

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

**C.R. No.4333 of 2015 (O&M)
Date of Decision: - 02.09.2015**

Suresh

.....Appellant

Versus

Ramphal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Sumit Sangwan, Advocate,
for the petitioner.

SHEKHER DHAWAN, J

Present Revision petition under Article 227 of the Constitution of India for setting aside the order dated 17.12.2013 whereby Civil Judge (Senior Division), Bhiwani (hereinafter referred to be as 'Trial Court' dismissed the application of petitioner for seeking leave to withdraw the suit with liberty to file fresh suit in lieu of that.

2. Learned counsel for appellant urged that 'Trial Court' dismissed the application mainly on the ground that case was at the stage of defendants evidence and there was no technical defect. Learned counsel for the petitioner took the plea that 'Trial Court' dismissed the application on the ground that petitioner had remedy to seek amendment of the pleadings

In fact petitioner had also availed that opportunity and filed amendment

application but 'Trial Court' dismissed the amendment application, vide order dated 29.05.2015. Petitioners are poor persons and if necessary permission not granted, the same shall cause irreparable loss to the petitioner.

3. Learned counsel for the petitioner mainly took the plea that the application for withdrawal was dismissed on the ground that the case is at stage of defendants' evidence and there was no technical defect. However, as per Order 23 Rule 1 CPC, plaintiff can withdraw the suit at any stage and in such like cases delay is immaterial. In support of his arguments, he has placed reliance upon judgments from Co-ordinate Benches of this Court in cases Vinod Kumar Vs. Gurmail Singh and another, 2012(1) R.C.R. (Civil) 539; Tarsem and another Vs. Nihal Kaur and others, 2010(5) Law Herald 4206; Pritam Singh Vs. Bachan Singh, 1998(3) R.C.R. (Civil) 344; and Kanhya Lal (deceased) through LRs and another Vs. Nathu and others, 1989(2) HLR 345, wherein, Co-ordinate Benches of this Court took the plea that such applications should be allowed liberally.

4. Having considered the submissions made by learned counsel for the petitioner and in view of fact that each and every case has its own distinct facts. In the case in hand, learned trial Judge has already taken the correct view that defendants had come with the specific plea in the written statement that they had become owners of the property, vide decree dated 06.09.1986. The applicant had moved an application for producing the certified copy of judgment dated 06.09.1986 and not 04.03.1985, as alleged in the application. Even the copies of judgment and decree dated 06.09.1986 are not available on the file. Learned trial Judge rightly formed the opinion that the application for withdrawal of suit was taken as after thought

process. Order was passed by the Court that the next date would be last opportunity for evidence.

5. More so, it was for the applicant to establish that there are some technical grounds calling for withdrawal of the present suit and filing fresh suit on the same grounds. But that was not the case before the Court and the application was rightly dismissed. There are no grounds to set aside the said order. Accordingly, the present civil revision stands dismissed.

(SHEKHER DHAWAN)
JUDGE

September 02, 2015
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