

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****133****CR-668-2025 (O&M)****Date of Decision : 03.02.2025**

Kunal Khurana

....Petitioner

VERSUS

Puneet Kumar

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Keshav Pratap Singh , Advocate for the petitioner.

Mr. Rahul Sharma, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed challenging the order dated 28.11.2024 (Annexure P-12) whereby the application filed by the plaintiff-respondent under Order XXIII Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 for grant of permission to withdraw the civil suit with liberty to file a fresh suit has been allowed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a suit for permanent injunction to the effect that the defendant-petitioner herein be restrained from selling, mortgaging, transferring, gifting and alienating in any manner the suit property as fully described in the plaint. It was averred in the plaint that an agreement to sell had been entered into on 20.03.2024 in favour of the plaintiff-respondent for a sale consideration of Rs.94,00,000/-. It was further averred in the plaint that the defendant-petitioner herein wanted to grab the money of the

plaintiff-respondent unlawfully and that he was playing in the hands of some mischievous and anti-social persons and was trying to sell the property. Hence, the suit. Written statement (Annexure P-2) was filed by the defendant-petitioner wherein a specific plea was taken regarding the cause of action for filing the suit. It was stated that the suit had already become infructuous as the plaintiff-respondent was fully aware that he had lost the other efficacious remedies available to him and he was debarred from filing any other suit. Subsequently, an application (Annexure P-7) was filed by the plaintiff-respondent under Order VI Rule 17 CPC for amendment of the plaint for converting the suit from one for permanent injunction to a suit for possession by way of specific performance. Reply to the said application was filed. Vide order dated 25.09.2024 (Annexure P-9) the said application was dismissed, which was not further challenged by the plaintiff-respondent. Thereafter, an application (Annexure P-10) was filed under Order XXIII Rules 1 and 2 read with Section 151 CPC for grant of permission to withdraw the civil suit with permission to file a fresh suit. Reply was filed to the said application. Vide the impugned order the said application was allowed. Hence, the present revision petition by the defendant-petitioner.

3. Learned counsel for the defendant-petitioner would contend that there was no formal defect with the suit and that earlier the plaintiff-respondent had filed an application for amendment of the plaint, which was dismissed vide order 25.09.2024 (Annexure P-9), which the plaintiff-respondent chose not to challenge. Now the plaintiff-respondent by seeking permission to withdraw the present suit wishes to file a suit for specific

performance, which cannot be permitted as his application, which was dismissed vide order dated 25.09.2024, has attained finality.

4. *Per contra* learned counsel for the plaintiff-respondent would contend that the suit for specific performance has already been filed and that since the defendant-petitioner was not willing to honour the agreement to sell, hence, the necessity for filing a suit for specific performance. It is further the contention that under Order XXIII Rule 1 CPC the suit can be permitted to be withdrawn if the Court is satisfied that it must fail by reason of some formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit. Learned counsel for the plaintiff-respondent would further contend that the present case falls within the parameters laid down in Order XXIII Rule 1 Sub Rule (3)(b) CPC and that there are sufficient grounds for allowing the plaintiff-respondent to institute a fresh suit.

5. Heard.

6. In the present case the civil suit was filed by the plaintiff-respondent herein for simpliciter permanent injunction on 29.04.2024. Written statement was filed. Thereafter, an application for amendment of the plaint was filed on 03.07.2024, which was dismissed vide order dated 25.09.2024 (Annexure P-9). The plaintiff-respondent herein did not challenge the said order and chose to file an application under Order XXIII Rules 1 and 2 CPC for withdrawal of the suit with liberty to file a fresh one, which was allowed vide the impugned order dated 28.11.2024 (Annexure P-12). The argument of learned counsel for the defendant-petitioner that the

present application could not have been allowed as the application for amendment of the suit stood dismissed, which was not challenged by the plaintiff-respondent herein and further that the suit does not suffer from any formal defect, deserves to be accepted. The argument of learned counsel for the plaintiff-respondent that this does not fall in the category of a formal defect, however, it would fall within the parameters as laid down under Order XXIII Rule 2 Sub Rule (3)(b) CPC that there are sufficient grounds for allowing the plaintiff to institute a fresh suit, deserves to be rejected for the following reasons.

7. In the present case the application filed by the plaintiff-respondent does not reveal that the same suffers from any formal defect. In the application, paras 1 to 4 deal with the facts of the suit. In para 5 a judgment of Hon'ble Supreme Court has been relied upon and reproduced. Para 6 states that there is formal defect in the suit, which would result in dismissal of the suit as the suit for injunction was not maintainable and hence, the plaintiff-respondent be permitted to withdraw the suit with permission to file afresh. Thereafter, other judgments have been referred to. Paras 7 and 8 are formal paragraphs. The defect, if any, has not been explained. The argument of learned counsel for the plaintiff-respondent that it was not a question of formal defect in the present case but a question that sufficient grounds are otherwise made out for filing a fresh suit is also not made out from the application. The application only talks about there being a formal defect, which has also not been enlisted. There are no other grounds which have been taken as noticed above.

Order XXXIII Rule 1 Sub Rule (3) CPC reads as under :

“ 1. Withdrawal of suit or abandonment of part of claim-

(1) xx xx xx xx

(2) xx xx xx xx

(3) 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 suit or part of a 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.”

8. It is incumbent on the Court under Order XXIII Rule 2 Sub Rule (3) CPC to record its satisfaction in case the suit must fail for some reason of formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit. In the present case, not only is the application totally bereft of any details as to the formal defect but it also does not enlist any sufficient ground for allowing the plaintiff to institute a fresh suit. Even the impugned order dated 28.11.2024 has recorded the contentions in paras 1 to 4. In para 5 and 6 it has been held as under :

“ 5. Perusal of the file reveals that the present suit has been filed by the plaintiff seeking relief of permanent injunction of the property as detailed on the headnote of the plaint. Now the plaintiff wants to withdraw the present suit with permission to file afresh one on the same cause of action on the ground that there are some changes of cause of action and circumstances in the present case as the defendant had refused to execute the sale deed on dated 01.05.2024. The Ld. Counsel for applicant/plaintiff relied upon the various judgments and the laws in the judgments are duly honoured. Further as per order 23 Rule 3 CPC, wherein it was mentioned “ where the court is satisfied :-

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

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

6. *So, in view of the above, the application is allowed and the plaintiff is permitted to withdraw the present suit with the permission to file afresh suit. As such file be consigned to record room as per rules."*

9. A perusal of the above reproduced portion of the impugned order dated 28.11.2024 reveals that no satisfaction has been recorded by the Court while passing the impugned order.

10. In view of the above, the present revision petition is allowed and the impugned order dated 28.11.2024 is set aside. Consequently, the suit is restored to its original number. The parties to appear before the Court concerned on **17.02.2025 at 10.00 am**.

11. Needless to say, the parties would always be at liberty to take recourse to remedies as available in law.

12. Disposed off. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

03.02.2025
jk

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