

Arjun Chand vs Smt. Shama Joshi

PUNJAB AND HARYANA HIGH COURT

Rakesh Kumar Jain, J.

Arjun Chand - Petitioner,

Versus

Smt. Shama Joshi - Respondent.

CR No.5025 of 2010 (O&M)

27.05.2011.

East Punjab Urban Rent Restriction Act, 1949, Section 13 - application filed by the landlord for amendment of the eviction petition - Dismissed - Held, It is now well settled that the amendment of the pleadings can be allowed even after commencement of the trial where the Court comes to the conclusion that despite due diligence the party could not have raised the matter before the commencement of the trial, meaning thereby it can be raised at any time, but the amendment cannot be allowed to fill up the lacuna caused in the case of the party on account of admission made in the pleadings and from the statement recorded before the Court.

Held further

In the present case, the case set up by the landlord was that the demised premises is required for her son Ish Kumar who would start the business of Chemist in it. However, when her son Ish Kumar appeared in the witness box as AW4, he categorically stated that he is only a graduate in Arts and would not be able to open the Chemist shop as he does not possess the license for it. He also admitted that he has no proof of being an LIC agent. In order to overcome this hurdle, after the arguments were heard by the Rent Controller, the amendment has been sought in the eviction petition in the garb of subsequent events to aver that Ish Kumar would start the business of Ayurvedic Medicines in the demised premises for which obviously no license is required as alleged by learned counsel for the landlord. Insofar as the other amendment with regard to averment that neither the landlord nor her son is in occupation of any such non-residential building or has vacated any such building in the same urban area is concerned, it was in their knowledge from the beginning and is not such a subsequent event which could not have been discovered by them earlier despite due diligence.

Mr. Sandeep Khunger, Advocate, for the petitioner. Mr. O.P.Hoshiarpuri, Advocate, for the respondent.

Rakesh Kumar Jain, J.

This revision petition is directed against order dated 14.06.2010 passed by the learned Rent Controller, Ferozpur by which application filed by the landlord for amendment of the eviction petition has been allowed.

In brief, the landlord filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 [for short "the Act"] for eviction of the tenant from shop bearing No.4, situated at Chowk Arya Samaj, Ferozpur on the ground of non-payment of arrears of rent, change of user and bona fide personal necessity of her second son, namely, Ish Joshi. In the eviction petition, it was pleaded that "whereas second son of applicant, who is going to open Chemist Shop, was earlier doing the job as a Medical Representative in a reputed company". The eviction petition was filed on 21.11.2004, written statement was filed on 03.05.2005 and both the parties led their respective evidence including the additional evidence by the landlord. On 09.04.2009, they advanced their final arguments and the case was adjourned to 16.04.2009 when application for amendment was filed by the landlord. The landlord, in *** order to aver that the demised premises is required by Ish Joshi, has now pleaded that "whereas Ish Joshi, the second son of the applicant who is going to open Ayurvedic Medicine Shop and Office of agent of Life Insurance Corporation of India, was earlier doing a job of medical representative in a reputed company" and neither the landlord nor her son Ish Kumar is in occupation of any other non-residential building or has vacated any such building in the urban area concerned after the commencement of the Act.

The learned Rent Controller allowed the application on the ground that it is a subsequent event, whereas learned counsel for the petitioner has submitted that when Ish Kumar appeared as AW4, he had admitted in his cross-examination that "I am a graduate in Arts. I passed my B.A. in the year 1999/2000, I am not to open the Chemist shop. I cannot conduct a Chemist business as I have no license to this regard. I have seen the judicial file today in the Court and there is no proof of being my LIC agent in this file". He further submitted that the application for amendment was filed even after the arguments were heard by the learned Rent Controller with change of counsel, in order to fill up the lacuna which has been left in the case on account of the admission of Ish Joshi in his cross-examination. It is submitted that even if the law of amendment is liberal, but it cannot be stretched too far to allow the party to withdraw its admission in order to fill in the patches of the weakness of his case which is prejudicial to the case of the other party.

On the other hand, learned counsel for the landlord has submitted that the subsequent events can always be allowed to be inserted in the pleadings by way of amendment. The need of the landlord has not been changed, rather the nature of the business has been changed. He also submitted that the application for amendment, which goes to the root of the case, can always be allowed even at the later stage.

It is now well settled that the amendment of the pleadings can be allowed even after commencement of the trial where the Court comes to the conclusion that despite due diligence the party could not have raised the matter before the commencement of the trial, meaning thereby it can be raised at any time, but the amendment cannot be allowed to fill

up the lacuna caused in the case of the party on account of admission made in the pleadings and from the statement recorded before the Court. In the present case, the case set up by the landlord was that the demised premises is required for her son Ish Kumar who would start the business of Chemist in it. However, when her son Ish Kumar appeared in the witness box as AW4, he categorically stated that he is only a graduate in Arts and would not be able to open the Chemist shop as he does not possess the license for it. He also admitted that he has no proof of being an LIC agent. In order to overcome this hurdle, after the arguments were heard by the Rent Controller, the amendment has been sought in the eviction petition in the garb of subsequent events to aver that Ish Kumar would start the business of Ayurvedic Medicines in the demised premises for which obviously no license is required as alleged by learned counsel for the landlord. Insofar as the other amendment with regard to averment that neither the landlord nor her son is in occupation of any such non-residential building or has vacated any such building in the same urban area is concerned, it was in their knowledge from the beginning and is not such a subsequent event which could not have been discovered by them earlier despite due diligence.

In view of the above discussion, the present revision petition is found to be meritorious and as such, the same is hereby allowed and the impugned order is set aside.