



CR-6422-2025

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(112)

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Date of Decision:-12.09.2025

Harjit Singh

.....Petitioner

Versus

Gurmeet Singh and Others

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present: Mr. Dhirinder Chopra, Advocate,
for the petitioner.

AMARINDER SINGH GREWAL, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India assailing the impugned order dated 19.08.2025 (Annexure P-7) passed by the learned Civil Judge (Senior Division), Moga in Civil Suit No.2233/2021 titled "*Gurmeet Singh & Others v. Jagsir Singh & Others*" (Annexure P-4), whereby the application moved by the present petitioner under Order VII Rule 11 read with Section 151 CPC for rejection of the plaint was dismissed. The petitioner has also sought stay of proceedings before the trial Court.

2. The respondents-plaintiffs instituted the aforesaid suit seeking declaration that they are co-sharers/co-parceners in joint possession of land measuring 62 kanals 19 marlas, situated in the revenue estate as detailed in the headnote of plaint, and further seeking declaration that the sale deed dated 24.03.2017 (registered on 31.03.2017) executed in favour of defendants No.1 & 2



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and consequential mutation No.5836 are illegal, null and void. Along with the said relief, the plaintiffs also sought the consequential relief of permanent injunction.

3. The petitioner-defendant, on notice, entered appearance and filed an application under Order VII Rule 11 CPC, asserting that the suit was barred since the respondents had earlier filed Civil Suit No.1234/2017 on the same cause of action, which was dismissed as withdrawn on 16.11.2018 without any liberty to file afresh. Hence, by virtue of Order XXIII Rule 1(4)(b) CPC, the subsequent suit was not maintainable. The trial Court, however, dismissed the application vide order dated 19.08.2025 (Annexure P-7), holding that as the defendants had already filed written statement, the application for rejection of plaint could not be entertained at that belated stage.

4. Learned counsel for the petitioner contends that the reasoning of the trial Court is unsustainable in law. It is argued that filing of a written statement does not curtail the statutory right of a defendant to raise objections under Order VII Rule 11 CPC, since the issue of maintainability goes to the root of the matter. It is further submitted that once the earlier suit had been withdrawn without liberty, the plaintiffs were clearly barred from instituting a fresh suit on the same cause of action. Reliance is placed on Order XXIII Rule 1(4)(b) CPC, as well as the judgment of the Delhi High Court in *M/s Shoes East Ltd. v. Jainender Jain*, wherein it was categorically held that a subsequent suit on the same cause of action is not maintainable once the earlier suit has been withdrawn without liberty.

5. Further reliance is placed on the judgment of the Hon'ble Supreme Court in *R. Rathinavel Chettiar & Another v. V. Sivaraman & Others*, (1999) 4 SCC 89 : 1999 (2) RCR (Civil) 447, wherein it has been held as under;



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“...where a decree passed by the trial Court is challenged in appeal, it would not be open to the plaintiff, at that stage, to withdraw the suit so as to destroy that decree. The rights which have come to be vested in the parties to the suit under the decree cannot be taken away by withdrawal of the suit at that stage unless very strong reasons are shown that the withdrawal would not affect or prejudice anybody’s vested rights.”

6. In view of the order proposed to be passed, notice is not being issued to respondent as it would delay the proceedings besides entailing additional expenses to the respondents.

7. I have heard learned counsel for the petitioner and perused the paper book.

8. It is not in dispute that *Civil Suit No.1234/2017* was dismissed as withdrawn on 16.11.2018. A perusal of the order, however, reveals that the withdrawal was not simpliciter but was premised upon a compromise said to have been entered into between the parties, wherein, the plaintiffs purportedly relinquished their rights in favour of the defendant. The respondents-plaintiffs now assert that such compromise was never acted upon and the defendant resiled from his obligations.

9. The legal position is well settled that where a suit is withdrawn without liberty under Order XXIII Rule 1(4), the plaintiff is precluded from instituting a fresh suit on the same cause of action. This principle has been reiterated in *M/s Shoes East Ltd.* (supra). At the same time, the Supreme Court in *R. Rathinavel Chettiar* (supra) clarified that the doctrine of bar upon withdrawal must be applied contextually and with regard to vested rights.

10. In the present case, the order dated 16.11.2018 records the factum of



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compromise. Therefore, the withdrawal cannot be treated as a simpliciter withdrawal so as to attract an absolute bar under Order XXIII Rule 1(4) CPC. When the alleged compromise did not fructify and the defendant resiled, a fresh cause of action did arise for the plaintiffs. The bar contained under Order XXIII Rule 1(4)(b) CPC thus does not stand attracted to the peculiar facts of this case.

11. The trial Court, however, fell into error in holding that an application under Order VII Rule 11 CPC cannot be considered after filing of the written statement. The settled law is that the maintainability of a plaint can be examined at any stage of the proceedings. On this aspect, the reasoning of the trial Court cannot be sustained. Nevertheless, for the reasons recorded hereinabove, the plaint cannot be rejected under Order VII Rule 11 CPC, since the withdrawal in the earlier proceedings was not unconditional.

12. For the reasons recorded above, the present revision petition is found to be devoid of merit and is hereby **dismissed**, without commenting upon the merits of the case.

13. All pending application(s), if any, stand disposed of accordingly.

(AMARINDER SINGH GREWAL)
JUDGE

12.09.2025

Shubham

Whether speaking/reasoned:-	Yes/No
Whether Reportable:-	Yes/No