

Dalip Singh v. Rajinder Singh etc. (Pandit, J.)

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

DALIP SINGH,—Petitioner.

versus

RAJINDER SINGH ETC.,—Respondents.

Civil Revision No. 794 of 1970.

September 17, 1971.

Code of Civil Procedure (Act V of 1908)—Order 23, rule 1—Permission to withdraw a suit—When can be granted—Reasons in support of such grant—Whether must be given in the order granting the permission.

Held, that permission to withdraw a suit with liberty to file a fresh one in respect of the same subject matter can be granted only if the case falls within the four-corners of the provisions of Order 23, rule 1 of the Code of Civil Procedure. It is not sufficient for granting such a permission merely to say that the Court is satisfied from the statement of the plaintiff that there is a formal defect in the frame and form of the suit. Reasons must be given in the order itself in support of the conclusion that the requirements of Order 23, rule 1 of the Code are satisfied. (Para 3).

Petition under section 115 C.P.C. for revision of the order of Shri Bachan Singh, Sub-Judge 1st Class, Amloh at Nabha, dated 10th June, 1970, dismissing the suit as withdrawn.

M. P. Maleri, Advocate, for the petitioner.

J. V. Gupta, Advocate, for respondent No. 1.

JUDGMENT

PANDIT, J.—(1) This is a defendant's revision petition against the order of the learned Subordinate Judge accepting the plaintiff's application under Order 23, rule 1, Code of Civil Procedure, for permission to withdraw the suit with liberty to bring another one on the same cause of action.

(2) The impugned order reads :

“From the statement of Shri Rajinder Singh, plaintiff, made today in Court overleaf, I am satisfied that there is a formal defect in the frame and form of this suit. Therefore,

the plaintiff is allowed to withdraw this suit with liberty to file a fresh one in respect of the same subject matter on payment of Rs. 20 as costs. The suit is dismissed, as withdrawn. The file be consigned on completion and the documents, if any, be returned to the parties."

(3) This petition is accepted on the short ground that the impugned order is no judgment in the eye of law. A bare reading of the said order would show that no reasons have been given by the learned Judge as to how he came to the conclusion that the requirements of Order 23, rule 1 were satisfied in this case. It is not sufficient to say that from the statement of the plaintiff, the Court was satisfied that there was a formal defect "in the frame and form of the suit". Curiously enough even the said statement had not been recorded in the order. The suit had gone on for quite some time, when the plaintiff made the statement, referred to in the impugned order. The learned Judge should have examined the provisions of Order 23, rule 1, Code of Civil Procedure, before giving the necessary permission to the plaintiff. Needless to say that the same could be granted only if the case fell within the four-corners of the said rule.

(4) This petition is, accordingly, accepted, the impugned order set aside and the trial Judge is directed to hear the parties again and decide the case afresh. Parties have been directed to appear before him on 19th October, 1971. There will, however, be no order as to costs.

B. S. G.

APPELLATE CIVIL

Before S. S. Sandhawalia, J.

LAKSHMI OIL MILLS, CIRCULAR ROAD, AMBALA CITY.—Appellant.

versus

THAKAR DASS ETC.,—Respondents.

**First Appeal From Order No. 141 of 1970 with Civil Misc.
No. 589 of 1970**

September 17, 1971.

Employees' State Insurance Act (XXXIV of 1948)—Section 61—Workmen's Compensation Act (VII of 1923)—Section 3—Workman insured under