

Rajwant Kaur Matta (Smt.) v. M/s Arora Feed Mills, Patiala, and  
another (A. L. Bahri, J.)

---

immoveable property, yet from the pleadings of the parties and the contents of letter Annexure P1/A it becomes clear that the authorities had intended to first recover the amount of the loan due by the sale of immoveable property mortgaged with the Board. The observations in Dharam Singh's case (supra) have also been made in the context of Section 67 of the Punjab Land Revenue Act. Consequently, we hold that the authorities before taking recourse to coercive measures like arrest and detention of the loanees had, in the first instance, to try to recover the dues by sale of the property mortgaged with the Board. If, however, some amounts remain due then and only then the revenue authorities could recover the arrears by arrest and detention of the defaulter loanee. We, however, want to make it clear that we have construed the provisions of Section 57 of the Land Revenue Act in the context of loans advanced by the Board and these principles are inapplicable in the matters of recovery of taxes, fees etc. due to the State."

(9) Thus, for the reasons aforesaid, there is no merit in the writ petitions. The same are dismissed with costs. Counsel fee Rs. 1,000.

---

R.N.R.

Before A. L. Bahri, J.

RAJWANT KAUR MATTA (SMT.),—*Petitioner.*

*versus*

M/S ARORA FEED MILLS, PATIALA. AND  
ANOTHER,—*Respondents.*

*Civil Revision No. 2978 of 1990.*

7th March, 1991.

*Code of Civil Procedure, 1908 (V of 1908)—O. 23, rl. 1—Withdrawal of suit—Previous suit dismissed as withdrawn on Plaintiff's statement "for the time being he does not want to proceed with the suit and withdraws the same"—Permission to file fresh suit on the same cause of action not taken—Fresh suit is barred.*

*Held*, that the first suit having been dismissed without obtaining permission to file fresh suit on the same cause of action debars him from filing a subsequent suit on the same cause of action.

(Para 3)

*Held*, that the principle underlying Rule 1 of Order 23 of the Code is that when a plaintiff once institutes a suit in a Court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject matter again after abandoning the earlier suit or by withdrawing it without the permission of the Court to file fresh suit.

(Para 2)

*Petition under section 115 C.P.C. for revision of the order of the Court of Shri D. R. Arora PCS, Sub Judge, 1st Class, Patiala, dated 15th September, 1990, deciding the preliminary issue in favour of the plaintiff holding the suit to be maintainable.*

*Claim:—Suit for declaration to the effect that the plaintiff is a tenant/direct allottee in possession of the shop bearing No. 6437, Municipal No. 341-B/2, which is situated at Dharampura Bazar, Patiala under the defendant No. 2 and the defendant No. 1 has no right, title or interest of any kind in it which is bounded as under and for permanent injunction restraining the defendant No. 1 from interfering or cause to interfere in any manner, whatsoever, in the continuous and peaceful possession of the plaintiff over the shop in question and from dispossessing the plaintiff over the shop in question forcibly except in due course of law.*

*North: Shop of Azad Printers; South: Main Bazar; East: Road; West: Takiya Rahim Shah, shop of Respondents.*

*Claim in Revision: For reversal of the order of lower court.*

*Puran Chand, Advocate, for the Petitioner.*

*G. S. Bhatia, Advocate, for the Respondents.*

#### JUDGMENT

*A. L. Bahri, J.*

(1) Sub Judge I Class, Patiala, on September 15, 1990, held a preliminary issue in favour of the plaintiff holding the suit to be maintainable. Defendant Smt. Rajwant Kaur Matta has challenged the same in this revision petition.

(2) It is not necessary to give in detail the nature of the suit filed as the question involved is purely question of law arising out

Rajwant Kaur Matta (Smt.) v. M/s Arora Feed Mills, Patiala, and another (A. L. Bahri, J.)

---

of admitted facts. The plaintiff, M/s Arora Feed Mills, Patiala, earlier filed a similar suit which was dismissed as withdrawn on December 6, 1988. On the same pleadings the present suit was filed on December 12, 1988. The objection was taken in the written statement that the present suit was not maintainable as permission of the Court to file fresh suit on the same cause of action was not taken when the previous suit was dismissed as withdrawn. At this stage it may be stated that when the previous suit was withdrawn the plaintiff had made the statement to the effect that "for the time being he does not want to proceed with the suit and withdraws the same." Order XXIII Rule 1 of the Code of Civil Procedure reads as under :-

- "1. Withdrawal of suit or abandonment of part of claim.—(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim :

Provided that where the plaintiff is a minor or other person to whom the provisions contained in Rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

- (2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

- (3) Where the Court is satisfied :—

- (a) that a suit must fail by reason of some formal defect, or  
 (b) that there are sufficient grounds for allowing 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 withdraw 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 such part of the claim.

