

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6118 of 2018(O&M)
Date of decision:15.07.2022

Satyavrat

...Petitioner

Versus

Virender Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sudhanshu Makkar, Advocate, for the petitioner.
Mr. S.R.Yadav, Advocate, for respondent no.1.

ANIL KSHETARPAL, J (Oral)

After proceeding with the trial of the civil suit for grant of decree of declaration for nearly 6 ½ years, the trial court has permitted the plaintiff to withdraw the suit with permission to file a fresh one on the same cause of action.

The Court, without coming to a conclusion about the nature of formal defect, has allowed the application. Such course is not appropriate. Either the Court should form an opinion that on account of a particular formal defect, the suit can be permitted to be withdrawn. In absence thereof, it would not be in the interest of justice to permit the suit to be withdrawn with permission to file fresh one.

In fact, Order 23 Rule 1 of the Code of Civil Procedure, 1908, itself provides that the court is required to be satisfied that either the suit must fail by reason of some formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit on the subject matter of the previous suit or part of the claim. Even after satisfaction, the discretion lies with the trial Court.

Keeping in view the aforesaid facts, the order under challenge is set aside.

The revision petition is allowed.

The trial court is requested to re-decide the application after taking note of the provisions of Order 23 Rule 1 of the Code of Civil Procedure, 1908.

The parties through their counsels are directed to appear before the trial court on 29.07.2022.

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

July 15, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No