

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

CR-2141-2019

Date of decision:-17.12.2019

Harjit Singh and others

...Petitioners

Versus

Rajandeep Singh minor through Smt.Baljeet Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Bikramjit Arora, Advocate
for the petitioners.

Mr.Umesh Aggarwal, Advocate
for the respondents.

H.S. MADAAN, J.

This revision petition is directed against the order dated 10.12.2018 passed by Civil Judge (Jr.Divn.), Amritsar. For ready reference the impugned order is being reproduced as under:

*Present: Sh. Rajiv Kumar Sharma Advocate for the plaintiff.
Sh. Vijay Khara Advocate counsel for the defendants no. 1,2,5 and 6.
Sh. D.P. Sharma Advocate for the defendants no.7 and 9.
Sh. Satinder Singh Advocate counsel for the defendants no. 20,21 and 22.
Suit against defendant no. 8 dismissed.*

Baljit Kaur plaintiff alongwith her counsel Sh. Rajiv Sharma has come present and stated that there is a technical defect in the suit. She prayed to withdraw this suit with permission to file the fresh one after curing the technical defect. Sh. Rajiv Sharma has stated that the case was to be instituted through the next friend,

but, this case has been filed by the natural guardian. A separate statement of Baljit Kaur has been recorded in this regard. The statement is duly counter signed by Sh. Rajiv Sharma Advocate. In view of the request of the plaintiff, the instant suit stands dismissed as withdrawn with liberty to file fresh one after curing the technical defect. File be consigned to record room after its due compilation as per rules.

The grouse of the revisionists, who were defendants before the trial Court is that no application had been filed by the plaintiff pointing out the technical defect in the suit, which was likely to lead to its dismissal, then asking for being allowed to withdraw the suit granting him permission to file the suit on the same cause of action; the defendants were not given any opportunity to oppose the request and in a hurried manner withdrawal of the suit was allowed and permission was granted to the plaintiff to file a fresh suit after curing the technical defect. It could not be done in such a manner. The second suit filed is barred under the law.

Learned counsel for the revisionists while addressing arguments on those very lines has referred to a judgment by a Co-ordinate Bench passed in CR No.4400 of 2018 titled as 'Gulab Singh and others Versus Tej Pal and others', decided on 6.3.2019 wherein it was observed that when the 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 order being non-speaking having been passed without there being any formal defect was found to be

unsustainable and was set aside.

Whereas learned counsel appearing for the respondents has defended the order submitting that it has been passed as per law and no defect can be found therewith. The revision petition is without any merit and it should be dismissed.

After hearing both the counsel, I do not find any illegality or infirmity in the impugned order, which might have called for interference by this Court while exercising revisional jurisdiction. The order is detailed and well reasoned. It was passed in presence of counsel for the defendants, who are revisionists before this Court. Counsel for the defendants had an opportunity to oppose the request but he is not shown to have recorded his dissent opposing the request made by plaintiff with counsel. It being so, now filing the revision petition thereafter challenging the order passed by the Court is uncalled for.

Furthermore, Order 23 CPC deals with withdrawal of suit or abandonment of part of claim. Sub-Rule 3 provides that where the Court is satisfied— (a) that a suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject- matter of such suit or such part of the claim.

In that way, the important factor is subjective satisfaction of the Court and the trial Court is supposed to have exercised such satisfaction while allowing the request made by the plaintiff. No formal

application for the purpose is required. The Courts are required to do substantial justice and not to get bogged down in technicalities. Furthermore, rules of procedure are hand maid of justice. They are meant to achieve ends of justice and not to defeat those.

Furthermore, the order has been passed in a suit, which had been filed on behalf of a minor. It is the duty of the Court to watch interest of the minor. A minor cannot be debarred from agitating for his rights by adopting a hyper-technical approach. The judgment referred to by learned counsel for the revisionists is clearly distinguishable due to different facts and circumstances.

Finding no merit in the revision petition, the same stands dismissed.

17.12.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No