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

RSA No. 1669 of 2005(O&M)

Date of Decision:12.07.2023

Municipal Committee Council, Jind

... Appellant

Versus

Nand Kishore

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Dr. Surya Parkash, Advocate
for the applicant-respondent.

Mr. Ashish Gupta, Advocate for
Mr. Raj Kumar Gupta, Advocate
for the non-applicant-appellant.

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SANJIV BERRY, J.

CM-7138-C-2023

The present application has been filed by respondent-plaintiff seeking permission to withdraw the suit.

2. Counsel for the respondent-plaintiff submits that the appellant-defendant is selling its shops in the market and first preference would be given to the shopkeepers who are in possession of the shops as tenants. Since the respondent-plaintiff is also tenant over the shop, he intends to purchase the shop in question from the appellant-defendant and for that reason, respondent-plaintiff is seeking permission to withdraw the suit filed

by him as the applicant-plaintiff is not seeking any relief against the present appellant-defendant.

3. Notice of the application.

4. Mr. Ashish Gupta, Advocate has accepted the notice and submits that he has no objection, if permission to withdraw the suit is granted to the respondent-plaintiff.

5. It is relevant to mention here that suit filed by the respondent-plaintiff seeking permanent injunction against the appellant-defendant from dispossessing him forcibly from the shop without following due course of law was dismissed by Id. Additional Civil Judge (Sr. Division), Jind. However, his appeal was allowed and the defendant was restrained from dispossessing him, except in due course of law, leading to the filing of the present Regular Second Appeal by the appellant-defendant.

6. It is categorically mentioned by applicant-plaintiff, in the present application, that he is not claiming any relief against the appellant-defendant. From the above submissions, it transpires that the plaintiff-applicant had filed the civil suit which was dismissed by the Court of Additional Civil Judge (Sr. Division), Jind. However, on appeal by the applicant the defendants were restrained from dispossessing him, except in due course of law and thereby the appeal was allowed in his favour.

7. The order of the first appellate Court has been challenged by the appellant-defendant i.e. Municipal Council Jind in the present Regular Second Appeal. Since, now the plaintiff wants to withdraw the original civil suit, keeping in view the averments made in the application wherein it is categorically mentioned therein that the applicant-plaintiff is not seeking any

relief against the present appellant-defendant, therefore, keeping in view the facts and circumstances, and the plaintiff being not desirous to continue with this suit, the requisite permission to withdraw the suit is hereby granted to the appellant-plaintiff.

8. Application stands disposed of accordingly.

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9. Vide aforesaid civil miscellaneous application the applicant-plaintiff (respondent in the present RSA) has been granted permission to withdraw the civil suit, which has been filed by the plaintiff seeking permanent injunction against the defendant Municipal Council, Jind for restraining it from dispossessing the plaintiff from the suit property. It is pertinent to mention here that this civil suit had been dismissed by the Court of learned Additional Civil Judge (Sr. Division), Jind vide judgment and decree dated 28.03.2002.

10. Thereafter, Civil Appeal No. 79 of 2002 was preferred and vide judgment dated 04.02.2005 learned Additional District Judge, Jind allowed the same and restrained respondent-defendant Municipal Council, Jind from dispossessing the plaintiff from the shop in dispute forcibly and illegally without following due course of law.

11. Against the aforesaid judgment dated 04.02.2005 present Regular Second Appeal has been preferred by the Municipal Council, Jind (defendant in the suit).

12. Since, the plaintiff has withdrawn the civil suit and has categorically stated that the plaintiff is not seeking any relief against the present appellant-defendant, therefore, all the consequential proceedings

including the restraint order passed in the Civil Appeal have been rendered redundant and creating no right in favour of the plaintiff. Thus, the present Regular Second Appeal has also become redundant and is accordingly disposed of keeping in view the fact that the respondent-plaintiff has withdrawn the civil suit from which the Civil Appeal as well as present Regular Second Appeal had arisen.

13. Disposed of accordingly.

(SANJIV BERRY)
JUDGE

12.07.2023

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |