

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

**Civil Revision No. 131 of 2020 (O&M)
Date of Decision: 16.11.2023**

Malkeet Singh

...Petitioner

Versus

The Primary Agricultural Development Bank Limited

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. I.S. Brar, Advocate
For the petitioner.**

**Mr. Kanwaljeet Singh Brar, Advocate
For the respondent.**

KARAMJIT SINGH, J.

1. The present revision petition has been filed by the petitioner/plaintiff for setting aside the order dated 09.10.2019 (Annexure P-1) passed by the Court of Civil Judge (Sr.Divn.), Sri Muktsar Sahib whereby an application filed by the petitioner for withdrawal of civil suit No. 705/2018 titled Malkeet Singh Vs. The Primary Agricultural Development Bank Limited with liberty to file afresh suit, has been dismissed.

2. The brief facts of the case are that petitioner filed suit for declaration with regard to redemption of land in question against the respondent. The suit is being contested by the respondent. During the pendency of the suit the petitioner filed an application for permission to withdraw the suit on technical ground with liberty to file afresh on the basis of same cause of action after service of mandatory notice under Section 79 of Punjab Cooperative Societies Act (in short, the Act). The said application

was resisted by the respondent and the learned trial Court after hearing both

the parties dismissed the application vide impugned order dated 09.10.2019 (Annexure P-1). Being aggrieved, the petitioner has filed the present revision petition.

3. I have heard the counsel for the parties.

4. The counsel for the petitioner submits that the suit filed by the petitioner is bound to be dismissed for want of notice under Section 79 of the Act. The counsel for the petitioner further submits that the suit is suffering from a formal defect which could be rectified only by withdrawing the present suit and thereafter to serve notice under Section 79 of the Act and to file a fresh suit on the basis of same cause of action on expiry of the notice period. The counsel for the petitioner further submits that the impugned order being erroneous deserves to be set aside. In support of his contentions, the counsel for the petitioner has placed reliance upon judgment of Gauhati High Court in **Shri W.Thanthianga Vs. State of Mizoram & Ors.** 2018 AIR (Gauhati) 143, wherein while setting aside the impugned order the High Court directed the trial Court to return the plaint with leave to file afresh after complying with the provision of Section 80 CPC.

5. The present petition is resisted by counsel for the respondent who while supporting the impugned order submits that at this stage the petitioner cannot be allowed to withdraw the suit with permission to file afresh on the basis of same cause of action just on the ground that the present suit is bad for want of notice under Section 79 of the Act. However, the counsel for the respondent has not disputed the fact that service of notice under Section 79 of the Act was mandatory before the filing of the present suit and that the said requirement was not fulfilled by the petitioner prior to filing of the suit.

6. I have considered the submissions made by counsel for the parties.

7. Admittedly, the petitioner filed suit against the respondent seeking redemption of his mortgaged land without serving statutory notice under Section 79 of the Act. Thus, there is a technical defect in the suit which could not be rectified even by seeking amendment of the plaint. Admittedly, the suit is not maintainable for want of notice under Section 79 of the Act which is necessary condition precedent and on this very ground the suit is not maintainable and is bound to be dismissed. The Courts are meant to advance the cause of justice and not to scuttle it. Thus, the application filed by the petitioner ought to have been allowed so that the dispute between the parties is decided on merits.

8. For the foregoing reasons the present petition is allowed and impugned order is hereby set aside. The application in question is allowed and petitioner is permitted to withdraw the suit with liberty to file a fresh suit on the basis of same cause of action after effecting service of notice under Section 79 of the Act upon the respondent and the fresh suit is to be filed on expiry of the notice period.

(KARAMJIT SINGH)
JUDGE

16.11.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No