
(1999) 12 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3441 of 1999

Panna Lal

APPELLANT

Vs

Chairman/Secretary, HSEB

RESPONDENT

Date of Decision : 04-12-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 4

Citation : (2001) 2 CivCC 128 : (2001) 2 RCR(Civil) 11

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Mr. Naresh Katyal, for the Appellant; Mr. Amarjeet Singh, for the Respondent

Judgement

M.L. Singhal, J.—Panna Lal filed suit in April, 1997 for declaration with consequential relief of permanent injunction thereby challenging the order dated 11.4.96 whereby the period during which he remained under suspension was ordered to be treated as leave of the kind due and he was punishable with stoppage of two annual increments with cumulative effect. He with-drew that suit on 23.10.97. In consequence for the withdrawal of that suit, the following order was passed by Additional Civil Judge (Senior Division), Bahadur-garh:

"Present:- Mr. I.S. Dagar, Advocate for the plaintiff.

2. It is stated by the learned counsel of the plaintiff that he does not want to proceed with the present suit and withdraws the same. Keeping in view me statement of the learned counsel for the plaintiff the present suit is dismissed as withdrawn. File be consigned to record room after due compliance."

3. After the withdrawal of the suit, he approached this Court by way of civil writ petition No. 17072 of 1997 "Panna Lal v. HSEB & others", challenging the same order dated 11.4.96 (ibid). Vide order dated 8.7.98, a Division Bench of this Court dismissed the writ petition being hit by Order 23 Rule (4) CPC. Order dated 8.7.98 passed by Division Bench of this Court reads as follows:

"Present:- Mr. Naresh Katyal, Advocate for the petitioner Mr. Tribhuwan Dahiya, Advocate for respondent.

4. The relief sought for in this petition is the one which petitioner had earlier sought by filing civil suit for declaration and also for permanent injunction restraining the respondents from taking action on the basis of order passed against him. Petitioner later withdraw the civil suit, but while withdrawing the suit, no permission was sought by him to file a fresh suit on the same cause of action. Since no prevision was sought, second suit is barred under Order 23, Rule 4 of the Code of Civil Procedure. If the suit is barred, then the writ petition on the same cause of action is also not maintainable. Consequently, we have no option but to dismiss the writ petition. It is so ordered."

5. On 15.1.99, he moved an application before Additional Civil Judge (Senior Division), Bahadurgarh seeking the review of the order dated 23.10.97 and for the grant of permission to him to file fresh suit on the same cause of action. It was alleged that permission was essential as he intended to file fresh suit on the same cause of action as he was continuously suffering irreparable loss due to order dated 11.4.96 (ibid). Vide order dated 1.4.99, the review application was dismissed by Additional Civil Judge (Senior Division), Bahadurgarh.

6. Aggrieved from the order dated 1.4.99 passed by Additional Civil Judge (Senior Division), Bahadurgarh, Panna Lal has come up in revision to this Court.

7. I have heard the learned counsel for the parties and have gone through the record.

8. It is clear from the aforesaid resume of facts, that Panna Lal has been rendered remedyless. Civil Writ Petition filed by Panna Lal was dismissed not on merit but because he had not sought any permission for filing the second suit at the time when he withdrew the first suit. Since no permission had been sought to file another suit on the same cause of action, second suit was barred under Order 23 Rule, 4 C.P.C. If suit was barred then the writ petition on the same cause of action was also not maintainable. It appears that plaintiff withdrew the suit but forgot to seek permission of the Court to file writ petition/suit on the same cause of action. It appears that he withdrew the suit because he wanted to avail a more efficacious and quicker remedy. If he had withdrawn that suit with permission to file a fresh suit on the same cause of action or civil writ petition on the same cause of action, the aforesaid writ petition/suit would have been maintainable. Since the plaintiff had withdrawn the suit without seeking the permission of the court to withdraw with liberty to institute fresh suit on the same cause of action, the Court was not required to go into the question whether the suit as framed was suffering from a formal defect necessitating its withdrawal and the permission to file another suit on the same cause of action. It appears that it got out of the mind of learned counsel for Panna Lal that he should withdraw the suit and ask for permission to institute fresh suit on the same cause of action or go in for writ petition to the High Court. Had this thing been

not in the mind of his learned counsel, Panna Lal would not have filed C.W.P. No. 17072 of 1997 seeking the quashing of order dated 11.4.96.

9. We cannot be slave to procedure. Procedure is designed to do justice and not throttle justice. We cannot render the plaintiff remedyless. At the altar of procedure, substantive rights cannot be allowed to be sacri-fied. Impugned order dated 1.4.99 passed by Additional Civil Judge (Senior Division), Bahadurgarh is set aside. Similarly, order dated 23.10.97 passed by that Court is also set aside. As a consequence, the civil suit filed by Panna Lal in April, 1997 gets revived. If Panna Lal seeks to withdraw this suit saying that owing to some formal defect from which this suit is suffering, this will fail and he be granted permission to withdraw this suit with liberty to file another suit on the same cause of action, the Court will examine this prayer and if the court declines this prayer, the Court will try this suit and if the Court accepts his prayer, he will institute fresh suit on the same cause of action.

10. Revision allowed.

11. Revision allowed.