

2025:PHHC:019461



253-Urgent

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

**CM No. 2643-CII of 2025 in/and
Civil Revision No. 289 of 2025 (O&M)
Date of Decision: 10.02.2025**

Bhim Singh

..... Petitioner

Versus

Vikram and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ashish Gupta, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner-plaintiff.

HARKESH MANUJA, J. (ORAL)

CM-2643-CII-2025

Prayer in the present application moved on behalf of the applicant-petitioner, is for preponing the main case from 03.03.2025 to an earlier date.

In view of the contents of the application, duly supported by an affidavit of petitioner, namely, Bhim Singh; prayer made in the same is accepted and with the consent of learned counsel for the applicant-petitioner, the main case is taken up today itself.

Registry to do the needful.

Application stands **disposed off** accordingly.

MAIN CASE

The petitioner-plaintiff, by way of present petition, seeks setting aside of an order dated 02.01.2025 (Annexure P-21) passed by the

learned Additional Civil Judge (Senior Division), Panipat, whereby an application moved at the instance of petitioner-plaintiff, seeking withdrawal of his suit with liberty to file afresh, stands declined.

[2] Briefly stating, based on an agreement to sell dated 06.05.2004, petitioner-plaintiff filed a suit for symbolic possession by way of specific performance with respect to a plot measuring 55 square meters bearing No. 783, Sector-18, HUDA, Panipat. It was pleaded that respondent No. 2 [Sunder Lal (since deceased)] being the allottee through his power of attorney holder i.e. respondent No. 1 (Vikram) entered into the agreement in question with plaintiff-petitioner as purchaser, whereas on 22.05.2017, its conveyance deed was executed in favour of defendant No. 4/respondent No.4 (Manoj Kumar), who later was impleaded as party in the suit on 16.05.2018. Having availed number of opportunities so as to conclude his evidence, at the fag end of the stage, the plaintiff-petitioner filed an application seeking permission to withdraw the suit with liberty to file fresh one, while pleading that the conveyance deed dated 22.05.2017 executed in favour of respondent No. 4 / defendant No. 4 was required to be assailed. The said application was opposed at the instance of respondent No. 4/defendant No. 4, which came to be dismissed by the trial Court vide impugned order dated 02.01.2025.

[3] After hearing learned counsel for the petitioner and having gone through the paper-book, I am unable to find substance in the submissions made on behalf of the petitioner.

[4] In the present case, respondent No. 4/defendant No. 4, in whose favour the conveyance deed was executed by defendant No. 3 on

22.05.2017, stands impleaded as party to the suit wayback vide order dated 16.05.2018; thus, in the humble opinion of this Court, the petitioner-plaintiff being a prudent litigant, was there and then required to assail the validity of conveyance deed dated 22.05.2017 if at all required, by seeking amendment of plaint. On the contrary, the petitioner after availing number of opportunities to conclude his evidence, having failed to do the same, filed the present application for seeking permission to withdraw the suit with liberty to file a fresh one, which appears to be merely an attempt to get fresh opportunity to produce the evidence in support of his claim, thereby leading to a *de novo* trial and thus, cannot be permitted in the facts and circumstances of the present case at this belated stage.

[5] Moreover, against the order dated 23.11.2023 passed by the trial Court whereby the evidence of petitioner came to be closed, he approached this Court vide Civil Revision No. 7368 of 2023, wherein vide order dated 24.07.2024, an opportunity was afforded to him to appear and get himself cross-examined; subject to deposit of costs of Rs. 25,000/-, however, instead of availing it, having failed to pay the costs, the petitioner-plaintiff filed the present application apparently to circumvent the course of proceedings. In such circumstances, it has been rightly reasoned by the learned trial Court that the petitioner cannot be permitted to do something indirectly, which he cannot do directly and fill-up the lacuna in the proceedings that has occurred on account of his own fault. Besides it, the cause espoused in the application could have even been got cured by invoking and awaiting the benefit of other procedural provisions at the appropriate stage and, therefore, the same cannot be treated as a formal

defect now for permitting the petitioner-plaintiff to withdraw the suit and permit him to file it afresh. Accordingly, the provisions of Order 23, Rule 1 (3) of Code of Civil Procedure, 1908, cannot be permitted to be misused to the detriment of the rights accrued to the respondents-defendants.

[6] Hence, no illegality or perversity can be found with the impugned order dated 02.01.2025 (Annexure P-21) passed by the learned Additional Civil Judge (Senior Division), Panipat, while dismissing the application for withdrawal of the suit seeking liberty to file it afresh at the instance of petitioner-plaintiff.

[7] Consequently, finding no merit in the present revision petition, the same is hereby **dismissed**.

[8] Pending miscellaneous application(s), if any, shall also stand disposed off.

February 10, 2025

(HARKESH MANUJA)

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JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>