

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

**CR No. 8541 of 2014 (O&M)
Date of decision: 28.11.2015**

Dildar and others

... Petitioners

versus

Ramjan and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Naveen Sharma, Advocate for
Sanjeev Kumar Bawa, Advocate for the petitioners.

K.Kannan, J.

There is a written request for an adjournment by the respondents. The counsel appearing on behalf of the petitioners says that he believed that if the respondents would seek for an adjournment he need not be ready for arguments. I decline the plea for an adjournment on either side and proceed to dispose of the case in the presence of the counsel for the petitioners.

The revision petition is against the order allowing the suit to be withdrawn when the prayer was for withdrawal of suit with permission to file a fresh suit. The plaintiffs had stated that the plaint contained some defects and therefore they intended to withdraw the same and sought for liberty for filing a fresh suit. The Court observed that no details of the technical defects had been shown and such a plaint could be easily rectified by amendment. Having said that the Court observed that the suit was, therefore, permitted to be withdrawn but with no liberty.

The order passed is erroneous for there is no half way house between the prayer for withdrawal of suit with liberty being dismissed and allowing the application. If the court was not convinced that there was any technical defect, the only action that could have

done is to dismiss the application for withdrawal and allowed the suit to come up for trial for disposal on merits. There cannot be an order merely ordering withdrawal of the suit for that was not a prayer by the plaintiffs. The withdrawal of suit without a liberty bars a fresh suit on the same cause of action under Order 23 Rule 1 CPC as constituting an abandonment of action. The plaintiff would be very seriously prejudiced if he had not at least the liberty to conduct the case on merits, if the Court was not being convinced that the plaintiff had not given the details of technical faults.

Under the circumstances, I set aside the order of the Court below and dismiss the application filed by the petitioners before the Court below. The effect would be that suit will be restored and the plaintiff will have the benefit of conducting the suit on merits and not given the liberty of mere withdrawal when the court was not finding adequate grounds for giving a liberty to file a fresh suit. I have seen through the petition and it gives no details about the so-called technical defects in plaint. The Court was, therefore, justified in finding that there was no grounds made for the withdrawal of the suit with liberty. In such a situation, the option open was to dismiss the petition and not allow it partially in the manner it was done.

The suit is restored and it shall be posted for disposal by trial in accordance with law.

Trial Procedure- If a petition for withdrawal with liberty to file a fresh suit is sought, the Court's power shall only be to either dismiss the application if no technical defect in pleading exists or allow the application if grounds exist. The Court has no power to allow for withdrawal but not grant liberty, if that is not the prayer in the petition.

(K.KANNAN)
JUDGE

28.11.2015

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