

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

-.-

CR 7869 of 2015
Date of decision: 23.11.2016

Ved Parkash

..... *Petitioner*

Versus

Ved Kumar etc.

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Aakash Singla, Advocate
for the petitioner

Mr. Sumit Sangwan, Advocate
for respondents No. 1 and 2

-.-

Rekha Mittal, J. (Oral)

The present petition directs challenge against order dated 03.10.2015 (Annexure P5) passed by the Civil Judge (Junior Division) Dadri whereby application filed by the petitioner/plaintiff under Order 23 Rule 1 (3) of the Code of Civil Procedure for withdrawal of suit with liberty to file a fresh one on the same cause action has been dismissed.

Counsel for the petitioner has submitted that the application (Annexure P4) was dismissed by the trial Court mainly on the ground that in the application, there is no reference as to what technical defect (s) is left in the suit due to which the suit is likely to fail. It is further submitted that the present petition may be disposed of without prejudice to rights of the petitioner to file a fresh application for the same relief by giving detail (s) of the technical defect(s) likely to cause prejudice to the petitioner/plaintiff.

Counsel for the respondents has supported the impugned order with the submissions that the instant application was filed by the petitioner after three years of institution of the suit.

I have heard counsel for the parties, perused the paper book particularly the application (Annexure P4) and the order impugned.

Perusal of the application (Annexure P4) makes it evident that the same does not make reference to any technical defect(s) in the suit on the basis whereof the plaintiff sought indulgence of the trial Court for withdrawal of the suit with permission to file fresh one. The Court vide impugned order has held that the applicant has failed to make out a case withdrawing the suit with permission to file fresh suit on technical grounds. Keeping in view the above, I find merit in contention of the petitioner that the petitioner cannot be deprived of his right to file another application seeking withdrawal of the suit with permission to file fresh one by detailing the technical defect(s) due to which the suit is likely to fail. Any objection by the respondents with regard to the application having been filed at a belated stage of the proceedings would be appreciated by the trial Court, if a fresh application in this regard is filed by the petitioner/plaintiff.

For the foregoing reasons, the instant petition stands disposed of. An application filed by the petitioner/plaintiff shall be decided by the trial Court, on its own merit, according to law.

(Rekha Mittal)
Judge

23.11.2016
mohan bimbira

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No