

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

**CR-1840-2021 (O&M)**

Date of decision: 16.05.2022

Ajay pal and others

....Petitioners

Versus

Balwant Jain

..Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr.Vivek Khatri, Advocate for the petitioners

Mr. Nitin Jain, Advocate for the respondent

**ANIL KSHETARPAL, J (Oral)**

The petitioners are the defendants in a suit for grant of permanent injunction filed by the plaintiff. The plaintiff alleges that defendants have failed to honour the agreement to sell between the parties executed by the defendants. The plaintiff filed a suit for grant of injunction. An application filed by the defendants for dismissal of the suit on the ground of maintainability, has been dismissed. The petitioners claim that in view of Section 41(h) of the Specific Relief Act, 1963, a suit for grant of injunction without filing a suit for specific performance of the agreement to sell is not maintainable.

Per contra the learned counsel representing the plaintiff has informed the Court that a suit for specific performance of the agreement to sell has already been filed and the plaintiff wishes to withdraw the suit for the grant of injunction, particularly, when the suit for specific performance has been filed. He submits that the Presiding Judge is on a long leave, therefore, the suit could not be withdrawn.

Keeping in view the aforesaid facts, the revision petition is disposed of. The plaintiff is permitted to withdraw the suit for grant of injunction in order to prosecute the suit for specific performance of the agreement to sell. Needless to observe that the plaintiff shall be entitled to pray for temporary injunction in the suit for specific performance as an additional interim relief.

Disposed of.

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

16.05.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

**(ANIL KSHETARPAL)**  
**JUDGE**