

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

Date of Decision-17.05.2019

1. CR No.4668 of 2018 (O&M)

Hem Lata ... Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) and
another ... Respondents

2. CR No.4669 of 2018 (O&M)

Anil Kumar ... Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) and
another ... Respondents

3. CR No.4672 of 2018 (O&M)

Mahesh Kumar Chhabra ... Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) and
another ... Respondents

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

Present: Mr. Rahul Jaswal, Advocate
for the petitioner.

Ms. Anupama Sharma, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.4668 of 2018 titled Hem Lata Vs. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) and another, CR No.4669 of 2018 titled Anil Kumar Vs. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) and another and CR No.4672 of 2018 titled Mahesh Kumar Chhabra Vs. Uttar Haryana Bijli Vitran Nigam Limited

(UHBVNL) and another are being disposed of. Point involved in the aforesaid three revision petitions is identical, therefore, facts are being noticed from CR No.4668 of 2018.

[2]. Petitioner has challenged the order dated 10.04.2018 passed by Civil Judge (Junior Division), Panipat vide which the application under Order 23 Rule 1(3) read with Section 151 CPC for permission to withdraw the suit with liberty to file fresh suit was dismissed.

[3]. Plaintiff filed a suit for declaration with consequential relief of permanent injunction on the ground that the plaintiff is a consumer of defendants and the electric connection was installed in the premises of the plaintiff. Plaintiff has been making payment of electricity charges regularly except the impugned amount in respect of which memos were issued to the plaintiff. Theft of energy was alleged against the plaintiff and the plaintiff was compelled to challenge the action of the defendants by way of civil suit. Petitioner alleged that after receiving the notice of the suit, the defendants gave threats of immediate dis-connection and succeeded in recovering the whole amount. Defendants also registered a false case and still adamant to dis-connect the connection of the aforesaid premises. Plaintiff/petitioner alleged that there is change in the circumstances and termed these circumstances to be technical and formal defects.

[4]. The application was contested by the defendants on the ground that there is no technical defect in the suit.

[5]. The suit has been filed for declaration to the effect that notices dated 20.12.2016, checking report dated 13.10.2016 and demand of Rs.1,69,649/- are illegal, null and void. Permanent injunction was also sought, restraining the defendants from dis-connecting the electricity supply of the plaintiff's meter on account of non-payment of aforesaid alleged payment of the dues. Notice of the suit was issued and the defendants have already appeared and have also filed written statement and reply to the application. When the case was fixed for consideration of stay application, the present application came to be filed.

[6]. According to the plaintiff, she has already deposited the amount claimed in the impugned notices because of threats given by the defendants to dis-connect the electricity connection. A criminal case has been registered against her. The aforesaid instances have been termed as formal defects in the suit for withdrawal of the suit with a liberty to file fresh suit on the same cause of action.

[7]. The prayer has been dismissed vide the impugned order dated 10.04.2018 passed by Civil Judge (Junior Division), Panipat. That is how, the present revision petition(s) came to be filed.

[8]. Formal defect as per the rules does not fit in the aforesaid plea of the plaintiff inasmuch as that formal defect is a defect of form prescribed by rules of procedure such as want of notice under Section 80 CPC, improper valuation of the suit, insufficient Court fee, doubt in respect of identification of the suit property, mis-joinder of parties, cause of action and so on. Formal defect as alleged by the petitioner does not fall under any such category, rather the alleged threat advanced by the defendants has already culminated in deposit of the amount and thereafter, a criminal case has been registered against the petitioner. The suit cannot be termed as bad on account of any such formal defect which would entitle the petitioner to seek withdrawal of the same with a permission to file fresh suit on the same cause of action. The plea is vague and ambiguous. Plaintiff has already deposited the amount of her own. A mere withdrawal of the suit without seeking any permission to file fresh on the same cause of action can always be permitted, but in case of seeking permission to file fresh on the same cause of action, the Court has to weigh the plea on the defined parameters whether there is any existence of formal defect as per rules of procedure and the Court has to decide as to whether the permission to seek withdrawal of the suit should be granted to the plaintiff and if so, on what terms as provided in sub-Rule (3) of Rule 1 of Order 23 CPC. The formal defect has to be constituted within

the meaning of Order 23 Rule 1(3) (a) CPC. For filing a fresh suit on the same cause of action, the plaintiff has to prove the case within the four corners of Order 23 Rule 1(3) CPC and in the absence thereof, second suit is barred in terms of Order 23 Rule 1 CPC. In such situation, withdrawal cannot be allowed merely on the asking of the plaintiff.

[9]. Since the pleaded case in the application does not fall under any of the category of formal defect, therefore, there is no error of jurisdiction in the impugned order dated 10.04.2018 passed by Civil Judge (Junior Division), Panipat. No indulgence can be granted in these revision petitions. These revision petitions are accordingly dismissed.

17.05.2019
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No