
(2011) 09 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 5831 of 2011 (O&M)

Harsh Vashisht

APPELLANT

Vs

Rajinder Sharma and others

RESPONDENT

Date of Decision : 27-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 39 Rule 2

Citation : (2012) 2 RCR(Civil) 114

Hon'ble Judges : Vijender Singh Malik, J

Advocate : Mr. S.S. Narula, Advocate. For the Caveator/respondent No. 2, Mr. Kul Bhushan Sharma, Advocate., Advocates for appearing Parties

Judgement

Vijender Singh Malik, J.

Harsh Vashisht elected as Vice President of Gaur Brahmin Vidya Parcharni Sabha, Rohtak (for short, ?the Sabha), in the results of the elections declared on 31.1.2011, has brought this revision petition under the provisions of Article 227 of the Constitution of India challenging the order dated 5.9.2011 passed by Civil Judge (Senior Division), Rohtak, whereby application of respondent No.1/plaintiff No.2 (hereinafter referred to as ?the respondent?) for allowing him to withdraw all his claims/reliefs from the suit with liberty to institute a separate fresh suit, for setting aside the result of election for the post of Vice President and for recounting of votes, has been accepted.

Vide the impugned order, learned trial court had decided three applications. The first application had been dated 3.6.2011 filed by plaintiffs No. 1 and 2 under Order 1 Rule 10 and Order 23 Rule 1 read with Section 151 CPC for abandoning their claim/relief/suit against defendants No. 4, 6, 8 and 9 and for deleting their names from the array of defendants. Application no.2 was dated 18.7.2011 filed by plaintiff No.2 for withdrawal of the suit with permission to file a separate suit and the last application dated 28.7.2011 filed by plaintiff No.1 is under Order 1 Rule 10 and Order 23 Rule 1 read with Section 151 CPC for abandoning their claim/relief/suit against defendant No.5 and for deleting his name from the list of

defendants. Defendant No.5 is the petitioner before me.

Hearing learned counsel for the parties, learned trial court allowed the various applications. The only order challenged before me is of allowing application of plaintiff No.2/respondent No.1 permitting him to withdraw all his claims/relief from the suit with liberty to institute a separate fresh suit on the same cause of action regarding the election to the post of Vice President.

I have heard Shri S.S.Narula, learned counsel for the petitioner and Shri Kul Bhushan Sharma, learned counsel for the respondent No.2/Caveator and have gone through the record. Learned counsel for the petitioner has submitted that the learned trial court could not permit the withdrawal of the suit by plaintiff No.2/respondent No.1. According to him, the composite suit challenging the election to the post of President and Vice President of the Sabha was not maintainable and on the said ground, the suit was liable to be dismissed. According to him, the same was not a defect of form and learned trial court was not justified in permitting plaintiff No. 2 to withdraw his claim with liberty to file a fresh suit challenging the election of Vice President of the Sabha.

Learned counsel for the petitioner has cited before me two decisions of this Court in Bansi Lal Clarence Vs. United Church of Northern India Trust Assc. Regd. Office, Bombay 1995 (2) RRR 1 and Chander and others Vs. Gulzari Lal and others (LXXXI1979) PLR 637.

Learned counsel for the respondent/Caveator has submitted on the other hand, that under the provisions of Order 23 Rule 1 CPC, the Civil court is competent to permit withdrawal of the suit in this manner with liberty to file fresh suit on the same cause of action.

Under Order 23 Rule 1, subrule (3), the court may grant permission to the plaintiff to withdraw from suit or such part of the claim with liberty to institute fresh suit in respect of such claim or such part of the claim, if it is satisfied that the suit must 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 a claim.

The composite suit challenging the election to the post of President and Vice President of the Sabha is not competent and the same would have been a reason of dismissal of the suit of the plaintiffs. However, that dismissal would have been on account of the defect of form. The said defect has nothing to do with the merit of the case. The court is not required to be satisfied simultaneously about the requirements of clause (a) and (b) of sub rule (3) of Order 23 Rule 1 and if plaintiff satisfies the court on the requirement of one of the two clauses, court was competent to grant the relief.

In the instant case, I find that the suit suffered from formal defect on account of which, it was to fail and since plaintiff No.2 applied for permission to withdraw from the claim with permission to file fresh suit challenging the election of Vice

President, the order permitting him cannot be held to be defective in any manner.

In Bansi Lal Clarence's case (supra) one of the objections of the defendants was that the plaint was vague and indefinite in material particulars. Those objections were called as formal defects in the plaint. It was clearly found that the course adopted by the plaintiff under the provisions of Order 23 Rule 1 CPC was to avoid the consequence of not bringing evidence despite 58 adjournments. The court also thought it to be easier course to get rid off an old civil suit. It is not the case in hand. There is no allegation that the plaintiffs have failed to lead their evidence and that they have taken this course to avoid unsavory consequence of closing of the evidence.

In Chander and others's case (supra) also the plaintiff had failed to produce relevant record or adduce adequate evidence or to fully describe the suit land in the plaint. It was not found to be a formal defect or sufficient reason under Order 23 Rule 1 CPC. So, the ratio of these two judgments is not attracted to the facts of this case.

For the aforesaid reasons, I find no ground to interfere with the impugned order. The revision petition is, therefore, found to have no merit and the same is dismissed.