

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

CR-740-2020(O&M)
Date of Decision: April 30, 2025

Des Raj through LRs

...Petitioner

Versus

Vijay Kumar Kalia through LRs and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vipin Goel, Mr.Pulkit Seth and
Ms.Paalki Bhandari, Advocates
for the petitioner.

Mr.Avtar S. Khida, Advocate
for respondent No.1.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 21.01.2020 passed by learned trial Court, thereby, dismissing an application dated 09.01.2020, filed at the instance of petitioner (who was defendant No.6 before trial Court) for seeking amendment of the written statement in rent petition, titled 'Vijay Kumar Kalia vs. Surinder Kumar and others'.

In pursuance of the notice issued, respondent No.1 made appearance through counsel.

Learned counsel for the parties heard.

The essential facts, to be noticed, are as under:-

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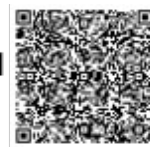
That, initially Vijay Kumar Kalia (landlord) had filed a petition under Section 13 of the East Punjab Rent Restriction Act, to seek ejectment of the respondents from the shop, as detailed in the headnote of the petition. The grounds pleaded by the landlord to seek ejectment were arrears of rent, sub-letting of the shop in question to respondent No.6-Des Raj (present petitioner) as well as on the ground of personal necessity of the shop to establish Nitish Kalia, son of the landlord, who was employee of M/s Gleam World Wide Pvt. Ltd.

However, when the case was at its fag end, an application for seeking amendment of the written statement, was filed at the instance of petitioner-Des Raj. Therein, it was asserted that it had come to the notice of the applicant-respondent No.6 (petitioner) that the plaintiff-landlord is guilty of concealment of facts and also about his personal necessity, which is not but camouflage. Although, the plea of personal necessity to be not bonafide, was taken in the written statement, filed at the instance of applicant-petitioner, but however, many interrelated aspects, vis-a-vis, concealment of facts and the fact that son of the petitioner is stated to be an employee of M/s Gleam World Wide Pvt. Ltd., is not an employee, but one of the major share holders and Director of the said company, as is evident from the statement of RW-3, who is Clerk, office of the Registrar of Companies, Punjab and Chandigarh. Beside the same also, the landlord has admitted in his statement that the building, in which his son is working in the said company, is owned by him and it has two shops and non-disclosure of the shops in possession of the landlord and his son, was fatal. Applicant-



defendant No.6, was all the time ready and willing to pay the arrears of rent, but the petitioner has refused to accept the same, on the ground of sub-letting and on this account, applicant-defendant No.6-Des Raj, wanted to incorporate paragraph No.5, in the written statement, which, in verbatim, as asserted in the application, is reproduced, as herein given:-

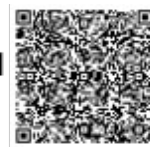
“Para 5-A. That during the course of evidence of petitioner and thereafter of the respondent, it has come to guilty of concealment of material facts as also about his personal necessity which is not bonafide but a camouflage. That the plea that personal necessity is not bonafide and the petitioner is guilty of concealment of facts, and the fact that son of the petitioner who is stated to be an employee with M/s Gleam World Wide Pvt. Ltd., is not an employee but one of the major share holders and directors of the said company as is evident from the statement of RW3 who is clerk office of the Registrar of Companies, Punjab and Chandigarh. Besides son of the petitioner is not working in the said company which is owned/controlled by him and it has two shops other than the property subject matter of present petition and that non-disclosure of shops in possession of the petitioner and his son is fatal. Further, answering respondent was all the time ready and willing to pay all the arrears of rent but the petitioner has refused to accept the same alleging ground the sub-letting. It is trite that even if landlord not admitting the respondent to be a tenant, rent on the basis of averments made in the pleadings can be assessed and tender made by respondent is valid and contention of landlord that only tenant could tender the rent is not tenable.”

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In the application, it was also asserted that amendment is necessary for determining the real question in controversy, between the parties. As such, a prayer was made for allowing of the application.

However, Vijay Kumar Kalia-landlord had filed the reply, thereby, disputing about the maintainability of the application and that the same has been filed, at the fag end of the case, when the respondents had also led the entire evidence and now, only to prolong their illegal possession over the shop in question, the application has been filed, which is also not verified nor supported by any affidavit. On merits, it was denied that there was any suppression of the material facts. In fact, it was asserted that when the ejectment petition was filed, the son of the landlord was employee of M/s Gleam World Wide Pvt. Ltd. He was promoted as Director in the year 2018, whereas, the petition was filed in the year 2016. Even, this fact was also admitted by RW-3, in his statement. Moreover, Nitish Kalia was promoted only as Director and he is not any share holder in M/s Gleam World Wide Pvt. Ltd. As such, there cannot be said to be any concealment, on the part of the landlord. Even, the detail of two shops has been given in the ejectment petition.

It is pertinent to mention that the petition seeking ejectment was filed in the year 2016. Admittedly, the evidence has also been concluded by the petitioner-defendant No.6 and he had led evidence, after availing 16 number of opportunities, before moving the said application. At the time of filing of an application, in hand, the eviction petition was pending for about three years. It was only thereafter, the said application

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was filed.

Proviso to Order 6 Rule 17 CPC specifically provides 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. In the case in hand, the evidence was concluded and when it was at fag end, the said application was filed. Nothing, as such, is evident that in spite of due diligence, the petitioner-defendant No.6, could not raise the plea before the commencement of the trial, which is now sought to be raised in the proposed amendment of the written statement.

Though, it is stated that it is only to elaborate the contentions raised in the written statement, but however, it is not so. Even though, it is stated that there is concealment of material facts, but anyhow, this submission is bereft of merits, as all the pleas, with regard to the working of his son, has been stated, in the petition itself, by the landlord and the detail of the building, as such, has also been given.

In the light of the same, it cannot be stated that there is concealment, at the behest of the landlord. Though reference is made to the testimony of RW-3 Singhasan Rai, Clerk, office of Registrar Companies, Punjab and Chandigarh, the copy whereof has been placed on record, but suffice to consider that this witness, in cross-examination had stated that Nitish Kalia was not appointed as Director or Additional Director earlier to 22.05.2018 i.e. at the time of filing of the petition.

So far as, the law with respect to amendment of the pleadings is

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concerned, the thumb rule is a requirement of proposed amendment for proper adjudication of the issue in hand. However, in the case in hand, considering the stage, at which the application has been filed, it is quite evident that filing of an application, itself is a delaying tactic, more particularly, when the fact of the subsequent event, as such, has no bearing on the case, with regard to the ‘need’, as expressed by the landlord, at the time of filing of the ejectment petition.

The proposed amendment application is apparently not bonafide and is malicious attempt, on the part of the tenant to prolong the lis.

In view of the aforesaid observations, the impugned order does not warrant interference, while exercise of the revisional jurisdiction. Hence, the revision petition sans merit and the same is hereby dismissed.

April 30, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No