

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

CR-7414-2015

Decided on: 20.02.2018

Raoul Vishal Singh (Minor)

... Petitioner

Versus

Smt. Laxmi Devi and another

... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. M.S. Kundu, Advocate, for
Mr. Ajay Ghangas, Advocate,
for the petitioner.

Ms. Ramandeep Kaur, Advocate, for
Mr. Bhupender Singh, Advocate,
for respondent No.1.

Mr. Jagdish Chand Malik, Advocate,
for respondent No.2.

KULDIP SINGH, J (ORAL)

Impugned in the present revision is the order dated 23.09.2014
(Annexure P-4) passed by learned Additional Civil Judge (Sr. Division),
Samalkha, District Panipat.

Heard.

The impugned order is reproduced as under:-

“This order of mine shall decide the application for withdrawal of suit u/o 23 Rule 1 CPC with permission to file the fresh one. On perusal of application filed by the plaintiff/applicant, it is merely stated in paragraphs no.5 that real facts were not in knowledge of Special Power of Attorney Smt. Krishna whereas in paragraph no.4 of the application, it is written that applicant/plaintiff was minor and the above said suit was filed through his mother Florence Indrawati Darshan through her S.P.A. Smt. Krishna then no question arises that real facts were

not in knowledge of S.P.A. Furthermore, as per order 23 Rule 1 CPC, the suit can be dismissed as withdrawn with permission to file fresh one, if there is any technical defect, but there is no mention of technical defect anywhere in the application. Therefore, such kind of application without any specific plea can't be allowed. Hence, suit is dismissed as withdrawn without permission to file fresh one. Hence, suit is dismissed as withdrawn without permission to file fresh one. File be consigned to the record room after due compliance.”

From the impugned order, it is clear that an application was filed under Order XXIII Rule 1 CPC, 1908 to withdraw the suit with permission to file fresh one on the same cause of action.

The said application was dismissed, finding that there is no technical defect. However, still the suit was dismissed as withdrawn without permission to file fresh one.

I am of the view that the approach of the trial Court is wholly illegal. If the permission is sought to withdraw the suit with permission to file fresh one, the Court had the jurisdiction to decline that permission. Once that permission is declined, the suit had to be decided on merits by recording findings. The impugned order is, therefore, set aside. The case is ordered to be decided on merits. Both the parties are directed to appear before the trial Court on 20.03.2018 at 10.00 a.m. Since the suit is of the year 2010, the trial Court is directed to expeditiously decide this suit on priority basis.

The present revision petition is allowed, accordingly.

(KULDIP SINGH)
JUDGE

20.02.2018

Dinesh

Whether speaking/reasoned : Yes
Whether Reportable : No