

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

212

CR-3633-2019 (O&M)

Date of Decision : 08.02.2024

AVTAR SINGH

..... Petitioner

Versus

GURBUX SINGH AND OTHERS

..... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. G.S. Sirphikhi, Advocate for the petitioner.

Mr. Harminder Singh, Advocate for respondent No.1.

ALKA SARIN, J. (Oral)

1. The present revision petition under Article 227 of the Constitution of India has been preferred challenging the impugned order dated 14.01.2019 (Annexure P-6) whereby the application under Order 23 Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 filed by the plaintiff-respondent No.1 has been allowed and the suit has been permitted to be withdrawn with liberty to file afresh.

2. Learned counsel for the petitioner would contend that the application for withdrawal does not state any reason and does not enlist any formal defects and hence the said application ought have been dismissed. In support of his arguments he has relied upon a judgment of this Court in the case of **Sukhdev Singh Vs. Inderjit Singh & Anr. [2019(1) PLR 795]**.

3. Per contra, learned counsel for respondent No.1 has contended that various objections have been raised in the written statement qua the maintainability of the suit i.e. regarding non-joinder of the necessary parties

and cause of action and hence the application for withdrawal of the suit with liberty to file afresh was filed.

4. Heard.

5. In the present case the application for withdrawal of the suit is totally bereft of any reasons. Order 23 Rule 1(3) CPC reads as under :

“Where the Court is satisfied:-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim.”

6. The section itself contemplates that where the Court is satisfied that a suit must fail by reasons of some formal defect or that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter, permission may be granted to the plaintiff to withdraw the suit with liberty to file a fresh suit. In the present case, since the application is totally bereft of any reason as to how the suit suffers from formal or inherent defect, the application ought not to have been allowed.

7. In view of the above, the impugned order dated 14.01.2019 is set aside and the revision petition is allowed. Pending applications, if any, also stand disposed off.

08.02.2024
D.Bansal

(ALKA SARIN)
JUDGE

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