

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

-.-

CR 6067 of 2015

Date of decision: 01.04.2016

Ashok Kumar

..... Petitioner

Versus

Ram Niwas and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Ms Pratibha Yadav, Advocate
for the petitioner

Mr. S K Yadav, Advocate
for the respondents

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J. (Oral)

The present petition has been directed against order dated 03.08.2015 (Annexure P9) passed by the Civil Judge (Junior Division) Mahendergarh whereby the respondent/plaintiff Ram Niwas, has been allowed to withdraw the suit with liberty to file a fresh suit.

Counsel for the petitioner would submit that the learned trial Court did not assign any reason for granting permission and simply allowed the respondent to withdraw the suit in view of statement made by his counsel. It is further submitted that the impugned order is cryptic in nature and exhibits non-application of mind much less adverting to the relevant

provisions of Order XXIII of the Code of Civil Procedure.

Counsel for the contesting respondent has supported the impugned order with the submissions that as there were certain defects in the site plan and pleadings, counsel for the respondent/plaintiff made a statement before the trial Court and has rightly been allowed to withdraw the suit with liberty to file a fresh one when otherwise, no prejudice would be caused to the petitioner if the impugned order is allowed to sustain.

I have heard counsel for the parties and perused the records, particularly the impugned order.

A relevant extract from the impugned order is quoted here-under for ready reference:

“.....learned counsel for plaintiff has suffered a statement that due to certain technical defects in site plan and in pleadings, he does not want to pursue the present suit and wants to withdraw the same with liberty to file afresh and also requested that documents may kindly be returned to the parties. Heard. In view of statement made by learned counsel for plaintiff, present suit is hereby dismissed as withdrawn and liberty is given to file afresh. Documents are ordered to be returned to the parties as per rules....”

A casual reading of the impugned order would substantiate contention of the petitioner that the learned trial Court acted upon statement of the counsel for the plaintiff/respondent without adverting to the relevant provisions of law or recording a finding that the suit is likely to fail due to some technical defect. In this view of the matter, the impugned order

cannot be allowed to sustain and accordingly set aside and the matter is remitted to the trial Court concern for decision afresh in view of the observation made hereinbefore.

For the foregoing reasons, the petition stands disposed of in the aforesaid terms. The parties through their counsel are directed to appear before the trial Court on 04.05.2016.

(Rekha Mittal)
Judge

01.04.2016
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