

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

**C.R. No. 3163 of 2014 (O&M)
Date of decision: 17.09.2015**

Dera Baba Sadhu Singh and Another ..Petitioners

Versus

Smt. Prabha Bhandari and Others ..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Hardeep Singh, Advocate for the petitioners.

Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Amit Kohar, Advocate for respondent No. 2.

AMIT RAWAL, J.

The challenge in the present petition is to the impugned order dated 16.4.2014 whereby the application filed by the petitioner-plaintiff for additional evidence has been dismissed.

Mr. Hardeep Singh appearing on behalf of petitioner-plaintiff submits that counsel Mr. Ram Singh Salooja engaged by the plaintiff-petitioner, who was conducting the present case in the trial Court had gone abroad permanently; and instead of producing the plaintiff in the witness box, he himself tendered an affidavit in evidence in affirmative, which is evident from order dated 5.3.2013. He submits that issues in the aforementioned case were framed in January, 2013. In the absence of any evidence, petitioner-plaintiff has no hope that he would succeed in the suit for, plaintiff has failed to lead evidence, much less discharged onus. He submits that for the lapse of the counsel the plaintiff may

not be made to suffer, as cited by **Hon'ble Supreme Court in Rafiz Vs. Munshi Lal & Others AIR (1981) SC 1400.**

Mr. Sumeet Mahajan, Sr. Advocate assisted by Mr. Amit Kohar on behalf of respondent No. 2 submits that the suit was filed by two Advocates Mr. A.S. Nirman, and Mr. R.S. Salooja. The application for additional evidence has been filed by Mr. A.S. Nirman, Advocate, therefore, it cannot be said that petitioner-plaintiff has suffered on account of lapse of counsel. He submits that opportunity sought by the petitioner-plaintiff may be granted as the property relates to a trust.

I have heard learned counsel for the parties. On going through the file, it has surfaced that the issues were framed in January 2013. Counsel for the petitioner-plaintiff closed the evidence on 5.3.2013. Going abroad without returning papers or any intimation, in my view is not condemnable, as the relationship between client and Advocate is fiduciary in nature.

In my view, since the petitioner-plaintiff has been deprived of stepping in the witness box, in that eventuality, the suit is likely to fail even respondent-defendant fails to lead any evidence. In case the application is allowed, it amounts to de novo trial. In my view, permission can be granted to the petitioner-plaintiff to withdraw the suit and file the fresh suit on cause of action already accrued as petitioner-plaintiff may face many hurdles, in case suit is dismissed.

Learned counsel for the petitioners wishes to withdraw the present case. Keeping in view aforesaid facts, he is permitted

to withdraw the present suit with liberty to file afresh suit.

Accordingly the suit bearing No.594-T/19.8.2010/6.1.2012 permitted to be withdrawn with a permission to file fresh on the same cause of action. With the aforesaid observation, the petition stands disposed of.

September 17, 2015

Poonam (II)

(AMIT RAWAL)
JUDGE