

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

CR No. 6095 of 2015

Date of Decision: 15.09.2017

SATBIR

-PETITIONER

VS

TRIBHUWAN AND ANR

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Chanderhas Yadav, Advocate,
for the petitioner.

Mr. Kartar Singh Malik-I, Advocate,
for respondent No.1.

Mr. Sanjay Mittal, Advocate,
for respondent No.2.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has assailed the order dated 26.08.2015 passed by Civil Judge (Senior Division), Rewari vide which application filed by the plaintiff-petitioner to withdraw the suit with a liberty to file fresh one on the same cause of action was partly allowed. The permission to file fresh suit on the same cause of action was declined.

On 17.09.2015, following order was passed by this Court:-

“Learned counsel for the petitioner inter

alia submits that the trial Court could have dismissed the application of the plaintiff for withdrawal of the suit in toto, but in any case it was not open to the Court to split up the statement of the plaintiff in two parts, thereby allowing the plaintiff to withdraw the suit by declining prayer to file fresh on same cause of action. Once the permission to withdraw the suit is granted, it is deemed to be with liberty to file fresh. Reliance is being placed on 1993 (1) PLR 749, Surjan Singh v. Amarjit Singh and 2008(3) RCR (Civil) 650, Lal Singh v. Ajit Singh and another.

Notice of motion for 03.12.2015.”

Thereafter, an effort was made to serve the respondent No.1 who was not found present on the given address. Even the effort made by the process server to affix the copy of summon on his house was opposed by respondent No.2 who happens to be his real brother. It appears that respondents No.1 and 2 have acted in tandem so as to restraint the public servant from performing his public duty. Even thereafter, the presence of respondent No.1 could not be secured and some latch is also attributable to the petitioner as he did not take any

step to serve the respondent No.1.

Today, Mr. Kartar Singh Malik-I, Advocate, appeared on behalf of respondent No.1.

Having heard the parties at length, I find that the impugned order dated 26.08.2015 was passed by the Civil Judge (Senior Division), Rewari on two counts. The facts were also noticed in the context of moving an application under Order 6 Rule 17 CPC by the plaintiff for amendment of the plaint which was dismissed on 27.07.2015. Even the revision petition filed against that order was got dismissed as withdrawn from the High Court on 18.08.2015 with a liberty to file an appropriate application before the trial Court.

Thereafter, this application came to be filed for withdrawal of the suit with a liberty to file fresh suit on the same cause of action. The trial Court has declined the prayer for filing fresh suit on the same cause of action, however, allowed the suit to be withdrawn.

In the light of observations made in **Surjan Singh vs Amarjit Singh, 1993(1) R.R.R. 521** and **Lal Singh vs Ajit Singh and another, 2008(3) RCR (Civil) 650**, I deem it appropriate to set aside the impugned order and remand the case to the trial Court for fresh decision in accordance with law. The trial Court shall be at liberty to take into consideration the

effect of order passed under Order 6 Rule 17 CPC and then proceed to decide the controversy in accordance with law.

Disposed of.

15.09.2017
jyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No