
(2002) 10 P&H CK 0079
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3774 of 1993

Mani Raj

APPELLANT

Vs

Firm Radha Krishan Siri Niwas and Others

RESPONDENT

Date of Decision : 09-10-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
East Punjab Urban Rent Restriction Act, 1949 — Section 13

Citation : (2003) 133 PLR 217 : (2003) 1 RCR(Civil) 125 : (2002) 2 RCR(Rent) 678

Hon'ble Judges : G.S. Singhvi, Acting C.J.

Bench : Single Bench

Advocate : Sunint Kaur and Rajesh Garg, for the Appellant; Vikram Aggarwal, for Ashok Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, Act. C.J.—This revision is directed against order dated 30.8.1993 passed by Rent Controller, Hansi partly declining the prayer of the petitioners for amendment by way of insertion of words "alleged to be" in the first line of paragraph 3 and second line of paragraph 6 of the ejectment application.

2. A perusal of the record shows that the petitioners filed an application for ejectment of the non-petitioners on the ground of non-payment of rent and also on the ground of making material alteration in the demised premises. During the pendency of the ejectment application, they filed an application under Order 6 Rule 17 of the CPC (for short, "CPC") for grant of leave to incorporate the following amendment:-

"a) In para No.3 of the ejectment application at page 4 (Internal) in first line the name of the firm be corrected as "M/s Bhagat Ram Narain" in place of Ram Narain Bhagat Ram.

b) In para No.3 of the ejectment application in first line before the word transfer

and after the word Bhagat Ram, the word "alleged to be" ordered to be incorporated.

c) That in the 11th line of this paragraph firm "M/s Bhagat Ram Narain" be inducted in place of "M/s Radha Krishan Siri Niwas".

d) In para 6 at page 5 in second line after the word were and before the word transferred the word "alleged to be" ordered to be added."

3. The petitioners claimed that the proposed amendment is necessary for determination of the real controversy between the parties and the same would not cause any prejudice to the non-petitioners because the proceedings were at the initial stage.

4. The non-petitioners contested the application for amendment and prayed for its dismissal by asserting that the petitioners should not be allowed to wriggle out of the admission made in the matter of transfer of the demised premises in favour of firm Radha Krishan Sri Niwas by their predecessor-in-interest, namely, Bhagat Ram Ram Narain.

5. The learned Rent Controller partly accepted the petitioners prayer in so far as it related to the correction in the description of the name of the firm was concerned, but rejected their prayer for incorporation of the words "alleged to be" in paragraphs 3 and 6 of the ejectment application by assigning the following reasons:-

"After hearing the parties and going through the records, I find no force in the contention of petitioners learned counsel. It is prominent to mention that it is not the petitioners case that they had made a wrong admission in their petition. They rather pleaded that the amendment is only to rectify a clerical mistake, whether or not it was a clerical mistake becomes clear from some documents which the respondents have placed on record. The respondents have produced a registered notice dated 1.1.1973 which petitioners predecessor-in-interest Lala Uggur Sain had served on respondent No.1 to pay him the amount of loss and damages caused to the demised premises. Lala Uggur Sain in this notice has clearly stated that M/s. Bhagat Ram Ran Narain had transferred his rights and liabilities under the lease to respondent No.1. There is then another document wherein the same admission has been recorded. This is the execution petition No.378 decided on 4.2.1937. The respondents produced copy of this petition and its perusal reveals that Lala Uggur Sain therein has also admitted that M/s Bhagat Ram Ram Narain had transferred its rights in the lease in favour of respondent No.1 i.e. firm M/s. Radha Krishan Siri Niwas. Evidently, the petitioners therefore through the proposed amendment intend to upset admission which has gone on record in the previous litigation between the parties. The admission in the original petition was therefore not a clerical mistake but was in fact an admission which petitioners predecessor-in-interest himself had made and is binding on the petitioners as well. Thus viewed, the amendment, if allowed, would not only negative the petitioners admission already made in the their petition but will also upset the

facts which have gone on record in previous litigation of the parties."

6. I have heard learned counsel for the parties and perused the record. In my opinion, the learned Rent Controller acted with material irregularity in exercise of his jurisdiction to grant or refuse the petitioners prayer for leave to amend the ejectment application. The view taken by the learned Rent Controller is also contrary to the law laid down by the Supreme Court and, therefore, the order under challenge calls for interference by this Court.

7. The law on the issue of amendment of pleadings is well settled. Ordinarily, the Court must grant leave to the parties to amend the pleadings unless it is convinced that amendment sought for would cause failure of justice or would materially change the position of the parties.

8. In *B.K.N. Narayana Pillai Vs. P. Pillai and Another*, , the Supreme Court reviewed various judicial precedents on the subject and laid down the following proposition of law:-

"The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and the Supreme Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayer should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation. The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as the question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or results in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be

properly compensated by costs and error or mistake which, if fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement."

9. The same view has been reiterated in M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., .

10. In view of the law laid down in the aforementioned decisions, it must be held that the learned Rent Controller committed a serious illegality by declining to entertain the prayer of the petitioners for amendment of paragraphs 3 and 6 of the ejectment application. He did not, at all examine the issue of prejudice, if any, likely to be caused to the non-petitioners by grant of leave for amendment. The observations made by him that the proposed amendment would enable the petitioners to withdraw the admission made about the transfer of the property by their predecessor-in-interest is clearly erroneous. By incorporating the words, "alleged to be", the petitioners cannot be said to have withdrawn the admission made in the documents referred to in the order of the Rent Controller.

11. In the premises aforesaid, the revision petition is allowed. The impugned order is set aside and the leave is granted to the petitioners for amendment of the ejectment application in terms of the prayer made in the amendment application. The amendment ejectment application be filed within four weeks from today. The non-petitioners will be entitled to file amended written statement and also seek leave of the Court for amendment thereof, if so advised. Rent Controller, Hansi is directed to decide the ejectment application within a period of six months from the date of receipt of a copy of this order.

12. The parties are directed to appear before Rent Controller, Hansi on 29.10.2002.