

Civil Revision No.4950 of 2013

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

Civil Revision No.4950 of 2013

Date of decision: 09.02.2016

Rahul and another

....Petitioners

Versus

Ajay Pal and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

- 1) Whether Reporters of the 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. Satbir Gill, Advocate, for the petitioners.

Mr. P.S. Jammu, Advocate, for respondent No.1.

PARAMJEET SINGH DHALIWAL, J.

Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 16.03.2013 passed by learned Civil Judge (Junior Division), Sirsa, whereby liberty has been granted to respondent No.1 to file fresh suit on the same cause of action.

Brief facts of the case are that respondent No.1 filed a suit for declaration against the petitioners and respondents No.2 and 3 challenging the 'Will' in favour of petitioner No.1. In pursuance of notice, petitioners and respondent No.2 appeared and filed their written statements and thereafter both the parties led their evidence. Respondent No.1/plaintiff was granted liberty to lead rebuttal evidence, however, no

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rebuttal evidence was led. On 16.03.2013, learned counsel for respondent No.1/plaintiff suffered a statement before the Court that due to some technical defect he did not want to proceed with the suit and same was requested to be dismissed as withdrawn to file fresh one. Vide order dated 16.03.2013, learned Civil Judge (Junior Division), Sirsa accepted the prayer and dismissed the suit as withdrawn with liberty to file afresh. Hence, this revision petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners vehemently contended that impugned order is illegal and not sustainable in the eyes of law. Petitioners contested the suit for 6-7 years and it was about to conclude as the same was fixed for final arguments. No application under Order XXIII Rule 1 of the Code of Civil Procedure was moved before the Court and on the statement of learned counsel for the plaintiff, suit was permitted to be dismissed as withdrawn to file fresh one. No technical defect was pointed out by learned counsel for the plaintiff in the suit.

On the other hand, learned counsel for respondent No.1 contended that impugned order is just and valid as the permission has been granted to file the suit afresh on the same cause of action. No harm is likely to be caused to the defendants.

I have considered the contentions raised by learned counsel for the parties.

The impugned order is not sustainable in the eyes of law as no

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reason has been recorded to indicate that there was a formal or technical defect in the suit. It was incumbent upon the trial Court to record findings about the formal or technical defect and further that on account of that formal defect the suit is likely to fail. The provisions of Order XXIII Rule 1 CPC have also not been followed as merely on the oral prayer of learned counsel for the plaintiff, suit has been permitted to be withdrawn to file fresh one.

In view of above, impugned order is set aside. Trial Court shall pass fresh speaking order in accordance with law.

Disposed of.

(Paramjeet Singh Dhaliwal)
Judge

February 09, 2016
R.S.