

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

CR No. 3051 of 2013 (O&M)

Date of decision: February 10, 2016

Jai Kumar and another

...Petitioners

Versus

Smt. Santosh Raghav

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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. Sudhanshu Makkar, Advocate,
for the petitioners.

Mr. Joginder Pal Sharma, Advocate,
for the respondent.

K. KANNAN, J. (Oral)

1. The revision is against the order dated 10.4.2013, reviewing the order passed on 14.6.2012, allowing the plaintiff to withdraw the suit. The plaintiff's grievance was that he had filed yet another suit describing a larger extent of property but since no permission had been granted for filing a fresh suit, the Court should have made good the defect in the order and permitted him to file a fresh suit. The Court has allowed the application for review.

2. The argument by the defendants is that when an application was filed to withdraw the suit, the plaintiff had given no reason as to why he wanted to withdraw and how she was competent to have a fresh suit filed on the same cause of action. The learned counsel for the respondents would justify that at the time when a person seeks for withdrawal with liberty to

file a fresh suit, no justification need be given. According to him, the property had not been properly described and, therefore, a fresh suit had been filed setting out a larger extent of property than what was contained in the first suit. This, according to him, must enable him to withdraw the suit with liberty. It is irrelevant, according to him, to set out any reason for why he wanted to have liberty of filing a fresh suit. Learned counsel for the respondents would refer to me a judgment of this Court in Alla Naur Sheikh Mohd. Ismail V. Mohd. Nisa Abdul Rehman and others AIR 1962 Punjab 50 to say that a subject matter referred to under Order 23 Rule 1 (3) CPC meant a cause of action and a suit withdrawn by a widow for administration of estate cannot mean that a second suit for recovery of dower debt against heir to be of the same cause. The Court held that the subject matter was different and found that the second suit was not barred.

3. We are not even confronting a situation of whether the second suit which has been filed now is barred or not. Before such an adjudication was taken, the plaintiff himself has moved an application for review of the order passed in the first suit that she should be given permission to file a fresh suit. This judgment, therefore, cannot be used to justify an order passed in review application. The most crucial issue is whether there was any defect in the order passed by the Court on 14.6.2012 when it had only allowed for withdrawal of the suit and did not give any reason for declining a right to file a fresh suit.

4. Order 23 Rule 1 CPC contemplates two different situations, namely, (i) that the plaintiff may chose to withdraw the suit which in legal parlance is an abandonment of cause and such abandonment will bar a fresh suit from being filed by virtue of Order 23 Rule 1 (4) of the Code; and (ii)

the second alternative would be to seek for withdrawal of the suit with liberty to file a fresh suit. If such a prayer is made, the Court should be satisfied that the suit would fail by reason of some formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit on the subject matter of the suit as part of the claim. This is the mandate of Order 23 Rule 1 (3) (a) and (b) of CPC. A court that allows an application is bound to be satisfied that the suit will fail or there are other grounds to justify institution of a fresh suit. In order to evoke that satisfaction, there has to be a ground made in the first place that there were defects in the plaint, which would necessitate such action to be taken. The plaintiff has given no such reason. The entire application is re-produced as under:-

“It is most respectfully submitted as under:

That the plaintiff has filed the above mentioned suit for declaration in this Hon'ble Court.

That the plaintiff wants to file another suit.

Kindly put the case for today and allow the plaintiff to withdraw the suit with permission to fresh a file suit.

14.6.2012”

This application does not state anything of relevance for the Court to exercise its mind to grant the relief of withdrawal with liberty to file a fresh suit.

5. If a petitioner seeks for prayer for withdrawing the suit, with permission to file a fresh suit, the nature of order that Court can pass could be either to allow the application to withdraw with liberty to file a fresh suit or to dismiss the petition. There is no half way rule possible. If the Court was not satisfied that the plaintiff had not given any reason for filling a

fresh suit, then it should have dismissed the petition for withdrawal itself. It could not have merely allowed the withdrawal of the suit and refused the relief of liberty to file a fresh suit. To that extent the order passed by the first Court was erroneous. If there was a scope for review of that order, the review could have been only that Court could have dismissed the application for withdrawal, restore10.4.2013 the first suit and allow for continuance of the first suit.

6. Even while finding that the permission given to file a fresh suit through the subsequent order by reviewing itself was erroneous, I still hold that the order on review could have been only to allow for dismissal of the petition for withdrawal. That was the only order that could have been passed.

7. The order already passed is set aside and the matter is remitted to the trial court to elicit from the plaintiff whether she would have her own petition for withdrawal of the first suit to be dismissed and allow for continuance of the first suit. If such an option is made, the Court will pass an appropriate order.

8. The revision petition is allowed and the matter is remitted to the court below with the above direction.

February 10, 2016
prem

(K.KANNAN)
JUDGE