authorized/competent person?OPR' and regarding the same, onus has been wrongly put on the petitioner whereas the onus should have been put on the landlord as it was for him to prove that the application had been filed by the authorized/competent person. It is submitted that the application dated 18.07.2024 filed by the petitioner for recasting the issues was meritorious and the same has been wrongly rejected vide the impugned order dated 21.09.2024 and the same deserves to be allowed.

4. This Court has heard learned counsel for the petitioner at length and with her able assistance has gone through the record and finds that the impugned order has been rightly passed and the present revision petition being meritless, is liable to be dismissed for the reasons stated hereinafter.

5. The present petition has been filed by the petitioner-tenant with the sole intent to delay the proceedings. The respondent-landlord had filed an eviction petition dated 29.06.2020 under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for seeking ejectment of the present petitioner from the shop in question. A reply to the said application was filed by the petitioner and one of the objections taken in paragraph 7 of the said reply/legal objections was that Chiranji Lal Garg was not the authorized/competent person to file the eviction petition against the tenant and as per the Constitution of the petitioner-Dal, it was only the General Secretary of the said Dal who was competent to file the said eviction petition. A rejoinder was filed to the said application and in paragraph 7 of

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the said rejoinder, it was stated that Chiranji Lal Garg was the President of the petitioner-Dal and was fully conversant with the facts of the case and had been duly authorized by the working committee vide its Resolution dated 14.03.2020 to file the present eviction petition for seeking eviction of the respondent-tenant and to obtain vacant possession of the demised premises. It was further stated that a copy of the resolution had already been brought on record and thus the objections raised by the respondent-tenant did not arise and were liable to be rejected and that the petition was filed by a duly competent and authorized person.

6. On the basis of the said pleadings, issues were framed on 10.02.2022 which are reproduced as under:-

“Present: Sh. N.M. Aggarwal, Advocate for the applicant.

Sh. N.P. Singh, Advocate for respondent No.1.

Respondent No.2 ex parte.

The applicant has filed rejoinder today. A copy of it is supplied to the respondent No.1.

From the parties’ pleadings, the following issues arise and are framed as under:-

- 1. Whether the applicant is entitled to seek the respondent’s ejectment from the demised premises on the grounds, as pleaded in the application? OPA*
- 2. Whether the applicant has got no locus standi and cause of action to institute the present application? OPR*
- 3. Whether the applicant’s application in the present form is not maintainable? OPR*
- 4. Whether the applicant has not come to the court with clean hands and has concealed true and material facts from it? OPR*
- 5. Whether the application is not filed by the authorized/competent person? OPR*



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6. *Relief*

No other issues either arises or is pressed by the parties.

To come up on 28.02.2022 for recording the applicant's evidence".

7. A perusal of the above would show that the said issues were framed in the presence of the counsel for the present petitioner who was respondent No.1 in the eviction petition and was stated to be a tenant. Importantly, it was specifically observed that no other issue had either arisen or pressed by the parties. It is thus apparent that the counsel for the present petitioner did not press for any other issue and was satisfied with the said framing of the issues. It is not in dispute that the landlord had led his entire evidence and it is after a period of more than two years and five months from the date when the issues were framed, that an application dated 18.07.2024 was filed by the petitioner-tenant for recasting of the said issues. In the reply dated 02.08.2024 (Annexure P-7), respondent No.1-landlord had opposed the present application and had stated that the petitioner-tenant had made every endeavour to delay the proceedings inasmuch as the petitioner was duly served through personal service on 07.10.2020 but he opted not to appear, and therefore, *ex parte* proceedings against him were initiated vide order dated 07.10.2020 and thereafter he moved an application on 27.11.2020, after the expiry of the statutory period for setting aside the *ex parte* order dated 07.10.2020, which was set aside on payment of Rs.2500/- as conditional costs and thereafter, the case was listed for filing of reply.

8. It is further averred that adjournments were sought by the respondent-tenant for filing the written reply and ultimately the same was filed on 03.12.2021 and after the pleadings having been completed, the



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issues were framed on 10.02.2022 and no other issue other than the ones framed was either raised or pressed by the present petitioner. It was further specifically averred that the landlord had concluded his evidence on 11.07.2023 and the petitioner had given his examination-in-chief in the form of Ex.RW-1/A on 04.10.2023 and was to be cross-examined on 18.10.2023. It was stated that both the parties had led their respective substantial evidence and thereafter on 18.07.2024, the instant application had been filed and no reason had been given as to why the said application had not been filed for a period of more than two and half years. It was further stated that with the passage of time, a valuable right had accrued to the respondent-landlord and that the resolution dated 14.03.2020 had already been duly proved on the file and the relevant witness to prove the same had already been examined and had also been cross-examined by the counsel for the present petitioner. Reference was made to an order passed by a Coordinate Bench of this Court in the case of ***'Harjeet Singh through his LRs Vs. Shree Sanatan Dharm Mahabir Dal and another'***, decided on 25.09.2023 in which a similar prayer made by a tenant against the same respondent-landlord, had been rejected. It was stated that the application was *mala fide* and was intended only to delay the proceedings.

9. That the Rent Controller vide the impugned order dated 21.09.2024 dismissed the said application and while dismissing the said application, observed that as far as issue No.1 was concerned, since the landlord was seeking eviction on two grounds, thus every individual ground for ejection will have to be proved by the landlord and after the same having been *prima facie* proved, the onus would be on the tenant to rebut the



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same and that even the Court was bound to record finding on all the grounds taken for ejectment of the petitioner. The said observations were made after relying upon the observations made by a Coordinate Bench of this Court in the case of ***Harjeet Singh through his LR (supra)*** and the said observations should have satisfied the petitioner-tenant but however the petitioner-tenant has chosen to still challenge the impugned order apparently only to delay the proceedings.

10. Even with respect to the aspect of shifting of onus, it was observed by the Rent Controller that the same would result in a *de novo* trial, which has been pending since 2020 and was at its fag end and thus, the filing of the said application after such a long delay, was not *bona fide*. On the aspect of issue No.5, it was observed that the Resolution along with the constitution of the landlord/applicant-SSD Mahabir Dal had been placed on the file and Chiranji Lal Garg had been examined as AW-3, whose testimony regarding his authority as President to file the case had already been put to the test of cross-examination and thus, the relevant piece of evidence had already been recorded.

11. That with respect to issue No.1 being a comprehensive issue, the observations made in the impugned order were specifically to the effect that all the grounds for ejectment would have to be proved by the landlord and separate finding on each issue would be given by the Rent Controller on each aspect, to satisfy the tenant. It would also be relevant to note that in ***Harjeet Singh through his LR (supra)***, where the respondent therein was Shree Sanatan Dharm Mahabir Dal and another, in which also an application was filed by the tenant therein for framing of additional issues, which was



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dismissed and the said order of dismissal was challenged before the High Court, the Coordinate Bench of this Court had dismissed the said revision petition and the relevant portion of the said judgment is as under:-

*13. Learned Senior Counsel also relies upon the judgment of this Court (Punjab and Haryana High Court, Chandigarh), passed in CR No.2312 of 2021, Date of Decision:11.10.2021 titled as **Rajesh Saini Vs. Harish Saini and others**, wherein, it was held that after the stage of leading of respective evidence by all the parties, application for framing additional issues, ought not to be entertained. Relevant paragraph No.6 of the said judgment is reproduced as under:*

'6. Having appraised the order under challenge, I am in agreement with the reasons recorded by the trial Court. It is expected of the trial Court to give finding on the issue of declaration only after giving reasons thereof as well as discussing evidence adduced by the respective parties. It has already been noted that parties have led their respective evidence and at this stage application for framing additional issue ought not to be entertained.'

*14. Learned Senior Counsel for the respondent further relies upon a decision of this Court (Punjab and Haryana High Court, Chandigarh) passed in CR No.5583 of 2019, Date of Decision:28.09.2022, titled as **Kuljeet Singh Vs. Kulwinder Kaur and others**, and submits that once facts were already in knowledge of the parties, framing of additional issues at belated stage should not be permitted at the instance of such party. Relevant Paragraph Nos.11,12, 14 and 15 are reproduced hereunder:*

'11. There can be no quarrel with the law laid down in the judgments relied upon by the learned counsel for the plaintiff-petitioner. It is trite that additional issues can be framed at any point of time. However, in the present case



the issues were initially framed on 04.08.2014 and thereafter re-framed on 30.05.2016. At both times the plaintiff-petitioner did not claim any further, issues. The controversy in the present case has always been, which both the parties were aware of, as to whether there was any oral agreement to sell. Further, both the parties were aware of the fact that defendant-respondent No.1 had claimed to be a bonafide purchaser by leading evidence on issue Nos.1 and 6. As such, all evidence as available would have been led by both the parties.

12. Learned counsel for the plaintiff-petitioner has also not been able to show as to what additional evidence he would lead in the event of the two additional issues being framed. A perusal of the application for framing of additional issues shows that the same is also bereft of any details as to what evidence the plaintiff-petitioner wishes to lead which could not have been led in the event of non-framing of the additional issues.

13. xxxxxx

14. In the case of Kanan (dead) by LRs & Ors. v. V.S.Pandurangam (dead) by LRS & Ors. [2008 (1) RCR (Civil) 193] it has held as under:

"11. By a series of decisions of this Court it has been settled that omission to frame an issue as required under Order 14, Rule 1 Civil Procedure Code would not vitiate the trial in a suit where the parties went to trial fully knowing the rival case and led evidence in support of their respective contentions and to refute the contentions of the other side vide Nedunuri Kameswaramma v. Sampati Subba Rao, AIR 1963 SC 884.

