

conditions of service rules, respondent No. 2 has overtaken the petitioner in promotion notwithstanding the seniority of the petitioner over and above respondent No. 2.

(20) The grading awarded to the candidates is not disputed. Both the petitioner and private respondent were held eligible by the Committee. It is on account of the higher merit of respondent No. 2 that he has been promoted as Director (Head of the Department).

(21) In view of the above legal and factual position, I do not find any merit in this petition, which is, accordingly, dismissed, however, with no order as to costs.

Held, that this court in authority Nand Lal's case (supra) held that lack of proper pleas and material documents which go to the root cause of the case could not be placed before the Court earlier is a ground for allowing the plaintiff to withdraw the suit with permission to file fresh one on the same cause of action. It has been laid down in this ruling that technicalities should not stand in the way of the Courts doing justice. Non-pleading of specific plea may prove to be the fatal, is a technical defect.

(Para 11)

Further held, that so, in view of the above said authoritative pronouncements by the Apex Court and by this Court, the learned trial Court should not have dismissed the application for withdrawal of suit with permission to file fresh suit on the case cause of action. Thus, the impugned order of the trial Court will cause miscarriage of justice.

(Para 12)

Further held, that the impugned orders stands set aside and the revision petition is allowed and the petitioner is allowed to withdraw the suit with liberty to file fresh suit on the same cause of action on payment of Rs.10,000/- as costs.

(Para 13)

R.M. Singh, Advocate, *for the petitioner*:

Prashant Bansal, Advocate, for respondent.

K.C. PURI, J.

(1) This is a revision petition preferred by plaintiff-petitioner under Article 227 of the Constitution of India for quashing the order dated February 24, 2011 passed by Shri Gopal Arora, Additional Civil Judge (Senior Division), Rajpura vide which he dismissed the application of the plaintiff/petitioner for withdrawal of the suit with permission to file fresh suit on the same cause of action due to technical defect in the suit.

(2) It has been averred by the petitioner that document Ex.DX which is not proved on the record according to law shows that the suit property was allotted to Shama Ram by adjustment of the compensation

payable under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. There are few technical defects and the late production of document Ex.DX, necessitated the plaintiffs to withdraw the present suit and to file fresh suit. The defendants-respondents appeared as DW-5 and was cross-examined on December 8, 2008 and till that date, the document exhibited as DX was not produced in the Court and even a specific question was asked to that effect. Due to some technical defect, it is very much necessary to file fresh suit otherwise plaintiff-applicant would suffer an irreparable loss and injury which cannot be compensated in any manner.

(3) On notice, defendants appeared, filed reply and contested the application on the ground that the same is not maintainable. On merits, it has been alleged that the plaintiff filed the present suit with averments that the suit property was allotted to Shama Ram great grand father of plaintiff No. 2 and coparcener in Joint Hindu Family property. It was duty of the plaintiff before filing the present suit to ascertain about the nature and status of the property. Defendant No. 1 from the very beginning alleging that the suit property to be self-acquired property which is duly proved on record and further Ex.DX is also proved as per the provisions of law. The plaintiff has further failed to disclose any technical defect in the suit and prayed for dismissal of the application.

(4) After hearing both the counsel for the parties, the Shri Gopal Arora, Additional Civil Judge (Senior Division), Rajpura dismissed the said application vide order dated February 24, 2001 holding that the plaintiff invoked the application intentionally just to drag the party in the 3rd round of litigation.

(5) However, feeling dissatisfied with the aforesaid order dated February 24, 2001 passed by the trial Court, the plaintiffs-petitioners filed the present revision petition.

(6) I have heard learned counsel for the parties and have gone through the records of the case.

(7) Learned counsel for the petitioner has submitted that the trial Court has dismissed the application for withdrawal of the suit with permission to file fresh one on the ground that earlier an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in short-the CPC) for

amendment of the plaint was made and the same was disallowed. Even the revision against the order the amendment was dismissed. It is submitted that in the plaint, the plaintiff has pleaded that suit property was allotted to Shama Ram father of Suhara Ram and after death of Suhara Ram, Shama Ram inherited the property from his father. The plaintiff wanted to amend the plaint so as to take the plea that suit property was allotted in lieu of perty left by Shama Ram, father of Suhara Ram in West Pakistan and Suhara Ram has got the said property on the death of Shama Ram. The plaintiff has placed on record the documentary evidence that suit property was allotted to Shama Ram. The plaintiff has placed on record the documentary evidence that suit property was allotted to Shama Ram in lieu of the property left by him in West Pakistan but has not pleaded that said fact and on that ground, suit of the plaintiff is likely to fail. The Hon-ble Apex Court in authority *Baniram and others versus Gaind and others (1)*, allowed the withdrawal of the suit wherein on account of technical impediment the suit is liable to be dismissed. He has also relied upon authority *Nand Lal versus Bhim Sen (2)*. On the strengthen of the same, it is argued that lack of perper pleas and material evidence which goes to the root cause of the case is tiself a ground for allowing the suit to be withdrawn with permission to file fresh one on the same cause of action.

(8) In reply to the above noted submissions, learned counsel for the respondent has supported the order of the trial Court. It is submitted that there is not formal defect. Earlier the petitioner filed an application for amendment of plaint and remained unseccessful. The revision against that order twas also dismissed. There is no technical defect. So, the impugned order is perfectly valid.

(9) I have given my thoughtful consideration to the rival submissions made by both the sides and have gone ghrrough the records of the case.

(10) According to the plaintiff, his case is liable to fail on the technical ground that plaintiff has nto pleaded that the suit property was allotted in lieu of property left by Shama Ram, father of Suhara Ram, in West Pakistan. However, the fact remains that the plaintiff ahs pleaded that earlier the property was allotted to Shama Ram father of Suhara Ram and

(1) AIR 1982 SC 789

(2) 2000 (3) RCR (Civil) 173 (Pb. & Hy.)

after death of Suhara Ram Shama Ram inherited the property. The original source of allotment of land in favour of Shama Ram is not pleaded. The plaintiff tried to amend the plaint but that application was not accepted by the trial Court being at related stage. That order of dismissing the application was upheld by this Court in Civil Revision No. 934 of 2011. The rules and procedures are meant to advance the cause of justice and not to thwart it. The Hon'ble Apex Court in authority *Baniram and others' case (supra)* has observed as under :—

“Having considered the fact that non-pleading of a point may prove a technical impediment and may result in the dismissal of the appeal which may imode a fresh adjudication if a point is to be made though belated, the Supreme Court considers it just and proper in the interests of justice to permit the appellant-plaintiff to withdraw the suit with liberty to file a fresh suit on the same cause of action or on a different cause of action, subject to the payment of Rs. 1,000 by way of costs in addition to all other costs.”

(11) This Court in authority Nand Lal's case (supra) held that lack of proper pleas and material documents which go to the root cause of the case could not be placed before the Court earlier is a ground for allowing the plaintiff to withdraw the suit with permission to file fresh one on the same cause of action. It has been laid down in this ruling that technicalities should not stand in the way of the Courts doing justice. Non-pleading of specific plea may prove to be the fatal, is a technical defect.

(12) So, the view of the above said authoritative pronouncements by the Apex Court and by this Court, the learned trial Court should not have dismissed the application for withdrawal of suit with permission to file fresh suit on the same cause of action. This, the impugned order of the trial Court will cause miscarriage of justice.

(13) Consequently, the impugned order stands set aside and the revision petition is allowed and the petitioner is allowed to withdraw the suit with liberty to file fresh suit on the same cause of action on payment of Rs. 10,000 as costs.

(14) A copy of this judgment be sent to the trial Court for strict compliance.