(4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1),  
or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.”

The perusal of the aforesaid provision clearly shows that if at the time of withdrawal of the previous suit permission is not granted by the Court to file fresh suit on the same cause of action, subsequently fresh suit is not maintainable. This principle has been recognised in several judicial decisions. In *Teja Singh v. Union Territory of Chandigarh and others* (1), the Full Bench applied this principle to the writ petitions enunciating the law in relation to Order XXIII Rule 1 of the Code of Civil Procedure. In para 25 of the judgment it was observed as under :

“It may be noticed that the applicability of the provisions of Order 23, Rule 1 shall have a very salutary effect as it would minimise to a great extent the chances of the abuse of the process of this Court. To elucidate the point further, I take an example. A litigant files a petition in this Court which comes up for motion hearing. During the arguments an impression is gathered that the Bench is not agreeing and the petition is likely to be dismissed and on the basis of that impression, the peti-

---

(1) A.I.R. 1982 P&H 169.

Rajwant Kaur Matta (Smt.) v. M/s Arora Feed Mills, Patiala, and another (A. L. Bahri, J.)

---

tion is got dismissed as withdrawn. Thereafter, on the same facts and in respect of the same cause of action a second writ petition is filed."

In para 27 it was concluded :

"That a second petition on similar facts and in respect of the same cause of action by the same party would not be maintainable even if his earlier petition has been disposed of by one word 'Dismissed'."

The Supreme Court in *Sarguja Transport Service v. State Transport Appellate Tribunal M.P., Gwalior and others* (2), applied the provisions of Order XXIII Rule 1 of the C.P.C. to the writ petitions. In para 7 of the judgment it was observed as under :—

"The Code as it now stands thus makes a distinction between 'abandonment' of a suit and 'withdrawal' of a suit with permission to file a fresh suit. It provides that where the plaintiff abandons a suit or withdraws from a suit without the permission, referred to in sub-rule (3) of Rule 1 of Order 23 of the Code, he shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim. The principle underlying Rule 1 of Order 23 of the Code is that when a plaintiff once institutes a suit in a court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject matter again after abandoning the earlier suit or by withdrawing it without the permission of the court to file fresh suit. *Invito beneficium non datur*. The law confers upon a man no rights or benefits which he does not desire. Whoever waives abandons or disclaims a right will lose it. In order to prevent a litigant from abusing the process of the court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of Rule 1 of Order 23. The principle underlying the above rule is founded on public policy."

(3) The matter was considered by the Lahore High Court in *Karam Singh v. Sardar Singh and others* (3). The plaintiff withdrew his first suit by requesting the Court that his suit might be filed for the time being. Exact words used were "*filhal dakhil dafter ho*" Subsequently on the same cause of action fresh suit was filed and it was held that a fresh suit for the same subject matter was not maintainable as no permission to bring a fresh suit was sought by the plaintiff when withdrawing the suit and no permission expressly or even impliedly was granted by the Court. The aforesaid decision fully covers the case in hand. Counsel for the respondent relied upon the decision of the Madras High Court in *Keesari Santamma v. Kanumatha Reddi Venkatarama Reddi and others* (4). The ratio of this decision is not applicable to the case in hand as that was a case of partition wherein every party can be treated as a plaintiff and could approach the Court for partition of the joint property. The approach of the trial Court that the suit is maintainable is not correct. The first suit having been dismissed without obtaining permission to file fresh suit on the same cause of action debars him from filing a subsequent suit on the same cause of action. Finding of the trial Court on this issue is reversed.

(4) For the reasons recorded above, this revision petition is allowed. The impugned order is set aside. The suit is held to be not maintainable and is dismissed. There will be no order as to costs.

R.N.R.

Before A. L. Bahri and S. S. Grewal, JJ

PROVIDENT FUND INSPECTOR, CHANDIGARH.—Appellant.

versus

M/S SURAJ BHAN DINESH KUMAR COTTON FACTORY AND ANOTHER.—Respondents.

Criminal Appeal No. 433-DBA of 1982.

27th March, 1991.

Code of Criminal Procedure, 1973—Ss. 249, 256—Employees Provident Fund and Miscellaneous Provisions Act, 1952—S. 14-A—Accused summoned on complaint—case adjourned for putting substance of complaint and recording his plea—Personal presence of

(3) A.I.R. 1982 Lahore 138.

(4) A.I.R. 1935 Madras 909.