

(2014) 05 P&H CK 0702

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Revision No. 3581 of 2013 (OandM)

Sukhwinder Singh

APPELLANT

Vs

Darshan Lal

RESPONDENT

Date of Decision: May 21, 2014**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17
- Constitution of India, 1950 - Article 227
- East Punjab Urban Rent Restriction Act, 1949 - Section 13(3)(a)(i)

Citation: (2014) 176 PLR 257 : (2014) 2 RCR(Rent) 345**Hon'ble Judges:** Bharat Bhushan Parsoon, J**Bench:** Single Bench**Advocate:** Gurcharan Dass, Advocate for the Appellant; Ajay Singla, Advocate for the Respondent

Judgement

Bharat Bhushan Parsoon, J.

A petition under Section 13 of the East Punjab Urban Rent Restrictions Act, 1949 (hereinafter mentioned as the Act), brought by the petitioner-landlord is pending adjudication for eviction of the respondent-tenant Darshan Lal, wherein ground, inter-alia, of personal necessity has been set forth. It remains a fact that for pleading this ground, a landlord in compliance with the provisions of Section 13(3)(a)(i) of the Act is also required to plead that he is not keeping any other residential building in the urban area concerned and further that he has not vacated such a building without sufficient cause after the commencement of the Act in the said urban area. During the pendency of the petition, though at a much later stage, the petitioner noticed that there was glaring defect in the drafting of the petition wherein such plea was non-existent. Consequently, an application was made by the landlord before the Rent Controller for seeking amendment of the petition but such request was declined on 16.5.2013. It is this order which is now under challenge in this revision petition preferred by the landlord invoking supervisory jurisdiction of this

Court under Article 227 of the Constitution of India.

2. Stand of the petitioner-landlord is that the amendment sought for goes to the root of the matter and unless allowed to be carried out, renders the pleadings of the landlord wanting in material particulars. It is claimed that dismissal of the application for amendment of the petition vide the impugned order has resulted in grave prejudice to the petitioner-landlord. It is claimed that delay in bringing any such application for amendment by itself is not a ground for rejection of the application for amendment.

3. Per contra, stand of the respondent-tenant is that since a right has accrued to him to thwart the claim of the landlord for his eviction in the interface of material pleadings being non-existent, landlord cannot be allowed to fill in the gaps and the lacunae at a highly belated stage when the petition is nearing conclusion.

4. Hearing has been provided.

5. No doubt, the petitioner-landlord is highly delayed in bringing the application for amendment of the petition but the main point for consideration is as to whether the application on averments contained therein has merit or otherwise is an attempt to delay and dilate the matter?

6. In a judgment of Full Bench of this Court in [Banke Ram Vs. Smt. Sarasti Devi,](#) it was categorically held that provisions inter-alia of Section 13(3)(a)(i) of the Act were required to be part of the petition in a case where eviction is sought on the ground of personal necessity. In other words, it was necessarily to be pleaded that the landlord is not keeping any other residential building in the area concerned and that he has not vacated such a building without sufficient cause after the commencement of the said Act in the said urban area. Now when the pleadings sought to be incorporated in the petition by way of an application for amendment are essential for complete adjudication of the matter in controversy, question arises as to whether delay in bringing in such application by itself is fatal for the landlord or not? In [Surender Kumar Sharma Vs. Makhan Singh,](#) Hon'ble Apex Court has held that amendment sought at belated stage cannot be refused if it is found that it was necessary for deciding the real controversy between the parties. It was further held that such amendment can be allowed on payment of costs. In [Sukh Sagar and Others Vs. Hem Raj and Others,](#) (a verdict of a Coordinate Bench of this Court), it was held that the party should not suffer for the lapse on the part of his counsel.

7. More recently and specifically with respect to incorporation of such necessary pleading in a petition under the Act, there is another verdict of a Coordinate Bench of this Court. Eviction of a tenant had been sought on the ground of bona fide personal necessity under the Act but it turned out to be a case of non-pleading of ingredient that the landlord was neither in possession of another commercial site in the urban area nor he had vacated any. In [Rajinder Parshad Vs. Sohan Lal,](#) it was held that in a case of non pleading of ingredient, landlord is required to be provided

with an opportunity to make necessary pleading. In yet another decision of a Coordinate Bench of this Court, it was held that application for amendment under section 13(3)(a)(i) of the Act is not to be dismissed. It was held that where the landlord has not pleaded ingredients of Section 13(3)(a)(i) of the Act, the landlord is required to be provided an opportunity to make up the deficiency and offer necessary pleadings.

8. Keeping in view the totality of facts and circumstances as also the law as discussed earlier, the impugned order dismissing the application for amendment of the pleadings primarily on the ground of delay cannot sustain in law. At this stage, it may be mentioned that the learned Rent Controller was merely influenced by the proviso appended to Order VI Rule 17 C.P.C. which provides that no application for amendment is to 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 trial.

9. There is force in the argument of Counsel for the petitioner that he being a landlord is to suffer the consequences of delay and there cannot be any motive in filing this application much less for delaying and dilating the proceedings. It is claimed that it is a sincere effort to bring in all the essential facts sought to be introduced in the petition, with transparency and genuineness.

10. Neither the Civil Procedure Code ipso facto with all the principles of law is automatically applicable nor provisions of C.P.C. render the Rent Controller or the Appellate Authority under the Act to be meaningless when cause of administration of justice suffers. In a case as the present one, as has already been noticed, such omission in pleadings once comes to the notice of the Rent Controller, is required to be incorporated even by calling upon the petitioner to do so. Subsequently, the impugned order does not stand legal scrutiny and thus is reversed. Accepting the revision petition and allowing the application for amendment of the pleadings, the petitioner-landlord is called upon to furnish fresh petition incorporating the plea sought to be introduced.