

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 5978 of 2015 (O&M)

Date of Decision: 24.09.2018

Sohan Lal Dutta @ Sohan Singh Dutta

.....Petitioner

Vs.

Vinay Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Rajeev Dev Sharma, Advocate,
for the petitioner.

Mr. R.C. Chauhan, Advocate,
for respondents no. 1 and 2.

Mr. Sandeep Kumar, Advocate, for
Mr. Neeraj Sharma, Advocate,
for respondent no. 3.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the order of the learned trial Court [Civil Judge (Junior Division), Pathankot], dated 30.05.2015, by which the application filed by the respondents-plaintiffs under Order XXIII Rule 1 (3) CPC, seeking to withdraw the suit and file a fresh one by removing what is termed therein as a formal defect in the pleadings, has been allowed, and the respondents-plaintiffs granted permission to withdraw the suit and to file a fresh one on the same cause of action

Learned counsel for the petitioner submits that the respondents-plaintiffs had earlier filed an application under Order VI Rule 17 CPC, for amendment of the plaint, which had been dismissed by the trial Court. In that

application, the plaintiffs had contended that due to illegal excavation of the earth, for construction of a building by the petitioner, damage had been caused to the building of the plaintiffs (as contended), and therefore the suit may be allowed to be amended, to seek damages for the loss caused to the plaintiffs.

That application was dismissed by the learned trial Court on 27.01.2015 (a copy of the order being Annexure P-4), with the said order having become final.

He then draws attention to the application filed under Order XXIII Rule 1 (copy Annexure P-5), wherein withdrawal of the suit is sought to file a suit for damages, which is the same reasoning given as in the application under Order XI Rule 17.

The contention therefore is that despite the 2nd application being one seeking the same relief as was sought by the earlier application filed under Order XI Rule 17, it has now been allowed by the trial Court, despite the dismissal of that application, with no reasoning whatsoever given in the impugned order.

A perusal of the impugned order dated 30.05.2015 (Annexure P-7) shows that not one reason has been given by the Civil Judge for allowing the application, with the entire order being contained in one page, the last part of which reads as follows:-

“Arguments heard. Application under Order XXIII Rule 1 CPC is allowed and liberty is granted to the plaintiffs to withdraw the present suit and file a fresh suit on the same cause of action. Liberty is granted to withdraw this suit and file a fresh suit. File be consigned to the record room.”

In view of the above, the order being wholly cryptic and without any reasoning whatsoever, the petition is allowed and the said order is set aside, with the trial Court directed to pass a reasoned order on the application filed by the

respondents-plaintiffs under Order XXIII Rule 1 CPC, with the said order to be now passed within a period of two months from today, the matter having remained pending unnecessarily.

September 24, 2018
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No.