

Before G.S. Sandhawalía, J.

GURBACHAN KAUR—*Petitioner*

versus

LAKHWINDER KAUR—*Respondent*

CR No.1705 of 2016

March 24, 2017

***East Punjab Urban Rent Restriction Act, 1949—S.13(3)
(a)(i)(b)(c)—Code of Civil Procedure, 1908—O. 6, RL.17—Applicant
for amendment of ejection petition by landlady—Rejected by Rent
Controller on the ground being filed at belated stage since the
landlady has been cross-examined at length and already closed her
evidence—Revision allowed.***

Held that, Counsel for the respondent is well justified to the extent that the case was at the fag end and therefore, the amendment should not have been permitted as there was no due diligence. However, the fact remains that adjudication has to be done on merits. Even in *Banke Ram* (supra), it has been noticed that even if the said facts, as such, are not pleaded, it will always be open to the parties to bring all material on record and therefore, the case has to be decided on the basis of the evidence, on merits. Merely due to the mandatory ingredients not being pleaded, would prejudice the case of the landlady and the petition can be dismissed on the said facts.

(Para 5)

Further held that, the Rent Controller has also noticed that in case opportunity to amend is granted, then cross-examination would have to be done afresh and it would lead to *de novo* proceedings, as such. For the said exercise, the other side, being the tenant, can be duly compensated monetarily and for the delay in proceedings, the landlord would suffer.

(Para 7)

Sukhmani Patwalia, Advocate, for
Vikas Singh, Advocate
for the petitioner.

Shrey Goel, Advocate
for the respondent.

G.S. SANDHAWALIA, J. (Oral)

(1) Challenge in the present revision petition, filed by the petitioner-landlady, is to the order dated 01.02.2016 (Annexure P1), passed by the Rent Controller, Ludhiana, whereby the application under Order 6 Rule 17 CPC, for amendment of the ejection application on account of lack of necessary ingredients of Section 13(3)(a)(i)(b)(c) of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act'), which were sought to be incorporated, has been dismissed.

(2) The reasoning given by the Rent Controller was that the application was filed at a very belated stage and the same was not maintainable. Merely because of the mistake of the previous counsel, the facts have not been mentioned, would not be sufficient to allow the amendment. The landlady had already tendered her evidence and has been cross-examined at length and closed her evidence. Similarly, the tenant has also tendered her evidence and therefore, by incorporating new facts, the tenant would not be granted an opportunity to cross-examine the landlady on the amended facts and in case the same is granted, it will amount to starting the proceedings afresh which will be an abuse of the process of law. Resultantly, the case was fixed for cross-examination of the witnesses of the tenant.

(3) A perusal of the amendment which is sought, would go on to show that the following facts were sought to be incorporated in the eviction petition:

“In para no.4 the petitioner wants to add para (a) “The petitioner and her grandson Gurpreet Singh and other family members has not vacated such a building without sufficient cause after the commencement of this act, in the Urban Area of Ludhiana.”

In para no.4 the petitioner wants to add (b) “The petitioner and her grandson Gurpreet Singh and other family members are not occupying another residential building after the commencement of this Act, in the Urban area of Ludhiana except a residential house no.809, M.I.G. Jamalpur, Focal Point, Ludhiana in which the petitioner is residing.”

(4) As noticed, the facts mentioned in para 4 (a) & (b) are the mandatory ingredients of the Rent Act. In the absence of the same, the landlady would be put to disadvantage, keeping in view the judgment

of the Full Bench in *Banke Ram* versus *Shrimati Sarasvati Devi*¹. It is also pertinent to notice that even otherwise, ejectment was on the ground of personal requirement of the grandson-Gurpreet Singh, who was living in rented accommodation. Resultantly, the necessary averments with regard to the landlady, her grandson and other family members having not vacated such a building without sufficient cause after the commencement of the Act, in the urban area of Ludhiana nor occupying another residential building after the commencement of the Act, in the Urban area of Ludhiana, were the necessary ingredients in the ejectment application.

(5) Counsel for the respondent is well justified to the extent that the case was at the fag end and therefore, the amendment should not have been permitted as there was no due diligence. However, the fact remains that adjudication has to be done on merits. Even in *Banke Ram* (*supra*), it has been noticed that even if the said facts, as such, are not pleaded, it will always be open to the parties to bring all material on record and therefore, the case has to be decided on the basis of the evidence, on merits. Merely due to the mandatory ingredients not being pleaded, would prejudice the case of the landlady and the petition can be dismissed on the said facts.

(6) In *Abdul Rehman & another* versus *Mohd. Ruldu & others*² wherein the object of the amendment was kept in mind and it was held that amendment can be allowed at any stage and the other side can be duly compensated by way of payment of costs. Relevant observations read as under:

“7) It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

8) The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by

¹ 1977 PLR 112

² 2012 (11) SCC 341

Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in *J. Samuel and Others vs. Gattu Mahesh and Others*, (2012) 2 SCC 300 and *Rameshkumar Agarwal vs. Rajmala Exports Pvt. Ltd. and Others*, (2012) 5 SCC 337. Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment.”

(7) The Rent Controller has also noticed that in case opportunity to amend is granted, then cross-examination would have to be done afresh and it would lead to *de novo* proceedings, as such. For the said exercise, the other side, being the tenant, can be duly compensated monetarily and for the delay in proceedings, the landlord would suffer.

(8) Accordingly, the present revision petition is allowed, the order dated 01.02.2016 (Annexure P1) is set aside. The amendment sought is allowed, subject to payment of Rs.10,000/- as costs. It would be open to the tenant to file the amended reply and the landlady/other witness will file the amended affidavit in consonance with the pleadings and will be permitted to be cross-examined.
