

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.4721 of 2014
Date of decision:23.02.2016

Virender Kumar Kaushik ... Petitioner

Vs.

Smt. Sukhiya and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Shiv Kumar, Advocate
for the petitioner.

Mr. Jagjit Beniwal, Advocate, for
Mr. Surinder Dagar, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff is aggrieved of the orders dated 19.12.2013 (Annexure P-3) and 15.04.2014 (Annexure P-4), whereby, despite having been suffered a statement to withdraw a suit with liberty to file fresh, the trial Court, only granted the permission to withdraw the suit for specific performance.

Mr. Shiv Kumar, learned counsel appearing on behalf of the petitioner submits that once liberty has been sought and not incorporated the same in the order, in view of the law laid down by this Court in **Bakhtawar Singh vs. Block Development and Panchayat Officer, Mansa 2000(1) RCR (Civil) 673**, the same is inherent and deemed to have been granted.

Mr. Jagjit Beniwal, learned counsel appearing on behalf of

the respondent submits that impugned orders are perfect, legal and justified. There is no illegality and perversity in the impugned order. The petitioner has not been able to show any inherent, therefore, the liberty to file fresh suit, has been declined.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the statement suffered by the counsel for the plaintiff (Annexure P-2) which reads thus:-

“Virender vs. Sukhiya

Statement of Sh. R.K.Saini, Adv. for plaintiff.

Stated that due to technical problem I do not want to continue further the present suit and intends to withdraw.

Permission to file the fresh suit may be granted.

Sd/Devender Singh
Civil Judge (Sr. Divn.)
Palwal 19.12.13

RO&AC

Sd/R.K.Saini, Adv.”

The impugned order dated 19.12.2013 (Annexure P-3) reads thus:-

“Present: Sh. Ram Kumar Saini, Counsel for the plaintiff.

Sh. D.D.Sharma, counsel for the defendant.

In view of the statement of the learned counsel for the plaintiff, the present suit is dismissed as withdrawn. He is

bound by his statement. File be consigned to the record room after due compliance.

Sd/Devender Singh

CJ(SD), Palwal 19.12.2013”

The aforementioned order was sought to be recalled by moving an application which has been declined vide order dated 15.04.2014 (Annexure P-4). The order under challenge is not sustainable, for the reasons that once the plaintiff seeks withdrawal of the suit with liberty to file afresh and in case, the liberty is not granted, the same is inherent.

The aforementioned finding has been supported by the judgment of this Court in Bakhtawar Singh's case (supra) and various other judgments, wherein, it has been held so.

In view of the aforementioned observations, the impugned orders are set aside and the matter is remitted back to the trial Court and the application for recalling of the order/statement is allowed. The trial Court is directed to consider the prayer vis-a-vis withdrawal of the suit in toto.

The parties through their counsel are directed to appear before the trial Court on 17.03.2016.

Accordingly, the revision petition is allowed.

(AMIT RAWAL)
JUDGE

February 23, 2016
savita