12. In Sayeda Akhtar v. Abdul Ahad, 2003 (2) RCR (Rent) 213 it was held by this Court that



even if no specific issue has been framed but if the parties were aware of that issue and have led evidence on it, the Appellate Court should not interfere with the findings of the trial Court. A similar view was taken in Kali Prasad Agarwalla and others v. M/s Bharat Coking Coal Limited and others, 1989 Supp (1) SCC 628 (vide paragraph 19) and in Shaikh Mahamad Umarsaheb v. Kadalaskar Hasham Karimsab and others, AIR 1970 SC 61 (vide paragraph 9) as well as in several other decisions.

15. The case is now at the stage of rebuttal and arguments and the application appears to have been filed only to fill up the lacunae in the case."

16. I have also taken note of the fact that there is a huge delay at the instance of the respondents-tenants in moving the application. Issues were framed on 24.04.2019 and that time, no other issue was pressed by the respondents-tenants. Now after such a long period that too at the stage when the trial is at fag for final decision, there is nothing special pointed out by the Counsel for the petitioner that what made him to move the present application at such a belated stage, which undoubtedly prejudices the right of the landlord, whose property is occupied by him as tenant.

17. In the aforesaid backdrop of the circumstances and judgments cited by Mr. Sumeet Mahajan, learned Senior counsel for the respondents which are directly applicable, to the present revision petition, this Court is of the view that to frame additional issues, the application is moved at highly belated stage and it appears to be moved with an ulterior motive to prolong the proceedings before the Court.

As this Court has been informed that ejectment application is based upon the three grounds i.e. (i) making



alteration at the instance of the respondent-tenant; (ii) non payment of rent; and (iii) Sub-letting, undoubtedly, it is expected from the learned Rent Controller that under Issue No.1, it would be decided on the basis of the evidence available on record in regard to all the three grounds independently. Thus, finding no substance in the prayer made by the respondents-tenants, I do not deem it appropriate to cause any kind of interference in the impugned order dated 17.08.2023, passed by learned trial Court, thus, the same is maintained and the present revision petition stands dismissed”.

12. A perusal of the above judgment would show that reference was made to two different judgments of this Court in which it was held that after the stage of leading of evidence, an application for additional issues was not to be entertained and that once the facts were in the knowledge of the parties, framing of additional issues at a belated stage should not be permitted. The factum of delay in the said case was also noticed and it was further observed that although a comprehensive issue had been framed but finding in respect of every issue, was required to be given independently.

13. Even with respect to issue No.5, it would be relevant to note that the said issue was framed on 10.02.2022 and the same was framed in the presence of the counsel for the present petitioner and the said order specifically records that no other issue had either been pressed or had arisen. The moving of the application dated 18.07.2024 after the entire evidence of the landlord has been led and after substantial evidence, even on the part of the respondent-tenant has been led, clearly shows that the application has been filed, only with intent to delay the proceedings and there is no explanation as to why in case the petitioner had any grievance then, any such



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application was not filed immediately after 10.02.2022. Moreover, it would be relevant to note that in paragraph 7 of the legal objections in the written statement filed by the present petitioner, a specific objection has been taken to the following effect:-

“7. That Sh. Chiranji Lal Garg is not authorized or competent person to file the present eviction application against the answering respondent/tenant, as per alleged Constitution of the petitioner Dal, only general secretary of the said Dal is competent to file the case/eviction application. So the eviction application is liable to be dismissed”.

14. That in the rejoinder which has been filed by the respondent-landlord, the said objection was answered in the following terms:-

“Para No. 7 of the legal objection in the reply as stated is incorrect, hence denied. Sh. Chiranji Lal Garg who is president of the petitioner Dal is fully conversant with the facts of the present case and he has also been authorized by the working committee vide its resolution dated 14.03.2020 to file the present eviction application for seeking the eviction of the respondents and to obtain vacant possession of the demised premises. Copy of the resolution has already been brought on the record Hence the objection raised by the respondent does not arise and is liable to be ignored. The petition has been filed through a duly competent and authorized person”.

15. Thus, once a specific objection had been taken by the petitioner in the written statement to the effect that as per the constitution of the petitioner Dal, only the General Secretary of the said Dal was competent to file the case, thus, it was necessary for the Court to frame issue No.5 in the manner in which it has been framed. At any rate, as has been recorded by

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the Rent Controller in the impugned order, the said Resolution in favour of Chiranji Lal Garg has already been placed on record along with the constitution of the Shri Sanatan Dharm Mahabir Dal and the said Chiranji Lal Garg has already been examined as AW-3 and has given evidence regarding his authority to file the present petition and has also been cross-examined by the petitioner.

16. Allowing the application at this stage would result in putting the clock back to 10.02.2022, which would cause extreme prejudice to the respondent-landlord who had filed the eviction petition in the year 2020. Moreover, owing to the inaction of the petitioner-tenant, the respondent-landlord cannot be made to suffer.

17. Keeping in view the facts and circumstances of the case, the impugned order dated 21.09.2024 (Annexure P-1) is in accordance with law and the same is upheld and the present petition being meritless deserves to be dismissed and, accordingly, the same is dismissed.

03.12.2024*D.Bansal***(VIKAS BAHL)
JUDGE**

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