



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

265/4

CR-4791-2023

Date of decision : 20.08.2025

Sanjay Khurana

..... Petitioner

versus

Shanta Yadav and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Mayank Bajaj, Advocate
for the petitioner.

Mr. Jai Vir Yadav, Senior Advocate with
Mr. Aman Gautam, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

1. Defendant is in revision.
2. Challenge is to order dated 18.11.2022 passed by Civil Judge (Senior Division), Gurugram whereby application filed by the plaintiff seeking withdrawal of Civil Suit No.4160 of 2022 has been allowed granting him permission to file fresh suit on the same cause of action.
3. Plaintiff filed suit seeking decree of perpetual injunction restraining defendants from raising construction over the suit land. Further prayer was for grant of mandatory injunction seeking direction to the defendants to remove illegal, unauthorized construction over the suit land.
4. Suit was filed on 10.10.2022. Ad interim injunction was declined to the plaintiff on 13.10.2022. Plaintiff moved an application seeking withdrawal of the suit claiming certain technical defects and



bonafide mistakes. Further prayer in the application was to grant permission to file fresh suit on the same cause of action. The application was opposed by the defendant. Vide impugned order, Civil Judge (Senior Division), Gurugram allowed the application filed by the plaintiff to withdraw the suit and granted him liberty to file fresh suit on the same cause of action.

5. Counsel for the petitioner assails the order passed by the Trial Court. It has been contended that the application filed by the plaintiff seeking withdrawal of the suit, though claims that there is a technical defect and bonafide mistake, but there are no technical defects and bonafide mistake spelled out in the application. Counsel submits that since the application did not disclose any technical defect and bonafide mistake, the order has also been passed without assigning any reason supporting grant of permission to file fresh suit. Counsel has relied upon ratio of law laid down by Supreme Court in ***K.S. Bhoopathy and others v. Kokila and others*** reported as ***(2000) 5 Supreme Court Cases 458*** to submit that prior to grant of permission to file fresh suit, the Court is to discharge the duty as per the mandate of Order XXIII Rule 1, CPC by taking into consideration all relevant aspects of the matter. The Court without recording satisfaction regarding sufficient ground for allowing plaintiff to institute fresh suit and without specifying formal defect should not have allowed the application filed by the plaintiff seeking withdrawal of suit with liberty to file fresh one.

6. Learned senior counsel appearing for the respondent has supported the order passed by the Trial Court. He submits that after the



impugned order was passed on 18.11.2022, fresh suit was instituted on 23.11.2022. Application under Order VII Rule 11 CPC was filed by the defendant on 24.01.2023. On 15.03.2023, defendant filed written statement. On 21.03.2023, application filed by the plaintiff under Order XXXIX Rule 1 and 2 was allowed. Against the same, an appeal was preferred by the defendants on 26.04.2023. Thereafter on 17.08.2023, even the evidence of the plaintiff was closed and the present revision petition was preferred on 19.08.2023 without disclosing the fact that the petitioner has already submitted to the jurisdiction of the Court in the subsequent suit. He relies upon judgment passed by Coordinate Bench in **CR No.2995 of 2025** titled as '**Vivek Yadav and another v. Karan Singh and others**' decided on 16.05.2025 wherein taking cognizance of the similar facts, the revision filed was dismissed with costs of Rs.50,000/- for having attempted to mislead the Court. Mr. Yadav further submits that ratio of law laid down in **K.S. Bhoopathy and others v. Kokila and others** is not applicable to the present case. In the said case, Supreme Court observed that the finding recorded by High Court to the effect that the defendant shall not be prejudiced, was held to be unsustainable in view of the fact that the permission to withdraw the suit with liberty to file fresh one, was granted after the plaintiff had lost in two Courts.

7. I have heard counsel for the parties and have carefully gone through the records of the case.

8. In order to appreciate the rival contentions, it will be apt to peruse Order XXIII Rule 1(3), CPC which reads as under:-

“(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 a 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.”

9. The import of Order XXIII Rule 1(3) of the Code was considered by Supreme Court in the case ***K.S. Bhoopathy and others v. Kokila and others*** reported as ***(2000) 5 Supreme Court Cases 458*** to cull out the following proposition of law:-

“11. In terms of Order 23, Rule 1 (3) (b) where the court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit, the Court may permit the plaintiff to withdraw the suit. In interpretation of the word "sufficient grounds", there are two views: One view is that these grounds in clause (b) must be "ejusdem generis" with those in clause (a), that is, it must be of the same nature as the ground in clause (a) that is formal defect or at least analogous to them; and the other view was that the words "other sufficient grounds" in clause(b) should be read independent of the words a 'formal defect' and clause (a). Court has been given a wider discretion to allow withdrawal from suit in the interest of justice in cases where such a prayer is not covered by clause (a). Since in the present case, we are only concerned with "formal defect" envisaged under clause (a) of Rule (1) sub-rule (3), we choose not to elaborate any further on the ground contemplated under clause (b) that is "sufficient grounds".

