

**In the High Court of Punjab and Haryana, at Chandigarh**

**Civil Revision No. 2492 of 2015**

**Date of Decision: 23.02.2016**

Kundan Lal

... Petitioner(s)

Versus

Krishana

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Shekher Dhawan.**

- |    |                                                                       |            |
|----|-----------------------------------------------------------------------|------------|
| 1. | Whether reporters of local newspapers may be allowed to see judgment? | <b>Yes</b> |
| 2  | To be referred to reporters or not?                                   |            |
| 3  | Whether the judgment should be reported in the Digest?                | <b>Yes</b> |

Present: Mr. P.K.Ganga, Advocate  
for the petitioner(s).

**Shekher Dhawan, J.**

Present petition is challenge to the order dated 4.3.2015, passed by learned Civil Judge (Junior Division), Sirsa, whereby application under Order 23 Rule 1 CPC for seeking permission to withdraw the suit with liberty to file a fresh suit was dismissed.

Relevant facts of the case that petitioner had earlier filed suit for permanent injunction restraining the respondent/defendant from alienating the suit property. During pendency of the suit, application was filed seeking permission to withdraw the suit with liberty to file fresh suit for specific performance on the same cause of action on the basis

of contract of sale dated 8.3.2013. Respondent contested the application *inter alia* taking the plea that plaintiff can be allowed to withdraw the suit but no permission can be granted to file fresh suit with same cause of action.

Learned counsel for the petitioner submitted that agreement of sale was duly executed on 8.3.2013 and the target date for execution of the sale deed was fixed to be 9.6.2013. Suit for permanent injunction was filed on 30.10.2013 and prayer of the petitioner has been declined to file fresh suit on the same cause of action.

Learned counsel for the respondent submitted that such a permission cannot be granted because petitioner was not in position to point out any formal defect and in fact he should have filed suit for specific performance only and the suit for permanent injunction was filed on 30.10.2013 and present petition be dismissed. In support of his arguments, reliance was placed upon the judgments rendered by this Court in cases ***Jasmer Singh v. Kanwaljit Singh and Another 1990(2) RRR 442*** and ***Raj Kumar v. Charan Dass and Others 2015(2) PLR 835***.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that as per provisions of Order 23 Rule 1 CPC, such a permission can be granted by the Court to withdraw the suit with liberty to file a fresh suit. For ready reference, Order 23 Rule 1 CPC is reproduced hereunder:-

**"ORDER XXIII-Withdrawal and Adjustment of Suits**

**1. Withdrawal of suit or abandonment of apart of claim.-**

(1) *At any time after the institution of a suit the plaintiff may, as against all or any of the defendants abandon his suit or abandon a part of his claim: Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.*

(2) *An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of a pleader to the effect that the abandonment proposed is, in his opinion, of the benefit of the minor or such other person.*

(3) *Where the Court is satisfied, -*

(a) *that a suit must fail by reason of some formal defect, or*

(b) *that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim.*

*It may on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the*

*subject matter of such suit or such part of the claim.*

*(4) Where the plaintiff -*

*(a) abandons any suit or part of claim under sub-rule (1), or*

*(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3).*

*he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect or such subject-matter of such part of the claim.*

*(5) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under subrule (3), any suit or part of a claim, without the consent of the other plaintiffs."*

The above provisions make it clear that the Court can allow a party to withdraw the suit at any stage of the proceedings when the suit was likely to fail for some reasons and also on the ground that there are sufficient grounds for allowing the plaintiff to institute a fresh suit on the subject matter of the suit or part of claim. In the present case, there was no negligence on the part of the plaintiff in conducting the suit and ingredient for grant of relief of specific performance was raised. The suit of the plaintiff was likely to fail because of formal defects in the format of the suit. It was open for the Court to allow the amendment so as to convert the same into specific performance. Only

because of negligence on the part of the counsel, earlier, suit for specific performance was not filed and for that purpose application was filed under order 23 Rule 1 CPC but the same was dismissed, whereas the same was to be accepted as there was a formal defect in the format of the suit and it was likely to fail. Needless to mention that limitation period for filing suit for specific performance was still in existence at the time of filing of application.

In view of above, present petition is accepted and impugned order dated 4.3.2015 is set aside. Application filed by petitioner for withdrawal of the suit for permanent injunction with liberty to file fresh suit for specific performance is accepted.

**(Shekher Dhawan)**  
**Judge**

**February 23, 2016**

"DK"