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

CR-7576-2024 (O&M)

Date of decision: 07.01.2025

Sharad Aggarwal

...Petitioner

Versus

Manjit Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Raj Kumar Kakkar, Advocate for the petitioner
(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside/quashing of order dated 25.11.2024 (Annexure P-9) passed by the Rent Authority vide which the Rent Authority had dismissed an application filed under Order 6 Rule 17 CPC filed by the petitioner.

2. Learned counsel for the petitioner has submitted that the petitioner had taken several points at the time of filing an application for leave to contest, which was filed on 09.03.2018, however inadvertently in the reply filed by the petitioner-tenant to the petition under the Rent Act, all the said points could not be taken. It is submitted that it was only at the time of preparing the evidence of the tenant that the said mistake



came to the notice of the counsel and accordingly, an application was moved for amendment of the written statement. It is submitted that vide order dated 25.11.2024, the said application has been dismissed illegally and the said order deserves to be set aside and the application filed by the petitioner for amendment of the written statement deserves to be allowed.

3. This Court has heard learned counsel for the petitioner and has perused the paper book and finds that the impugned order dated 25.11.2024 is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed.

4. It is not in dispute that the respondent had filed a petition under Section 24 of the Punjab Rent Act, 1995 to recover the immediate possession of the premises on the averments that she was a Non-Resident Indian and was owner of the premises in question. The petitioner had filed an application dated 09.03.2018 for leave to defend and vide order dated 23.07.2019, leave was granted to the petitioner to defend and immediately thereafter, a detailed reply was filed by the petitioner to the rent petition, which has been annexed as Annexure P-4 along with the paper book. The issues in the present case were framed on 18.11.2019 (Annexure P-5) and the landlord/respondent had led her entire evidence and had closed her evidence on 22.07.2024 (Annexure P-6). The case was thereafter adjourned to 01.08.2024 for leading evidence of the tenant-present petitioner. The tenant-present petitioner instead of leading evidence, moved the application in question under Order 6 Rule 17 CPC seeking amendment of the written reply and in para 4 of the said



application, it was pleaded as under:-

*“4. That due to **sheer inadvertence, over sightedness,** human error and typographical mistake, the said written reply consisted of certain inherent mistakes which came to the knowledge of the respondent/applicant yesterday while preparing the evidence and the present application is being filed without any inordinate delay.”*

5. A perusal of the above pleadings would show that the plea raised by the petitioner for seeking amendment was on account of inadvertence/over sightedness etc. It is not in dispute before this Court that all the pleas which were sought to be raised in the said application were available to the petitioner at the time of filing of the original reply and prior to framing of the issues which were framed on 18.11.2019. The respondent-landlord had opposed the said application by filing a detailed reply (Annexure P-8) in which it was stated that the trial had already commenced and the application had been filed only to delay the proceedings and in case the said application was allowed then, the same would result in de novo trial.

6. The Rent Controller, vide impugned order dated 25.11.2024 had dismissed the said application and observed that the trial had already commenced and as per proviso to Order 6 Rule 17 CPC, the proposed amendment can only be allowed in case the party seeking the amendment is able to show that he could not incorporate the same earlier, which was not the case in the present case as it was the own plea of the present petitioner that the pleas sought to be incorporated were taken in the



earlier application for leave to defend and were thus, within the knowledge of the petitioner. It was observed that the petitioner/tenant was seeking to incorporate 27 new paragraphs in the written reply and that the same would result in de novo trial as the entire evidence had been led by the respondent-landlord on the basis of the reply filed by the tenant and the issues framed and even the present petitioner-tenant had cross-examined all the witnesses of the respondent-landlord without raising any such plea. After dismissing the said application, the case was adjourned by the Rent Controller to 11.12.2024 for evidence of the present petitioner-tenant. The observations made in the order dated 25.11.2024 could not be disputed.

7. Proviso to Order 6 Rule 17 CPC has been incorporated on 01.07.2002 and the said provision reads as under:-

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided 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.”

8. A perusal of the above provision would show that it has been specifically mentioned in the proviso 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 raise the matter before commencement of the trial.

9. The Hon'ble Supreme Court in the case of **Ajendraprasadji N. Pande and another Vs. Swami Keshavprakeshdasji N. and others**, reported as **2006(12) SCC 1**, had observed that trial is deemed to commence when the issues are settled and the case is set down for recording of evidence and for the purpose of satisfying the requirement of Order 6 Rule 17 CPC (as amended), the necessary particulars are required to be mentioned in the application which would satisfy the requirement of law.

10. In the present case, it could not be disputed that the averments which were sought to be incorporated by virtue of the amendment in question was already in the knowledge of the petitioner-tenant at the time of filing of the original reply and also prior to framing of the issues which were framed on 18.11.2019. In fact, it was the case of the petitioner that the pleas sought to be incorporated were the pleas which had already been raised in the application for leave to contest which was dated 09.03.2018. It is also not in dispute that the respondent-landlord has already led her entire evidence and thus, the trial has commenced and the amendment sought is hit by the proviso to Order 6 Rule 17 CPC. The reason given in the amendment application to the effect that it was on account of sheer inadvertence/oversightedness that the said pleas could not be taken would show that the said reasoning is in



direct contradiction to the term “due diligence” and in case the said arguments raised on behalf of the petitioner are taken to be true on its face value then it is clear that in the present case, there was no due diligence on the part of the petitioner. In the present case, the eviction petition was filed on 05.12.2017 and it is apparent that the tenant has made every endeavour to delay the proceedings and even the present application for amendment has been filed only to delay the proceedings.

11. Keeping in view the abovesaid facts and circumstances, the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

12. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

07.01.2025

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No