Manohar Lal v. Jai Parkash

PUNJAB AND HARYANA HIGH COURT

G.S.Sandhawalia, J.

Manohar Lal – Petitioner,

Versus

Jai Parkash – Respondent.

CR No.7797 of 2014 (O&M)

19.04.2017

CPC, 1908 O. 6 R. 17 – Application for amendment of written statement by tenant at the stage when the parties had closed their evidence allowed – It is settled principle that under Order 6 Rule 17 CPC, amendment is to be allowed where it is necessary for the purpose of determining the real question in controversy between the parties – Dispute qua what is the area of the tenanted premises and the eviction has to be ordered from which portion – The rules of procedures are hand-maids of justice and technicalities are not to stand in the way and the Courts are to adjudicate on the merits of the dispute – If there is an error in the pleadings, as such, and subsequently also, by filing of the affidavit by way of evidence, this Court cannot close its eyes of the facts that on an earlier point of time, the area of the tenanted premises already stands admitted as to what was the extent of the tenanted premises.

Held,

The landlord would be gravely prejudiced at the end of the day if from 200 Sq.ft. of the tenanted premises, ejectment is not ordered. Then the objection in principal, would be raised that there can be no partial eviction and therefore, the purpose of filing the eviction application, as such, would be subverted, even if the landlord succeeds in getting the order of eviction. Therefore, the amendment which is sought is a very valid and required amendment.

Mr.Vikas Bahl, Sr.Advocate, with Mr.Divanshu Jain, Advocate Mr.Akshay Rawal, Advocate and Ms.Japneet Kaur, Advocate, for the petitioner.

Mr.Sunil Chadha, Sr. Advocate with Mr.Chetan bansal, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral)

The present revision petition is directed against the order dated 17.09.2014, whereby the Rent Controller, Chandigarh has declined the application seeking amendment, filed by the petitioner-landlord, regarding the area of the premises, which was mentioned in the eviction petition, from 170 Sq.ft. to 370 Sq.ft.

2. The reasoning given by the Rent Controller is based on the ground that it was at a belated stage, as such and it could not be held to be a typographical mistake and the case was fixed for rebuttal evidence/ arguments. The landlord had appeared in the witness-box and also submitted his affidavit and at that stage, it was not justified.

3. Learned Senior Counsel for the petitioner has submitted that in an earlier round of litigation, the area had been adjudicated and therefore, the amendment application, as such, which was moved, was justified and that technicalities should not come in the way to deprive the landlord of eviction from the tenanted premises. It is submitted that the other side can be duly compensated with costs.

4. Learned Senior Counsel, Mr.Sunil Chadha, for the respondent, on the other hand, submits that at several stages, the area had been mentioned and therefore, it was not a typographical error, as such and once a stand had been taken that the area was 170 Sq.ft. only, vide the amendment, the area of the tenanted premises could not be increased and benefit, as such, was not liable to be granted as the tenant would be gravely prejudiced. There was no due diligence pleaded, as such and therefore, reliance was placed upon ***Ajendraprasadji N. Pande & v. Swami Keshavprakeshdasji N. 2005 PLRonline 0003, 2006 (12) SCC 1*** to justify the order impugned. Reliance is also placed upon ***J.Samuel v. Gattu Mahesh & others 2012 (2) SCC 300***, to submit that it was not a typographical mistake, as such.

5. It is pertinent to mention that it is a case where there is no dispute that in an earlier round of litigation wayback in 1979, the issue of the same premises had come up in question between the same parties. The earlier ejectment petition had been dismissed on 22.02.1979. The appeal had been allowed by the Appellate Authority on 11.10.1979 and a Civil Revision came to be filed by the respondent-tenant, bearing CR- 2606-1979, which had been decided on 19.08.1987 (Annexure P5), wherein it has been specifically mentioned that the premises were one room in front of property No. 44 Grain Market, Chandigarh, which were measuring 22’X17′ towards property No. 45 Grain Market, Chandigarh. The revision petition of the respondent-tenants was allowed and the appellate order was set aside, whereby eviction had been ordered.

