



(120) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4605-2026 (O&M)
Date of Decision: 29.05.2026

DHARAMBIR SINGH

...Petitioner

Vs.

ASHOK AND OTHERS

...Respondents

CORAM:- HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. R.A. Sheoran, Advocate
for the petitioner.

VIRINDER AGGARWAL, J. (Oral)

1. The present Civil Revision Petition has been filed under Article 227 of the Constitution of India, 1950 read with Section 151 of the Code of Civil Procedure, 1908, seeking setting aside of the impugned order dated 04.04.2026 (Annexure P-4) passed by the learned Civil Judge (Junior Division), Charkhi Dadri, whereby the learned Trial Court dismissed the application dated 13.03.2026 filed by the petitioner seeking withdrawal of the civil suit with liberty to institute a fresh suit on the same cause of action.

2. Briefly stated, the petitioner instituted a suit for permanent injunction seeking to restrain the respondent/defendant from interfering in his peaceful possession over the suit property, which, as pleaded, comprises land over which the petitioner has raised construction of a residential house. The suit was contested by the defendant, who denied the averments made by the petitioner and specifically pleaded that no construction exists at the site in dispute and that the property in question is merely a vacant plot. In support of his defence, photographs depicting the suit land as an open and vacant plot were also placed on record. During the pendency of the suit, the petitioner



moved an application seeking permission to withdraw the suit with liberty to institute a fresh suit on the same cause of action. However, vide the impugned order, the learned Trial Court dismissed the said application. Being aggrieved by the aforesaid order, the petitioner has preferred the present revision petition under Article 227 of the Constitution of India read with Section 151 CPC.

3. Learned counsel for the petitioner submitted that the provisions of Order XXIII Rule 1 of the Code of Civil Procedure, 1908 confer a substantial and valuable right upon the plaintiff to withdraw a suit at any stage of the proceedings. It is contended that the scheme of Order XXIII Rule 1 CPC clearly indicates that the plaintiff cannot be compelled to continue with a suit if he no longer wishes to prosecute the same, and the Court does not possess an unfettered discretion to force a litigant to proceed with the case against his will.

4. It is further submitted that where the plaintiff seeks withdrawal of the suit with liberty to institute a fresh suit on the same cause of action, such permission ought to be granted in appropriate cases, particularly where the plaintiff is able to demonstrate that the suit suffers from formal defects or there are sufficient grounds which would otherwise lead to failure of justice if the plaintiff is not permitted to withdraw and re-file.

5. Learned counsel has further argued that it is a well-settled proposition of law that defects in pleadings, including incorrect framing of reliefs or omission to claim proper relief due to inadvertence or mistake, constitute formal defects within the meaning of Order XXIII Rule 1(3) CPC. Such defects can be rectified either by way of amendment of pleadings or by



permitting withdrawal of the suit with liberty to file a fresh suit, so as to enable adjudication of the real controversy between the parties.

6. The learned Trial Court has specifically considered and discussed the facts and circumstances leading to the filing of the application. It has categorically held that the alleged defect in the plaintiff's suit does not constitute a formal defect; rather, it goes to the very root of the plaintiff's case and directly affects the merits of the matter in controversy. In such circumstances, the learned Trial Court has concluded that permission to withdraw the suit with liberty to institute a fresh suit on the same cause of action cannot be granted.

7. It is not disputed that the suit property is a vacant plot. The plaintiff instituted the present suit seeking a decree of permanent injunction restraining the defendants from interfering in his alleged peaceful possession over the property on the assertion that he has already raised construction of a residential house thereon. The defendants, however, contested the suit and specifically denied the existence of any such construction, pleading that the suit site is merely a vacant plot. In support of their defence, photographs depicting the property as an open and vacant site were also placed on record.

8. The learned Trial Court has, therefore, rightly declined the application seeking withdrawal of the suit with liberty to institute a fresh suit on the same cause of action, as the defects pointed out in the plaint are not formal in nature but go to the very root of the case. The material on record indicates that an attempt was made to mislead the Court by falsely pleading that construction had been raised on the suit property, whereas no such construction exists.



9. It appears that upon the said factual position being brought to light during the proceedings, the plaintiff attempted to withdraw the suit so as to avoid adjudication on merits and to escape the consequences of the pleadings already made. In such circumstances, the application was rightly dismissed by the learned Trial Court. There is, thus, no illegality, perversity, or infirmity in the impugned order warranting interference, and the same does not call for any interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India and the same is accordingly dismissed.

10. Pending applications, if any, shall stand disposed of.

(VIRINDER AGGARWAL)
JUDGE

29.05.2026

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<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>