



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-6316-2019(O&M)

Date of Decision: May 08, 2025

Mohd. Sabar

...Petitioner

Versus

Babu Khan

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.K.R.Dhawan, Advocates
for the petitioner.

Mr.Mahipal S. Yadav, Advocate
for the respondent.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 10.09.2019 passed by learned Rent Controller, whereby, an application under Order 6 Rule 17 CPC, for amendment of the reply filed by the respondent-tenant was allowed.

The essential facts, to be noticed, are as follows:-

That, petitioner-Mohd. Sabar had filed a petition for seeking eviction of respondent-Babu Khan, from the shop, as detailed in the headnote of the petition, copy whereof is Annexure P-1, on the grounds of arrears of rent and personal necessity. The issues were framed in the present case and thereupon, the evidence was led by both the parties. When the case was at



the stage of arguments, an application for amendment of the reply was filed by the respondent, on the ground that on the northern and eastern side of the shop in dispute, there is commercial property of the petitioner-landlord and he has shown the said property to be his house, whereas, the said property is totally commercial. Besides the same, also it was asserted that during the pendency of the eviction petition, the petitioner raised construction of multi-storey shopping complex, in the said commercial property. In view of the subsequent events and changed circumstances, the amendment was sought, to make addition of paragraph No.4B, which in verbatim, as pleaded in the application, is herein reproduced:-

“That paragraph no.4)B of the petition as stated is wrong and denied. It is wrong and denied that the petitioner requires the shop in dispute for his personal necessity. The petitioner has no personal necessity of the shop in dispute. The petitioner is already doing business separately and he is earning sufficient income. The petitioner is in possession of sufficient commercial property at Malerkotla for his business without any hindrance. The petitioner has not disclosed the commercial properties within the municipal limits of Malerkotla, which are in possession or have come in possession of the petitioner. The petitioner has concealed true and material facts from the Hon'ble Court. On the northern and eastern side of the shop in dispute, commercial property of the petitioner stands. The petitioner shown the said property to be his house, whereas the said property is totally commercial. During the pendency of the present petition, the petitioner raised construction of multi-storey shopping complex in the said commercial property. Photographs showing the actual and factual position of the



spot are attached herewith for kind perusal of the Hon'ble Court. Evidence shall be given.”

It was asserted that the proposed amendment will not prejudice the petitioner, in any manner. It will not change the nature of the petition. Rather, it will help the Court to decide the rent petition more judiciously.

In reply, the petitioner-landlord raised preliminary objections, thereby, disputing the maintainability of the application as well as asserted about the respondent to be filing false and frivolous applications, one after the another, with the purpose to delay the proceedings of the rent petition. Also, it was asserted that previously, the respondent-tenant filed an application for transfer of the rent petition and therefore, he also filed application for recall of Mohd. Sabar, by alleging that ‘certain other material questions need to be asked from the petitioner qua the said facts’ and the application was dismissed. Further, it was asserted that the cross-examination of the respondent was completed on 26.02.2019 and thereafter, the case was fixed for arguments for 20.03.2019 and thereafter, the respondents failed to address final arguments of the case, even after availing 10 opportunities and with the sole purpose to delay the decision, the present application has been filed.

On merits, it was further asserted that the respondent had duly cross-examined Mohd. Sabar-landlord, qua the alleged shed and the cross-examination was conducted on 29.08.2018 as well as 07.09.2018. Further, it was asserted that respondent had also examined various other witnesses and RW-1 Naresh Kumar had also proved the site plan Ex.R1 and

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photographs of the shed of the petitioner. In these circumstances, the respondents cannot be allowed to amend the reply, at this stage. As such, a prayer was made for dismissal of the application.

After hearing counsel for the parties and on appraisal of the material, coming forth, learned Rent Controller vide impugned order dated 10.09.2019, had allowed the application, subject to payment of Rs.2000/- as costs. Therein, it was asserted that the photographs coming on record of alleged commercial property and the question whether or not, this alleged commercial property belongs to the petition, is a matter of evidence. Further, it was observed by learned Rent Controller that the petitioner-landlord shall be given an opportunity to cross-examine the witness produced by the respondent. Hence, no prejudice would be caused to the petitioner-landlord, if the respondent-tenant is allowed to amend his written reply to the main application. Considering the same, it was so allowed.

Being aggrieved, the petitioner-landlord has filed the present revision petition.

In pursuance of the notice, learned counsel for the respondent made appearance.

Learned counsel for the parties heard.

While making reference to the reply, already filed to the application for amendment, learned counsel for the petitioner has assiduously submitted that the case had reached its fag end, when the said application was filed. In fact, it is submitted that even after recording of the evidence of the petitioner as well as the respondent, the case was fixed for

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final arguments and after availing about 10 opportunities, the said application was filed. More so, it is submitted that the proposed amendment sought, with regard to the nature of the adjoining property, as well as, about the commercial property/building having raised, was already in the knowledge of the respondent-tenant. In this regard, learned counsel has made reference to Annexure P-7, which is the statement of Mohd. Sabar, got recorded before Rent Controller, wherein, it is submitted that cross-examination, relating to the assertions now sought to be made by way of proposed amendment, had already been conducted.

On the other hand, learned counsel for the respondent-tenant submits that the respondent, only wanted to elaborate the plea, which had already been taken and therefore, the amendment should be allowed, which shall not, in any case, cause prejudice to the petitioner.

It is not in dispute that in response to the eviction petition, reply was filed by the respondent, wherein, specific reference was made to the ground of personal necessity. In the case in hand, as culled from the paperbook, after framing of the issues, the evidence was led by both the parties. The cross-examination of the respondent was concluded on 26.02.2019. Thereafter, the case was fixed for arguments on 20.03.2019, but the arguments were not addressed, even after availing almost 10 opportunities and only thereafter, at this stage, the application was filed.

So far as, the law with respect to amendment of the pleadings is concerned, the thumb rule is requirement of the proposed amendment for proper adjudication of the issue in hand. However, proviso to Order 6 Rule

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17 CPC, specifically provides that no application for amendment shall be allowed, after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter, before the commencement of the trial. In the case in hand, as observed aforesaid, the trial had commenced and rather, it is at the fag end.

Learned counsel for the respondent has not been able to show that in spite of due diligence, the respondent could not raise the pleas before the commencement of the trial, which are now sought to be raised, by virtue of amendment of the reply. In fact, in the application itself, it is asserted that the property on the northern and southern side of the shop in dispute, is commercial property of the petitioner. Even if it be so, this ought to have been in the knowledge of the respondent-tenant much earlier and in the minimum, at the time of filing of the reply to the eviction petition.

Though, also further it is stated that during the pendency, the petitioner-landlord had raised construction of multi-storey shopping complex, in the said commercial property, but however, this is a vague assertion made. Nothing as such, has been stated as to when and how it was so raised.

Keeping in view the factual position and also taking into consideration the stage, at which, this application for amendment was filed, it is amply evident that the proposed amendment application is not bonafide and is only a malicious attempt, on the part of the respondent-tenant, to prolong the lis.

Considering the aforesaid, the impugned order warrants



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interference. Hence, the impugned order is set aside and consequently, the application filed by the respondent-tenant for amendment of reply, stands dismissed.

In view of the aforesaid observations, the revision petition is hereby allowed.

May 08, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No