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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2922-2018 (O&M)

Date of Decision : 15.03.2023

Gulzar Singh and Another

....Petitioners

VERSUS

Surjeet Kaur @ Seeto and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.V.S. Chugh, Advocate for the petitioners.

None for respondent No.1.

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ALKA SARIN, J. (Oral)

The present revision petition has been preferred impugning the order dated 03.11.2017 whereby the plaintiff-respondent No.1 was permitted to withdraw the suit with liberty to file afresh on the same cause of action.

The brief facts relevant to the present lis are that the plaintiff-respondent No.1 filed a suit for possession by way of partition as well as suit for declaration and permanent injunction. On 09.04.2014 the following order was passed :

“None has appeared for or on behalf of the plaintiff.

Case called several times since morning. Present suit

is dismissed in default under Order 9 Rule 8 CPC. File

be consigned to the record room.”

Thereafter on 07.10.2014 an application was filed for restoration of the case. On 03.11.2017 the following order was passed :

“Ld. Counsel for applicant has got recorded his statement separately to the effect that he withdraw the present application with permission to file the fresh suit. All documents attached with application may be returned. So, in view of the statement, present application is ordered to be dismissed being withdrawn and the permission has been granted to the applicant to file the fresh suit on same cause of action and documents be returned against proper receipt to the ld. Counsel for plaintiff after placing on the file photocopy of the same. File is ordered to be consigned to the record room.”

Hence the present revision petition by the defendant-petitioner.

Learned counsel for the defendant-petitioner would contend that once the suit itself was dismissed in default vide order dated 09.04.2014, on an application for restoration of the suit the plaintiff-respondent No.1 could not have been permitted to withdraw the suit with liberty to file afresh on the same cause of action. It is further the contention of the learned counsel that the suit had been dismissed on 09.04.2014 and hence there was no question of withdrawing the same.

Notice was issued to the respondents and Mr. N.S. Sodhi,

Advocate had put in appearance on behalf of the plaintiff-respondent No.1.

However, since 22.08.2019 none has put been putting in appearance on behalf of the plaintiff-respondent No.1. Vide order dated 31.05.2022 the Registry was directed to inform the counsel for the plaintiff-respondent No.1. However, despite information to the counsel, none has put in appearance. The plaintiff-respondent No.1 is accordingly proceeded against ex-parte.

Heard.

In the present case the suit itself stood dismissed in default on 09.04.2014. Thereafter an application for restoration was filed (Annexure P-3) on 07.10.2014. While permitting the withdrawal of the application, strangely it has been noticed in the impugned order that permission is granted to withdraw the application with permission to file a fresh suit. It is not understandable as to how a suit which already stood dismissed in default, without the same being restored, could have been permitted to be withdrawn. The impugned order dated 03.11.2017 is wholly unsustainable in law and is perverse. Once the main suit itself was dismissed in default on 09.04.2014 there was no occasion for the Court to permit the withdrawal of the same suit with liberty to file afresh on the same cause of action.

In view of the above, the revision petition is accordingly allowed. The impugned order is set aside. Pending applications, if any, also stand disposed off.

March 15, 2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO