



CR-6215-2024(O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-6215-2024(O&M)

Date of decision : 04.02.2025

Parveen @ Parveen Goyal and another

... Petitioners

Versus

Jai Bhagwan Mittal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Arihant Jain, Advocate and
Mr.Kanish Jindal, Advocate
for the petitioners.

VIKAS BAHL, J.(ORAL)

1. Challenge in the present revision petition is to the order dated 22.08.2024 vide which the application for amendment filed by the petitioners (LRs of tenant / alleged sub tenant) has been dismissed.
2. Learned counsel for the petitioners has submitted the amendment, which the petitioners are seeking, is only to elaborate the defence taken in the written statement and the same would neither alter the defence nor introduce a new defence. It is submitted that in the said circumstances, the application for amendment of the written statement should have been allowed. In support of his arguments, learned counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court of India passed in the case of "***State of Bihar & Ors. vs. Modern Tent***



House & Anr.” reported as **2017(8) SCC 567**.

3. This Court has heard the learned counsel for the petitioners and has perused the paper book and finds that the impugned order is in accordance with law and deserves to be upheld and the present revision petition deserves to be dismissed for the reasons stated hereinafter.

4. It is not in dispute that respondent no.1-Jai Bhagwan Mittal had filed a petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 for ejection of the petitioners along with that of Raj Kumar and Deepak, both sons of Hari Ram, from the shop in question. The said eviction petition was filed on 16.08.2016. The plea raised in the said petition with respect to subletting was detailed in paragraph 4(b). Paragraph 4(b) of the said petition is reproduced hereinbelow:-

“4. That the respondents are liable to be evicted from the said Shop on the following grounds:

xxx xxx xxx

b) That the respondents No. 1 to 3 have sublet the shop in dispute to respondent No. 4 without consent of the petitioner. The respondent No. 1 is doing his own business of General Merchant in Shiv Colony, Jind. Respondent No. 2 is also doing his own business in Shiv Colony, Jind. The respondent No. 3 is doing his business in Chori Gah, Rohtak Road, Jind. The respondent No. 4 Sub Tenant is in exclusive possession as sub tenant under the respondent No. 1 to 3 and doing his business.”

5. Thus, it was the case set up by present respondent no.1 that the present petitioner no.1 (respondent no.3 before the Rent Controller), who was the son of Hari Ram, was doing business in Chori Gah, Rohtak Road,



Jind and petitioner no.2 (respondent no.4 before the Rent Controller) was sub-tenant, who was in exclusive possession as sub-tenant under respondents no.1 to 3 (before the Rent Controller) and was doing his business in the premises in question.

6. On 13.02.2017, a joint written statement by all the respondents (tenants/ alleged sub-tenants) was filed. Paragraph 4 (b), where the plea of sub-tenancy was opposed, is reproduced hereinbelow:-

“(b) That sub para-No.4(b) of the petition is absolutely wrong and denied. It is wrong and denied to allege that respondents No.1 to 3 have sublet the shop in dispute to respondent No.4 without consent of the petitioner. It is also wrong and denied to allege that respondent No. 1 is doing his own business in Shiv colony, Jind. It is further wrong and denied to allege that respondent No.2 is also doing his own business in shiv colony, Jinx [sic.] or that respondent No.3 is doing his business in Chauri Gali Rohtak Road Jind. It is specifically wrong and denied to allege that the respondent No.4 is sub tenant and is in exclusive possession as sub tenant under the respondent No. 1 to 3 and doing his business. Respondent No.4 is not in possession of the shop in dispute in any capacity and he has no concern and connection with the shop in dispute nor he is sublettee of respondent No.1 to 3 and he is not carrying on any business sin [sic.] the shop in dispute. The respondent No.2 Deepak son of Hari Ram is carrying on and running his business of sale purchase of utensils in the shop in dispute under the name and style of Janta Bartan Store, Jind and is in exclusive possession of the shop in dispute. The respondent No.4 is carrying on his separate business in a shop bearing municipal number 456/9 situated in Shastri Market, Dayal Bagh, Jind which he has taken on rent from Shiva Gupta now



owned by Kamlesh Rani and the respondent No 4 has no concern or connection with the shop in dispute and business carrying on by respondent No.2 in the shop in dispute. Respondents No.1 to 3 are tenants of the shop in dispute and respondent No.2 is carrying on his business in it.”

