

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

CR No.1309 of 2021 (O&M)

Date of Decision: 02.12.2021

Sohan Lal

..... Petitioner

V/s.

Dakshin Haryana Bijli Vitran Nigam and Others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Raman Chawla, Advocate
for the petitioner.

Mr. Prateek Mahajan, Advocate with
Ms. Perna Malhotra, Advocate and
Mr. Jaideep Sharma, Advocate
for respondent Nos.1 and 2.

Rajbir Sehrawat, J. (Oral)

The present petition has been filed under Article 227 of the Constitution of India for challenging the impugned order dated 05.02.2021 (Annexure P-6) passed by Additional District Judge, Hisar whereby appeal of the petitioner has been rejected and further the application filed by the respondent No.3 under Order 7 Rule 11, CPC, has been wrongly and illegally accepted, while considering the question of principle of *res judicata*.

Learned counsel for the respondents has relied upon the judgment of the Hon'ble Supreme Court rendered in case "Rishabh Chand Jain Vs. Ginesh Chandra Jain, 2016(2) RCR(Civil) 944", to contend that against the order of allowing of the application moved under Order 7 Rule 11 and rejection of the plaint, an appeal lies. In fact, the petitioner had preferred his first appeal before the Additional District Judge. The

appellate Court has passed a judgment and a decree, both. Hence, the petitioner would be required to avail the remedy of further appeal, instead of the revision.

In view of the above, learned counsel for the petitioner submits that he be permitted to withdraw the present petition, with liberty to avail the remedy of Regular Second Appeal.

Dismissed as withdrawn, with liberty aforesaid.

It is further ordered that the time spent during the pendency of the present petition shall be excluded from the limitation, for the purpose of filing of the Regular Second Appeal, if any.

02nd December, 2021

Sonia Puri

(RAJBIR SEHRAWAT)
JUDGE

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