

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 266

CR-8969-2017

Date of decision : 16.05.2019

Pritpal Singh and others

..... Petitioners

VERSUS

Gurdev Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Keshav Pratap Singh, Advocate, for the petitioners.

Mr. S. K. Aggarwal, Advocate, for respondent No. 1.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 01.02.2017, passed by the Civil Judge (Senior Division), Kurukshetra (for short, the Trial Court), permitting respondent No. 1-Gurdev Singh to withdraw the civil suit filed by him with permission to file a fresh one on the same cause of action.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that respondent No. 1 filed a suit seeking therein permanent injunction to restrain the petitioners as also respondent No. 2 from interfering in his possession over the land detailed and described in the head note of his plaint (for short, the suit property). On being put to notice, the petitioners and respondent No. 2, who were the defendants in the suit, appeared before the Trial Court and *inter alia* submitted that respondent No.1's plaint was defective as the same had not been properly verified. According to them, at the time of the filing of the suit, respondent No. 1 was confined in jail and therefore, his signatures on the plaint were required to be verified by the concerned jail authorities and in the absence thereof his suit was liable to be rejected. In view of the above objection, respondent No. 1 filed an application before the Trial Court for rectification of his plaint on the ground that the

counsel who had filed respondent No. 1's plaint had got respondent No. 1's power of attorney attested by the jail authorities but inadvertently not the plaint and the accompanying affidavit. While the above application was pending, respondent No. 1 filed an application before the Trial Court seeking therein to withdraw his entire suit with permission to file a fresh one on the same cause of action after properly appending his signatures on the plaint, stay application and the affidavit. After considering the application filed by respondent No. 1 as also his statement made by him before the Trial Court, his prayer for withdrawing his suit with permission to file a fresh one on the same cause of action was accepted through the order under challenge in the present proceedings.

Learned counsel for the petitioners submitted that under Order 23 Rule 1 CPC a suit could be permitted to be withdrawn with permission to file a fresh one on the same cause of action only if there was some technical defect in the suit. According to him, in the present case, in the application filed by respondent No. 1, no technical defect in the suit was pleaded by him and in the absence thereof the Trial Court erred in allowing respondent No. 1 to withdraw his suit with permission to file a fresh one on the same cause of action. In support of his arguments, learned counsel for the petitioners cited a judgment of this Court in "*Vinod Kumar vs. Gurdev Singh and others*" 2016(2) PLR 329.

On the other hand, learned counsel for respondent No. 1 submitted that a perusal of the application filed by respondent No. 1 clearly revealed that through such application he had brought to the notice of the Trial Court the technical defect in his suit which was that since he was in jail his signatures on his plaint, stay application and the affidavit were required to be attested by the jail authorities which inadvertently had not been done. On going through the reasons given by respondent No. 1 as also his statement made by him before the

Trial Court, he was rightly permitted to withdraw his suit. Learned counsel further submitted that a perusal of the order impugned shows that the same was passed in the presence of learned counsel for the petitioners and at that time no objection was raised on behalf of the petitioners to the relief being granted to respondent No. 1.

Seeking dismissal of the present petition on the ground of delay and estoppel, learned counsel for respondent No. 1 submitted that after the impugned order was passed, on 01.02.2017 respondent No. 1 filed his fresh suit. Alongwith his suit, he filed an application under Order 39 Rules 1 and 2 CPC seeking therein interim relief. The Trial Court dismissed such application. The appeal filed by respondent No. 1 against such dismissal was accepted by the Appellate Court. The petitioners then challenged the acceptance of respondent No.1's appeal by filing a petition before this Court being CR-4832-2017 "*Pritpal Singh and others vs. Gurdev Singh and others*" which was dismissed on 04.08.2017. Before this Court no plea was taken on behalf of the petitioners that respondent No. 1's second suit was barred on account of illegal withdrawal of his earlier suit.

It is not disputed that at the time when respondent No. 1 initially filed his suit, he was confined in jail and that though his *vakalatnama* had been attested by the jail authorities, his signatures on the plaint and other documents appended thereto were not. In their written statement the petitioners raised an objection with regard to the above defect in respondent No. 1's plaint. Respondent No. 1 then filed an application seeking rectification of the above defect. However, while such application was pending, an application was filed by him seeking therein to withdraw his suit with permission to file a fresh one on the same cause of action after removing the above defect.

Though respondent No. 1's *vakalatnama* was attested by the jail

authorities, however, it appears that due to sheer oversight respondent No. 1's counsel did not get attested respondent No. 1's signatures on the plaint as also on the documents attached thereto. Due to the aforesaid defect in his suit respondent No. 1 sought and rightly got permission of the Trial Court to withdraw his suit and file a fresh one on the same cause of action.

On the grounds mentioned therein respondent No. 1 filed an application seeking withdrawal of his suit with permission to file a fresh one on the same cause of action. The petitioners did not file any reply to the same. Their counsel also did not seek time to do so. Further, no objection was raised to the grant of respondent No. 1's prayer by the learned counsel appearing for the petitioners at the time when the impugned order was passed.

The present petition has been filed after 10½ months of the passing of the impugned order. In the meanwhile, as per the permission granted by the Trial Court respondent No. 1 filed a fresh suit. Alongwith his suit, he filed an application under Order 39 Rules 1 and 2 CPC seeking therein interim relief. The Trial Court dismissed such application. Respondent No. 1 challenged such dismissal by way of an appeal which was accepted by the Appellate Court. The petitioners challenged the acceptance of respondent No. 1's appeal through a petition filed before this Court being CR-4832-2017 "*Pritpal Singh and others vs. Gurdev Singh and others*" which was dismissed on 04.08.2017. A perusal of the order of this Court dated 04.08.2017 reveals that for opposing the grant of interim relief to respondent No. 1 no plea was raised on behalf of the petitioners that his second suit was barred on account of the illegal withdrawal of his earlier suit.

The judgment cited by learned counsel for the petitioner in *Vinod Kumar's* case (supra) would have no application as in that case no technical

defect in the plaintiff's plaint had been pointed out.

In view of the above discussion, no error is found in the order of the Trial Court permitting respondent No. 1 to withdraw his suit with permission to file a fresh one on the same cause of action especially when such prayer was sought and got at the initial stage of the litigation even when issues had not been framed.

Dismissed.

16.05.2019
shamsher

[DEEPAK SIBAL]
JUDGE

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