

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5623-2019

Date of Decision : 17.01.2025

Sant Footwear Pvt. Ltd.

..... Petitioner

Versus

Sarvinder Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Sh. Rajbir Singh Guron, Advocate
for the petitioner.

Mr. Rajesh Sood, Advocate
for the respondent.

VIKRAM AGGARWAL, J (ORAL)

The present revision petition is directed against the order dated 06.03.2019, passed by the learned Rent Controller, Chandigarh vide which the application filed by the respondent under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC') for amendment of the eviction petition was allowed.

2. The facts, as emanating from the revision petition, are that an eviction petition was filed by the respondent-landlord under Section 13-B of the East Punjab Urban Rent Restriction Act, 1995 (for short 'the Rent Act') for eviction of the petitioner-tenant from SCO No.85-86, Sector 17, Chandigarh (hereinafter referred to as 'the demised premises') on the ground of personal necessity as he intended to open a multi-utility mall.

3. The respondent-landlord claimed to have become co-owners to the extent of 16.6% share in the demised premises on the basis of a family settlement. It was claimed that the petitioner-tenant was a tenant on the ground floor (front side portion) of the demised premises. The tenancy was a monthly tenancy. The petitioner required the demised premises for his personal use and occupation for running multi-utility Mall. It has been averred that the petitioner did not own or possess any other non-residential/commercial property for the said purpose. Under the circumstances, the petition was filed.

4. The eviction petition was opposed by the petitioner-tenant. In the written statement, a preliminary objection was raised that the petitioner was a tenant in the demised premises vide lease deed dated 20.09.1991 and the area under occupation of the petitioner-tenant was one complete Bay on the ground floor measuring 17 x 80 feet, mezzanine floor measuring 17 x 80 feet and complete basement measuring 34 x 80 feet. It was claimed that the said premises had been taken on rent from one T.S.Madaan, Satwant Kaur Madaan and their son Deshvir Singh Madaan. Other preliminary objections were also raised. The rate of rent was claimed to be Rs.18,500/- per month which had been increased to Rs.22,916/- per month. It has been averred that the petitioner No.1, through petitioner no.2, had handed over the vacant physical possession of the demised premises to the petitioner on 09.04.2014 and respondent-company was not in occupation of the demised premises and the entire rent stood paid. It was also claimed that the petitioner-tenant was not in arrears of rent.

5. During the pendency of the eviction petition, an application under Order 6 Rule 17 CPC was moved by the respondent-landlord for amendment of

the eviction petition. It was admitted in the application that the petitioner-tenant was a tenant on the ground floor, mezzanine floor and basement and accordingly, the heading and prayer clause of the rent petition was sought to be amended. It was averred that the said amendment would not change the basic character of the eviction petition.

6. The application was opposed by the petitioner-tenant. In the reply, preliminary objections regarding maintainability were raised. It was averred that in view of the categorical averments made in the written statement to which no replication had been filed, the application would not be maintainable. It was also averred that petitioner No.1, through petitioner no.2, had handed over the vacant physical possession of the demised premises to the petitioner on 09.04.2014 and respondent was not in occupation of the demised premises and the entire rent stood paid. It was averred that the case was fixed for respondent's evidence when the application for amendment of the eviction petition was moved on 18.11.2014. It was averred that under the circumstances, the application could not be allowed.

7. By way of the impugned order, the application was allowed, leading to the filing of the present revision petition.

8. I have heard learned counsel for the parties..

9. Sh. Rajbir Singh Guron, learned counsel representing the petitioners, strenuously urged that the impugned order is not sustainable. He submits that the application was moved to fill up the lacunae as in the written statement, it was averred that the tenancy of the petitioner was on the ground floor, mezzanine floor and basement and that lease deed dated 20.09.1991 had

