

246

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

CR No. 4400 of 2018
Date of Decision: 06.03.2019

Gulab Singh and others

-Petitioners

Vs

Tej Pal and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kul Bhushan Sharma, Advocate,
for the petitioners.

Mr. Tushar Gautam, Advocate,
for the respondents.

RAJ MOHAN SINGH, J. (ORAL)

Petitioners have preferred this revision petition against the order dated 12.03.2018 passed by Civil Judge (Senior Division), Palwal vide which application for withdrawal of suit with permission to file fresh on the same cause of action was allowed.

Perusal of the impugned order would show that learned counsel for the plaintiff orally pointed out some technical defect for which he wanted to withdraw the suit with a liberty to file fresh on the same cause of action. Prayer was opposed by learned counsel for the defendants. Prayer was allowed on the basis of statement made by learned counsel for the plaintiff and

the suit was allowed to be withdrawn with a liberty to file fresh suit on the same cause of action.

Learned counsel for the petitioners submitted that there was no such application filed by the plaintiff under Order 23 Rule 1 CPC and the prayer was based only on oral assertion made by learned counsel for the plaintiff.

Learned counsel further pointed out that the Court has not recorded any formal defect under Order 23 Rule 1 CPC nor any such ground or defect was pleaded in writing before the trial Court. The application was allowed at the stage of leading evidence by the defendants.

Perusal of the impugned order would show that the order is totally silent about recording any finding in respect of formal defect for which the suit must fail by reasons of the same.

Under Order 23 Rule 1(3) CPC, permission to withdraw a suit with liberty to file fresh on the same cause of action can only be granted if the suit must fail by reasons of some formal defect or there are sufficient grounds for granting such permission and liberty.

Plaintiff has not pleaded any such formal defect in any application nor the trial Court has recorded any such finding in the context of any such formal defect in the plaint.

The impugned order is totally non-speaking and the same has been passed without there being any formal defect to that effect.

I am of the considered view that the impugned order is totally unsustainable in law and the same is hereby set aside.

Normal consequences to follow.

06.03.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No