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

CR-9548-2018 (O&M)

Date of Decision: January 24, 2025

HARJIT KAUR

.....Petitioner

Versus

S.S.GILL (THROUGH LRS) & ORS.

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Divanshu Jain, Advocate and
Mr. Abhinav Goel, Advocate for the petitioner.

Mr. Surinder Gandhi, Advocate for respondent No.1.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition filed under Article 227 of the Constitution of India, challenge has been laid to an order dated 01.12.2018 passed by the Rent Controller, Chandigarh, whereby, an application filed on behalf of the petitioner-tenant seeking amendment of her written statement stands rejected.

2. Briefly stating, in February 2004, respondent No.1 being Landlord filed an eviction petition against the petitioner-tenant from half portion of SCO No.84, Sector 17-D, Chandigarh on the grounds of arrears of rent as well as material impairment.

3. In response, written statement was filed on behalf of the petitioner-tenant while submitting that there was no relationship of Landlord-tenant between the parties as the petitioner-tenant was in occupation as co-owner having purchased a share in SCO Nos. 83-84, Sector 17-D, Chandigarh vide registered sale deed dated 30.06.2000 from one of the co-sharers.

4. Based thereupon, on 21.12.2005, following issues in the aforementioned eviction petition were framed :-

1. *whether the respondents are in arrears of rent since June 2002 to Feb, 2 004?OPP*
2. *whether the respondents no.1, 3, 2, and 5 have demolished the wall separating the tenancies and after merging the area of their tenancies*
3. *Whether respondent no.4 has sublet the entire area in his exclusive possession without the consent of landlord?OPP*
4. *Whether respondent has made the material alternation in the demised premises?OPP*
5. *whether the petition is bad for not maintainable?OPD*
6. *whether the petition is bad for non-joinder of necessary parties? OPD*
7. *Whether there is no relationship of landlord & tenant between the parties and respondent is occupying the same as co-sharer?OPD*
8. *Whether respondent has already paid the rent w. e.f. 1.4.kl and petitioner is only entitled to the rent to the extent of his share?OPD*
9. *Whether there is no change of user of demised premises? OPD*
10. *Relief.*

5. Both the parties having concluded their evidence, an application came to be filed on behalf of the petitioner-tenant seeking amendment of written statement for adding preliminary objection No.7 to the following effect:-

“Preliminary Objection No. 7 –

That the present eviction petition has become infructuous and is not maintainable in view of the passing of final decree in a Partition Suit in the building in question i.e. SCO No. 83-84, Sector 17-D, Chandigarh and the tenancy rights, if any were have merged into the ownership of the respondent No. 1 w.e.f. 10.10.2018 and the court of Shri Gaurav Dutta, Civil Judge (Junior Division), Chandigarh has held that the respondent No.1 as owner in the entire building with share of

4.555%. It is further submitted that in Chandigarh the fragmentation of property is not permissible and interse sale is not possible and the property has to be sold in open auction and there is every likelihood that the respondent No.1 may purchase the entire building in the said auction, therefore in the present eviction petition after the passing of the final decree the petitioners cannot claim any relief against the respondent No. 1"

6. The prayer made in the said application was contested on behalf of respondent No.1-Landlord. Upon consideration, the Rent Controller vide order dated 01.12.2018 dismissed the same. Aggrieved against it, the present revision petition has been preferred.

7. Learned counsel for the petitioner submits that the amendments sought to be incorporated in the written statement with regard to passing of the final decree dated 10.10.2018 for partition was essential for determination of the eviction petition filed at the instance of respondent No.1 being a relevant subsequent event having material bearing and thus, the prayer made in the application was required to be allowed.

8. On the other hand, learned counsel for respondent No.1-Landlord submits that a plea with respect to non-maintainability of the eviction petition; based on the petitioner-tenant having become one of the co-owners having purchased the share from one of the co-owner was already part of the original written statement and thus, no amendment in the written statement as prayed for was essential and accordingly, the impugned order warrants no interference.

9. I have heard learned counsel for the parties and gone through the paper-book. I am unable to find substance in the submissions made by learned counsel for the petitioner.

10. In the present facts, a perusal of the original written statement filed on behalf of the petitioner-tenant shows that a clear-cut plea regarding the petitioner-tenant being in occupation of a portion of the demised premises being one of its co-owners having purchased a share therein was clearly set up therein and thus, no amendment as prayed for was required to be incorporated in her written statement based on the final partition decree dated 10.10.2018 whereby, it was merely determined that the petitioner-tenant was to get 4.55% share in SCO Nos.83-84, Sector 17-D, Chandigarh. Moreover, issue No.7 as framed by the Rent Controller vide order dated 21.10.2005 also takes care of the plea set up by the petitioner-tenant of she being in occupation of the demised premises as one of its co-sharer and thus, in such circumstances, the amendment sought for by the petitioner-tenant was not essential, being merely reiteration of the substantive plea already forming part of the original pleadings and the case set up. Even a preliminary decree dated 19.05.2011 forms part of record as Ex.RD and thus, the amendment sought for is not required for the purpose of adjudication fo the rent petition. Moreover, the filing of application is apparently an act of delaying the final disposal of the ejectment petition pending adjudication since 2004.

11. In view of the above, no merit can be found in the present petition and the same is thus, dismissed.

12. Considering the fact that instant petition was filed in 2004, Rent Controller is directed to decide the same as expeditiously as possible, preferably within a period of two months from today.
13. Pending application(s), if any, shall also stand disposed of.

24.01.2025
Tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>