been executed. Learned counsel submits that in case the amendment is allowed, it would amount to filling up the lacunae which is not permissible. Reference has also been made to the provisions of Order 6 Rule 17 CPC to submit that such an amendemnt could not have been allowed. In support of his contentions, learned counsel has placed reliance upon the judgments of Supreme Court of India in *Vidyabai & Ors. Versus Padmalatha & Anr. 2009 (1) R.C.R. (Civil) 763* and *Sampath Kumar versus Ayyakannu and another 2002 (4) R.C.R. (Civil) 566*, judgment *dated 23.11.2016* of a Coordinate Bench of this Court in *Dalip Singh versus Bhupinder Nagpal*, passed in *CR No.5302-2016*; judgment of Madras High Court in *Lord Balamukundas versus K.Kothandapani and others 1971 AIR (Madras) 422* and the judgment of Gujrat High Court in *Vasudev Dhanji Varu-Decd. Thro' Heirs & Rep. & Ors. Versus Bhogilal Manohardas Vaishnav, Anjar Kutch 1998 (1) GujLH 728*.

10. On the other hand, Sh. Rajesh Sood, learned counsel representing the respondents-landlords has submitted that there is no illegality in the order, for, the nature of the eviction petition would not change and the amendment was sought only in the heading and the prayer clause.

11. I have considered the submissions made by learned counsel for the parties.

12. Admittedly, the eviction petition was filed for eviction of the petitioner herein from the ground floor of the demised premises. In the written statement, a categoric stand was taken that the petitioner was in possession of one full Bay at the ground floor, the mezzanine floor and the complete basement. The rate of rent was also claimed to be Rs.18,500/- per month on the

basis of lease deed dated 20.09.1991. Admittedly, issues were framed and the case was at the stage of evidence. Order 6 Rule 17 CPC clearly lays down that an application for amendment is not to be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial, though it is also true that amendment otherwise can be allowed at any stage. It cannot, by any stretch of imagination, be even assumed that despite due diligence, the respondent could not have moved the application for amendment before the commencement of trial. It had been claimed in the written statement about the rate of rent and the area in occupation of the tenants. Then to simply say that the amendment in the heading and the prayer would not change the nature of the eviction petition would be a fallacy. If the amendment is allowed, an amended written statement would come, issues would be framed and then evidence would be led again. No party can be permitted to change its stand to this extent. The law is well settled on the said issue. In ***Revajeetu Builders & Developers versus Narayanaswamy & Sons & Others 2009 (10) SCC 84***, the Supreme Court of India examined the entire law on amendment of pleadings starting from the decision of the privy council in ***Ma Shwe Mya v. Maung Mo Hnaung, AIR 1922 Privy Council 249*** wherein it was observed as under:-

"All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment,

the subject-matter of the suit."

A perusal of the aforesaid observations of the privy council as far back as in 1922 would show that it is the same law which is holding the field even today. It is not in doubt that powers of amendment should be exercised liberally but by means of the amendment, the nature and subject matter should not change. The Supreme Court then examined various judgments rendered by the English Courts, the Supreme Court, the Bombay High Court etc. and certain principles were culled out which ought to be taken into consideration while allowing or rejecting an application for amendment;

On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case ?

(2) Whether the application for amendment is bona fide or mala fide ?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

13. The said view of the Supreme Court of India has recently been reiterated in the case of ***Basavaraj versus Indira And Others 2024 (4) RCR (Civil) 115*** also. In fact, in this case, the Supreme Court held that oversight cannot be accepted as a ground to allow any amendment in the pleadings at the fag end of the trial. Reference can also be made to the judgment of the Supreme Court of India in ***Life Insurance Corporation of India versus Sanjeev Builders Private Limited & Anr. 2022 AIR (Supreme Court) 4256*** wherein also, the law as regards amendment of pleadings was summed up;

(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)

14. If the matter is examined on the touchstone of the principles enunciated by the Supreme Court of India, as referred to above, the irresistible conclusion that this Court arrives at is that neither was the amendment essential for the just decision of the case nor the request was bonafide. Further, this amendment would cause prejudice to the petitioner-tenant. Refusing the amendment will not lead to injustice. Further, the amendment fundamentally changes the nature of the case as well.

In view of the aforementioned facts and circumstances, the present revision petition is allowed, the impugned order dated 06.03.2019, passed by the learned Rent Controller, Chandigarh is set aside and the application for amendment of the eviction petition is dismissed.

Pending application(s), if any, stand(s) disposed of accordingly.

17.01.2025
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(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No