Before G .S. Sandhawalia, J.

CHHAJU SINGH SULEKH RAM FAMILY TRUST, KHANNA THROUGH ITS MANAGING TRUSTEE, CHHAJU SINGH (DECEASED) THROUGH HIS LRs— *Petitioner*

versus

BALJINDER SINGH–*Respondent*

CR No. 5284 OF 2004

March 8, 2017

Civil Procedure Code, 1908—Order 6, Rule 17—East Punjab Urban Rent Restriction Act, 1949—S.13—Amendment of eviction petition and impleadment of son of Managing Trustee/general power of attorney claiming him to be landlord—In view of Apex Court in Revajeetu Builders & Developers v. Narayanaswamy & sons and others, 2009(2) RCR (Rent) 568 : (2009) 10 SCC 84, as long as material pleadings are not altered or substituted and not got rid off and amendment is bonafide refusing amendment would lead to injustice—Held, no such mala fide intention and amendment was bona fide and even otherwise, no serious prejudice would be caused to opposite side—However, amendment of eviction petition filed after long delay, therefore, application for impleading trustee allowed, subject to costs of Rs. 5000/- in each case, to be paid to tenants.

Held that, the amendment sought thus was as per the law laid down by the Apex Court in Revajeetu Builders & Developers v. Narayanaswamy & sons and others, 2009(2) RCR (Rent) 568 : (2009) 10 SCC 84 wherein it was held that as long as the material pleadings are not altered or substituted and not got rid off and the amendment is bonafide refusing amendment would lead to injustice.

(Para 17)

O.P.Goyal, Sr.Advocate
Shallie Mahajan, Advocate
for the petitioner.

Amit Jain, Advocate
for the respondents.

G.S. SANDHAWALIA, J.

(1) Vide the present judgment, 5 civil revisions, i.e., CR-5284 to 5287-2004 and 132-2005, shall be disposed of, since common

questions of law are involved, as to whether the order passed by the Rent Controller, Khanna, dismissing the application for amendment of the ejectment petition and for impleadment of petitioner No.2, was justified or not. In 3 cases, the orders have been passed on 06.09.2004, by the then Rent Controller, Khanna, Mr. K.K.Goyal, whereas in 2 cases, the orders have been passed on 27.10.2004, by Ms.Priya Sood, another Rent Controller at Khanna. The facts have been taken from ***CR-5284-2004 titled 'Chhaju Singh Sulekh Ram Family Trust*** versus ***Baljinder Singh'***.

(2) The primary reasoning which prevailed with both the Rent Controllers was that in view of the amendment of CPC w.e.f. 01.07.2002, the provisions under Order 6 Rule 17 had been made more stringent. Keeping in view the purpose of determining the real question in controversy between the parties, it was held that the petition was initially filed by the Trust on 05.11.1997, through its Managing Trustee, Chhajusing, through general power of attorney-Praveen Kanwal, against which, an objection had been raised that it was not maintainable. The issues had been framed on 13.08.1998 and the evidence of the landlord had been closed on 06.04.2004. The case was at the fag end and after 7 years, the amendment application had been filed to implead Praveen Prakash Kanwal as petitioner No.2, claiming that he was the landlord independently, vis-a-vis the premises. The said fact had been in the knowledge of the applicant and if allowed, would necessitate retrial of the petitions and no explanation had been given as to why for 7 years the amendment had not been sought earlier. The version that the applicant was a layman and there was an unintentional mistake, was not accepted, as it was noticed that he was an educated person and filing number of petitions and civil suits. Serious prejudice would be caused to the respondent in case the amendment was to be allowed and a entirely new petitioner, who alleges himself to be landlord independently, would be introduced. The fact that in the original petition, not a single word had been said about Praveen Kanwal being the landlord which would lead to changing the entire complexion of the petition. An attempt was being made to substitute the petitioner and the landlord and entirely a new case would be set up and inspite of the fact that law of amendment was liberal but substitution of an entirely new case in place of the original one, was not permissible. The impleadment of Praveen Kanwal in independent capacity could not be held to be formal or necessary amendment, since all the Trustees were not seeking impleadment, which was not the original case and therefore, the application was declined.

(3) A perusal of the paperbook would go on to show that at the first instance, the petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act') was filed on 08.07.1997, which was amended on 25.05.1999, seeking ejectment of the respondent-tenant from the shop in question by the Trust, through its Managing Trustee, Chhajusing, son of Sulekh Ram Natha Singh Kanwal, through general power of attorney, Praveen Kanwal, son of Chhajusing, who is now the applicant. It was pleaded that the petitioner-Trust is the owner of the premises and Praveen Kanwal was the general power of attorney of the petitioner. The photocopy of the same along with the trust deed was attached with the condition that the original would be produced at the time of evidence. The shop had been let out to the father of the respondent, who was a tenant and thereafter, on account of change of user, ejectment had been sought and that also, on the ground that it had become unfit and unsafe. The tenant had tried to make alterations in the shop and even a DDR had been lodged regarding this fact and therefore, ejectment was sought, apart from the ground of non- payment of rent. It was further pleaded that Civil Suit, as such, had been filed on 05.11.1997, by the Trust, for permanent injunction, restraining the tenant from making any alterations. Thereafter, application for amendment of the plaint had been filed.

