

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

CR No. 1375 of 2015

Date of decision: 16.08.2016

Roshan Ali & others

...Petitioners

Vs.

Balwinder Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Ms. Sonal Datta, Advocate for
Mr. V.M. Gupta, Advocate
for the petitioners.

Mr. Vijay Lath, Advocate
for respondent Nos. 1, 5 to 12, 14 to 25, 27 & 28.

None for respondent No. 46.

Mr. Ajaib Singh, Additional Advocate General, Punjab
for respondent Nos. 40 to 44.

DARSHAN SINGH, J. (Oral)

Present revision petition has been preferred against the order dated 07.03.2014 (Annexure P-1), passed by learned Additional Civil Judge (Sr. Division), Rupnagar, vide which, the application moved by the plaintiffs-respondents, under Order 23 Rule 1(3) of the Code of Civil Procedure, 1908 (*hereinafter called 'CPC'*) for withdrawal of the suit with liberty to file a fresh suit on the same cause of action, has been allowed. The said application was filed on the ground that there was technical defect in the suit as the plaintiffs have not served the notice under Section 80 CPC to the State of Punjab and its Officers before filing the suit.

Learned counsel for the petitioners pointed out that at the time of filing the suit, the plaintiffs had moved an application under Section 80 (2) CPC seeking the leave of the Court to file the suit without issuance of

notice under Section 80 CPC. The said application was allowed, vide order dated 05.05.2005.

Once the application, moved by the plaintiffs-respondents under Section 80 (2) CPC, was allowed by the learned trial Court, so the plaintiffs were allowed to institute the suit without serving the notice under Section 80 CPC, thus there remains no defect in the suit for want of notice under Section 80 CPC. Therefore, the application moved by the plaintiffs-respondents for withdrawal of the suit with liberty to file the fresh suit due to the aforesaid technical defect was without any base.

Consequently, the present revision petition is hereby allowed. Impugned order dated 07.03.2014 is hereby set aside. The trial Court will proceed further with the suit and in accordance with law. Parties are directed to appear before the learned trial Court on 29.09.2016.

August 16, 2016

Ansari

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No