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

**Civil Revision No.9272 of 2018 (O&M)
Date of Decision: 18.12.2018**

Jagdev Singh

.....Petitioner

Vs

Tarsem Singh and another

....Respondents

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

Present:Dr. Rau P.S. Girwar, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner is aggrieved of the orders dated 14.05.2018 and 02.08.2018 passed by the Civil Judge (Jr. Divn.) Bathinda.

[2]. In a suit for declaration, plaintiff sought to withdraw the suit under Order 23 Rule 1 CPC with a permission to file fresh suit on the same cause of action and also to refund the court fee.

[3]. Perusal of the record would show that the plaint was rejected qua defendants No.2 and 3. Plaintiff has already availed as many as 18 opportunities to conclude his evidence which was closed by order of the Court on 08.01.2018. Even thereafter, the plaintiff moved an application for leading additional evidence. The said application was dismissed by the

trial Court vide order dated 12.02.2018. The case was argued on behalf of the defendant and last opportunity was granted to the plaintiff to address arguments on 26.02.2018. However, the arguments were not advanced by the plaintiff, rather the application for withdrawal of the suit with a permission to file fresh suit on the same cause of action was moved at that stage.

[4]. The trial Court dismissed the application by noticing the aforesaid incriminating facts and the plaintiff remained unsuccessful in the application for recalling/review of the order which was filed along with application under Section 5 of the Limitation Act.

[5]. Plaintiff could not point out the formal defect in the suit. Since the plaint was rejected qua defendants No.2 and 3, therefore, the plea with regard to shifting of office of defendant No.2 to the Court of Sh. Kanwaljit Singh Bajwa was not tenable. Even the said plea did not constitute any such formal defect which would entail in withdrawal of the suit with permission to file fresh suit on the same cause of action. The conduct of plaintiff in not concluding his evidence despite availing 18 sufficient opportunities was rightly deprecated by the trial Court and the evidence was closed by order of the Court.

[6]. Case of the defendant was already argued before the trial Court and last opportunity was granted to the plaintiff to

address his arguments. Failure on the part of the plaintiff to address arguments before the trial Court on the date fixed would not entitle the plaintiff to further delay the disposal of the case by filing the application, which was lacking legal parameters in terms of Order 23 Rule 1 CPC.

[7]. The ratio of **Anil Kumar Singh vs. Vijay Pal Singh & Ors., 2018(1) R.C.R. (Civil) 200**, is on different facts. The facts in the present case are so pertinent which would not entitle the plaintiff to seek withdrawal of the suit. The withdrawal of the suit was sought primarily on the ground that due to shifting of office of defendant No.2 to the Court of Mr. Kanwaljit Singh Bajwa, rest of the suit would not be properly adjudicated upon. The said plea in the background of the case was vague enough to be accepted even by stretch of any imagination. The plaint itself was rejected qua defendants No.2 and 3 in the application under Order 7 Rule 11 CPC. The said ground was not available to the plaintiff for pressing the withdrawal of the suit.

[8]. Thereafter the conduct of the plaintiff was such that he was never inclined to get disposal of the suit in accordance with law despite availing 18 opportunities to conclude his evidence. After closure of his evidence, he remained unsuccessful in his attempt to lead additional evidence and thereafter at the time of culmination of the suit proceedings, he did not argue the case

despite the arguments made by the defendant. Owing to the conduct of the plaintiff, the impugned orders were passed. The aforesaid facts make the case distinct from the facts of **Anil Kumar Singh's** case (supra).

[9]. In view of above, there is no justification in interfering in the impugned orders passed by the trial Court. This revision petition is accordingly dismissed.

December 18, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No