

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

C.M. NO.3667 C OF 2016 &

R.S.A. NO.1295 OF 2016

DATE OF DECISION: MAY 16, 2016

Krishan Kumar

.....Appellant

VERSUS

Municipal Council, Narnarul and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

**Present: Mr. J. P. Sharma, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgement and decree dated 17.09.2014 passed by the Additional Civil Judge (Junior Division), Narnaul, whereby a suit for permanent injunction filed by the appellant-plaintiff against the respondent-defendants, restraining them from demolishing the house as also the construction raised by the appellant-plaintiff and dispossessing him therefrom, stands dismissed on the ground that the suit is not maintainable, appeal against which preferred has also been dismissed by the District Judge, Narnaul, on 14.10.2015.

It is the contention of learned counsel for the appellant that the Courts below have failed to appreciate that the suit could not be dismissed merely because of non-deposit of costs of ₹1,000/- with the District Legal

Services Authority, Narnaul, as ordered by the Additional District Judge, Narnaul, vide order dated 30.01.2013 whereby the appeal as well as the earlier suit bearing No.266 of 2002 preferred by the appellant-plaintiff against the respondent-defendants was permitted to be withdrawn with liberty to file a fresh one on the same cause of action. He contends that the Court should have given an opportunity to the appellant-plaintiffs to deposit the costs prior to dismissing the suit being not maintainable, which has not been done by the trial Court and, therefore, the judgements and decree as passed by the Courts below deserve to be set-aside.

I have considered the submissions made by learned counsel for the appellant and with his assistance have gone through the impugned judgements.

It is an admitted position that the appellant-plaintiff had earlier filed a suit bearing No.266 of 2002 titled as Krishan Kumar Vs. Municipal Committee, Narnaul and others, praying for the same relief and on the same cause of action as in the present suit, which was dismissed by the trial Court vide judgement and decree dated 26.03.2012. Appeal against the said judgement and decree was preferred by the appellant-plaintiff. The appeal as well as suit were sought to be withdrawn with permission to file a fresh suit on the same cause of action. The Appellate Court, vide order dated 30.01.2013, allowed withdrawal of the suit with liberty to file a fresh one on the same cause of action subject to payment of costs of ₹1,000/- to be deposited with the District Legal Services Authority, Narnaul. Fresh suit, which is the present one, was filed on 06.02.2013 but without depositing the costs of ₹1,000/- with the District Legal Services Authority, Narnaul. The arguments were addressed before the trial Court and the suit was dismissed

vide judgement and decree dated 17.09.2014, holding it to be not maintainable as the costs were not deposited. In the appeal, which was preferred against the said judgement and decree, a concocted story has been cooked up as detailed in Para 16 of the judgement passed by the lower Appellate Court. The said pleas cannot be accepted in the light of the fact that in para 9 of the plaint, the appellant-plaintiff has stated that he had withdrawn his appeal on an assurance of the respondent-defendants and with permission to file a fresh one but there is nothing mentioned with regard to imposition of costs, which clearly indicates that he had not deposited the costs. The concocted story as manufactured is that the counsel had gone to deposit costs of ₹1,000/- with the District Legal Services Authority, Narnaul, but as the Clerk of the said Authority was not available in the office, the said amount could not be deposited. The counsel remained ill and ultimately expired and, therefore, the associate counsel did not come to know whether the amount has been deposited or not. Had there been intention on the part of the appellant-plaintiff to deposit the costs, there should have been a specific mention thereof in the plaint itself. The learned lower Appellate Court has rightly appreciated the same and had come to a conclusion that the said story is a bogus one and a concocted plea has been created by the appellant-plaintiff, which is neither believable nor plausible.

Counsel for the appellant could not dispute that without deposit of costs of ₹1,000/-, the present suit, on the same cause of action, would not be maintainable and, therefore, the judgements and decree passed by the Courts below cannot be faulted with.

No other point has been argued by learned counsel for the appellant-plaintiff.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

Since the main appeal stands dismissed, C.M. No.3667 C of 2016 for restraining the respondents not to interfere into the ownership and possession of the appellant over the suit property is also dismissed.

May 16, 2016
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE