

208

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

CR No. 7832 of 2012

Date of Decision: 10.08.2018

Suresh Kumar and others

....Petitioners

Vs

Roshan Lal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashok Verma, Advocate,
for the petitioners.

Mr. Rajinder Goyal, Advocate,
for respondent No.1.

RAJ MOHAN SINGH, J.(Oral)

1. Petitioners have challenged the order dated 13.10.2012 passed by Civil Judge (Senior Division), Hansi whereby the suit filed by the plaintiff-respondent No.1 was allowed to be dismissed as withdrawn with a liberty to file fresh on the same cause of action under Order 23 Rule 1 CPC.

2. At the time of issuance of notice of motion on 08.08.2014, following order was passed:-

“Learned counsel for the petitioners, inter alia, contends that the plaintiff sought various reliefs in the suit filed in the year 2007 in which the petitioners filed written statement taking two

preliminary objections that the suit is not maintainable for want of Mandatory Notice under Section 79 of the Punjab Co-operative Societies Act, 1984 [for short 'the Act'] and under Section 124 of the Act, to the petitioner and that the Civil Court does not have the jurisdiction. On the pleadings of the parties, issues were framed. Both the parties led their entire evidence and when the case was fixed for arguments, an application was filed by the plaintiffs making an averment that at the time of preparation of arguments, it came to know that notice under Section 124 of the Act has not been given to either side, therefore, there is a formal defect for which they may be allowed to withdraw the suit in order to file fresh one on the same cause of action. The said application has been allowed by the learned Court below.

Learned counsel for the petitioners submits that averments made in the application were itself false as issues have specifically been framed about the non-issuance of the notice. In this regard, he relies upon a judgment

*of this Court rendered in **CR No.1081 of 2014** titled as “**Krishan Kumar Sood and another Vs. Sneh Latta Sud and others**” decided on 12.2.2014.*

Notice of motion for 3.11.2014.

In the meantime, further proceedings before the trial Court shall remain stayed.”

3. Learned counsel for the petitioners has argued that no withdrawal of suit at this belated stage is permissible in view of law laid down in **CR No.1081 of 2014** titled as “**Krishan Kumar Sood and another Vs. Sneh Latta Sud and others**” decided on 12.2.2014.

4. There is another facet of aforesaid controversy. In terms of Order 23 Rule 1 CPC, even if a suit is allowed to be withdrawn with liberty to file fresh one on same cause of action, still the fresh suit would be hit by Order 23 Rule 2 CPC i.e. limitation of law not to be effected by fresh suit. In any case, fresh suit is instituted with the permission of the Court, plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted. The cause of action for the second suit on the strength of aforesaid provision would be barred by limitation.

5. Faced with this situation, learned counsel for

respondent No.1 states that if the impugned order is to be set aside, then his original suit be allowed to remain intact.

6. To the aforesaid proposition, learned counsel for the petitioners has no objection.

7. In view of facts and circumstances of the case, I deem it appropriate to set aside the impugned order dated 13.10.2012 passed by Civil Judge (Senior Division), Hansi. The revision petition is allowed.

8. With the setting aside of the impugned order, the order dismissing the suit as withdrawn with liberty to file fresh suit stands quashed and the original suit shall be revived from the stage when the permission was accorded.

9. Both the parties are directed to appear before the trial Court on 28.08.2018.

10.08.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No