A perusal of the above pleadings would show that it was the stand of the present petitioners along with that of Raj Kumar and Deepak that the present petitioner no.2 (respondent no.4 in the eviction petition) was not in possession of the shop in dispute in any capacity and had no concern with the same. It was further the case of the present petitioners that Deepak, son of Hari Ram, was carrying on and running his business of sale purchase of utensils in the shop in dispute.

7. It is not disputed that on the basis of the said pleadings, issues were framed on 16.05.2017. Respondent no.1 was cross-examined by the counsel for the petitioners on 21.03.2023 and thereafter the evidence of respondent no.1-landlord was completed on 31.03.2023. Thereafter, the case was fixed for 17.04.2023 for the evidence of present petitioners on which date no RW was produced by the petitioners and the case was adjourned to 02.05.2023. It is at that stage, after much delay and after the trial had commenced, an application dated 02.05.2023 was filed for amendment of the written statement. The following amendment was sought in the said amendment application:-

“i. That in para no. 4 (b) of W/S in place of " the respondent no.2 Deepak S/o Hari Ram is carrying on running his business of Sale & Purchase of utensil in the shop in dispute under the name and style of Janta Bartan Store, Jind" the following



words are to be substituted /replaced. "after filing of written statement, the respondent no.2 Deepak S/o Hari Ram now about a year ago has left Jind and has settled at Gurgaon and in his place respondent no. 3 Parveen is carrying on and running his business of sale & Purchase of utensil in the shop in dispute under the name & style of Janta Bartan Store, Jind"

*ii. That in para no. 4 (b) of the W/S in place of "the respondent no. 4 is carrying on his separate business in a shop bearing municipal no. 456/9 situated in Shastri Market Dayal Bag, Jind which he has taken on rent from Shiva Dutta now owned by Kamlesh Rani" the following words are to be substituted/ replaced. "It is further submitted that the shop no. 456/9 situated in Shastri market, Dayal Bag, Jind which was occupied by respondent no.4 as tenant, was vacated by him as he was ejected in a rent petition of ejectment filed by Kamlesh Rani and appeal decided on 16.10.2017 and he left the possession of that shop in January, 2018 on the basis of order of Rent Controller, Jind and **now he is leading the life of a retire person and is carrying on no business in any shop.**"*

8. A detailed reply was filed to the said application and in the said reply, it was stated that issues were already framed and thus, the application was not maintainable in law and the application had been filed with malafide intention only to delay the proceedings.

9. The Rent Controller vide order dated 22.08.2024 had dismissed the said application for amendment.

10. The petitioners had earlier filed a civil revision petition no.5323 of 2024, which was dismissed as withdrawn vide order dated 03.10.2024 with liberty to file afresh on the same cause of action under the



relevant provisions of The Haryana Urban (Control of Rent and Eviction) Act, 1973. Thereafter, the present petition had been filed, which came up for hearing on 28.10.2024 and on which date, an adjournment had been sought by learned counsel for the petitioners and thereafter on 05.12.2024, a written request for adjournment was made and in view of the same, case was adjourned to 04.02.2025. Thus, sufficient time has lapsed after passing of the order dated 22.08.2024.