12. xx xx xx

13. The provision in Order 23 Rule 1 Civil Procedure Code is an exception to the common law principle of non suit. Therefore on principle an application by a plaintiff under sub-rule (3) cannot be treated on par with an application by him in exercise of the absolute liberty given to him under sub-rule (1). In the former it is actually a prayer for concession from the Court after satisfying the Court regarding existence of the circumstances justifying the grant of such concession. No



doubt, the grant of leave envisaged in sub-rule (3) of Rule 1 is at the discretion of the Court but such discretion is to be exercised by the Court with caution and circumspection. The legislative policy in the matter of exercise of discretion is clear from the provisions of sub-rule (3) in which two alternatives are provided: (1) where the Court is satisfied that a suit must fail by reason of some formal defect, and the other where the Court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim. Clause (b) of sub-rule (3) contains the mandate to the Court that it must be satisfied about the sufficiency of the grounds for allowing the plaintiff to institute a fresh suit for the same claim or part of the claim on the same cause of action. The Court is to discharge the duty mandated under the provision of the Code on taking into consideration all relevant aspects of the matter including the desirability of permitting the party to start a fresh round of litigation on the same cause of action. This becomes all the more important in a case where the application under Order 23 Rule (1) is filed by the plaintiff at the stage of appeal. Grant of leave in such a case would result in the unsuccessful plaintiff to avoid the decree or decrees against him and seek a fresh adjudication of the controversy on a clean slate. It may also result in the contesting defendant losing the advantage of adjudication of the dispute by the Court or courts below. Grant of permission for withdrawal of a suit with leave to file a fresh suit may also result in annulment of a right vested in the defendant or even a third party. The appellate/second appellate court should apply its mind to the case with a view to ensure strict compliance with the conditions prescribed in Order 23 Rule 1(3) Civil Procedure Code for exercise of the discretionary power in permitting the suit with leave to file a fresh suit on the same cause of action. Yet another reason in support of this view is that withdrawal of a suit at the appellate/second appellate stage results in wastage of public time of Courts which is of considerable importance in the present time in view of large accumulation of cases in lower courts and inordinate delay in disposal of the case.”



10. The same was again considered by Supreme Court in **V. Rajendran v. Annasamy Pandian (dead) through legal representatives Karthyayani Natchiar (2017) 5 SCC 63**, to observe as under:-

“10. In K.S. Bhoopathy and Ors. v. Kokila and Ors., 2000(3) RCR (Civil) 195 : (2000) 5 SCC 458, it has been held that it is the duty of the Court to be satisfied about the existence of “formal defect” or “sufficient grounds” before granting permission to withdraw the suit with liberty to file a fresh suit under the same cause of action. Though, liberty may lie with the plaintiff in a suit to withdraw the suit at any time after the institution of suit on establishing the “formal defect” or “sufficient grounds”, such right cannot be considered to be so absolute as to permit or encourage abuse of process of Court. The fact that the plaintiff is entitled to abandon or withdraw the suit or part of the claim by itself, is no licence to the plaintiff to claim or to do so to the detriment of legitimate right of the defendant. When an application is filed under Order XXIII Rule 1(3) CPC, the Court must be satisfied about the “formal defect” or “sufficient grounds”. “Formal defect” is a defect of form prescribed by the Rules of procedure such as, want of notice under Section 80 CPC, improper valuation of the suit, insufficient court fee, confusion regarding identification of the suit property, mis-joinder of parties, failure to disclose a cause of action etc. “Formal defect” must be given a liberal meaning which connotes various kinds of defects not affecting the merits of the plea raised by either of the parties.

11. In terms of Order XXIII Rule 1(3) (b) where the court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit, the Court may permit the plaintiff to withdraw the suit. In interpretation of the word “sufficient grounds”, there are two views: One view is that these grounds in clause (b) must be “ejusdem generis” with those in clause (a), that is, it must be of the same nature as the ground in clause (a) that is formal defect or at least analogous to them; and the other view was that the words “other sufficient grounds” in clause(b) should be read independent of the words a ‘formal defect’ and clause (a). Court has been given a wider discretion to allow withdrawal from suit in the interest of justice



in cases where such a prayer is not covered by clause (a). Since in the present case, we are only concerned with “formal defect” envisaged under clause (a) of Rule (1) sub-rule (3), we choose not to elaborate any further on the ground contemplated under clause (b) that is “sufficient grounds”.

