

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1945 of 2018 (O&M)
Date of decision: 18.12.2019

Narinder Singh

... Petitioner

Versus

Radha Rani and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Sanjay Verma, Advocate,
for the petitioner.

Mr. Arun Sharma, Advocate,
for the respondents.

ARUN PALLI, J. (Oral)

The defendant is in revision aggrieved by an order dated 7.12.2017 (Annexure P-4) passed by Civil Judge (Junior Division), Yamuna Nagar at Jagadhri, vide which the suit filed by the respondents-plaintiffs was permitted to be withdrawn with liberty to file afresh on the same cause of action.

In context of the limited issue involved for consideration, it would be apposite to refer to the impugned order, which reads, thus:-

“Today case was fixed for evidence of plaintiff. At this stage, Ld. Counsel for plaintiff appeared before the court and suffered a statement to the effect that she does not want to pursue with the present suit any more and wants to withdraw the same. She further requested that permission be granted to her to file fresh suit. Her statement has been recorded separately. Keeping in view the statement, the present suit is hereby dismissed as withdrawn and permission is hereby granted to plaintiff as per rule. File after needful be consigned to the record room”

A bare analysis of the provisions of Order 23 Rule 3 of the Code of Civil Procedure reveals that, where the Court is satisfied that a suit must fail by reason of some formal defects or there exists sufficient grounds for allowing the plaintiff to institute a fresh suit qua the same subject matter, it may, on such terms, permits the plaintiff to withdraw from such suit with liberty to file afresh. *Ex facie*, the order is erroneous and does not conform to the requirements of the provisions, referred to above.

That being so, the only and the inevitable option this Court has is: the order dated 7.12.2017 (Annexure P-4) is set aside. The trial court is requested to reconsider the prayer of the respondent-plaintiff and pass appropriate orders, in accordance with law. Needless to assert that this order shall not constitute any expression of opinion on merits of the case of either side. Parties through their counsel are directed to appear before the trial court on 08.01.2020.

The revision petition is accordingly disposed of, in the above terms.

(ARUN PALLI)
JUDGE

December 18, 2019
AK Sharma

Whether speaking / reasoned:	YES
Whether Reportable:	NO