

## **SOM NATH v. GUPTA RAM KHATRI,(2022-1)205 PLR 465**

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice H.S. Madaan.

SOM NATH – Petitioner,

Versus

GUPTA RAM KHATRI – Respondent.

CR-1807-2021(O&M)

**Civil Procedure Code 1908 (V of 1908) Order 6 Rule 17 - Amendment of written statement - A pleading is required to state material facts and not evidence by which they are to be proved - In the written statement filed by respondent-tenant, he has already taken up a plea that petitioner/landlord has got several properties at Ludhiana in the localities Prem Nagar, Islamganj, Ghumar Mandi and Dugri etc. - The petitioner/landlord has already got his statement recorded and he has been cross-examined on behalf of the respondent/tenant with regard to his other properties - The respondent would get an opportunity to produce evidence in respect of the other properties said to be owned by the petitioner - Thus amendment of the written statement giving details of these properties is not required - East Punjab Urban Rent Restriction Act 1949 (III of 1949) Section 13.**

Cases referred to:-

1. 2020 PLRonline 5013, *Pandit Malhari Mahale v. Monika Pandit Mahale*.
2. (2005) 2 SCC 476, *Adil Jamshed Frenchment(D) by LRs v. Sardar Dastur Schools Trust*.
3. 2017(8) SCC 567, *State of Bihar v. Modern Tent House*.
4. (2001) 8 SCC 97, *M/s Estralla Rubber v. Dass Estate (Pvt.) Ltd*.
5. AIR (2007)5 SCC 602, *Usha Balashahed Swami v. Kiran Appaso Swami*
6. (2020-1)197 PLR 59, *Bhupinder Singh v. Pritpal Singh*.
7. (2020-1)197 PLR 591, *Satwinder Kaur v. Gurdeep Singh*.

*Mr.Vaibhav Sehgal*, for the petitioner.

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**H.S. Madaan, J.** - (8<sup>th</sup> October, 2021) - This revision petition is directed against the order dated 3.8.2021 passed by Rent Controller, Ludhiana vide which he had dismissed an application under Order 6 Rule 17 [CPC](#) filed by respondent-tenant Som Nath for amendment of the written statement.

2. Briefly stated, the facts of the case are that petitioner/landlord Gupta Ram Khatri had brought a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 against respondent - tenant Som Nath seeking ejection of the latter from a shop No.19 situated at Faridkot House, Chaura Bazar, District Ludhiana on the ground of personal necessity. On getting notice, the respondent-tenant appeared and filed written reply contesting the petition raising various legal pleas further contending that the petitioner - landlord had suppressed the material facts from this Court and the ground of personal necessity put forward by him is misconceived since he had got several properties situated in the localities at Prem Nagar, Islam Ganj, Ludhiana as well as a property at Ghumar Mandi and one property at Dugri Road apart from other properties regarding which details would be submitted later on and his two sons are settled in Canada, whereas third son is employed in bank.

3. The Rent Controller, Ludhiana had framed issues and thereafter petitioner-landlord was asked to produce evidence, which he did and then the case was fixed for evidence of respondent, during the course of which respondent moved an application under Order 6 Rule 17 read with Section 151 CPC for amendment of the written statement contending that in the written statement originally filed, details of other properties owned by the petitioner could not be given and it was stated that the same would be furnished later on and now the respondent has come to know that the petitioner also owns other properties detailed below:

- (i) Property No.308, Zone-B, Prem Nagar, Ludhiana.
- (ii) Property No.702/A, Zone-B, Islamganj, Ludhiana.
- (iii) Property No.904-I, Zone-D, B.R.S. Nagar, Ludhiana.
- (iv) Property No.B-14/701, Zone-B, Islamganj, Ludhiana.
- (v) Property No.2404 HIG, Zone-D, Urban Estate Phase-1, 2 & 3, Dugri, Ludhiana

4. The respondent-tenant wants to take preliminary objection No.4 stating that the petitioner does not require the shop in dispute as his personal necessity as he owns several properties giving details of such properties as mentioned above.

5. The application was resisted by petitioner/landlord.

6. Vide the impugned order the application was dismissed. The operative part of the impugned order for ready reference is being reproduced as under:

5. At the outset, it is necessary to point out that after the amendment of the CPC vide Amending Act of 1999, the amendment in the pleadings after framing of issues and

commencement of trial can only be allowed subject to the condition if the amendment sought to be made could not have been raised despite due diligence before commencement of trial. Now it is on this premise that the present application filed by the respondent is to be evaluated. The respondent had filed the written statement in this case on 18.8.2017 in which it was specifically mentioned that the respondent would give details of the other property owned by the petitioner. Thereafter, the issues were framed and the petitioner was cross-examined by the counsel for the respondent and specific questions were put to the petitioner regarding his properties at Islamganj, Ghumar Mandi and Ram Nagar. This cross-examination was conducted on 9.9.2019. The present application for amendment has been moved on 8.1.2020. Since there is a specific plea at the time of filing of the written statement taken by the defendant that there are other properties of the petitioner which would be disclosed later on, so it cannot be said that this fact was not within the knowledge of the applicant and could not have been specifically raised before commencement of trial. Laxity on the part of the respondent does not make out a ground to allow the amendment at this stage when the evidence of the petitioner is complete and case is fixed for respondent evidence. So, the condition provided under Order 6 Rule 17 of CPC that no amendment shall be allowed after the trial has commenced until the Courts come to the conclusion that inspite due diligence the matter could not be raised earlier is not satisfied in this case. Moreover, in cross-examination these facts have put to the petitioner and even thereafter, the application was filed the present applicant three months after the cross-examination. So the present application is devoid of merits and has been filed just to delay the matter. In this case, reliance can be placed upon judgment of the Hon'ble Supreme Court of India in case titled as "*Pandit Malhari Mahale v. Monika Pandit Mahale & Ors.*" <sup>1</sup> 2020 PLRonline 5013, Civil Appeal No.189 of 2020 decided on 10.01.2020" in which it was held that without finding that the party could not have raised the matter before commencement of trial with due diligence, the application for amendment cannot be allowed. Same is the situation in the present case as already discussed above. The same is accordingly dismissed.

7. Such order left the respondent/tenant aggrieved and he has approached this Court by way of filing the present civil revision petition.

8. I have heard learned counsel for the revisionist besides going through the record.

9. Learned counsel for the revisionist has contended that the proposed amendment is necessary for just decision of the case and at the time of filing the written statement, the revisionist was not aware of the other properties owned by the petitioner/landlord and therefore, could not give the details thereof. Although it was mentioned that details would be given later on and now since the respondent/revisionist has come to know about the details, he wants to mention those in the written statement and the Rent Controller, Ludhiana has wrongly declined that request of the revisionist. In support of his contentions, he has referred to various judgments i.e. *Adil Jamshed Frenchment(D) by LRs v. Sardar Dastur Schools Trust & Ors.*, <sup>2</sup> (2005) 2 SCC 476, *State of Bihar and Ors. v. Modern Tent House & Anr.*, <sup>3</sup> 2017(8) SCC 567, *M/s Estralla Rubber v. Dass Estate (Pvt.) Ltd.*, <sup>4</sup> (2001) 8 SCC 97, *Usha Balashahed Swami and Ors. v. Kiran Appaso Swami & Ors.*, <sup>5</sup> AIR (2007)5 SCC 602, *Bhupinder Singh v. Pritpal Singh and another*, <sup>6</sup> (2020-1)197 PLR 9 and *Satwinder Kaur*

*v. Gurdeep Singh*, <sup>7</sup> (2020-1)197 PLR 59 .

10. While analysing the submissions made by learned counsel for the revisionist, it is to be kept in mind that under Order 6 Rule 2 CPC, a pleading is required to state material facts and not evidence by which they are to be proved. In the written statement filed by respondent - tenant, he has already taken up a plea that petitioner/landlord has got several properties at Ludhiana in the localities Prem Nagar, Islamganj, Ghumar Mandi and Dugri etc. The petitioner/landlord has already got his statement recorded and he has been cross-examined on behalf of the respondent/tenant with regard to his other properties. The respondent would get an opportunity to produce evidence in respect of the other properties said to be owned by the petitioner. Thus amendment of the written statement giving details of these properties is not required. The trial has already started with petitioner/landlord having completed his evidence. Now it is turn of the respondent to produce evidence in support of his version. Allowing the application at this stage would put the clock back resulting in de novo trial, which is uncalled for.

11. As regards the authorities referred to by learned counsel for the revisionist, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

12. I find that the impugned order passed by the Court below is detailed and well reasoned, which does not suffer from any illegality or infirmity and no interference therewith is called for while exercising jurisdiction under Article 227 of the Constitution of India.

Thus, finding no merit in the civil revision petition, the same stands dismissed.

*R.M.S.*

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*Petition dismissed.*