

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

CR-8479-2017 (O&M)

Date of decision: 17.11.2022

Prem Singh Bhoria

...Petitioner

Versus

Smt. Indirawati and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.R.Kartikaye, Advocate for the petitioner

Mr. Abhinav Sood, Advocate for

Mr. Vikram Singh, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

1. The plaintiff in a suit for recovery of Rs.63,750/- is the petitioner herein. The suit for recovery has been filed against his immediate neighbour. As per the rules and regulations framed by the Haryana Shehari Vikas Pradhikaran Nigam a common wall in between the residential plots is required to be constructed. As per the terms of the allotment, the owner subsequently constructing the plot is required to pay his share representing the cost of construction of the common wall to the previous owner. First in the point in time, the petitioner constructed his house on plot No. 439-P. The respondent constructed his house on the plot purchased by him later on. It is the admitted case of the plaintiff that he was paid Rs.26,250/- only by the respondent. The petitioner claims that the total cost of the common wall was assessed at Rs.1,80,000/- resultantly, the respondent was liable to pay Rs.90,000/- to the petitioner for the said construction. Hence, he is entitled to recover the remaining amount of Rs.63,750/- from the respondent. There is a

long history of litigation between both the neighbours. In the beginning, the plaintiff filed a suit for grant of decree of permanent and mandatory injunction against the defendant which was dismissed as withdrawn on 24th July, 2012. Thereafter, he filed another suit for recovery on 28th August, 2012. After 3 years, he filed an application for permission to withdraw the second suit on the ground that it suffers from a formal defect. The court refused to grant the permission to file a fresh suit, but permitted the plaintiff to withdraw the suit. The operative part of the order dated 18th May, 2015 reads as under:-

*“It is settled law that liberty to file fresh suit can be granted only if the trial court is satisfied that the suit must fail by reason for some formal defects or there are sufficient ground for allowing to plaintiff to institute fresh suit. In this regard the reliance can be placed upon **Goverdhan Dass Vs. Kishori, Lal & Ors 2014 (2) LJR 761.** In the present case there seems to be no defect much less cogent to allow the plaintiff to file the fresh suit on the same cause of action. However, if the laws permit plaintiff may avail any remedy. With these observations the application stands disposed of and the present suit is hereby dismissed as withdrawn. File be consigned to record after due compliance.”*

2. Thereafter, the petitioner filed the third suit on 23rd July, 2015 alleging that the cause of action to file the suit has firstly arisen on 28th November, 2011 on the ground that the ground floor was constructed and thereafter on 20th August, 2012 when the construction was completed. It may be noted here that the respondent also filed a suit against the petitioner, which has also been dismissed.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

4. On the one hand, the learned counsel representing the

petitioner contends that the trial court has erred in observing that the suit filed by the plaintiff is barred by limitation. He submits that final refusal to pay the amount was on 20th August, 2012 and the suit filed on 23rd. July, 2015 so the suit was filed within the prescribed time. Whereas on the other hand, the learned counsel representing the respondents submits that in the first suit permission to file the second suit was specifically denied. Hence, the suit no. 3 was not maintainable.

5. Undoubtedly, if the prayer is to permit the withdrawal of the suit, with permission to file a fresh one, it is not permissible for the court to permit withdrawal of the suit simplicitor. The court cannot segregate a consolidated prayer into two parts. However, in the facts of the case, this Court is of the considered view that the litigation between two immediate neighbours is required to be closed. The amount claimed by the petitioner is only Rs.63,750/-only. Both the parties are the residents of Urban Estate, Panipat. Both are owners of the adjoining plots. Moreover, they have already fought the litigation in the court for more than 10 years. In these circumstances, this Court does not find it appropriate to interfere in the matter in exercise of its jurisdiction under Article 227 of the Constitution of India.

6. Hence, dismissed.

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

17.11.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE