

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

CR-8336-2017 (O&M)
Date of decision: 20.04.2023

RAM MEHAR AND ORS

...Petitioners

VS

NAFE SINGH AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Vikram Punia, Advocate,
For the petitioners.

Mr. Ashwani Gaur, Advocate,
For LR's of respondent No.1.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 28.10.2017 (Annexure P-5) passed by learned Civil Judge (Jr. Divn.), Sonapat, whereby an application filed by plaintiff-respondent for dismissal of the suit as withdrawn was allowed with permission to file afresh suit subject to limitation and just exceptions.

2. Learned counsel for petitioners contends that civil suit filed by Nafe Singh-respondent for declaration and permanent injunction was got dismissed as withdrawn on 18.07.2012 without seeking any permission to file fresh suit on the same cause of action. Thereafter, second suit was filed in which written statement was filed by petitioner-defendants No.1 to 3 therein. A specific objection was

taken in preliminary objection No.5 that the suit was not maintainable under Order 23 Rule 1 (3) CPC. Faced with this situation, second suit was withdrawn by seeking liberty to file fresh one on the same cause of action. Since second suit itself was not maintainable, therefore, liberty to file fresh suit (i.e. third suit) on the same cause of action was illegal and there was no such technical defect rather the same should have been brought to the notice of learned Court below.

3. I have heard learned counsel for the parties and gone through the case file.

4. The argument of learned counsel that LRs of plaintiff/respondent No.1 instead of withdrawing the plaint, could have resorted to amendment of plaint by seeking permission under Order 6 Rule 17 CPC is being noted only to be rejected because it is self-contradictory inasmuch as if plaintiff could have applied to amend plaint, I see no reason why he could not have refiled the same by carrying out necessary amendments as long as filing of fresh plaint on the same cause of action was within limitation and he had sought due permission from the Court while withdrawing earlier plaint. Vide impugned order, learned Court below allowed the plaintiff to withdraw the suit by giving specific permission to file a fresh one on the same cause of action. However, the objection is that the suit, which has been permitted to be withdrawn with permission to refile in itself was not maintainable in view of an earlier suit which was dismissed as withdrawn without seeking liberty under Order 23 Rule 1 of the CPC to re-file the same.

5. Be that as it may, the said objection unless adjudicated would very much be alive and available to petitioners herein to be taken in the suit proposed to be re-filed now after carrying out the necessary amendments. In fact, the impugned order itself says that the same is subject to just exceptions.

6. Accordingly, liberty is granted to petitioners to take the said objection and it is expected of learned trial Court to decide the same, in accordance with law.

7. Disposed of.

(ARUN MONGA)
JUDGE

20.04.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No