(4) The stand taken in the written statement to the amended petition was that the power of attorney, Praveen Kanwal was not competent to file the petition but the ownership of the Trust was admitted and so was the relationship of landlord-tenant. It was denied that any alteration, as such, had been made and neither there was any change of user. The DDR had been lodged on wrong facts and it was also incorrect that the shop had become unfit and unsafe. The business was being carried out right from the very beginning in the name and style of Raja Glass House and the tenant had filed a petition under Section 31 of the Indebtedness Relief Act, 1934 against the petitioner, who had stopped receiving rent. Deposit of rent was also made @ Rs.175/- per month, with the permission of the Court, which had been received by the Trust, through its counsel on 14.01.1998. The Civil Suit and the injunction application had been withdrawn by the plaintiffs and it was submitted that a Local Commissioner had also inspected the shop in dispute.

(5) Rejoinder was filed by the petitioner-Trust, whereby the competency of Praveen Kanwal to file the petition, being the duly authorized general power of attorney of the Trust was reiterated, apart

from the other pleadings of the rent application. Resultantly, issues were framed, which read as under:

1. Whether the respondent has changed the user of the demised premises? OPA

2. Whether demised property become unfit and unsafe for any kind of business? If so its effect? OPA

3. Whether the respondent has impaired the value and utility of the demised shop by making structure? OPA

4. Whether ground of non payment of rent against subsisting after tender of rent in court? OPA

5. Whether the respondent liable to be ejected from the demised property? OPA

6. Relief.

(6) It is the case of the petitioner himself that its evidence was concluded and the power of attorney had stated that he had been managing the property and receiving the rent and had also issued the receipts. Resultantly, the application for amendment was filed on 05.06.2004, taking the plea that the power of attorney was also independently the landlord vis-a-vis the property in dispute. Chhajusing Kanwal was the Managing Trustee of the Trust and the applicant had been controlling and managing the property and receiving rent and issuing receipts and reliance was placed upon the receipts. It was further submitted that Praveen Prakash Kanwal is also the Trustee of the petitioner-Trust but due to mistake he had not been impleaded independently and therefore, the said fact could not be mentioned in the ejectment application. An objection had been raised regarding the competency of Praveen Prakash Kanwal and therefore, the impleadment was very much necessary for proper and just decision of the rent application, to show that there was a relationship of landlord-tenant qua the property in dispute. The petitioner-Trust was the landlord by virtue of the ownership but the applicant was an independent landlord and was controlling and managing the Trust. Resultantly, amendment was sought for impleading him as petitioner No.2 and also adding para 1(a) wherein the facts were pleaded that he was the Trustee and managing and controlling the property and receiving the rent and issuing receipts. He had been acknowledged as a landlord apart from the Trust and therefore, there was a relationship of landlord-tenant between the petitioner and the respondent and there

was a mistake on account of the counsel and therefore, proposed amendment was necessary.

(7) The application was opposed by filing reply, taking the plea that a new case was sought to be introduced which was not permissible. Even in the pleadings and in the statement of the attorney, not a single word had been mentioned regarding the alleged relationship and as such, he could not be impleaded as petitioner No.2. In view of the amendment of the CPC and in view of the trial having commenced and the petition having been filed in November, 1997 and entire evidence having been led and closed on 06.04.2004, the proposed amendment was not permissible, as it would set up a new case. The factum of the applicant being the son of Chhajusing Kanwal was admitted. It was denied that he was independently the landlord. It was even denied that his father was the Managing Trustee of the petitioner-Trust and that there was any acknowledgment that he was the landlord. It was also denied that he was also the Trustee of the petitioner-Trust and no trust deed had been produced on the file to prove the fact regarding the alleged trustee. The said facts were in knowledge of the petitioner and so many petitions had been filed numbering about 15 and therefore, there could not be any unintentional mistake. The relationship, thus, was denied of the landlord-tenant and that the amendment was not required for the purpose of deciding the eviction petition. The attorney was a duly educated person and contesting the Civil Suits as well as ejectment petitions and therefore, a false story had been put up and the proposed amendment would result in miscarriage of justice.

(8) The law pertaining to amendment has been deliberated upon time and again. The basic thread which runs through all the precedents which after considering the provisions of Order 6 Rule 17 CPC is that liberal view is to be taken, as such, regarding the amendment of the pleadings. However, the fact remains that the provisions of the said section have to be kept into consideration. The powers of the Court, at any stage, to allow the proceedings at such terms as would be just, which are necessary for properly determining the real controversy, is not disputed. However, the proviso provides that once the trial has commenced, there has to be an application of mind by the Court and there has to be due diligence and that the parties could not raise the matter before the commencement of trial. It has also been mentioned that delay is not a ground for declining the prayer for amendment and Courts would allow all amendments which are necessary for

determining the real question which arises between the parties. However, where there is not a *bona fide* amendment being sought and the cause of action is totally to be changed of the present party to sue, as such, it has been held that amendment is not to be allowed.

(9) As noticed, in the present case, the case of the Trust itself is that it had filed a Civil Suit in February, 1997, for grant of permanent injunction, restraining the respondents from making any alterations. The pleadings of parties of the Civil Suit would go on to show that again, it was through the power of attorney and that the suit had been instituted, namely, by Praveen Kanwal. Similarly, in the application dated 05.03.1997 under Section 31 of the Indebtedness Relief Act, 1934 also, the respondent-tenant had also filed an application again, impleading the Trust through its Managing Trustee, Chhajusing and through its general power of attorney, Shri Praveen Kanwal. The parties, thus, were very clear regarding the fact that the landlord was the Trust and there was a relationship as such. The Managing Trustee was one Chhaju Singh, though the same has also been questioned and the factum of the Trust being the owner of the premises, has not been disputed. The proceedings had, thus, carried on from February, 1997 and it was only in June, 2004, the application for amendment was filed whereby a totally new stance was sought to be taken by introducing another landlord, who was the power of attorney and son of the Managing Trustee.

(10) The evidence had already been concluded and the tenant was to start his evidence and in such circumstances, the trial would start *de novo* afresh, at this belated stage. It is not disputed that though delay is not a *sine qua non* for disallowing amendments but the *bona fide* aspect of the amendment has to be taken into consideration and whether the cause of action is being changed and a right is being taken away of the party. Thus, by virtue of the application a separate landlord was stepping in, who is alleging that he has the control of the property. The pleadings are sought to be incorporated that he had been receiving rent also and issuing receipts, as such, qua the property which was relied upon. The authority as a power of attorney has also been questioned by the tenant, though there is no issue framed regarding the said dispute. The argument which has been raised by counsel for the respondent is that a fresh cause of action is being made out and an independent person is stepping in.

(11) Copy of the Will dated 01.01.1981 of Sulekh Ram Natha Sing was produced which showed that the rented property at G.T.

Road, Khanna was to be settled in Trust and Chhajusing Sulekhram son along with his wife, Smt. Krishna Kumari Chhajusing and Shri Praveenprakash Chhajusing were appointed as Trustees. The Trust was to be known as Chhajusing Sulekhram Family Trust and the Managing Trustee was to be Chhajusing. It is not disputed that the managing Trustee-Chhajusing himself had expired, during the pendency of the present proceedings on 15.01.2011, leaving behind his wife-Krishna Kanwal as legal representative along with Praveen Kanwal and Mrs.Sen Sierra and they were brought on record in the present proceedings on 28.09.2015. It is, thus, apparent that the father of the applicant was the Managing Trustee and the grandfather while executing his Will dated 01.01.1981 had appointed his son, daughter-in-law and grandson, as Trustees. The Trustees were to take-over the possession of the property and pay out all his debts and liabilities, funeral and testamentary expenses etc. The immoveable property owned by the Trust read as under:

> "(A) IMMOVEABLE PROPERTIES :-
>
> i) Self occupied Residentail property at G.T. Road, Khanna, Punjab land Sq.yards 644.8 and construction thereon.
>
> ii) Rented property at G.T.Road, Khanna, Punjab having land Sq.yds. 1730.7 and construction thereon.
>
> iii) Residential quarter at Mandi Govindgarh, Punjab bearing Ward No.4, Mandi Govindgarh having land Sq.yards 442.5 and construction thereon."

(12) Similarly, apart from the self-occupied property, the other property was to go to the trust, which would be clear from the relevant recital:

> "(A) I bequeath the aforesaid self occupied property at G.T. Road, Khanna, Punjab to my son Chhajusing Sulekhram individually.
>
> (B) THE remaining Immoveable and Moveable Property including partnership share and any other property mentioned or not, subject to payment of debts and liabilities, if any, be settled in Trust as mentioned hereunder:-
>
> i) I appoint my son Chhajusing Sulekhram and my daughter in law Smt. Krishnakumari Chhajusing and Shri

> Praveen prakash Chhaju Singh as trustees. My son Chhajusing shall be Managing Trustee or Executor. My trustees or continuing trustees shall have power to appoint new trustee or trustees.
>
> ii) My Trustees shall take over possession of all my properties and shall pay out of it all my debts and liabilities, funeral and testamentary expenses, Estate Duty and Taxation liabilities etc.
>
> iii) Name of Trust
>
> THE Trust will be known as CHHAJUSING SULEKHRAM FAMILY TRUST".

(13) Thus, it is apparent that the applicant was a Trustee, as such, and therefore, would be entitled to manage the affairs of the Trust and the amendment, as such, which was sought, was not *mala fide* in any manner. Merely because earlier he was the power of attorney and had been prosecuting and looking after the interests of the Trust, would not, as such, bar him from seeking the relief of impleadment as petitioner No.2.

(14) It is trite to say that at the stage of application for amendment, the Court is not to delve upon the merits of the case and it is only on the leading of the evidence, the Court would come on to the true conclusion as to whether applicant was a Trustee, as such and the application was justified. The earlier role as a power of attorney was also a dual role, as such, which was basically looking after the interests of the Trust and keeping in view the fact that the core question *inter se* was whether the landlord was entitled to press his case for ejectment on the grounds available under the Act, was to be decided by the Rent Controller. The Court was to decide on the issue in question and the right of the applicant, as such, to be impleaded, keeping in view the fact that he was receiving the rent. Section 2(c) of the Act has an expansive meaning which provides that the landlord need not be the owner and therefore, if the applicant was receiving the rent and looking after the property, the question would arise whether he was also entitled to seek the eviction on the ground of relationship of landlord-tenant, being the Trustee of the said Trust.

(15) Reference can be made to the judgments of the Apex Court in the case of ***Lakha Ram Sharma*** versus ***M/s Balar Marketing Pvt.***

Ltd.[1] wherein it has been held that the question of *bona fide* necessity is to be examined on merits by the Rent Controller. In the present case and at this stage, it would not be fair to debar the landlords from taking the clarificatory pleas which they have sought to raise in the application for amendment. The principles of amendment have been laid down by the Apex Court on the issue of clarification and after the commencement of trial in ***Rajesh Kumar Aggarwal & others*** versus ***K.K. Modi & others***[2] wherein it has been held that the real question in the controversy between the parties is to be adjudicated upon. Relevant portion reads as under:

> "This rule declares that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The proviso enacts that no application for amendment should 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 for which amendment is sought before the commencement of the trial.
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> 13. 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.
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> 14. Order 6 Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.
>
> 15. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not

[1] 2008 (17) SCC 671
[2] 2006 (4) SCC 385

> changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit."

(16) Similar observations were made in ***Sushil Kumar Jain*** versus ***Manoj Kumar & another***[3] wherein it was held that if the applicants were only seeking to clarify the earlier stand, then such amendment could be allowed even by taking inconsistent pleas of substituted and alternative defence.

(17) The amendment sought thus was as per the law laid down by the Apex Court in ***Revajeetu Builders & Developers*** versus ***Narayanaswamy & sons and others***[4] wherein it was held that as long as the material pleadings are not altered or substituted and not got rid off and the amendment is bonafide refusing amendment would lead to injustice. The principles laid down read as under:-

> "67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.
>
> (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
>
> (2) Whether the application for amendment is bona fide or mala fide?
>
> (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
>
> (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
>
> (5) Whether the proposed amendment constitutionally or fraudulently changes the nature and character of the case? And
>
> (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by

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[3] 2009 (14) SCC 38
[4] (2009) 10 SCC 84

limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

70. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments."

(18) Similarly in ***Ramesh Kumar Agarwal*** versus ***Rajmala Exports Pvt. Ltd. and others***[5]**,** the same view has been taken wherein the amendment was allowed and it was held that the Court should not take hyper technical approach and liberal approach should be the general rule specially where other side could be compensated with costs. In the said case the plaintiff wanted to explain how the money was paid though the averments had already been made.

(19) In ***Abdul Rehman & another*** versus ***Mohd. Ruldu & others***[6] wherein the object of the amendment was kept in mind and it was held 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

[5] 2012 (3) SCR 992
[6] 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."

(20) Resultantly, this Court is of the opinion, keeping in view the principles laid down by the Apex Court in ***Revajeetu Builders & Developers*** (supra) there was no such *mala fide* intention and the amendment was *bona fide* and even otherwise, no serious prejudice would be caused to the opposite side. However, keeping in view the fact that it was filed after a long delay, application of the petitioner for impleadment as petitioner No.2, is allowed, however, the same shall be subject to costs of Rs.5000/- in each case, to be paid to the tenants.

(21) Revision petitions stand allowed, in the above-said terms.

Ritambhra Rishi