(1995) 10 P&H CK 0074

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 11631 CII of 1995 in Civil Revision No. 4384 of 1994

Prince Sales Corporation APPELLANT

Vs

Partap Singh and Others RESPONDENT

Date of Decision : 05-10-1995

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

Citation : (1996) 112 PLR 163

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : M.L. Sarin and Vikas Suri, for the Appellant; Sarwan Singh and H.L. Bhatia, for the Respondent

Final Decision : Allowed

Judgement

N.K. Kapoor, J.—This is tenant''s revision petition against the order of the appellate authority declining prayer for the amendment of written statement.

2. Briefly put, respondents-landlord filed a petition u/s 13 of the East Punjab Urban Rent Restriction Act (for short ''the Act'') for ejectment of the petitioner-tenant from the shop situate in New Cycle Market Gill Road, Ludhiana, on the ground of non-payment of rent as well as of sub-letting.

3. The tenant resisted the claim on a number of grounds but ultimately an order of eviction was passed by the Rent Controller.

4. Feeling dissatisfied, the present revision petitioner filed an appeal and during the pendency of the appeal filed an application under Order 6 Rule 17 of the CPC seeking amendment in the written statement which has been declined by the Court. According to the learned counsel for the petitioner, the appellate authority acted illegally and improperly in declining the petitioner''s application for amendment in the written statement. By means of the amendment sought, the

petitioner intended to incorporate in the written statement that all the partners of the firm M/s Prince Sales Corporation have not been impleaded as a party and so in the absence of all the partners, the petition is not maintainable; and secondly, the property in dispute was taken on rent by M/s Prince Industrial Corporation which consisted of Kailash Chand, Mohan Lal and Kewal alias Kanwal Kumar as its partners. Out of the three partners, Kamal Kumar still continues to be in possession in his own right as a tenant and thus no question of sub-letting arises. The observation of the Court that the amendment if allowed would change the complexion of the original plea or otherwise it is belated is hardly a ground to decline the amendment as prayed for. Otherwise too, the Courts are liberal in permitting the parties to amend their pleadings and for such a lapse the other party can be well compensated with costs. Reference has also been made to the judicial pronouncements which will be briefly discussed later on.

5. Counsel for the respondents, on the other hand, argued that the decision declining the proposed amendment is not only just but proper in the facts and circumstances of the present case. According to the counsel, the petition for eviction was filed way back in the year 1986 whereas the proposed amendment is being sought sometime in the year 1994. According to the counsel, the sole purpose of the amendment sought is to prolong the case and thus deprive the respondents of their right to claim the possession of the property on the basis of valid order of the Rent Controller. Even on merit, the pleas now sought to be raised are contradictory and so there is no good ground to allow any latitude to the petitioner.

6. I have heard learned counsel for the parties, perused the impugned order of the appellate authority as well as some of the documents referred to by the counsel for the petitioner. The facts are not in dispute i.e. eviction of the petitioner on the ground of subletting. According to the landlord, the premises in dispute was let out to Kailash Chand, partner of Prince Industrial Corporation, who has now sublet it to M/s. Prince Sales Corporation through Kewal Krishan Partner. It is the case of the petitioner that M/s Prince Industrial Corporation has partners, namely, Kailash Chand, Mohan Lal and Kewal alias Kanwal Kumar and in M/s Prince Sales Corporation, Kewal alias Kanwal Kumar is one of its partners and hence there is no question of subletting by M/s Prince Industrial Corporation to M/s Prince Sales Corporation. It is with a view to clarify the earlier stand that the petitioner sought amendment of the written statement with a view to incorporate the following as preliminary objection:-

"That the application is not maintainable as per the allegations of the petitioner. He had let out the property to Prince Industrial Corporation, a partnership firm through Kailash Kumar one of its partners. All the partners have not been made party. As such the petition is liable to be dismissed. The partnership concern M/s Prince Industrial Corporation consists of Kailash Chand, Mohan Lal and Kewal alias Kanwal Kumar as its partners vide partnership deed dated 26.4.68. So in the absence of all the partners, the petition is not maintainable. In case any order of ejectment is made, it would not be binding on other partners."

The following was also proposed to be added in para No. 2(b) of the written statement:-

"Even otherwise there is no question of any subletting. The property was taken on rent by Prince Industrial Corporation a partnership concern, consisting of Kewal Krishan, Mohan Lal and Kamal alias Kanwal Kumar. Out of the three partnership firm along with Kewal Krishan and is running the business of Prince Sales Corporation in the shop in question. So Kamal Kumar being one of the original partners still continues to be in possession in his own right as tenant. The forming of partnership with Kewal Krishan does not tantamount to subletting, he being in effective control and possession of the tenancy premises. Thus there is no question of any subletting."

7. Thus, according to the petitioner, Kamal Kumar was partner in Prince Industrial Corporation and is a partner in Prince Sales Corporation. This fact is otherwise proved as per partnership deed already placed on record. The amendment now sought has, indeed, material bearing upon the point to be adjudicated upon by the authority. Presently, it is a plea which is sought to be raised. There is no denying the fact that the petitioner has been somewhat negligent in not approaching the Court at an earlier date but this by itself is no ground to shut a legitimate enquiry which indeed will help the Court in deciding the matter more thoroughly. Otherwise too, the aggrieved party can be compensated by costs. The appellate Authority''s reliance upon the decision of the apex Court in case reported as Shah Phoolchand Lalchand Vs. Parvathi Bai, , is somewhat misplaced. In the above cited case, a plea was sought to be raised for the first time before the apex Court and it is in these circumstances that the Court observed that it is not open to the appellant to raise such an objection at a very late Stage and thereby delay the matter for a number of years. In the present case, the amendment is being sought before the first appellate Court. Rather the decision in case reported as Chhotelal Pyarelal, The Partnership Firm and Others Vs. Shikarchand, , is applicable to the facts of the present case. The respondents ought to have impleaded all the partners of the firm and in any case the plea is now being raised by the petitioner in the written statement and it would be upto the respondents-landlord to implead all or any of the partners if they deem proper.

8. Thus, keeping in view the facts of the present case, I am of the view that the revision petition deserve to be allowed. Accordingly, I accept the revision petition, set aside the order impugned and permit the petitioner to amend the written statement as prayed for subject to payment of Rs. 5000/- as costs to the landlord parties are directed to appear before the appellate authority on 15.11.1995. The appellate authority, of course, shall grant due opportunity to the respondents-landlord.

