

223

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

CR No. 5570 of 2016 (O&M)
Date of Decision: 08.02.2019

Narender Singh (deceased) through LRs

-Petitioners

Vs

Darshan Singh and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kulwant Singh, Advocate,
for the petitioners.

Mr. Mohit Aneja, Advocate, for
Mr. K.S. Dhaliwal, Advocate,
for respondents No.1 to 3.

RAJ MOHAN SINGH, J. (ORAL)

This revision petition has been preferred by the petitioners against the order dated 18.07.2016 passed by Additional Civil Judge (Senior Division), Karnal whereby the application under Order 23 Rule 1(3) CPC filed by the plaintiffs was allowed.

Plaintiffs were permitted to withdraw the suit with a liberty to file fresh in respect of same cause of action subject to Order 23 Rule 2 CPC i.e. limitation as limitation law is not affected by first suit.

In case, fresh suit is instituted on the basis of

permission granted by the Court, plaintiffs are bound by the law of limitation in the same manner as if the first suit had not been instituted.

At the time of issuance of notice of motion on 04.11.2016, following order was passed:-

“Limited plea raised before this court is that lis between the parties has already been decided by the court of competent jurisdiction. Even, if present order is maintained, plaintiff may not be granted permission to file a fresh suit. It has also been brought to the notice of the court that plaintiff was allowed to withdraw the suit on the basis of a technical defect (nonjoinder of parties) at the stage when it was nearing culmination.

Notice of motion for 16.12.2016.

Notice re: stay.”

Learned counsel for the petitioners confined his prayer only to the second aspect i.e. permission to file fresh suit may not be granted, though there was no challenge to withdrawal of the suit in terms of Order 23 Rule 1 CPC.

In **Lal Singh vs Ajit Singh and another, 2008(3)**

RCR (Civil) 650, it was held that when the plaintiffs makes an

application for withdrawal of the suit for filing fresh on the same cause of action, permission to withdraw is deemed to be with a liberty to file fresh as the Court could not permit withdrawal without permission to file fresh suit.

In terms of Order 23 Rules 1 and 4 CPC, plaintiffs are entitled to leave or relinquish any part of the claim. Defendants cannot compel the plaintiffs to prosecute the suit by opposing the prayer in respect to claim costs for filing suit against them and putting them in litigation.

Since the plaintiffs have already confined their prayer to the second part of the relief, therefore, in view of aforesaid ratio in **Lal Singh's case (supra)**, the order passed by the trial Court does not suffer with any error of jurisdiction.

This revision petition is accordingly, dismissed.

08.02.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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