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

**Civil Revision No.2707 of 2108
Date of Decision: 19.11.2018**

**M/s Aneja Trading Company and others
.....Petitioners**

Vs

**M/s Reena Textile Mills and others
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. A.P.S. Chaudhary, Advocate
for the petitioners.

Mr. J.S. Lalli, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioners have laid challenge to the order dated 17.03.2018 passed by the Civil Judge (Jr. Divn.) Ludhiana, vide which the application filed by the defendants/petitioners under Order 7 Rule 11(d) CPC was dismissed.

[2]. Perusal of the record would show that the respondents/plaintiffs have earlier filed a suit for recovery of Rs.6,80,321/- along with interest. In the said suit, Special Power of Attorney of the plaintiff namely Rahul Baheti made a statement for withdrawal of the suit on 16.05.2017. The statement was to the following effect:-

*“M/s Reena Textile Mills Vs. Aneja Trading Company
Statement of Rahul Baheti S/o Subhash Chander special
power of Attorney for plaintiff.*

*Stated that I am holder of special power of attorney of the
partners of the firm M/s Reena Textile Mills. On the basis of
said power of attorney and on instruction of plaintiff, I
withdraw the present suit due to some technical reasons
and seek liberty to file suit afresh.*

*RO & AC
Sd/- Rahul Baheti
16.05.2017”*

*Sd/- Sumit Sabherwal, PCS
CJJD/Ldh/16.05.2017*

[3]. Perusal of the aforesaid statement would show that the same was filed for withdrawal of the suit due to some technical reasons and a prayer for filing fresh suit was also made. The Civil Judge (Jr. Divn.) Ludhiana vide order of even date 16.05.2017 allowed the suit to be withdrawn. Court fee was also allowed to be refunded to the plaintiffs as per rules. The order dated 16.05.2017 passed by the Civil Judge (Jr. Divn.) Ludhiana reads as under:-

“Reena Textile Mills vs. M/s Aneja Trading Co.

Present:Sh. H.S. Bhatti, Advocate, counsel for the plaintiff.

*Sh. Harvinderpal Singh, Advocate, counsel for the
defendants.*

*Sh. Rahul Baheti attorney of the plaintiff suffered
statement that on the instruction of plaintiff, he withdraw the
present suit. He has also filed application for refund of
Court fee. In view of the statement, present suit is hereby
dismissed as withdrawn. Court fee be refunded to plaintiff
as per rules. File be consigned to record room after due
compliance.*

Pronounced.

16.05.2017

(Sumit Sabherwal) PCS
Civil Judge Junior Divisional,
Ludhiana. (UID PB0366)”

[4]. Thereafter fresh suit was filed by the plaintiffs/ respondents in which application under Order 7 Rule 11(d) read with Section 151 CPC for rejection of plaint was filed by the defendants/petitioners on the ground that the suit is barred by law in terms of Order 23 Rule 1 CPC. There was no permission granted in the earlier suit to file fresh suit on the same cause of action.

[5]. Learned counsel for the petitioners by relying upon V. Rajendran and Anr. vs. Annasamy Pandian (D) Thr. Lrs. Karthyayani Natchiar, 2017(1) R.C.R. (Civil) 887; Chander vs. Mohinder and others, 2013(2) R.C.R. (Civil) 577; Rahul and another vs. Ajay Pal and others; 2016(2) PLR 477; Satwant Singh vs. Gurdev Singh & others; 2016(3) R.C.R. (Civil) 24; Kanta Devi vs. Jagdish Chand and others; 2017(4) Him.LR.2263 and Gordhanlal vs. Babulal and others, 2017(2) M.P.W.N.182 contended that there has to be a formal defect in the suit for withdrawal of the same for the purposes of filing a fresh suit on the same cause of action. The formal defect has to be constituted within the meaning of Order 23 Rule 1(3)(a) CPC. For filing a fresh suit on the same cause of action,

the plaintiff has to prove the case within the four corners of Order 23 Rule 1(3) CPC and in the absence thereof, second suit is barred in terms of Order 23 Rule 1 CPC. Withdrawal cannot be allowed merely on the oral prayer.

[6]. I have considered the submissions made by learned counsel for the parties.

[7]. The ratio of aforesaid precedents is only in the context of challenging the order vide which earlier suit was withdrawn. In the instant case, the order dated 16.05.2017 passed by the Civil Judge (Jr. Divn.) Ludhiana is not under challenge. The only grievance of the petitioner is that the second suit on the same cause of action is barred under Order 7 Rule 11(d) CPC.

[8]. Perusal of the statement dated 16.05.2017 made by Rahul Baheti attorney of the plaintiff would show that the same was not the oral statement of the counsel, rather statement of party in writing was made which was duly signed by Rahul Baheti, who appeared in the Court. Liberty was also sought to file fresh suit on the same cause of action. The trial Court while granting liberty to withdraw the suit has impliedly given permission to file fresh suit otherwise, the trial Court ought to have dismissed the application.

[9]. The ratio of judgment of **Lal Singh vs. Ajit Singh and another, 2008(3) R.C.R. (Civil) 650** can be relied in the present

context. Grant of permission only to withdraw the suit in view of prayer made for withdrawal of the suit with liberty to file fresh suit on the same cause of action would necessarily mean implied permission to file fresh suit otherwise the Court would have dismissed the application. The ratio of aforesaid case (supra) would cover the controversy in question.

[10]. The order dated 16.05.2017 vide which earlier suit was allowed to be withdrawn was never assailed by the petitioners in any manner. In this revision petition also, the order has not been assailed. For attracting Order 7 Rule 11(d) CPC, pleadings of the earlier suit are required to be proved in the present case. The pleadings of the earlier suit are not *per se* admissible.

[11]. In view of aforesaid facts, ingredients of Order 7 Rule 11(d) CPC cannot be found to be attracted for the reasons recorded hereinabove. This revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

November 19, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No