

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

**RSA No.6031 of 2018 (O&M)
Date of Decision : 11.01.2019**

Jarnail Singh and another

.....Appellants

Versus

Baldevi Devi and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Diwan S. Adlakha, Advocate
for the appellants.

SUDIP AHLUWALIA, J. (ORAL)

This appeal is directed against the judgment dated 8th August, 2018 passed by the Ld. Additional District Judge, Ambala, vide which the Trial Court in its judgment dated 20th March, 2017 decreed the respondents' suit for possession by way of ejectment of the appellants from the shop situated at Mauza Dera Kanwar Bagh, Tarlokpur Road, Kala Amb, Tehsil Naraingarh, District Ambala, has been upheld.

2. Contention raised on behalf of the appellants is that the eviction suit itself was not maintainable since the respondents/plaintiffs had earlier filed a virtually identical suit on the same “subject matter” which they had subsequently withdrawn without obtaining any liberty to file a fresh one.

3. Reliance in this regard has been placed upon the decisions of Co-ordinate Benches of this Court in '**Anand Dev and another vs. Suraj Bhan, 2012(29) R.C.R.(Civil) 598**' and '**Jaswant Rai and others vs. Municipality, Bathinda and others, 2014(67) R.C.R. (Civil) 809**' to contend that a fresh suit in the given circumstances would become barred because no liberty to file a fresh suit was obtained by the plaintiff(s) while withdrawing the earlier suit under Order 23 Rule 1(4) of the Civil Procedure Code.

4. This Court has considered the above submissions raised on behalf of the appellants but finds that the same is unconvincing and the reliance on the aforesaid Co-ordinate Benches' decisions is not applicable in the present case.

5. It is to be noted first of all that none of the above two cases related to the relief of eviction of a tenant/lessee from a demised premises. In Anand Dev's case (supra), the original suit was for possession of land "by demolition of construction raised by the defendant" while in Jaswant Rai's case (supra) the suit was for permanent injunction to restrain the Reviewing Authority from collecting house tax under duress from the plaintiffs.

6. That apart, undisputedly the concept of withdrawing and filing a subsequent suit with or without liberty applies to a situation where the second suit is based on the same "cause of action" and not merely the same "subject matter".

7. It can be that while the relief in both the suits is similar or even identical, the cause of action as disclosed in the plaint may not necessarily be the same which was relied upon in the previous suit. A scrutiny of the Lower Court's record in this case also shows that the cause of action happens to be lastly of the date i.e. 19th September, 2010 when the statutory time after expiry of the eviction notice allegedly expired. On the other hand in the previous suit a copy of which is on record as Annexure A-1, it is seen that the last cause of action in the said case was “day before yesterday” i.e. two days before filing of the suit on 16th July, 2008, when the defendants allegedly refused to vacate the demised premises.

8. Needless to mention, continuation of a lessee in a connected premises after the landlord has notified about termination of the lease constitutes a recurring cause of action every day which is the distinguishing feature in the present case, from the aforesaid reliances cited on behalf of the appellants.

9. The Court therefore finds no impropriety or illegality in the impugned judgment of eviction .

10. The present appeal is therefore dismissed.

11. In the interest of justice, however, the appellants are given a time of three months from today to peacefully vacate the demised premises and deliver its possession to the respondents, during which period execution proceedings, if any, pending against them shall

remain stayed.

12. This order shall automatically stand vacated on 12th April, 2019.

January 11, 2019

Dpr

(SUDIP AHLUWALIA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No