



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

228

CR-5630-2022 (O&M)

Date of decision: 09.04.2026

Madan Lal

...Petitioner(s)

Vs.

Subhash Mahajan

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. S.M.Tripathi, Advocate for the petitioner.

Mr. Sunil Kumar, Advocate for the respondent.

NIDHI GUPTA, J.

Present Civil Revision Petition under Article 227 of the Constitution of India has been filed by the landlord laying challenge to the order dated 17.11.2022 (Annexure P-4) passed by the learned Rent Controller, whereby application filed by the respondent/tenant under Order 6 Rule 17 CPC for amendment of the written statement, has been allowed.

2. It is *inter alia* submitted by learned counsel for the petitioner that the instant application for amendment of written statement was filed by the respondent after trial has commenced, at the stage of cross-examination of the petitioner. Thus, as per proviso of Order 6 Rule 17 CPC, amendment cannot be permitted after commencement of trial. Hence, the impugned order cannot be sustained.

3. It is further submitted that the impugned order suffers from material errors of facts which are pointed out by learned counsel for the



petitioner during the course of arguments from the record of the case. It is accordingly prayed that the present Revision Petition be allowed; and the impugned order be set aside.

4. *Per contra*, learned counsel for the respondent vehemently opposes submissions made on behalf of the petitioner and submits that in the Affidavit of examination-in-chief filed by the petitioner, he has raised some new points, which require clarification. It is for this reason that the instant application was filed by the respondent. It is accordingly prayed that the present Revision Petition be dismissed being meritless.

5. No other argument is raised on behalf of the parties. I have heard learned counsel for the parties and perused the case file in great detail. I find merit in the submissions made on behalf of the petitioner.

6. Brief facts of the case in chronological order are as follows: -

30.11.2021: Petitioner has filed Rent Petition dated 30.11.2021 (Annexure P-1) for eviction of the respondent from the demised premises.

18.1.2022: Respondent had moved application dated 18.01.2022 for production of documents.

18.04.2022: Petitioner has filed reply to the said application.

26.04.2022: Vide order dated 26.04.2022, application of the respondent was partly allowed; and respondent was directed to produce allotment letter of demised premises and other documents.

04.07.2022: Respondent filed written statement dated 04.07.2022 to the main petition.

18.08.2022: Vide order dated 18.08.2022, issues were framed.



15.09.2022: Thereafter on 15.09.2022, respondent filed instant application (Annexure P-2) under Order 6 Rule 17 CPC for amendment of written statement.

30.09.2022: Petitioner has filed reply dated 30.09.2022 (Annexure P-3) to the said application.

17.11.2022: Vide impugned order dated 17.11.2022 (Annexure P-4), application for amendment of written statement filed by respondent has been allowed.

7. First and foremost, the legal position in this regard is very clear in as much as amendment cannot be permitted after trial has commenced unless the applicant is able to show that despite due diligence, the new facts were not in the knowledge of the applicant. Order 6 Rule 17 CPC reads as follows: -

“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 bare reading of the above provision shows that no doubt, amendment is to be permitted in justiciable terms for the determination of the real controversy at hand. However, the said provision cannot be read in isolation of the proviso thereto, which further categorically stipulates “...no application for amendment shall be allowed after the trial



is 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.” Thus, prior to permitting amendment, it is incumbent upon this Court to veritably conclude that despite exercise of due diligence, the party seeking the amendment could not have pleaded the facts now sought to be incorporated/urged.

9. A perusal of the impugned order dated 17.11.2022 (Annexure P-4) shows that the learned Rent Controller has permitted amendment of written statement on the following grounds: -

“The perusal of the record shows that issues have been framed in the present case and examination-in-chief of three PWs has already been recorded. The said application under Order 6 Rule 17 of CPC was filed by the respondent after tendering of affidavits by the witnesses of the petitioner. The perusal of the record also shows that the petitioner has incorporated a new fact regarding filing of a complaint by him against the respondent before the SSP, Chandigarh in his affidavit and after disclosure of the said fact in the affidavit Ex.PW1/A of petitioner, application. the respondent has filed the present application.....”

10. However, the said reasoning of the learned Rent Controller does not bear scrutiny on account of the fact that the petitioner in para 7 of the Rent Petition (Annexure P-1) has clearly pleaded in respect of complaint moved by the petitioner before the SSP Chandigarh. The said para 7 of Rent Petition reads as follows: -



“7. That the petitioner approached the National Commission for Schedule Caste as well as SSP, Chandigarh by submitting complaint against the respondent but because of money & muscle power of respondent, the petitioner could not get justice from said forums.”

11. From the above, it is clear that the sole ground of the learned Rent Controller on which the application for amendment has been allowed to the effect that *“However, the fact regarding filing of a complaint by the petitioner against the respondent in the office of SSP, Chandigarh was only disclosed in the affidavit Ex.PW1/A filed by the petitioner....”* is palpably wrong, being factually incorrect. It cannot be ignored that even though the said facts were in the knowledge of the petitioner, yet it has not been mentioned in the written statement. It is my considered view, that in such a situation, amendment cannot be permitted. By way of amendment, the respondent cannot be permitted to fill the lacunae in his case. Provision of Order 6 Rule 17 CPC is not to fill lacuna in the pleadings. Thus, in the facts of this case, this Court is unable to bring itself to the conclusion that the impugned amendment is as per law; or as per the stipulation in the proviso.

12. Moreover, it cannot be ignored that the present application under Order 6 Rule 17 CPC for amendment has been filed by the petitioner much after trial had commenced – which, in itself is not permitted as per law. Admittedly, plaintiff evidence is at the stage of his cross-examination, and matter has been adjourned many times at the instance of the respondent. Therefore, it would be grossly prejudicial and



inequitable to the respondent if amendment is permitted at this belated stage.

13. Reference may be made to judgment of the Hon'ble Supreme Court in **Pandit Malhari Mahale v. Monika Pandit Mahale, (SC) : Law Finder Doc Id # 1691426** wherein it is held as under: -

"Civil Procedure Code, 1908, Order 6, Rule 17 - Amendment of Plaint - Amendment application filed after evidence begun - In absence of any finding that Court is satisfied in spite of due diligence, party could not introduce amendment before commencement of trial - Therefore, amendment of plaint unsustainable and set aside."

14. This Court in **Rati Ram v. Inder (P&H) : Law Finder Doc Id # 244372** has held as under:-

"Civil Procedure Code, 1908, Order 6, Rule 17 - Amendment of Pleadings - Amendment cannot be allowed as a matter of right - Amendment was not at all necessary to determine the real controversy between the parties - The application was not bona fide as such, it was only filed to delay the proceeding further when the suit remained pending for seven years - Amendment right decline."

15. Again in **"K.B. Sharma Vs. Shri Keerti Karan Dharni" (P&H) Law Finder Doc ID # 205192**, this Court has held that: -

"A. Civil Procedure Code, 1908, Order 6, Rule 17, Proviso - Amendment of written statement - After the commencement of trial, amendment of pleadings cannot be allowed, until and unless, the party seeking amendment establishes that despite due diligence, it could not raise the pleas sought to be incorporated by way of amendment - Where defendant was already in knowledge of such pleas at the time of filing the original written statement - Amendment cannot be allowed."



16. Learned counsel for the respondent is unable to dispute or controvert the above said factual and legal position.
17. In view of the above, Present Revision Petition is **allowed**; and the impugned order dated 17.11.2022 (Annexure P-4) is set aside.
18. Pending application, if any, stands disposed of.

09.04.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

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