11. From the pleadings of the parties before the Rent Controller, it is apparent that the primary issue for consideration with respect to the ground of subletting is as to whether the petitioner no. 2 / respondent no.4 (before the Rent Controller) has occupied the premises in question without the consent of the landlord or not and is a sub-tenant without consent or not. It is the specific case of respondent no.1-landlord that the present petitioner no.2 is the sub-tenant, who is in exclusive possession of the premises in question. In the written statement filed on 13.02.2017, it is the case of the present petitioners, including petitioner no.2, that he is not in possession of the shop in dispute in any capacity. Thus, the issue which is required to be decided by the Rent Controller is as to whether on the date of the eviction petition i.e., 16.08.2016, the present petitioner no.2 was in occupation of the premises or not. In the application which has been filed on 02.05.2023, it has been stated that he is now leading a retired life. In the opinion of this Court, the said subsequent event for which amendment is sought is not relevant for the purpose of consideration in the present case. The second issue sought to be raised in the amendment is to the effect that Deepak had



thereafter left Jind about a year ago from the date of filing of application for amendment and had settled in Gurgaon and now Parveen is carrying on his business. The said averments, apart from the fact that they have been raised without due diligence, are also not necessary for adjudicating the ground of sub-letting, as the relevant date for considering the sub-letting is the date of filing of the rent petition and thus, the said amendment sought is also not necessary for the proper adjudication of the case.

12. In case the present revision petition is entertained and the amendment sought is now allowed, at this stage, then the same would result in delaying the proceedings, inasmuch as, the rent petition had been filed in the year 2016 and the written statement had also been filed in the year 2017 and the respondent no.1-landlord has led his entire evidence and thus, allowing the amendment would cause serious prejudice to the rights of respondent no.1-landlord as, in addition to making amendment in the pleadings / eviction petition, the landlord would also then require to lead further evidence.

13. The Rent Controller had rightly observed that the amendment sought is without due diligence and is much delayed. The observation of the Rent Controller, to the effect that respondent no.1 was cross-examined by the petitioners on 21.03.2023, has not been disputed before this Court. The fact that on 31.03.2023, the evidence of respondent no.1 was closed and on 17.04.2023, it was the defence evidence which had to start and the matter was adjourned to 02.05.2023 as no RW was produced on behalf of the petitioners has also not been disputed. It was noticed by the Rent Controller



that in the application under Order 6 Rule 17 CPC dated 02.05.2023, it had been stated that the said Deepak had about a year ago left Jind and thus, the time when he left Jind as per the said averment was approximately in May 2022, whereas the counsel for the present petitioners, while cross-examining PW-1 (on 21.03.2023), had given specific suggestions that respondents no.1 to 3 (before the Rent Controller) i.e., Raj Kumar, **Deepak** and Parveen were in possession of the rented premises and thus, the cross-examination conducted by the counsel for the petitioners showed that the grounds taken in the application did not tally with the cross-examination of PW-1. Moreover, at the time of cross-examining PW-1, no such defence that the said Deepak had moved one year prior i.e., in year 2022 was put to the said PW-1. It was observed that the same clearly showed that the present petitioners were trying only to delay the proceedings which were instituted in the year 2016, by bringing out unnecessary new facts.

14. In the facts and circumstances of the present case, since the amendments sought are not necessary for the adjudication of the present case and also have not been sought with due diligence, thus, this Court is of the opinion that entertaining the present revision petition as well as allowing the amendment would cause irreparable loss to the respondent no.1-landlord and the proceedings for eviction, filed in the year 2016, would be endlessly delayed. Respondent no.1-landlord, other than the ground of sub-letting, has also raised the plea of personal necessity and thus, the rent petition is required to be decided expeditiously. This Court is also of the opinion that the present application for amendment has been



filed only to delay the proceedings. The judgment of the Hon'ble Supreme Court in the case of *State of Bihar & Ors. (supra)* relied upon by the learned counsel for the petitioners would not further the case of the petitioners in any manner as in the said case, it was observed by the Hon'ble Supreme Court that by virtue of allowing the amendment, no prejudice would be caused to the plaintiffs therein, however, this Court is of the opinion that in the present case, serious prejudice would be caused to respondent no.1-landlord in case the amendment is allowed.

15. Keeping in view the abovesaid facts and circumstances, the impugned order dated 22.08.2024 is upheld and the present revision petition is dismissed.

(VIKAS BAHL)
JUDGE

February 04, 2025.

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No