
(2000) 03 P&H CK 0078
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3417 of 1999

Shri Hari Chand

APPELLANT

Vs

Balwant Kaur and Another

RESPONDENT

Date of Decision : 27-03-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
East Punjab Urban Rent Restriction Act, 1949 — Section 12, 15

Citation : (2000) 125 PLR 715 : (2000) 1 RCR(Rent) 491

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Advocate : Arihant Jain, for the Appellant; Sudeep Mahajan, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sudhalkar, J.—Petitioner and respondent No.2 had filed a petition u/s 12 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act) against respondent No. 1, for the repair of the premises in their possession and in the alternative they prayed that they may be allowed to repair the premises at the cost of respondent No. 1. In that petition, an amendment application was given by the petitioner and respondent No.2 to the following effect :

"4.A. That the respondent has intentionally put some flower vases which obstructed free and efficient flow of rainy water and also remove cement pointing and also damaged tiles as well as of floor on first floor which is in possession of the respondent. There is green growth which the respondent has intentionally not removed and has not maintained the floor. They have also not removed the Banyan Tree nor they have allowed to remove the Banyan tree which is on first floor. Some time the respondent used to obstruct the flow of water and due to obstructions waste water which caused damage to the wooden battons. So, wooden battons are to be replaced."

"4. The respondent be directed to remove green growth and flower vases from the first floor and also remove the banyan tree by weeding out and properly repair outrightly roof of the verandah as well as walls and also repair the floor of the walls EIGI and GIDI and floor shown in the site plan. The respondent be directed to replace 16 battons from the upper side with the proper restoration of top flooring i.e. six battons b3, b4 and b5 in span S1 and b1, b3 and b10 in span 2 of roof of room No.1 and 7 battons i.e. b1 to b5, b8 to b2 and 3 battons of room No.2 in span S2 and also laid the tiles in the smooth level with adjoining floor."

2. The learned Rent Controller rejected the application holding that it was a belated one and when the petitioner the respondent No.2 did not lead any evidence, and when it was about to be closed, the said application was made. It is further observed by the learned Rent Controller that mere filing of a report does not reveal new fact to the petitioner and respondent No.2 and that pleading cannot be allowed after obtaining a report as it is a matter of evidence.

3. After hearing learned counsel for the parties, I find that the stand taken by the learned Rent Controller is not correct. The proposed amendment is not in conflict with the petition filed u/s 12 of the Act. Counsel for respondent No.2 has cited before me the case of Chand Singh and Others Vs. Major Singh and Another, In that case the stand taken in the original written statement was that the defendants had purchased the suit land and the amendment was sought to the effect that they had inherited property by virtue of a will. The delay of five years in that case was not explained and the application for amendment of written statement was dismissed. The facts of the said case are apparently different from those of the present case. Therefore, the said ruling is not applicable.

4. In the case of Suraj Mal v. State of Haryana 1999(2) C.C.C. 549, it has been held by this Court that all amendments necessary to determine the questions in controversy have to be allowed and the duty of the Court is to determine the rights of the parties and not to punish them for the mistakes, if any. It has been further held therein that if the application filed is mala fide, withdraws the admissions made without explaining them, takes away the vested rights of the other party, the other party cannot be compensated in terms of costs or the claim has become time barred in time when he seeks an amendment, then in the peculiar facts of those cases, the amendment can be disallowed. However, it does not go against the petitioner and respondent No.2 of this case.

5. In the case of A.K. Gupta and Sons Vs. Damodar Valley Corporation, , it has been held that in the matter of allowing amendment of pleading, the general rule is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on the new cause of action is barred.

6. In the case of Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others, , it has been held that the correct principles were enunciated in the judgment in the case of Kisandas Rupchand v. Rachappa Vithoba 33 Bom 644.

The portion quoted in that case can be reproduced as under :-

"All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties... but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of . action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test, therefore, still remains the same: can the amendment be allowed without injustice to the other side, or can it not?"

7. In view of these authorities and the facts of the present case, amendment does not go against the pleading of petitioner and respondent No.2 and, therefore, I find no ground to reject this revision petition. This revision petition, on the contrary, as mentioned above deserves to be allowed.

8. As a result, this petition is allowed. The order of the learned Rent Controller is set aside. The amendment as prayed for by the petitioner and respondent No.2 is permitted.