

CR-1279-2021(O&M)
Date of Order:13.08.2021

STATE OF HARYANA AND OTHERS

..Petitioners

Versus

JAI BHAGWAN TVF

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Samarth Sagar, Addl. A.G. Haryana.

Mr. Deepak Girotra, Advocate for the respondent.

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The State of Haryana assails the correctness of order passed by the First Appellate Court permitting the respondent-plaintiff to withdraw the suit with liberty to file fresh one on the same cause of action. It is important to note that the plaintiff's suit seeking declaration with consequential relief of mandatory injunction was dismissed after a complete trial vide judgment dated 06.06.2020. The respondent-plaintiff filed an appeal. During the pendency of the appeal respondent-plaintiff filed application for permission to withdraw the suit with permission to file a fresh one on the same cause of action on the ground that there is a technical defect in the suit. It was pointed out that plaintiff has failed to challenge the correctness of the order passed by the appellate authority. Learned First Appellate Court allowed the application.

After having heard the learned counsel for the parties at some length, this Bench is of the considered view that the First Appellate Court has erred in permitting the plaintiff to file a fresh suit particularly when the trial Court had already dismissed the suit and hence there was a decree passed by

the Court of competent jurisdiction against him. It is well settled that a decree

passed by a competent Court of jurisdiction cannot be permitted to be nullified in this manner just by permitting withdrawal of the suit itself at the appellate stage.

Learned counsel representing the parties do not dispute the aforesaid position of law.

Learned counsel representing the respondent-plaintiff, however, prays that since there is a technical defect, consequently, the plaintiff should be permitted to amend the plaint in order to challenge the appellate order.

Sh. Samarth Sagar, Additional AG, Haryana, learned counsel representing the State has no objection to the aforesaid suggestion.

Keeping in view the aforesaid facts, the first appeal shall not be dismissed only on the ground that the appellate order has not been challenged. The First Appellate Court would decide the appeal after taking note of the fact that the appellate order passed by the Appellate Authority is deemed to have been challenged.

Petition stands disposed of accordingly.

Learned counsel for the parties are directed to appear before the First Appellate Court on 31.08.2021..

Consequently, the fresh suit filed by the respondent-plaintiff shall stand infructuous.

All the pending miscellaneous applications, if any, are also disposed of.

August 13, 2021

AY/Parveen

**(ANIL KSHETARPAL)
JUDGE**

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