11. In a similar situation, Coordinate Bench in the case in **CR No.2995 of 2025** titled as **‘Vivek Yadav and another v. Karan Singh and others’** decided on 16.05.2025, observed as under:-

“12. If one considers the matter in totality, it emerges that first, a statement was given by learned counsel for the respondents-plaintiffs. Thereafter, when the Court was considering the issue, learned counsel stated before the Court that he wanted to withdraw the suit with liberty to file a fresh suit as he wanted to challenge the agreement to sell. The Court then noted the submissions made by learned counsel for the defendants as well. The Court, thereafter, noticed that the case was at its initial stage and no effective order had been passed on the merits of the matter and, therefore, came to the conclusion that if the plaintiffs are permitted to withdraw the suit with liberty to file afresh, no injustice would be caused to the defendants. Accordingly, the permission was granted.

13. In the considered opinion of this Court, the ingredients of Order XXIII Rule 3 CPC stood satisfied. There is no condition that an application for withdrawal should have been filed. Learned counsel for the plaintiffs gave a statement which was duly recorded. He then gave reasons for the statement as well. The statement was objected to. The trial Court considered the statement, as also the objections and then recorded its satisfaction and view and granted the permission. It has to be borne in mind that though, the respondents-plaintiffs could have amended the previous suit also, they could have filed a fresh suit as well after, of course, obtaining permission from the trial Court. In the considered opinion of this Court, the trial Court did not commit any illegality in permitting the respondents-plaintiffs to withdraw the suit with liberty to file afresh.

14. There is another aspect of the matter albeit a serious one. It has been brought to the notice of the Court by learned counsel



for respondent No.1 that pursuant to the suit having been withdrawn, a fresh suit was instituted on 05.02.2025. Notice was issued to the defendants for 11.02.2025. The defendants put in appearance on 11.02.2025. The application for ad interim injunction was dismissed vide order dated 13.02.2025. An appeal was preferred by respondent No.1 against the said order, which was allowed on 06.05.2025.

15. The present revision petition was filed, thereafter, on 13.05.2025. Though, it has been mentioned in the petition that pursuant to the impugned order dated 29.01.2025 having been passed, five separate suits were instituted, no reference was made to the fact that the petitioners had submitted to the jurisdiction of the Court and that the injunction application was initially dismissed by the trial Court but was allowed by the first appellate Court, after which the revision petition was preferred. The petitioners have, therefore, deliberately concealed vital facts from the Court and have made an attempt to mislead the Court. The said attempt is highly condemnable and is deprecated. xxx”

12. There cannot be any dispute with respect to the proposition that the order allowing the plaintiff to withdraw the suit with liberty to file fresh one, must conform to the ingredients of Order XXIII Rule 1(3) CPC. While granting permission to file fresh suit on same cause of action, the Court needs to be satisfied that the suit is bound to fail by reason of some formal defect or that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of the suit or part of the claim.

13. In the present case, counsel for the petitioner is right to the extent that apart from claiming that the suit suffers from technical defects and bonafide mistakes, nothing has been mentioned in the application filed by the plaintiff. The application filed by the plaintiff needs to be tested on the touchstone of Order XXIII Rule 1(3)(2). In the impugned



order, the Court observed that suit is at the initial stage and thus, no prejudice would be caused to the defendants if the application is allowed. As held by Supreme Court in the case of ***K.S. Bhoopathy (supra)***, prejudice caused to the defendant, is one of the factors that would fall within the ambit of sufficient grounds as contemplated under Order XXIII Rule 1(3)(b). In ***K.S. Bhoopathy's*** case, Supreme Court found that since permission was being granted at the stage of regular second appeal, High Court erred in holding that no prejudice will be caused to the defendant. In the present case, counsel for the petitioner is not in a position to dispute that, on the day the application was filed by the plaintiff seeking withdrawal of the suit and on 18.11.2022, when the order was passed, defendant had not even filed written statement. Stand of the defendant had not been unveiled by that date. Issues had not been framed. Court had not applied its mind. Thus, this Court finds that no fault can be found with the Trial Court having allowed the plaintiff to withdraw the suit with liberty to file fresh one on the same cause of action at this nascent stage.

14. That apart, from the bare perusal of the revision petition, it is evident that petitioner failed to disclose that after passing of the impugned order, subsequent suit has been filed and the petitioner had already submitted to the jurisdiction of the Court in the same. He moved an application under Order VII Rule 11 CPC seeking rejection of the plaint. The same was dismissed. By the time, the petitioner filed the present revision petition, even the plaintiff had closed his evidence. Petitioner was obligated to disclose the aforesaid facts in the present revision petition. He having failed to do so, this Court finds that the petitioner has



not approached this Court with clean hands.

15. In view of above, this Court does not find any reason to interfere in the present revision petition and the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

20.08.2025
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No