

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

CR-5033-2022 (O&M)

Date of Reserved : 15.04.2024.

Date of Pronouncement:06.05.2024.

Hari Singh

...Petitioner.

Versus

Balvir Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Akshay Kumar Goel, Advocate
for the petitioner.

Mr. Naresh K. Manchanda, Advocate
for respondent No.1.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged order dated 17.08.2022 passed by learned Civil Judge (Senior Division), Nihal Singh Wala, vide which the application under Order 7 Rule 11 CPC filed by the petitioner/ defendant No.2, was dismissed.

2. The relevant facts for adjudication of the present revision petition are that the plaintiff/ respondent No.1 filed a suit for possession bearing No.CS-63/2018 on 26.04.2018 titled as 'Balvir Singh Vs. Karamjit Kaur and others' claiming himself to be the owner of the house as detailed in the head note of the plaint of the said suit, alongwith consequential relief of permanent injunction restraining the defendants and his agents from demolishing, constructing or changing the nature of the suit property in any

manner and further restraining the defendant from alienating the suit property by way of sale, mortgage, gift, exchange and transferring it forcibly, illegally and without due course of law. He also sought alternative relief of recovery of Rs.6,10,000/- with interest upto date @ 18% and also for damages as ascertained by the trial Court.

3. The plaintiff subsequently filed another suit bearing No.99 of 2018 on 15.06.2018 under Section 6 of the Specific Relief Act, 1963 seeking possession of the same suit property alleging on the same cause of action and against the same defendants (as arrayed in the earlier suit bearing CS No.63 of 2018 filed on 26.04.2018). The plaintiff/ respondent No.1 disclosed in para 13 of the suit that no other suit on same cause of action between the same parties had been previously instituted or finally decided by any Court of competent jurisdiction.

4. The petitioner/ defendant No.2 filed application under Order 7 Rule 11 CPC dated 05.02.2019 praying for rejection of the plaint on the premise that the plaintiff had filed two suits with regard to the same property, seeking same relief and against the same defendants. The plaintiff had filed one suit for possession and the other suit for possession under Section 6 of the Specific Relief Act, 1963. The plaintiff/ respondent No.1 filed reply to the said application and therein he did not deny the fact of pendency of two suits seeking possession of the suit property against the petitioner and proforma respondents. The trial Court vide order dated 30.04.2019 disposed of the application under Order 7 Rule 11 CPC observing the same having been rendered infructuous as the plaintiff had withdrawn the suit for possession (bearing No.CS-63/2018) on 30.04.2019

by suffering a statement in that regard.

5. The issues were framed by the trial Court on 30.04.2019 and the case was adjourned to 23.05.2019 for evidence of the plaintiff. Then the case was adjourned for various dates for evidence of the plaintiff.

6. The petitioner/ defendant No.2 filed an application under Order 7 Rule 11 CPC for rejection of the plaint on 16.07.2022 on the ground that the plaintiff had withdrawn the earlier suit bearing No.CS-63/2018 without seeking any liberty of the trial Court to file a fresh suit in respect of the subject matter of withdrawn suit, so the instant suit was barred under the provisions of under Order 23 Rule 1 (4) CPC.

7. Reply to the said application was filed by the plaintiff/ respondent No.1 admitting that the said suit had been withdrawn and there was no need to seek permission as the instant suit was already pending and had not been filed after withdrawal of the earlier suit. Vide order dated 17.08.2022, the trial Court dismissed the said application. Hence, the petitioner has knocked the doors of this Court by way of filing of the present revision petition.

8. Learned counsel for the revision petitioner has contended that the trial Court has gravely erred in observing that the petitioner had not preferred any revision against the order dated 30.04.2019 and thus the second application was not maintainable. It has further wrongly observed that the cause of action on the basis of which the instant suit under Section 6 of Specific Relief Act, claiming possession of land measuring 5 ½ marlas was filed, being continuous one, therefore, it did not preclude the plaintiff to continue with the suit filed subsequently. It has also been wrongly observed

that even if the earlier suit had been withdrawn during the pendency of the instant suit but withdrawal of the earlier did not bar him from pursuing the present suit. He has contended that it could not be inferred from the statement of the plaintiff and order dated 30.04.2019 that implied permission was accorded to file the subsequent suit, during the pendency of the earlier suit, so the instant suit is not maintainable being barred by the provisions of Order 23 Rule 1(4) CPC as it precludes from instituting any fresh suit in respect to the subject matter of the earlier suit.

9. On the other hand, it has been contended by learned counsel for the respondents that the instant application is not maintainable as the similar application had already been dismissed by the trial Court vide order dated 30.04.2019. As no appeal or revision has been filed against the said order, so the said order has become final and is binding upon the parties. He has contended that the instant application has been filed only to harass the plaintiff and to delay the proceedings of the present suit.

10. I have heard learned counsel for the parties and have gone through the relevant record.

11. This is the admitted fact that earlier also one application under Order 7 Rule 11 CPC had been filed by the petitioner which had been dismissed vide order dated 30.04.2019 by the trial Court. Admittedly, no revision or appeal whatsoever has been filed against the aforesaid order, so the said order has attained finality. Now this second application under Order 7 Rule 11 CPC has been filed by the petitioner/ defendant No.2 on the ground that the instant suit is barred as per provisions of Order 23 Rule 1(4) CPC, as while withdrawing the suit bearing No.63/2018, the permission was

not sought from the Court for filing of the fresh suit on the same cause of action.

12. The Apex Court has held in **Y.B. Patil and others Vs. Y.L. Patil, AIR 1977 Supreme Court, 392**, “that principle of resjudicata can be invoked not only in separate subsequent proceedings; it also gets attracted at subsequent stage in the same proceedings. Once an order made by the Court at earlier stage of a proceeding becomes final, it would be binding for another application for same relief, at the subsequent stage of that proceeding. The Division Bench of Hon'ble Allahabad High Court in **Smt. Rakesh Bala Aneja Vs. Smt. Sushil Bajaj and others, 2013 (6) R.C.R. (Civil) 2631**, has also held that principle of resjudicata is applicable to application under Order 7 Rule 11 CPC.

13. In the instant case, when the application under Order 7 Rule 11 CPC has already been dismissed by the trial Court on 30.04.2019 which order has attained finality, then the present application filed for same relief, by moulding the averments cannot be accepted.

14. Moreover, it is also to be taken note of that the instant case has not been filed subsequently after withdrawal of the suit bearing No.63/2018. Rather, by then it had already been filed and was continuing at that time, so the trial Court has rightly observed that the present suit does not come within the ambit of fresh suit as per the provisions of Order 23 Rule 1(4) CPC, for filing of which the permission of Court was required.

15. Thus, there being no illegality or infirmity in the impugned order no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands

dismissed.

16. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

06.05.2024.
komal

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No