



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

CR-2550-2022(O&M)

Date of decision:27.05.2025

Labh Singh

..Petitioner

Versus

Surjit Kaur and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. K.S.Brar, Advocate for the petitioner

Mr. K.B.Raheja, Advocate for the respondents

ANIL KSHETARPAL, J. (Oral)

1. The plaintiff assails the correctness of the order refusing to restore the suit, which was dismissed as withdrawn on 07.01.2021.
2. The plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 26.12.2011 in which notice was issued to the defendants. During the pendency of the suit, FIR was also registered against the plaintiff on 14.11.2019. Learned counsel representing the plaintiff prayed for permission to withdraw the suit, which was allowed. The order passed by the court on 07.01.2021 reads as under:-

“File taken up on the application. Defendant No.1 has appeared through Sh.GS Mann, Adv and suffered statement that exchange deed No.2018-19/63/1204 dated 13-11-2018 executed by me in favour of Hardev Singh son of Puran Singh, defendant No.2 with my free consent and will and the same is correct. I am bound of this exchange deed. I never challenge this deed in future. Further ld. Counsel for the plaintiff made



statement that compromise has been effected between the parties and he do not want to proceed with thie present suit and the same may kindly be ordered to be dismissed as withdraw. Court fee ay kindly be ordered to be refunded as per rules. Hence, in view of the above statement, the suit stand dismissed as withdrawn. Court fee be refunded back as per rules. File be consigned.”

3. Subsequently, in the FIR the petitioner was arrested on 03.05.2021 but granted bail only on 17.12.2021. Thereafter, the plaintiff filed the present application under Order IX Rule 9 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’) on 03.01.2022, which has been dismissed by the court.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. Learned senior counsel representing the petitioner submits that the suit was withdrawn on the basis of an oral settlement and therefore, he was entitled to restoration because the defendant failed to honour an oral settlement.

6. This Court has considered the submissions made by the learned counsel representing the parties.

7. The plaintiff withdrew the suit in accordance with the Order XXIII Rule 1 CPC. At that point in time, the withdrawal was not subject to fulfilment of the alleged oral settlement.

8. Order IX Rule 9 CPC is applicable only if the suit is dismissed for non-prosecution. Such application is not maintainable against the dismissal of the suit as withdrawn.

9. Learned counsel representing the respondents submits that the defendants have adhered to the compromise and did not



support the prosecution in the criminal case, resulting in acquittal of Jagtar Singh and Balwinder Singh, co-accused of the petitioner. He submits that no challan was presented against Labh Singh.

10. In the opinion of this Court, the plaintiff's application under Order IX Rule 9 CPC was wholly mis-conceived. Once a suit has been withdrawn under Order XXIII Rule 1 CPC, application for restoration of the case under Order IX Rule 9 CPC is not maintainable. Moreover, after withdrawal of the suit, the plaintiff also received the amount of court fee which was deposited while filing the suit.

11. Keeping in view the aforesaid facts, no ground to interfere is made out.

12. Hence, dismissed.

13. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

27.05.2025

rekha

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No