

CR No.5032 of 2014 (O&M)

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

**CR No.5032 of 2014 (O&M)
Date of decision:26.02.2015**

Daya Nand and another

...Petitioners

Versus

Municipal Committee, Safidon and another

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. D.K.Jangra, Advocate,
for the petitioners.

Mr. Amit Parashar, Advocate,
for respondent no.1.

Mr. Sanjeev Kumar, Advocate, for
Mr. Johan Kumar, Advocate, for respondent no.2.

Rakesh Kumar Jain, J.

The petitioners are aggrieved against the order dated 09.07.2014, dismissing their application for withdrawing the suit with permission to file it afresh on the same cause of action.

The plaintiff-petitioners filed suit for permanent injunction restraining the defendants from interfering in his possession. No temporary injunction was granted to them and the suit is at the stage of pleadings as no evidence was led. The petitioner moved an application for permission to withdraw the suit with permission to file it afresh as some defects were found in the suit which are mentioned as under:-

- “i) That as per requirement of Section 52 of Haryana Municipal Act, 1973, one month notice is required before institution of suit against Municipal Committee. Hence, the suit is to be filed after service notice.
- ii) That relief of specific performance of contract which had taken place between plaintiff and M.C., could not be prayed.
- iii) That suit property has not been properly described in the suit.
- iv) That relief is to be claimed in view of judgment passed by Hon'ble High Court passed in R.S.A. Nos.1328 of 1985 and 1283 of 1985. The details of this litigation could be properly mentioned.”

The learned trial Court dismissed the application observing that since it was a suit for permanent injunction, therefore, notice under Section 52 of the Haryana Municipal Act, 1973 was not required to be served.

Counsel for the petitioners has argued that the absence of notice under Section 52 of the Haryana Municipal Act, 1973 was not the only defect in the suit but the suit property was not properly described; the details of the previous litigation was not specifically mentioned and the relief of specific performance of contract could not be prayed.

On the other hand, counsel for the respondents has submitted that the petitioners could have filed an application for amendment of the suit

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instead of withdrawing it.

I have heard learned counsel for the parties and examined the available record.

It is not disputed that no relief has been granted to the petitioners by the trial Court by way of temporary injunction and the suit is only at the stage of pleadings because no evidence has been led by the parties.

In such a situation, it would be just and expedient to allow the petitioners to withdraw the suit with permission to file it afresh on the same cause of action because the prayer made in the application for withdrawal of the suit indicating the defect therein can be effectively entertained by way of a fresh suit than by way of amendment.

Thus, I am of the considered opinion that there is an error in the impugned order of the Court below and hence, the present revision petition is hereby allowed and the impugned order is set aside.

February 26, 2015
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(Rakesh Kumar Jain)
Judge