

(2016) 05 P&H CK 0462

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 3665 of 2015 (O&M)

M/s Kamla Dials and Devices Limited

APPELLANT

Vs

Nijhawan Travel Service Private Limited

RESPONDENT

Date of Decision : 16-05-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2016) 4 PLR 142

Hon'ble Judges : Mr. Augustine George Masih, J.

Bench : Single Bench

Advocate : Ms. Manisha Gandhi, Senior Advocate with Ms. Salina, Advocate, for the Petitioner; Mr. Anil Sharma, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Augustine George Masih, J. (Oral)—CM No. 21944-CII of 2015

Prayer in this application is for exemption from filing the certified as well as true typed copy of letter dated 09.08.2014 (Annexure R-1), copy of order dated 24.08.2015 passed by learned Rent Controller (Annexure R-2) and for placing on record photostat copies of the same and additional affidavit of Sh. Sham Nizwan, Managing Director of respondent No.1.

Notice of the application to the counsel opposite.

Ms. Salina, Advocate accepts notice on behalf of the non-applicant /petitioner and states that she has no objection to the prayer made in the application.

In view of the above, the present application is allowed and additional affidavit along with Annexures R-1 and R-2 are taken on record.

CR No.3665 of 2015

Challenge in this revision petition is to the order dated 21.04.2015 passed by the Civil Judge (Junior Division), Chandigarh, whereby an application for amendment

of the written statement by incorporating preliminary objection No.5 was sought to be taken that a fresh tenancy has been created between the present petitioner i.e. tenant and the respondent i.e. landlord and as such, the rent of the premises has been enhanced to Rs. 2,74,850/- per month from August, 2014 excluding service tax and TDS which renders the eviction petition not maintainable, has been dismissed by the Rent Controller. It is the contention of learned senior counsel for the petitioner that at the stage of the trial when the issues were not framed, application for amendment of the written statement under Order 6, Rule 17 read with Section 151 CPC was filed for incorporating the preliminary objection No.5 as was mentioned in Para 4 of the said application. This plea had become available to the petitioner after filing of the written statement and, therefore, the said plea had to be taken at that very stage and immediately the said application had been filed. Further contention is that, the Rent Controller has misdirected itself in coming to a conclusion that there is likelihood of prejudice to be caused to the respondent-landlord and, therefore, rejected the application. She contends that as per the settled law, amendment to the pleadings is to be liberally construed and permitted specially at the initial stage of proceedings in the case. There has been no delay on the part of petitioner in moving the application as the issues had not been framed and there is no intention on its part to delay the proceedings before the Rent Controller. Application has been moved with a bona fide intention and, therefore, the same should have been allowed by the Rent Controller. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in *Sushil Kumar Jain v. Manoj Kumar* and another, AIR 2009 (SC) 2544 where the Hon'ble Supreme Court has held that the amendment to the pleadings can be allowed at any stage and while construing the plea to the amendment of the written statement, it has to be more liberally construed than in the plaint. Prayer has, thus, been made for setting aside the impugned order and allowing the application for amendment of the written statement.

2. On the other hand, learned counsel for the respondent submits that the plea as has been sought to be taken is primarily based upon the letter dated 09.08.2014 which has not been brought to the notice of the Rent Controller which was at the own doing of the petitioner that an enhanced rent was put-forth to the respondents. In any case, the cheques which have been produced and handed over to the respondent-landlord, has been accepted with a rider that no prejudice would be caused to the pending eviction petition. He, thus, contends that the plea itself as has been taken in the amendment which is being sought, is unsustainable. That apart, he asserts that mere acceptance of enhanced rent is not in itself sufficient that a fresh tenancy has come into existence and in any case, the rent offered was accepted by the respondent without prejudice to its any right or claim and, therefore, would not give rise to any plea as has been sought to be taken by the petitioner.

3. I have considered the submissions made by learned counsel for the parties and with their able assistance have gone through the impugned order as also the

judgment of the Hon''ble Supreme Court referred herein above.

4. The facts as has been narrated above, are not in dispute that the application for amendment of the written statement was moved by the petitioner at the very threshold and at the stage when issues were not framed by the Rent Controller. The stage at which the amendment is being sought, therefore, cannot be taken as a plea for non-acceptance of the amendment. As regards, the plea for amendment by incorporation of preliminary objection No.5 in the written statement, it is not in dispute that the said plea as has been sought to be taken has come into existence at the time when the rent petition was pending and, therefore, it cannot be assumed that such a plea could have been taken earlier by the petitioner in the written statement. The plea as has been sought to be taken would not, in the considered opinion of this Court, in any manner prejudice any right or any claim of the respondent-landlord if permitted, at this stage as the veracity or otherwise of the said plea which is being sought to be taken in the written statement will be dependent upon the evidence to be led by the parties which the Court at that stage would consider and pass appropriate orders. In view of the above, the impugned order cannot sustain, specially in the light of observations of the Hon''ble Supreme Court in the judgment in Sushil Kumar Jain's case (supra), where amendment to the written statement is being sought to be made at the initial stage and it permits even substituting and altering the defence.

5. The impugned order dated 21.04.2015, therefore, is set aside, allowing the present revision.