6. In the present eviction petition filed on 25.01.2010, eviction has been sought from the front portion of about 170 Sq.ft of Chakki Site No.44 adjacent to Chakki Site No.45, Grain Market, Sector 26, Chandigarh. It is no doubt correct that the measurements of 170 Sq.ft. have been mentioned at three places in the body of the petition, apart from the one in the heading. However, what would come to the rescue of the petitioner-landlord is that the

tenant himself has taken a plea that there was an earlier litigation regarding the demised tenanted premises in which the landlord had lost his case before this Court and also before the Apex Court and that was the defence, as such, of the tenant. It has been specifically mentioned in the written statement that the property had been leased out by Ram Swaroop, who is none else but the father of the landlord and the tenancy was with Hari Krishan, who is also the father of the present tenant/respondent. As noticed, in the earlier round of litigation, the area was the same as what is now sought by virtue of the amendment application which was filed on 12.08.2014 (Annexure P3), at a very belated state. It is not disputed that the issues were framed on 18.11.2010 and the landlord had concluded his evidence on 05.06.2012.

7. An application under Order 6 Rule 17 CPC had been filed on 18.12.2012 of the written statement by the tenant which was allowed on 20.01.2014. Thereafter, the tenant closed his evidence on 12.07.2014 and eventually, on 12.08.2014, the application under Order 6 Rule 17 came to be filed. The fact remains that even in the application for amendment also, the necessary facts were never brought forth before the Rent Controller that on an earlier occasion also, the area of the tenanted premises had been adjudicated upon, which the tenant himself admits and therefore, the Rent Controller did not have the benefit of this argument which was not raised before him.

8. It is settled principle that under Order 6 Rule 17 CPC, amendment is to be allowed where it is necessary for the purpose of determining the real question in controversy between the parties. The dispute herein is as to what is the area of the tenanted premises and the eviction has to be ordered from which portion. The landlord would be gravely prejudiced at the end of the day if from 200 Sq.ft. of the tenanted premises, ejectment is not ordered. Then the objection in principal, would be raised that there can be no partial eviction and therefore, the purpose of filing the eviction application, as such, would be subverted, even if the landlord succeeds in getting the order of eviction. Therefore, the amendment which is sought is a very valid and required amendment. The rules of procedures are hand-maids of justice and technicalities are not to stand in the way and the Courts are to adjudicate on the merits of the dispute. If there is an error in the pleadings, as such, and subsequently also, by filing of the affidavit by way of evidence, this Court cannot close its eyes of the facts that on an earlier point of time, the area of the tenanted premises already stands admitted as to what was the extent of the tenanted premises.

9. Mr.Bahl is well justified to place reliance upon the judgment of the Three Judges Bench of the Apex Court in ***Sajjan Kumar v. Ram Kishan 2005 (13) SCC 89*** wherein amendment was allowed of the plaint where the correct description of the suit premises was allowed on the ground that even if it was at a belated stage. It was noticed in the said case that in order to avoid complications, the description of the suit premises needed to be corrected. Similar are the facts herein and by not correcting the error would only lead to failure of justice between the parties. It is also pertinent to notice that by virtue of the amendment, even if the proceedings are delayed, the same would be to the detriment of the landlord and the tenant, as such, cannot object to this aspect.

10. Reliance upon **J.Samuel** (supra) by the respondent, that it was not a typographical

error, as such, would also be without any basis. In the said case, there was no mention of the earlier litigation, which is a very relevant factor, which this Court is to keep in consideration.

11. Similarly, in **Ajendraprasadji N. Pande** (supra), the Apex Court had upheld the order dismissing the application for amendment by noting that it would introduce a totally new and inconsistent case and would cause serious prejudice to the plaintiffs.

12. Accordingly, in view of the above discussion, the present revision petition is allowed, the order dated 17.09.2014 is set aside and the amendment which is sought, giving the correct description of the area, is allowed, subject to payment of Rs.30,000/- as costs, to be deposited with the State Legal Services Authority, Union Territory Chandigarh.