

**(2006) 04 AHC CK 0257**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 22547 of 2006**

Ratan Singh and Others

APPELLANT

Vs

U.P. Avas Evam Vikas Parishad and Another

RESPONDENT

**Date of Decision :** 26-04-2006

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1(3)  
Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 — Section 82(2)

**Citation :** (2006) 9 ADJ 563 : (2006) 4 AWC 3513

**Hon'ble Judges :** Umeshwar Pandey, J

**Bench :** Single Bench

**Advocate :** Vivek Chaudhary, for the Appellant; Vivek Saran and Surya Shaker Pandey, for the Respondent

**Final Decision :** Allowed

## Judgement

Umeshwar Pandey, J.—Heard Mr. Vivek Chaudhary, the learned Counsel for the petitioners and Sri Surya Shankar Pandey holding brief of Sri Vivek Saran, learned Counsel for the respondents.

2. This petition challenges the order of the revisional court dated 10.1.2006 whereby the court below has allowed the revision and set aside the order of the trial court dated 24.8.2005 granting permission to the petitioners-plaintiffs to withdraw the suit with liberty to file a fresh suit.

3. The suit against U. P. Awas Evam Vikas Parishad was filed in which it was alleged that the statutory notice u/s 82(2) of U. P. Awas Evam Vikas Parishad Adhiniyam, 1965, had been given but since the notice was not given by registered post, the petitioners plaintiffs did not have documentary evidence with regard to service of the said notice. As such finding this formal defect in the suit the prayer was made before the trial court for its withdrawal under Order XXIII, Rule 1 (3), C.P.C. The prayer was quite innocuous and as such it was accepted by the trial court vide its order, Annexure-4. The revisional court, while discussing all these aspects of the matter for no good reasons, has arrived that the order

permitting withdrawal of the suit with liberty to file a fresh suit, was erroneous. The order of the revisional court thus, appears to be wholly misconceived. The aforesaid provision of Order XXIII, Rule 1(3), C.P.C., for appreciation on the point, is quoted as below :

Where the Court is satisfied,-

(a) that the suit shall fail by reasons of some formal defect, or

(b) that there are sufficient grounds for allowig 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it may, on such terms as it thinks fit, grant the plaintiff permission to withdrawn from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or a part of a claim,

4. From the aforesaid provision, is more than evident that if the Court is satisfied that the suit shall fail by reasons of some formal defect it may be treated to be a sufficient ground to allow the plaintiff to withdraw the suit with liberty to file a fresh suit. Acting purely in the light and spirit of the aforesaid provision of the Code, the trial court passed the order. The revisional court without recording any reason as to the propriety and justification of the satisfaction of the trial court being erroneous, found that the permission should not have been granted for withdrawal as well as for leave to file a fresh suit. It is nowhere recorded in the revisional order that why the said court was not satisfied that the suit shall fail for some reason of formal defect and instead recording its dissatisfaction to the prayer made by the plaintiffs petitioners, has interfered into the findings recorded by the trial court. The revisional court's orders appears to be wholly erroneous and cannot sustain in the eye of law.

5. In result, the petition is allowed. The Impugned order dated 10.1.2006 passed by the revisional court (Addl. District Judge, Court No. 8, Meerut) is hereby set aside. The order of the trial court (Annexure-4) is, restored.